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COVID-19

Employer & Plan Response

March 23, 2020



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Overview

- The Latest / Government Response
- Benefit Plans & Employer Policies
- Stop Loss Considerations
- Families First Coronavirus Response Act
 - Expanded FMLA
 - Emergency Paid Sick Leave
- Workplace Safety Issues
- HIPAA Considerations

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Today's Speakers



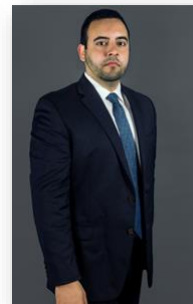
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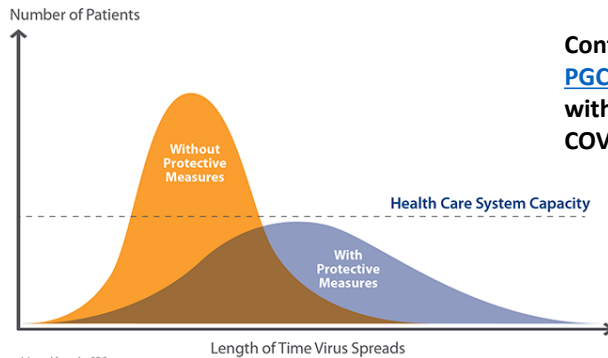
The Latest on the Pandemic

The Current Situation

- Most serious challenge to healthcare system since WWII
- 350,000+ confirmed cases worldwide
- 35,000+ confirmed cases in the U.S. (471 deaths)
- 100 million+ on lockdown
- Severe resource shortage (beds, ventilators, PPE)

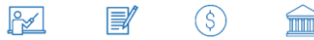


Why Protective Measures Matter: Flattening The Curve



Contact us at
PGCReferral@phiagroup.com
 with any and all questions on
 COVID-19 preparedness.

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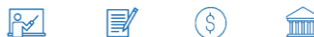
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Government Response

- Enactment/implementation of wartime legislation (National Defense Production Act)
- Shelter in place orders / quarantines
- Unprecedented waiver of state and federal regulations
 - FDA fast-track approval / compassionate use
 - Doctors being allowed to practice across state lines
 - CMS expands telehealth
 - Field hospitals being constructed / private property commandeered
 - House of service laws waived (for truck drivers, etc.)
- Coronavirus stimulus bill being worked on (\$2 trillion price tag)



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Benefit Plans & Employer Policies

- Self-Funded Group Health Plan Considerations
 - Federal law now requires **all** plans to cover FDA-approved diagnostic testing and related expenses with no cost-sharing (FFCRA)
 - No prior auth. or medical management requirements for testing
 - No requirements related to any treatment for COVID-19
 - Grandfathered status
 - Non-ERISA plans
- High Deductible Health Plan Considerations
 - IRC § 223(c)(2) – minimum deductible and MOOP amounts
 - IRS guidance on COVID-19 testing – HDHPs may waive deductibles without jeopardizing eligibility
 - Does not classify testing and treatment as preventive



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Benefit Plans & Employer Policies

Plan Design Considerations

- Changes in law may require a plan amendment
 1. Add language regarding the testing for and treatment of COVID-19 to the benefit grid and outline the applicable cost-sharing requirements
 2. Allow participants to seek treatment through the use of telemedicine
 3. Allow continuation of health coverage for individuals who are not able to work and may require a leave of absence as a result.
 4. Ensure the definition of “Actively at work” properly encompasses situations such as individuals who must work from home as opposed to in the office
 5. Ensure that the plan does not exclude coverage as a result of a State of Emergency or other applicable exclusion which would deny coverage in the given situation

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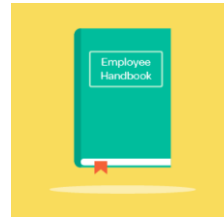
Benefit Plans & Employer Policies

Workforce Reduction Considerations

- Many employers reducing hours (layoff or furlough)
- PD must allow for continuation of coverage and satisfy the employer mandate

Employer Policies/Employee Handbook

- Paid time off
- FMLA/state leaves
- ADA leave/general leave
- Teleworking
- Disaster recovery/business continuity planning



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Stop Loss Considerations

- How Are Carriers Responding to COVID-19
 - Generally, more lenient
 - Most honoring any mandated coverage (i.e. testing) without a plan amendment
 - Some okay with plans that want to cover treatment
 - Some not re-writing based on amendments to the plan or fluctuations in plan participant figures
 - Many requiring amendments for changes to leaves that allow a continuation of coverage
 - Carriers eventually want to see a plan amendment
 - Waiver of cost sharing for testing
 - Waive of cost sharing and limits for telemedicine
 - Some are permitting early refills
 - Some will accept retro amendments back to March
- What Are the Areas of Concern?
 - Experimental drug exclusions
 - International travel exclusions
 - New leave of absence provisions



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Families First Coronavirus Response Act

- Act includes many provisions which apply to employers and which increase funding for federal benefit programs (unemployment insurance, tax credits, WIC & SNAP)
- President Trump signed on March 18th → Effective April 2nd
- Two provisions providing paid leave to employees forced to miss work due to COVID-19
 - Emergency Expansion of the FMLA
 - Emergency Paid Sick Leave Act (EPSLA)
- Note that many states are proposing similar emergency legislation
- Employers must not only prepare for April 2nd enactment, but provide notice their employees through postings and policies



