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Please find any FAQs discussed in our webinar here: <https://www.onegroup.com/covid19-updates/>

Information from Thursday, May 14, 2020 Webinar:

Good afternoon and thank you for joining OneGroup's informational update. My name is Alison Dunn. We are glad you could join us for our seventh update on the Coronavirus and various business-related impacts. There is a lot of information out there, and we appreciate you spending your time with us.

Currently, we know that businesses are working on their plans for employee's returning to work and those essential businesses where employees have been reporting in to work are creating plans and renewing efforts to ensure safety in the work place.

We also know there is quite a bit going on in Congress, with the proposed 3 trillion dollar Heroes Act. We will cover some highlights of that today, as well as several timely updates to help you as you navigate in this unprecedented environment.

We have several of our experts with us today.

We have:

- Kelly Goodsell, Vice President of Claims Risk Management
- Dennis Ast, Senior Account Executive, Cyber Risk Specialist
- Casey Cone, Senior Human Resources Consultant
- Nate Bradley, Employee Benefits Consultant
- Joe Hatfield, Vice President, OneGroup Retirement Advisors, and
- Tod Hoffman, Senior Bank Liaison

We will be discussing updates to address our clients' frequently asked questions in the areas of:

- Claims and Risk Management
- Cyber
- Human Resources
- Employee Benefits
- Retirement Plans
- Paycheck Protection Program

We do have to include our disclaimer – this is for informational and educational use only. Nothing in this discussion should be considered legal advice. Please consult with the appropriate attorney or advisor before addressing any situation raised in this discussion.

For today, we have structured this discussion to cover key updates and areas that our clients have been asking about. We also requested that participants share any questions with us before this discussion. Due to the number of participants on this call, we have muted all callers. If you have questions after this discussion, please reach out to your OneGroup contact. We will be posting content to our website, onegroup.com. There is a COVID-19 section on the main page that includes all of this information, as well as other helpful tools.

Claims and Risk Management

Business Interruption, Extra Expense and Civil Authority: Covid-19 is not considered a covered cause of loss on most property policies.

We are currently monitoring legislation at the state and federal levels that would require insurance carriers to retroactively change their contractual language and provide business interruption coverage to employers. Currently there is a federal bill pending that would require insurance carriers to provide this coverage retroactively to small businesses with 250 employees or less. The bill was tabled until a later date.

Workers' Compensation: Delays in necessary treatment such as physical therapy and pain management are causing problems with returning employees back to work. Hopefully, in the next several weeks as the country starts to re-open, we will see injured workers getting the necessary treatment they need.

We are also seeing some claims being filed against employers with allegations of discrimination and wrongful termination as a result of Covid-19 and employees being afraid to report to work.

Cyber

Coronavirus Cyber Discussions

- Sadly an uptick in cyber events – Complaints up 300% over the past month – FBI IC3 from 1,000 daily to as many as 4,000 daily
- Cyber Criminals are opportunistic, preying on people's fear and curiosity
- Almost 20k new corona related domains created in last 3 weeks, Corona Cure most popular reference
- Targeted coronavirus Phishing & Smishing campaigns. Recently WHO & United Nations referencing donating to a Covid-19 fund

- Fake cures, treatments, donations, general misinformation to take advantage and psychological manipulation of people
- Social Media –Malicious Links, don't click enter website yourself
- DHS & FBI issued a warning that China is likely launching cyber-attacks to steal coronavirus treatment and vaccine research and info
- DOJ said it will prioritize and prosecute coronavirus scams and fraud
- Google noted at least a dozen foreign government back groups active in cyber-attacks mostly phishing and malware – 18M daily coronavirus related phishing/malware emails
- Increase utilization of remote workers presents new exposure

Practice Good Cyber Hygiene

- Employee Training – Think Before Clicking – Don't Panic
- Multifactor Authentication & Utilization of a VPN
- Use Strong Passwords or Pass Phrases
- No public Wi-Fi
- Secure Mobile Devices
- Install/Update Anti-Malware (Next Gen)
- Stay current with patching/updates
- Risk Assessment (Know what you have) NIST Framework
- Back-up, Test it, Air Gap
- Vendor Management – Beneficial Contracts
- **Cyber Response Plan – Who do you call first?**

Human Resources

The EEOC continues to update guidance listed on its website with regards to the ADA during this pandemic. Below please find a few recent updates:

Disability-Related Inquiries and Medical Exams

A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace? (4/23/20)

