COVID-19 FAQs
REGARDING EMPLOYEE BENEFITS

MEDICAL COVERAGE

Is COVID-19 testing covered by my policy?

Congress has passed legislation mandating all group health plans cover COVID-19 testing.

Are we required to offer COVID-19 testing with no cost sharing for employees and their dependents?

Many states—including California, Colorado, New York, Oregon and Washington—are mandating insurance companies cover medically necessary testing without cost sharing. Most insurance carriers (including Aetna, Blue plans, Cigna, UHC, and numerous others) have announced that COVID-19 testing will be provided at no cost to members.

Additionally, Congress has passed legislation that requires all plans cover testing without cost sharing as of the day the law is enacted. Grandfathered plans, self-funded plans, and governmental plans therefore have to provide testing without cost sharing.

If we cover without cost sharing, how will that affect HSA eligibility?

According to IRS Notice 2020-15, high deductible health plans may cover COVID-19 testing and all subsequent treatment with low or no cost sharing without compromising the ability to contribute to a health savings account (HSA).

What is the recommended coverage for COVID-19 testing and treatment for self-funded plans?

Medically necessary **testing must be covered without cost sharing**.

Any **treatment** for COVID-19 subsequent to testing should be covered at normal benefit levels. If you wish to change your plan's level of coverage for these services, please contact your IMA Benefits consulting team to discuss what steps need to be taken.

GOVERNMENT RESOURCES FOR EMPLOYERS AND HEALTH PLANS

CMS FAQs for individual and small group insured health plans, and other guidance for health care providers

OSHA overview, workplace preparedness guide and respiratory protection overview

CDC workplace preparedness guide

DOL FMLA guidance

EEOC workplace pandemic preparedness guide from 2009 (not specific to COVID-19), and a very brief refresher in relation to COVID-19

Medicare will pay about $36 for CDC tests and about $51 for commercial tests

IRS Notice 2020-15 stating that, until further notice, testing and all aspects of treatment for COVID-19 may be provided prior to the minimum deductible requirement without compromising HSA-compatibility

HR 6201, the Families First Coronavirus Response Act passed by Congress on March 18, 2020

State law materials

- National Conference of State Legislature's roundup of State Action on Coronavirus
- National Governors Association's information page regarding specific steps taken by states
- CIAB's State Insurance Regulatory COVID-19 Updates

My insurance carrier has announced a one-time COVID-19 special enrollment period. Should I extend this offer to my employees?

During these times, employees are more likely than ever to want to be enrolled in comprehensive major medical coverage for their entire family. Insurance carriers (and state-run public health Exchange Marketplaces) have responded in large numbers to offer one-time special enrollment windows for those not currently enrolled to enroll their families during this time. While cafeteria plan rules would not generally treat this as a qualifying event (QE), the fact that coverage has improved (COVID-19 testing and related visits/supplies now have no cost-sharing, and several insurers are even offering treatment without cost-sharing), employers may be able to rely on the significant improvement in coverage QE to allow this one-time special enrollment. We have no reason to believe the IRS would penalize employers for allowing this given the current crisis environment.

Should I allow employees to move from a higher-cost plan to a lower-cost plan option?

Since employers with more than one plan must make the change to all their plans to cover testing without cost-sharing (and if they offer treatment without cost sharing, will likewise offer that on all their plans, too), it's not as apparent that changing from a buy-up plan to a more affordable plan should be allowed under the technical terms of the mid-year election-change rules. Even if there has arguably been a "significant improvement" to the more affordable option (e.g., enhanced COVID-related coverage), it is likely a similar improvement has been made to the buy-up plan. However, given the state of crisis and overall government emphasis on economic support for employees and continuation of medical coverage, we have no reason to believe the IRS would seek to penalize employers for allowing this change in plans mid-year. So as long as the insurance/stop loss carrier is willing to allow such an enrollment change, employers may conclude there is an acceptable level of practical risk in allowing employees enrolled in a buy-up option to change to a lower-cost option.

Should I allow employees to drop coverage when hours reduce but eligibility is not lost?