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Families First Coronavirus Response Act

Emergency Family and Medical Leave Expansion Act

- Expanded Coverage and Eligibility
 - Covers all ERs with fewer than 500 EEs (some exceptions)
 - Any EE who has worked for 30 days prior to this leave may be eligible for paid family and medical leave
- Reasons for Emergency Leave
 - Any EE can take up to 12 weeks job-protected leave if EE is unable to work or telework, to care for the EE's child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency
- Paid Leave
 - First 10 days may be unpaid (EE substitute allowed)
 - After 10 days, ER must pay FT employees at 2/3rds **EE's regular rate** for the # of hours the EE would otherwise be normally scheduled.
 - Limited to \$200 per day and \$10,000 total per EE

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Families First Coronavirus Response Act

Emergency Family and Medical Leave Expansion Act

- Calculating Pay for Non-Full Time EEs
 - Paid based on the average # of hours the EE worked for the 6 mos. prior to taking Emergency FMLA. EEs who have worked for less than 6 mos. prior to leave are entitled to the EE's reasonable expectation at hiring of the average # of hours the EE would normally work
- Job Restoration
 - ERs with 25 or more EEs will have the same obligation as under traditional FMLA to return any employee who has taken Emergency FMLA to the same or equivalent position upon the return to work.
 - ERs with fewer than 25 are generally excluded if position is gone
- **Health coverage must be continued for the duration of this leave**
- Effective Date & Expiration
 - Effective April 2 – December 31, 2020

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Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- Eligibility
 - Applies to ERs with fewer than 500 EEs (some exceptions)
 - Must provide FT EEs (regardless of duration of employment prior to leave) with 80 hrs. of paid sick leave at the EE's regular rate (or 2/3rds the EE's regular rate to care for qualifying reasons 4, 5, or 6 below)
- Reasons for Paid Sick Leave
 1. EE is subject to a federal, state, or local quarantine related to COVID-19;
 2. advised by a provider to self-quarantine due to COVID-19 concerns;
 3. experiencing COVID-19 symptoms and seeking medical diagnosis;
 4. caring for an individual (not just family) subject to a federal, state or local quarantine or isolation order or advised by a provider to self-quarantine;
 5. caring for the EE's child if the child's school or place of care is closed or the child care provider is unavailable due to public health emergency; or
 6. experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretaries of the Treasury & Labor



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Families First Coronavirus Response Act

Emergency Paid Sick Leave Act

- Cap on Paid Sick Leave Wages
 - Paid sick leave wages are limited to \$511/day up to \$5,110 total per EE for their own use and \$200/day up to \$2,000 to care for others
- Carryover & Interaction with Other Paid Leave
 - This paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by an employer
- **Nothing in this bill specifically requires continuation of health coverage...but...**
- Effective Date & Expiration
 - Effective April 2 – December 31, 2020

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Workplace Safety Issues

- What Main Guidance To Follow?
 - Existing Occupational Safety and Health Administration (OSHA) guidance (no new specific COVID-19 guidance)
 - OSHA divides workplaces into four risk zones (very high, high, medium, low risk)
 - E.g. for workers in close contact with sick personal, must provide PPE
 - General Duty Clause – ER must furnish a workplace “free from recognized hazards that are causing or likely to cause death or serious physical harm.”
- Equal Employment Opportunity Commission (EEOC) Guidance
 - ADA and Rehabilitation Act do not prohibit employers from adhering to CDC, state, and local health authority guidance
- Other Considerations
 - Do not overact or gossip about EEs of Asian descent, wearing masks, etc.
 - Even if HIPAA does not apply, state laws might
 - Keep health information confidential to the extent feasible



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Workplace Safety Issues

Selected Frequently Asked Questions

- Can I ask EE to leave work or stay home if they exhibit symptoms?
 - Yes. EEOC confirmed this is permissible and not considered disability-related if symptoms are akin to COVID-19
- Can I take an EEs temperature at work to determine whether they may be infected?
 - Yes. EEOC confirmed that measuring EE's body temperatures is permissible given the current circumstances
 - Note: EEs may be infected and have no symptoms
 - Note: If you do business in California, the California Consumer Privacy Act (CCPA) will apply and you must give notice when you collect this information
- An EE has tested positive. What should I do?
 - Send home all EEs who worked closely with that EE for a 14-day period
 - Do not identify by name the infected EE
 - Inform building management if you work in a shared office building
 - Consult further CDC guidance

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HIPAA Considerations

- Does the COVID-19 Emergency Trump HIPAA Privacy Rules?
 - No
- Employer Obligations
 - Privacy restrictions mandated by HIPAA only apply to “covered entities” such as medical providers or employer-sponsored group health plans and only in connection with individually identifiable health information
 - ERs are not covered entities, so information in employment records are not subject to HIPAA restrictions
- Sharing Patient Information
 - When Are Disclosures Permitted?
 - Minimum Necessary Standard



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