The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if [employees entering the workplace have COVID-19](#) because [an individual with the virus will pose a direct threat](#) to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review [guidance](#) from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require – to the greatest extent possible – that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

Reasonable Accommodation

D.12. Do the ADA and the Rehabilitation Act apply to applicants or employees who are classified as “[critical infrastructure workers](#)” or “[essential critical workers](#)” by the CDC? (4/23/20)

Yes. These CDC designations, or any other designations of certain employees, do not eliminate coverage under the ADA or the Rehabilitation Act, or any other equal employment opportunity law. Therefore, employers receiving requests for reasonable accommodation under the ADA or the Rehabilitation Act from employees falling in these categories of jobs must accept and process the requests as they would for any other employee. Whether the request is granted will depend on whether the worker is an individual with a disability, and whether there is a reasonable accommodation that can be provided absent undue hardship.

Return to Work

G.3. What does an employee need to do in order to request reasonable accommodation from her employer because she has one of the [medical conditions](#) that CDC says may put her at higher risk for severe illness from COVID-19? (5/5/20)

An employee – or a third party, such as an employee’s doctor – must [let the employer know](#) that she needs a change for a reason related to a medical condition (here, the underlying condition). Individuals may request accommodation in conversation or in writing. While the employee (or third party) does not need to use the term “reasonable accommodation” or reference the ADA, she may do so.

The employee or her representative should communicate that she has a medical condition that necessitates a change to meet a medical need. After receiving a request, the employer may [ask questions or seek medical documentation](#) to help decide if the individual has a disability and if there is a reasonable accommodation, barring [undue hardship](#), that can be provided.

G.4. The CDC identifies a number of medical conditions that might place individuals at “higher risk for severe illness” if they get COVID-19. An employer knows that an employee has one of these conditions and is concerned that his health will be jeopardized upon returning to the workplace, but the employee has not requested accommodation. How does the ADA apply to this situation? (5/7/20)

First, if the employee does not request a reasonable accommodation, the ADA does not mandate that the employer take action.

If the employer is concerned about the employee’s health being jeopardized upon returning to the workplace, the ADA does not allow the employer to exclude the employee – or take any other adverse action – *solely* because the employee has a disability that the CDC identifies as potentially placing him at “higher risk for severe illness” if he gets COVID-19. Under the ADA, such action is not allowed unless the employee’s disability poses a “direct threat” to his health that cannot be eliminated or reduced by reasonable accommodation.

The ADA direct threat requirement is a high standard. As an affirmative defense, direct threat requires an employer to show that the individual has a disability that poses a “significant risk of substantial harm” to his own health under [29 C.F.R. section 1630.2\(r\)](#). A direct threat assessment cannot be based solely on the condition being on the CDC’s list; the determination must be an individualized assessment based on a reasonable medical judgment about this employee’s disability – not the disability in general – using the most current medical knowledge and/or on the best available objective evidence. The ADA regulation requires an employer to consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. Analysis of these factors will likely include considerations based on the severity of the pandemic in a particular area and the employee’s own health (for example, is the employee’s disability well-controlled), and his particular job duties. A determination of direct threat also would include the likelihood that an individual will be exposed to the virus at the worksite. Measures that an employer may be taking in general to protect all workers, such as mandatory social distancing, also would be relevant.

Even if an employer determines that an employee’s disability poses a direct threat to his own health, the employer still cannot exclude the employee from the workplace – or take any other adverse action – unless there is no way to provide a reasonable accommodation (absent undue hardship). The ADA regulations require an employer to consider whether there are reasonable accommodations that would eliminate or reduce the risk so that it would be safe for the employee to return to the workplace while still permitting performance of essential functions. This can involve an interactive process with the employee. If there are not accommodations that permit this, then an employer must consider accommodations such as telework, leave, or reassignment (perhaps to a different job in a place where it may be safer for the employee to work or that permits telework). An employer may only bar an employee from the workplace if, after going through all these steps, the facts support the conclusion that the

employee poses a significant risk of substantial harm to himself that cannot be reduced or eliminated by reasonable accommodation.

G.5. What are examples of accommodation that, absent undue hardship, may eliminate (or reduce to an acceptable level) a direct threat to self? (5/5/20)

[Accommodations](#) may include additional or enhanced protective gowns, masks, gloves, or other gear beyond what the employer may generally provide to employees returning to its workplace. Accommodations also may include additional or enhanced protective measures, for example, erecting a barrier that provides separation between an employee with a disability and coworkers/the public or increasing the space between an employee with a disability and others. Another possible reasonable accommodation may be elimination or substitution of particular "marginal" functions (less critical or incidental job duties as distinguished from the "essential" functions of a particular position). In addition, accommodations may include temporary modification of work schedules (if that decreases contact with coworkers and/or the public when on duty or commuting) or moving the location of where one performs work (for example, moving a person to the end of a production line rather than in the middle of it if that provides more social distancing).