If the employer temporarily adopts relaxed eligibility rules allowed by their underlying insurance/stop loss carrier, then employees with a reduction in hours or furlough will not be experiencing a loss of eligibility during the timeframe the carrier allows active coverage to continue. Also, for medical plan purposes, any employer that is utilizing the look-back method might find a large number of impacted employees remain eligible for medical due to being protected by a full-time stability period. However, there are a few considerations:

- For full-time stability periods, employers were allowed to adopt a cafeteria plan election change that would allow an employee to drop medical upon reduction in hours if they attest their intent to seek other coverage within two months. COBRA would not be available, and the employee would not be allowed to re-enroll until the next annual open enrollment (or experiencing a valid QE, noting resumption of FT hours will not be a QE because the earlier reduction in hours was not a loss of eligibility, so resuming FT is not reflective of becoming newly eligible).
- Many employers will not be in a position to pay the entire premium during the furlough, so employees will likely be expected to keep timely paying their share of premiums. If employees become unable to have their share of insurance premiums deducted from pay (due to paychecks being significantly reduced or not being paid at all during this time), then the employer must extend a 30-day grace period to the employee to make up the missed premium. Should the employee miss that deadline, then coverage will terminate (in some states, it might even terminate retro to the last date through which the employee had paid premiums), and COBRA is not offered. If coverage terminates retroactively, claims paid might have to be reprocessed.
    - Bypassing that entire process to instead allow an employee to voluntarily drop in anticipation of being unable to pay might make sense during this time of crisis, knowing the government's emphasis on providing families with maximum flexibility for immediate cashflow.

However, it's incredibly important employees understand the importance of things like health, life, and disability insurance during times of public health crisis, know that COBRA will not be offered, and understand they may not be able to re-enroll when normal hours resume since the reduction in hours didn't lead to a loss of eligibility to begin with, so resumption of FT hours isn't creating new eligibility.

If I allow employees to voluntarily drop coverage, should I allow them to re-enroll when they resume normal full-time hours?

If eligibility was not lost due to the reduction in hours, then resuming full-time hours will not make employees newly eligible. However, given that employers had to be flexible to allow the coverage drop to begin with, it might make sense to honor re-enrollment upon resumption of full-time hours, particularly if re-enrollment is limited to major medical and Rx coverage. So as long as the insurance/stop loss carrier is willing to allow re-enrollment upon resumption of full-time hours, employers may conclude there is an acceptable level of practical risk in allowing employees to re-enroll at that time.

How will my employees' coverage be affected while they are not working?

In light of the widespread effects of the COVID-19 pandemic, we anticipate that many carriers will allow for certain extensions to coverage beyond what would typically be permitted under employers' plan documents. If you wish to continue coverage for employees during quarantines, remote work arrangements, furloughs, or other reductions in employee hours, we encourage you to contact your IMA Benefits consulting team for coverage information and advice.

Absent any exception or extension in your coverage, the following general rules would apply:

- Terminated employees must be offered COBRA continuation coverage.
- Employees covered by FMLA should have benefits protected for up to 12 weeks.
- The new legislation passed by Congress provides expanded FMLA protection for employers with fewer than 500 employees. Individuals employed at least 30 days must be given 12 weeks of extended FMLA to care for children under 18 whose school or child care provider is unavailable due to public health emergency. The first 10 days of this special leave are unpaid, but employees may choose whether to utilize paid leave available to them from the employer. The remaining portion of the 12 weeks of extended FMLA are to be paid at two-thirds normal compensation, up to $200 per day and up to $10,000 in the aggregate. For variable hour employees, an average of the last 6 months of hours, including all types of leaves, is to be used. Employers must make reasonable efforts to restore the employee to the same or equivalent position (there is a hardship clause to exempt certain employers with fewer than 25 employees from this provision).
- Employees in a full-time stability period under the look-back method may remain covered under the major medical plan regardless of hours until exhaustion of their full-time stability period.
- Otherwise, employers should follow their written leave of absence provisions described in their wrap plan document. Benefits typically end at the end of the month in which the employee is no longer scheduled to work full-time, but some employers have language allowing coverage for employer-approved leaves of absence for another month or two, after which COBRA ensues due to reduction of hours.

Can we continue to cover employees if their hours are reduced during the COVID-19 outbreak?

Employers should follow the written terms of their plans unless they obtain special permission from their insurer or stop loss insurer to extend coverage outside of normal eligibility terms. If moving employees to COBRA, the employer might offer to provide the usual employer contribution (or perhaps even offer to pay full COBRA costs) for the first two or three months of COBRA to help with this transition, with the hope employees might return to full-time work by that time.

