

# Virtual Forum: COVID-19 & Employer Benefits

April 2020



Provided by:

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## Today's Webinar

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- **Submit your questions** during the presentation, we will address at the end
- We will not be able to assist you with technological issues while the webinar is taking place. We will, however, **provide a recording of the webinar** once it is available to us on our COVID-19 Resource Page [ProCourseAdv.com/Covid-19](https://ProCourseAdv.com/Covid-19)

# Panelists

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**Doug Prince** (Moderator)  
ProCourse Fiduciary Advisors



**Jill Lehman, SPHR**  
High Frequency Arts



**Andy Vektor**  
MJ Insurance



**Mike Paton**  
Barnes & Thornburg



**Lori Shannon**  
Barnes & Thornburg



# COVID-19 EMPLOYER EMPLOYEE BENEFITS UPDATE

## April 2, 2020

**Michael G. Paton**

Barnes & Thornburg LLP  
11 South Meridian Street  
Indianapolis, IN 46204  
(317) 231-7201  
mpaton@btlaw.com

**Lori L. Shannon**

Barnes & Thornburg LLP  
One N. Wacker Drive, Suite 4400  
Chicago, Illinois 60606  
(312) 214-5664  
lori.shannon@btlaw.com

# FFCRA - DOL Guidance

- <https://www.dol.gov/agencies/whd/pandemic>
- Fact Sheets on FFCRA Paid Leave Rights and Requirements
- Q&As – FFCRA, COVID-19: FLSA & FMLA
- Poster and FAQs about Notice

# FFCRA – DOL POSTER

## ▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$  for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at  $\frac{2}{3}$  for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

<ol style="list-style-type: none"><li><b>1.</b> is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li><li><b>2.</b> has been advised by a health care provider to self-quarantine related to COVID-19;</li><li><b>3.</b> is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li><li><b>4.</b> is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li></ol>	<ol style="list-style-type: none"><li><b>5.</b> is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li><li><b>6.</b> is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li></ol>
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# Plant Layoff or State Stay at Home Order

- **If my employer closed my worksite before April 1, 2020 (the effective date of the FFCRA), can I still get paid sick leave or expanded family and medical leave?**
- No. If, prior to the FFCRA's effective date, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. **This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.**
- Same answer if closed on or after 4/1/2020

# What if Employer Closes While Employee is on Leave?

- **If my employer closes my worksite while I am on paid sick leave or expanded family and medical leave, what happens?**
- If your employer closes while you are on paid sick leave or expanded family and medical leave, your employer must pay for any paid sick leave or expanded family and medical leave you used before the employer closed. As of the date your employer closes your worksite, you are no longer entitled to paid sick leave or expanded family and medical leave, but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because the employer was required to close pursuant to a Federal, State or local directive.



# Documentation for Paid Sick Leave/ Expanded FMLA

- Paid Sick Leave
  - Document employee name, qualifying reason for leave, statement employee is unable to work (including telework) and dates of leave
    - Quarantine order or isolation order
    - Name of Dr. for advice of self-quarantine
    - Need for tax credit
- Expanded FMLA
  - Notice or proof that school or daycare is closed
  - Same for 1<sup>st</sup> two weeks of paid sick leave
  - Need for tax credit

# COVID-19 EMPLOYER UPDATE: COMMON EMPLOYEE BENEFITS QUESTIONS

Q: Due to COVID-19 many companies intend to reduce hours, place employees on leave of absence, or furlough groups of employees. If companies wish to continue benefits for these employees, what are the considerations?

A: There several considerations depending upon the type of benefit programs.

- Eligibility provisions for the employee benefit plans will need to be reviewed
- Companies will need to consider how to handle employee benefit plans with employee contributions
- Retirement plans may need or want to make adjustments to loan repayments, in-service withdrawals and conditions for employer contributions

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

## Group Health Plans

- Group health plans typically include medical (including wellness plans), dental, vision, and health care flexible spending accounts
- Many plans have a requirement that the employee works a minimum number of hours to be eligible
- Group health plans may be self-insured or fully-insured