These are only a few ideas. Identifying an effective accommodation depends, among other things, on an employee's job duties and the design of the workspace. An employer and employee should discuss possible ideas; the Job Accommodation Network (www.askjan.org) also may be able to assist in helping identify possible accommodations. As with all discussions of reasonable accommodation during this pandemic, employers and employees are encouraged to be creative and flexible.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

FFCRA Leave Requests

As discussed, as we return to this new normal, there will be additional considerations to make with regards to employees and the way in which we all perform work.

To date, there may be several employers who may not have had to administer many FFCRA leaves. However, employers certainly may receive an increase in leave requests as employees begin to return to the workplace. For example, leave requests for childcare due to a school or daycare being closed. This could apply to many as in NY, schools will be closed for the remainder of the school year. As a reminder, these leave provisions are in effect at least through the end of the year (December 31, 2020). It is important to make sure you are aware of the leave programs available in the event you receive requests.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Employee Benefits

New relief affecting FSAs

Within [Notice 2020-29](#) from the IRS, taxpayers using FSAs will receive the following relief:

Expanded mid-year elections

This change expands the ability of taxpayers to make mid-year elections for the following:

- health coverage
- health FSAs
- dependent care assistance programs

The Notice is very clear that this is not a free-for-all. The employer has the discretion to impose parameters for these election changes, including the extent to which the election changes are permitted and applied, and they can limit the period during which election changes may be made.

Increased rollover amount

Perhaps largest, change in the new relief affecting FSAs is the updated rollover provision. Since its introduction in 2013, the rollover feature has been set at \$500 with no fluctuations.

In a historical move, [Notice 2020-33](#) not only increases the current rollover from \$500 to \$550 for medical FSAs, but establishes it will now be adjusted annually for inflation.

COBRA / Special Enrollment update

On April 28, 2020, the Department of Labor (DOL), the Internal Revenue Service (IRS), and Department of Health and Human Services (HHS) issued guidance and relief related to COBRA and HIPAA Special Enrollment rights. Most notably, the guidance requires employers and plans to suspend the deadline for qualified beneficiaries to elect COBRA or pay COBRA premiums from March 1, 2020 until 60 days after the National Emergency ends (or such other date as specified by the Agencies).

In order to ease the burden on participants and beneficiaries, the DOL, in coordination with the IRS issued a Final Rule extending certain timeframes and deadlines for participants to consider coverage elections and benefits decisions under ERISA and the Code.

Duration of Relief

The rule provides that in determining certain plan time frames, the duration of the “outbreak period” is to be disregarded. The outbreak period is the period from March 1, 2020 until 60 days

after the end of the national emergency or another date announced by DOL and Treasury in a future notice.

The rule provides that, to the extent there are different outbreak period end dates for different parts of the country, DOL and Treasury will issue additional guidance. The rule also notes that, per the statutory provisions in the Internal Revenue Code and ERISA that provide the basis for these extensions, the period required to be disregarded may not be longer than one year.

The dates included in the final rule are as follows:

- The 30-day period to request a special enrollment;
- The deadline for individuals to notify the plan of a qualifying event or determination of disability;
- The 60-day election period for COBRA continuation coverage;
- The date/deadline for making COBRA premium payments;
- The deadline within which employees can file a benefit claim, or a claimant can appeal an adverse benefit determination, under a group health plan's or disability plan's claims procedures;
- The deadline for claimants to file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and

Consistent with the above, the Final Rule provides group health plans with relief from issuing COBRA election notices for any qualifying event that occurred between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency (or such other date announced by the Agencies in a future notice).

IRS Examples

The following examples illustrate the timeframe for extensions required by the IRS rules. An assumed end date for the National Emergency was needed to make the examples clear and understandable. Accordingly, the Examples assume that the National Emergency ends on April 30, 2020, with the Outbreak Period ending on June 29, 2020 (the 60th day after the end of the National Emergency). To the extent there are different Outbreak Period end dates for different parts of the country, the Agencies will issue additional guidance regarding the application of the relief.