As discussed above, we expect that many carriers will be willing to agree to reasonable adjustments to plan terms during these circumstances. Please contact your benefits team to discuss further.

What happens to employees who are unable to pay their premiums while they are not working full-time hours?

As discussed above, we expect that many carriers will be willing to agree to reasonable adjustments to plan terms during these circumstances. Please contact your benefits team to discuss further.

Also, Congress has passed legislation providing certain employees extended paid FMLA to care for children when school or child care is unavailable, as well as providing certain employees two weeks of emergency paid leave due to COVID-19.

Assuming employees unable to work full-time hours remain eligible and enrolled, employees unable to pay their premiums should be given a 30-day grace period notice to make up the premium shortfall. Should the employee be unable to make up the missing premium by the end of the 30-day grace period, the employer needs to decide whether to forgive the shortfall (and the employer pays that premium instead) or to terminate the employee's coverage without access to COBRA.

If the employer pays premium shortfalls for employees during this time, they should likely do so for any employee experiencing a premium shortfall during this time in order to avoid discrimination problems.

If I choose to cover COVID-19 treatment through my self-funded plan, will my stop loss policy cover those claims?

IMA is in the process of gathering coverage details from several stop loss insurers we routinely work with. Generally speaking, we have found that most stop loss carriers are covering both testing and treatment for COVID-19. Please contact your IMA Benefits consulting team to confirm details specific to your plan.

Can I allow employees to change their benefits elections as a result of changes in circumstances due to COVID-19?

The IRS only allows benefit election changes mid-year for recognized qualifying events (QEs). Employers should be careful not to deviate from the IRS's list of QEs. Please contact your IMA Benefits consulting team if you have questions about employees' eligibility to change benefits elections.

DISABILITY AND OTHER COVERAGE

Do employees qualify for short term disability benefits if they become ill due to COVID-19?

Disability policies typically include a 7- or 14-day elimination period before disability benefits would be payable. It is expected most employees ill with COVID-19 will have recovered before the end of the elimination period, so benefits would not apply when the employee recovers quickly.

In the event an employee is ill through that entire elimination period, then the policy's definition of disability determines whether benefits are payable. Claims for COVID-19 illness will be evaluated the same as any other illness that makes employees unable to perform material duties of their job.

IMA is in the process of gathering coverage details from several disability insurers we routinely work with. Please contact your IMA Benefits consulting team to confirm details specific to your plan.

Are employees considered to be actively employed while quarantined?

Most disability policies recognize employer-approved short leaves of absence as still actively at work. Check with your IMA Benefits consulting team for your policy's details.

The federal bill HR 6201 passed by Congress provides two weeks emergency paid leave and 12 weeks of mostly paid FMLA for employers with fewer than 500 employees, which will help emphasize the position that these employees are actively at work.

Are employees with symptoms of COVID-19 covered by our critical illness, specified disease, or hospital indemnity policy?

Please contact your IMA Benefits consulting team to confirm details specific to your plan.

Are employees with symptoms of COVID-19 covered by our long-term care policy?

Long term care insurance (LTCi) would typically cover extended inability to perform two or more activities of daily living (ADLs) without assistance, such as bathing, eating, or transferring. Should the individual experience two losses of ADLs for the entire duration of their LTCi elimination period, then the LTCi policy would likely offer coverage at that point. Please contact your IMA Benefits consulting team to confirm details specific to your plan.

LEAVE ISSUES/ADA

Are employees entitled to FMLA leave during quarantines?

A serious medical condition as defined by FMLA generally requires hospitalization or ongoing care of a physician. Should either of these be present for a specific quarantine situation, FMLA might apply. Also, if a doctor recommends someone get tested, then taking time off for that medically necessary test and to be quarantined while waiting for the results will qualify for FMLA.

The new legislation passed by Congress provides expanded FMLA protection for employers with fewer than 500 employees. Individuals employed at least 30 days must be given 12 weeks of extended FMLA to care for children under 18 whose school or child care provider is unavailable due to public health emergency. The first 10 days of this special leave are unpaid, but employees may choose whether to utilize paid leave available to them from the employer. The remaining portion of the 12 weeks of extended FMLA are to be paid at two-thirds normal compensation, up to $200 per day and up to $10,000 in the aggregate. For variable hour employees, an average of the last 6 months of hours, including all types of leaves, is to be used. Employers must make reasonable efforts to restore the employee to the same or equivalent position (there is a hardship clause to exempt certain employers with fewer than 25 employees from this provision).