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

- Sponsors of self-insured group health plans may choose to waive any eligibility requirements related to hours of service (e.g., a requirement that an employee must work at least 30 hours a week on average to be eligible)
  - A plan amendment may be required in connection with such change
  - Any stop-loss policy tied to a self-insured plan will need to be reviewed to determine whether the policy would permit waiver of the eligibility requirement
  - The employer will need to contact the stop-loss insurance company about the waiver of any eligibility requirement to determine if steps can be taken to extend the stop-loss coverage in this situation

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

- Sponsors of fully-insured plans should review policies to determine whether there is any flexibility in eligibility requirements
  - Insurance providers should be contacted to discuss adopting flexible eligibility terms
  - A plan amendment may be necessary, if permitted by the insurance company
- If an employer fails to inform an insurance company (i.e., either a stop-loss insurance company or the insurance provider for a fully-insured plan) that an employee has been furloughed or has reduced hours and no longer satisfies the applicable hours requirement for purposes of the policy, the employer could be forced to self-insure that benefit for those employees

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

- The furlough or reduced hours arrangement may impact the employee's eligibility for medical coverage in a subsequent year (or stability period) if the employer is measuring the employee's hours to determine if the employee is a "full-time employee" for purposes of offering affordable minimum value medical coverage (Employer Mandate) – the employer may wish to consider crediting hours for the period the employee is on furlough or reduced hours for this purpose

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

- Employers should be aware of any COBRA continuation coverage trigger if an employee who fails to work a sufficient number of hours loses eligibility under the terms of a group health plan
  - COBRA service providers should be informed timely to ensure notice and election forms are distributed
  - Automated payroll systems should be adjusted if necessary to avoid inadvertent COBRA triggers
  - If eligibility for coverage as an “active employee” is extended into a period of furlough and the group health plan coverage subsequently ends, COBRA continuation coverage would need to be offered
  - Employers may choose to provide COBRA subsidies to alleviate the financial burden on employees

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

- Payment of premiums for employees on furlough or reduced hours arrangements may be difficult
  - For an employee on furlough, an employer may choose to pay 100% of the employee's premiums (and, if the employee returns to work, catch-up repayments may be made)
  - Employees may pre-pay the premiums for the anticipated period of furlough on a pre-tax basis with accrued but unpaid compensation at the time the furlough commences (but consider impact of new employment by such employee during furlough period)
  - The Employer may set up a direct bill and have the employee make after-tax payments for the group health plan benefits



# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

## Life Insurance, Disability, Long-term Care & ADD Plans

- Short-term disability plans may be either funded by an employer or funded through insurance
  - If necessary, an employer may amend its self-funded short-term disability plan to permit employees who reduce their hours to continue being eligible for benefits
  - A short-term disability plan funded through insurance may only be amended to loosen the eligibility requirements (i.e., and permit employees who fail to satisfy any minimum hours worked requirement to be eligible) if permitted by the insurance company
  - Employees who lose eligibility as the result of a reduction in hours should be apprised of the change
  - An employer may opt to self-insure short-term disability benefits for employees who lose coverage under the fully insured policy in connection with a reduction in hours
- Employers are obligated to inform insurance companies of any change in status of employees related to hours worked and it is possible that insurers may agree to revise eligibility requirements, at least temporarily

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

- Life Insurance, long-term disability, long-term care and accident and disability plans are typically funded through insurance
  - Plans funded through insurance may only be amended to loosen the eligibility requirements (i.e., and permit employees who fail to satisfy any minimum hours worked requirement to remain eligible) if permitted by the insurance company
  - Employees who lose eligibility as the result of a reduction in hours should be apprised of the change and offered conversion coverage, if applicable
  - Employers are obligated to inform insurance companies of any change in status of employees related to hours worked (it is possible that insurers may agree to revise eligibility requirements, at least temporarily)

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

- For the life insurance and long term disability benefits that are based upon the employee's pay, the employer will need to consider the impact on the benefit amount and if changes would need to be made to the benefit plan
- Any changes to plan terms must be approved by the insurance company

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

## Other Employee Benefits-Related Issues

- Employers should consider when a separation from service has occurred under IRC Section 409A (if a furlough becomes a termination of employment) and the impact under plans and other arrangements subject to IRC Section 409A (e.g., deferred compensation plans, employment agreements, severance plans and programs, etc.)
- Generally, subject to any relief granted, an employee on a leave of absence longer than two weeks is not considered gainfully employed and may not be permitted to submit expenses for dependent care expenses during a prolonged leave of absence
- Cancellation of child care arrangements due to the unemployment of one parent may prompt the desire to change dependent care elections in order to reduce or discontinue contributions

# BENEFIT PLANS AND FURLOUGHS OR REDUCED HOURS

- Employers should check dependent care plan documents regarding midyear changes to determine whether such changes are allowed and discuss this with service providers
- Consider how fringe benefits will be handled during any period of furlough, such as employer-provided vehicles, employer-paid cell phones and computers

# COVID-19 EMPLOYER UPDATE: COMMON EMPLOYEE BENEFITS QUESTIONS

Q: Do group health plans need to provide coverage for COVID-19 diagnostic tests?