Example 1 (Electing COBRA). (i) *Facts.* Individual A works for Employer X and participates in X's group health plan. Due to the National Emergency, Individual A experiences a qualifying event for COBRA purposes as a result of a reduction of hours below the hours necessary to meet the group health plan's eligibility requirements and has no other coverage. Individual A is provided a COBRA election notice on April 1, 2020. What is the deadline for A to elect COBRA?

(ii) *Conclusion.* In Example 1, Individual A is eligible to elect COBRA coverage under Employer X's plan. The Outbreak Period is disregarded for purposes of determining Individual A's COBRA

election period. The last day of Individual A's COBRA election period is 60 days after June 29, 2020, which is August 28, 2020.

Example 2 (COBRA premium payments). (i) *Facts.* On March 1, 2020, Individual C was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since Individual C had elected COBRA. Monthly premium payments are due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. Individual C made a timely February payment, but did not make the March payment or any subsequent payments during the Outbreak Period. As of July 1, Individual C has made no premium payments for March, April, May, or June. Does Individual C lose COBRA coverage, and if so for which month(s)?

(ii) *Conclusion.* In this Example 2, the Outbreak Period is disregarded for purposes of determining whether monthly COBRA premium installment payments are timely. Premium payments made by 30 days after June 29, 2020, which is July 29, 2020, for March, April, May, and June 2020, are timely, and Individual C is entitled to COBRA continuation coverage for these months if she timely makes payment. Under the terms of the COBRA statute, premium payments are timely if made within 30 days from the date they are first due. In calculating the 30-day period, however, the Outbreak Period is disregarded, and payments for March, April, May, and June are all deemed to be timely if they are made within 30 days after the end of the Outbreak Period. Accordingly, premium payments for four months (i.e., March, April, May, and June) are all due by July 29, 2020. Individual C is eligible to receive coverage under the terms of the plan during this interim period even though some or all of Individual C's premium payments may not be received until July 29, 2020. Since the due dates for Individual C's premiums would be postponed and Individual C's payment for premiums would be retroactive during the initial COBRA election period, Individual C's insurer or plan may not deny coverage, and may make retroactive payments for benefits and services received by the participant during this time.

Example 3 (COBRA premium payments). (i) *Facts.* Same facts as Example 2. By July 29, 2020, Individual C made a payment equal to two months' premiums. For how long does Individual C have COBRA continuation coverage?

(ii) *Conclusion.* Individual C is entitled to COBRA continuation coverage for March and April of 2020, the two months for which timely premium payments were made, and Individual C is not entitled to COBRA continuation coverage for any month after April 2020. Benefits and services provided by the group health plan (e.g., doctors' visits or filled prescriptions) that occurred on or before April 30, 2020 would be covered under the terms of the plan. The plan would not be obligated to cover benefits or services that occurred after April 2020.

Example 4 (Special enrollment period). (i) *Facts.* Individual B is eligible for, but previously declined participation in, her employer-sponsored group health plan. On March 31, 2020, Individual B gave birth and would like to enroll herself and the child into her employer's plan;

however, open enrollment does not begin until November 15. When may Individual B exercise her special enrollment rights?

(ii) *Conclusion.* In Example 4, the Outbreak Period is disregarded for purposes of determining Individual B's special enrollment period. Individual B and her child qualify for special enrollment into her employer's plan as early as the date of the child's birth. Individual B may exercise her special enrollment rights for herself and her child into her employer's plan until 30 days after June 29, 2020, which is July 29, 2020, provided that she pays the premiums for any period of coverage.

Retirement Plans

Letter Sent to OneGroup Retirement Advisors Clients

May 15, 2020

Dear Valued Investor:

Investors like labels for the economy and financial markets—many of them with the word “great” in them. The Great Depression. The Great Recession. The Great Lockdown. Well, we’ve moved into what we might call the Great Disconnect. How can stocks have rebounded so strongly in the last month amid so much suffering and economic damage? What’s Wall Street seeing that so many on Main Street are not?

For one, in the United States more than 20 states have already begun to reopen their economies, and others have plans to begin very soon. In Europe, lockdowns are being eased, following Asia’s lead. Even gradual progress like this may help the stock market focus more on what’s ahead than where we are right now.

As lockdown restrictions are lifted, timely indicators like vehicle traffic, electricity consumption, public transportation use, daily consumer confidence surveys, and a wide variety of weekly economic indicators point to a low mark in economic activity in the United States in April. The “Great Lockdown” recession of 2020 may be over already—although it may not be officially declared a recession for several more months.