Am I required to pay employees during quarantines?

Congress has passed legislation mandating employers with fewer than 500 employees provide certain levels of compensation for two weeks of COVID-19 related quarantines.

Some state or local paid leave laws might require pay during a quarantine. An employer's own leave policies may also provide for compensation during these instances. If employees are not otherwise entitled to pay, they should typically be allowed to use any accrued sick time or PTO while away from work.

In many instances, employees who are not sick will be capable of working from home during quarantines, and employers should review their remote work policies and procedures to minimize any business interruption during these periods. Employees working from home should be paid at their regular rates of pay.

Are employees that test positive for COVID-19 covered by the ADA?

Generally speaking, a COVID-19 diagnosis will not constitute a disability under the Americans with Disabilities Act (ADA) as it is typically a temporary condition. In the unlikely case that an employee's illness rises to the level of a covered disability, the ADA would require employers to evaluate whether reasonable accommodations could be made to enable someone to work without undue burden to the employer and without jeopardizing the health/safety of other employees.

Can we charge employees' vacation and sick leave balances while not working?

Employers should follow their written policies on taking leave. New COVID-19 specific legislation says for employers with fewer than 500 employees, "an employee may elect to" utilize paid leave benefits during the first 10 days of unpaid expanded FMLA to care for children during school/child care closures. It is unclear whether this requires employers to give the employee a choice and prohibits the employer from charging accrued paid leave balances, so we'll look for more guidance.

What happens to employees' benefits during quarantines or other leave?

Employers will want to follow the written terms in their plan documents. While short 14-day quarantines might not impact benefits and FMLA leaves protect benefits, other leaves might not protect benefits beyond a certain amount of time. Please see above for more details, and as always, please reach out to your IMA Benefits consulting team with any questions regarding your specific plan terms.

PRIVACY/HIPAA ISSUES

If an employee tests positive for COVID-19, can I inform their co-workers that they may have been exposed?

Employers absolutely should inform supervisors and co-workers of confirmed COVID-19 diagnoses without divulging identities as much as possible. Typically employers are not going to learn of such a diagnosis from the health plan, so HIPAA privacy would rarely be implicated, but general privacy considerations should always be top of mind. Your IMA Benefits consulting team will be happy to assist if you have any questions or concerns about sharing this information.

Can I ask employees questions about their health to determine whether they need to be quarantined?

Employers should not outright ask if employees have a specific condition, but they are permitted to ask employees about recent travel and about symptoms they are experiencing that might necessitate the need to be quarantined. Employers are authorized to insist employees stay home if conditions warrant but should not discriminate and should prevent stigma/discrimination in the workplace.

WORKPLACE SAFETY

What obligations do I have to protect employees from exposure to COVID-19?

Employers have a general duty under the Occupational Safety and Health Act (OSHA) to protect employees from known dangers at the workplace. As a result, it is imperative extra precautions are taken to protect the workplace from known or suspected exposures to the virus and to take extra cleaning measures. The Occupational Safety and Health Administration has published a document called Guidance on Preparing Workplaces for COVID-19 that provides recommendations for employers to protect employees and comply with their OSHA obligations.

What should I do if an employee gets sick?

Employers should not allow an employee with a confirmed diagnosis or known exposure to someone with a confirmed diagnosis to access the workplace during a quarantine period. Public health officials have provided guidelines for how long quarantines should last based on when symptoms subside.

Can I send home an employee that appears to be sick?

This is generally at the discretion of the employer, keeping in mind OSHA's general duty clause to protect other workers. It's typically best to ask the employee what symptoms they're experiencing and whether they've sought medical consultation.

Can I force employees to get tested for COVID-19?

This may be excessive, as public health officials don't have an unlimited number of tests and prefer to only provide testing to those most at risk. Imposing a quarantine would be a more appropriate action in most scenarios.

Can I require employees to stay home if they have been exposed to others that have tested positive for COVID-19?

Yes, employers will want to ensure all workers are protected from known potential threats to health and safety.

What if an employee is simply quarantined for potential exposure (but shows no symptoms)?