A: Yes, group health plans will need to provide coverage without any cost sharing, prior authorization or medical management requirements for (1) the in vitro FDA approved diagnostic products for the diagnosis of SARS and COVID-19, and (2) items and services furnished by health care providers (including in-person and telehealth visits), urgent care clinics, and emergency rooms that result in an order for or administration of the in vitro diagnostic test, but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for the product

- Applies to out-of-network and in-network providers
- effective March 18, 2020
- Employers will need to amend their plans and coordinate with third party administrators and insurers

# COVID-19 EMPLOYER UPDATE: COMMON EMPLOYEE BENEFITS QUESTIONS

Q: Have there been other changes to group health plan benefits for COVID-19?

A: Yes.

- A high deductible health plan may cover COVID-19 testing and treatment without a deductible and participants may still contribute to their HSAs
- A high deductible health plan may cover telehealth services without a deductible for plan years starting on or before December 31, 2021
- Vaccine for COVID-19 when developed will be a preventive service with no cost sharing permitted
- Certain OTC products considered medical care and expenses can be reimbursed from health care flexible spending accounts and HSAs

# EFFECT OF FURLOUGHS OR REDUCED HOURS ON RETIREMENT PLANS

## Qualified Retirement Plans

- Part-time employees are generally eligible to participate in qualified plans (subject to statutory hours requirement)
- Employer contribution provisions in defined contribution plans should be reviewed to determine if an employee is required to have 1,000 hours of service to receive a contribution allocation - if so, a plan amendment may be required to permit employees with fewer than 1,000 hours of service to receive an allocation of an employer contribution in a given plan year
- Plans with “last day of the year” requirements for employer contribution allocations may wish to permit employees on furlough to receive employer contributions (i.e., clarify that employees on furlough are still employed for such purpose)



# EFFECT OF FURLOUGHS OR REDUCED HOURS ON RETIREMENT PLANS

## Defined Benefit Plans

- Depending on the accrual formula under a defined benefit plan, a reduction in hours which creates a reduction in pay may reduce an employee's accrued benefit
- For any amendment that freezes or reduces benefit accruals in a defined benefit plan or defined contribution plan subject to IRC Section 412, employers should consider when a 204(h) notice is required
- Employers should consider when a contribution freeze or partial plan termination (if a furlough becomes a termination of employment) requires full vesting for impacted employees or notice required to the PBGC
- Significant layoffs or furloughs could trigger PBGC "reportable events"

# EFFECT OF FURLOUGHS OR REDUCED HOURS ON RETIREMENT PLANS

## Qualified Retirement Plans

- Employers may wish to credit hours of service for the furlough or reduced hours period to avoid a break in service and to continue to receive service credit for vesting purposes

# COST SAVING MEASURES FOR RETIREMENT PLANS

- Defined contribution plans can reduce employer contributions under certain circumstances
- Safe harbor 401(k) plans can reduce or eliminate matching or non-matching safe harbor contributions if:
  - The employer is operating at an economic loss or
  - The employer’s safe harbor notice stated that the employer had reserved the right to suspend or reduce the safe harbor contribution

# COST SAVING MEASURES FOR RETIREMENT PLANS

- Reduction or suspension cannot be effective until 30 days after notice is provided to employees
- Upon reduction or suspension, the plan is no longer a safe harbor plan for the year

# COST SAVING MEASURES FOR RETIREMENT PLANS

- Non-safe harbor plans with discretionary contribution formulas have more flexibility to reduce or eliminate employer contributions for the entire year
- Non-safe harbor plans with contribution formulas (*i.e.*, X% of pay) should be able to reduce or eliminate those contributions going forward
- Legislation is being proposed that will relax some of these rules, especially as they relate to safe harbor plans

# CARES ACT

Under the CARES Act, employees may request “coronavirus-related distributions” from a 401(a), 401(k), 403(b) or government 457(b) plan similar to other disaster relief, if plan terms allow.