Nowhere to go but up isn’t normally very reassuring, but to the stock market it may be. Historically, when things have looked their worst, the opportunity in stocks has tended to be the best. The S&P 500 Index has usually hit its bottom and started the climb back up about five months before a recession has ended.

Other factors have helped boost investor sentiment recently. Market participants have gained confidence from the bold stimulus response from policymakers in Washington, DC, and the

Federal Reserve. The total amount of the stimulus this year is about 22% of the entire US economy, based on gross domestic product (GDP). During the entire 2008–09 financial crisis, the total amount of stimulus was 16.6% of GDP. And there may be more. Surging unemployment and weakening finances at the state and municipal levels may be catalysts for more action. Though millions of jobs have been lost to this crisis, many millions surely have been saved as well.

The medical community also has provided reasons for optimism. Though no one knows for sure when a COVID-19 vaccine will be ready, rapid progress is being made, and several promising candidates are now in human trials. Testing capacity has also ramped up, while some of the best capitalized and most innovative companies in the world are developing contact-tracing tools to help facilitate safe re-openings. While stocks may have come a bit too far, too fast in the short term, markets are clearly responding to these positive developments.

Reopening the US economy will be a gradual process, and temporary setbacks may be possible. Some of the lost jobs may not return. The possibility of disappointment as the “Great Reopen” unfolds is real. We are facing a tremendous challenge, but it is being met with incredible resilience, resourcefulness, and innovation. Together we will get through this crisis and return to better times.

Please take care, and don’t hesitate to contact me if you have any questions or concerns.

Sincerely,

Joseph Hatfield, AIF®
Vice President
OneGroup Retirement Advisors/LPL Financial

Important Information

This material is for general information only and is not intended to provide specific advice or recommendations for any individual. There is no assurance that the views or strategies discussed are suitable for all investors or will yield positive outcomes. Investing involves risks including possible loss of principal. Any economic forecasts set forth may not develop as predicted and are subject to change.

References to markets, asset classes, and sectors are generally regarding the corresponding market index. Indexes are unmanaged statistical composites and cannot be invested into directly. Index performance is not indicative of the performance of any investment and do not reflect fees, expenses, or sales charges. All performance referenced is historical and is no guarantee of future results.

All data is provided as of May 6, 2020.

Any company names noted herein are for educational purposes only and not an indication of trading intent or a solicitation of their products or services. LPL Financial doesn’t provide research on individual equities.

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[Download the T. Rowe Price PowerPoint: Reactions from Plan Sponsors and Participants to the Coronavirus-Impacted Environment](#)

Below please find the call in detail for next **Thursday's** Participant Call presented by **Vanguard. Vanguard** will be sharing their thoughts on the markets, speaking to the value of long term investing and highlighting a few tools they have available on their education site.

The call is scheduled for **12:15pm on Thursday, May 21** and will run 30 minutes. The call in and meeting information is below. Please share with your employees. If they are not able to make the call but would like to be included on future invites, please have them reach out to us at support@onegrouppra.com and we will be sure to include them on future call invites.

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[Alternate VTC dialing instructions](#)

Paycheck Protection Program

A number of questions have been circulating about how loan proceeds can be spent and how that ties into calculating loan forgiveness.

I'm going to reiterate Alison's statement that I am not an attorney or CPA and you should definitely speak directly to your CPA or attorney before making any major financial decisions.

Their knowledge and expertise can help you through the process of calculating loan forgiveness as it is not as straightforward as it seems.

For example:

One issue many people are missing is the inherent imbalance built into the PPP loan calculations. The maximum loan amount is equal to 2.5x the average total monthly payroll costs during the year prior to the loan date.

That equates to a little over 11 weeks of payroll costs.

The period that you have to spend the money is only eight weeks.

Dividing eight by 11 gives you just under 73%, so that factor alone makes it difficult to spend 75% on payroll during only the eight weeks.

That is one of the questions that has been raised without definitive guidance or answer.

Additionally the forgiveness calculation is based on a combination of two calculations – the number of full time equivalent employees and your payroll cost themselves. When you merge these two equations it further complicates the calculation of the amount eligible for forgiveness.

We've been waiting for an update from the SBA. One came out yesterday but it deals primarily with the safe harbor provision of the PPP Act, relative to certification of the required good faith certification and to the necessity of the PPP funds for your business.

The government is going to audit for fraud and or misuse, though the smaller your loan amount was, the less likely that is to happen. Be sure to check the SBA.gov website's FAQ section.