If the employer can accommodate the employee working from home, then hopefully the quarantine will have little effect on the employee's status or benefits. If the employer cannot accommodate the employee working from home, then the employer should follow its leave of absence policies and, if not already providing paid leave, perhaps consider a short-term emergency paid leave provision for impacted employees.

TRAVEL POLICIES

Can we restrict employees from traveling to high-risk areas?

Generally employers can restrict business travel but not personal travel. Employers can, however, require all personal travel be reported to the employer so quarantines can be enforced.

Can I require employees to stay home if they have recently traveled to high-risk areas?

Yes, employers would be advised to quarantine employees known to have traveled to high-risk areas.

If so, are we required to pay employees during that time?

Some states and municipalities require paid leave. Congress passed legislation mandating employers with fewer than 500 employees provide two weeks of emergency paid leave. Otherwise, there is currently no federal requirement to provide paid leave, but employers might strongly consider some short-term emergency paid leave for the duration of the current pandemic. Please see above for further discussion regarding pay during quarantines.

REDUCED HOURS, FURLOUGHS, TEMPORARY LAYOFFS, AND PERMANENT REDUCTIONS IN FORCE

If I need to reduce hours, how will that affect benefits eligibility?

A reduction of hours below 30 hours per week (or below your plan's full-time eligibility definition, if different) would typically lead to a loss of coverage subject to offering COBRA. However, we expect there will be some leniency from carriers in allowing plans to maintain eligibility for participants during these circumstances. We encourage employers to check with their IMA Benefits consulting team for information about their coverage and to discuss any desired adjustments.

For an employer utilizing the look-back method, employees in full-time stability periods should be able to maintain their medical coverage at full-time rates during any full-time stability periods. While the IRS only developed the look-back method to apply to medical plans, some employers chose to voluntarily adopt stability periods to also apply to dental, vision, flexible spending account, or other benefits as well. Employers should double check their own look-back eligibility terms to identify which benefits are impacted.

Reduced hours could also impact an employee's current measurement period. All hours which are or should be paid must be counted for measurement purposes, but the only categories of unpaid time which must be credited toward employees are FMLA, jury duty, or USERRA. Employers will need to determine whether to be generous and count unpaid time due to business interruption toward measurement results.

Reduced hours may cause employees to be unable to pay their share of premiums. Typically employers would extend a 30-day grace period to allow employees to make up the missed premium, then if the employee is unable to pay within those 30 days, terminate coverage without access to COBRA. In these scenarios, the employee would be unable to rejoin the plan until they experience a qualifying event (such as marriage or birth) or at the next annual open enrollment, which means returning to FT hours won't be enough to allow them back on the plan. During these extenuating circumstances, however, employers might decide whether to be lenient with employees that cannot pay within the grace period, choosing to pay the employee's share as those needs arise.

If I need to furlough some employees, how will that affect benefits eligibility?

Furloughed employees remain "employed," so the same discussions above apply (their hours just happen to reduce to zero). The difference here is employers may decide to cover all of the cost of coverage for employees rather than expecting them to continue to pay monthly premiums.

If I need to temporarily lay off some employees, how will that affect benefits eligibility?

A temporary layoff ensures employees can apply for unemployment, so employment is officially terminated with the prospects of potential recall in the future. When employment is terminated, COBRA is offered, but employers can decide whether to help contribute toward the cost of COBRA for a certain number of months during the layoff. Note that insurers may reserve the right to re-rate your plans should eligibility change by more than 10%.

If I need to exercise a permanent reduction in force, how will that affect benefits eligibility?

These would be permanent terminations of employment subject to COBRA. As part of severance agreements, some employers may choose to help contribute toward the cost of COBRA for a certain number of months. Note that insurers may reserve the right to re-rate your plans should eligibility change by more than 10%.

As your broker, IMA does not adjudicate claims or interpret the policy terms and conditions. That responsibility lies with the insurance carrier. However, we can give you our interpretation of the potential terms and meaning that will be discussed during the claim process. If you feel you have a claim you wish to pursue, we will be more than happy to submit on your behalf.

The information provided on COVID-19 and as relates to insurance coverage is an ever-changing topic. Any decisions by the courts or legislation enacted by state or federal authorities could alter the opinions provided above.

We also encourage clients to review contracts and other agreements for additional provisions which could provide recovery or other relief of capital commitments through force majeure or other clauses.