- Waiver of 10% penalty on early distributions of up to \$100,000
- Applies when employee, spouse or dependent is diagnosed with COVID-19 or the employee has suffered a financial setback (e.g., furlough or reduced hours) due to the pandemic
- Income from distributions would be subject to tax over 3 years. Employee may re-contribute the funds to an eligible retirement plan within 3 years and the re-contribution amount would not be taxable

# CARES ACT

## Under the CARES Act

- Loan limit increased to lesser of \$100,000 or 100% of the participant's vested account balance in the plan, but only for participants who meet the eligibility requirements for a coronavirus withdrawal
- An individual with a plan loan with a repayment due from the date of enactment of the CARES Act through Dec. 31, 2020 may delay loan repayments for up to one year. This only applies to participants who meet the eligibility requirements for a coronavirus withdrawal
- Subsequent loan repayments must be adjusted to reflect the delay in the 2020 repayment and related interest
- The five-year limit on loan repayments disregards the one-year permitted delay

# CARES ACT

## For defined contribution plans

- The CARES Act permits a one-year delay in RMDs for qualified defined contribution plans, Section 403(a) and (b) plans and governmental Section 457 plans
- The delay applies to both 2019 RMDs that needed to be taken by April 1, 2020 and RMDs with beginning dates in 2020
- Amounts distributed in 2020 that would have been RMDs are not treated as eligible rollover distributions
- This allows retirees to avoid taxable distributions from defined contribution plans when the stock market is down



# CARES ACT

- The CARES Act delays minimum funding contributions for single-employer qualified plans until January 1, 2021
- The amount of each minimum required contribution is increased by interest accruing from the original due date to the payment date at the effective rate of interest for the plan for the plan year in which the payment is made
- However, any applicable collective bargaining agreement or agreement with the PBGC should be reviewed to ensure ongoing compliance

# CARES ACT

The CARES Act delays the due date for related amendments to plans provided that the plan is operated as if the amendment is in effect and the amendment is retroactive, as follows:

- Plan amendments made in connection with the Act must be made by the last day of the plan year beginning on or after January 1, 2022; except
- For governmental plans, the deadline is the last day of the plan year beginning on or after January 1, 2024

# CARES ACT

Under the CARES Act, the DOL has authority to extend any deadline under ERISA. The DOL may provide such relief with respect to the deadlines in the ERISA claims procedures. In the meantime, plan administrators may wish to take advantage of all permitted extensions under the claims procedures related to “special circumstances” (notifying participants as required) and send correspondence via e-mail, if possible, followed by hard copies when administratively feasible.

# Recordkeepers

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Opt-Out	Opt-In
ADP (April 6)	Nyhart
Fidelity (March 31)	RPCSI
Empower (April 3)	EFC
Transamerica (TBD)	APA
Schwab	Voya
Newport (April 5)	Prudential
One America – (April 6)	Principal
APA	Cuna
Standard (April 3)	Goldleaf
McCready	T. Rowe Price

# Panelist Q&A

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**Doug Prince**  
ProCourse Fiduciary  
Advisors



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High Frequency Arts



**Andy Vektor**  
MJ Insurance



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# Visit our Sponsor & Participant Resources Page

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The screenshot shows the ProCourse website with a navigation bar at the top containing the logo and links for People, Services, Get Social, Contact, and Client Portal. The main content area features a large heading for COVID-19 & Retirement Plans, followed by a paragraph of text and a section for Plan Sponsor Resources with an upcoming webinar announcement and a Register button.

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## COVID-19 & Retirement Plans

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There are constant developments in the COVID-19 situation. During these uncertain times, we have created a page with tools and resources as it pertains to Retirement Plans. We will continue to update this site with any information we have, along with ideas on how to support your participants during this time. Please continue to reach out to us with your questions and concerns. *We are all in this together.*

### Plan Sponsor Resources

Upcoming Webinar:  
HR Leaders Virtual Forum: COVID-19 & Employer Benefits  
With the anticipated passing of the unprecedented \$2 trillion coronavirus

[Register](#)

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