DISCLAIMER: Any statements contained herein relating to the impact or the potential impact of coronavirus/COVID-19 on insurance coverage or any insurance policy are not legal opinions, warranties or guarantees, and should not be relied upon as such. We do not have the authority to render legal advice or to make coverage decisions regarding COVID-19 claims, and you should submit all claims to your insurance carriers or authorized representatives for evaluation as they will make the final determination. Given the on-going and constantly changing situation with respect to the coronavirus/COVID-19 pandemic, this communication does not necessarily reflect the latest information regarding recently-enacted, pending or proposed legislation or guidance that could override, alter or otherwise affect existing insurance coverage. At your discretion, please consult with an attorney at your own expense for specific advice in this regard.

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

Information from Thursday, June 18, 2020 Webinar:

Thank you for joining us for OneGroup's informational update. We started our webinar series back on March 19, which seems like forever ago now, to focus on the COVID-19 pandemic and we have continued with updates throughout the past few months.

We are now switching gears in this and future webinars to provide you with any pertinent and timely updates that could affect your business, whether COVID-19-related or not. Our goal is to keep you informed on matters that impact your business, ranging from business insurance and risk management to human resources and employee benefits matters.

We have several of our OneGroup experts with us today:

- Casey Cone, Senior Managing Consultant
- Nate Bradley, Employee Benefits Consultant
- Mike Tisdell, Vice President with OneGroup Retirement Advisors
- Paul Coderre, Vice President of Risk Management
- Kelly Goodsell, Vice President of Claims Risk Management
- Dennis Ast, Senior Account Executive, Cyber Risk Specialist
- Tod Hoffman, Senior Bank Liaison

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

- Human Resources
- Employee Benefits, including retirement
- Claims
- Risk Management
- Cyber
- The Paycheck Protection Program

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.

Human Resources

We have been reviewing survey data from various sources. One survey in particular from the Society for Human Resource Management (SHRM) indicates between 22 and 35% of U.S. employees often experience symptoms of depression as they live through the COVID-19 pandemic.

The survey of 1,099 employees found that women, younger workers and people living with at least one person who is a member of a vulnerable population—such as a healthcare worker or someone with a compromised immune system—were affected the most.

COVID-19 is taking a toll emotionally and employers need to be aware as they may see the impact in the workplace.

Survey results show that there are symptoms of depression, including difficulty concentrating, feelings of failure or letting the family down, hopelessness, little interest or pleasure in pursuing activities, and feeling tired.

There are also challenges for those still working remotely as they experience feeling 'out of sight, out of mind' or, even worse, feeling as if their work and dedication are being questioned since they are not physically in the office each day.

Some employees feel as if they must work twice as hard to prove themselves and get recognized for the work they do. Remote employees often find that the lines between work and home become blurred. They put in more hours than the average office worker, and they experience higher levels of stress due to being 'on' all of the time.

Here is the concern - more than one-third of all respondents said they have not done anything to cope with their feelings; only 7% had contacted a mental health professional.

What Employers Can Do

1. Stay in touch – regular check ins (especially if you have remote workers)

Your employees should hear from you often, feel supported and cared for frequently.

There are a variety of ways you can stay in contact with your employees.

- Simple things – ask them how they are doing and listen!
- Administer small surveys frequently to gauge how they are feeling and identify shifts in attitude so you can adjust communication plans accordingly.
- Staying in touch with your employees will also help to keep them on task, as you can reset priorities and identify any issues.

2. Make sure it's known that it's acceptable if someone needs help.

- Let your employees know that you recognize this is a time of great stress and uncertainty.

- Offer a list of resources for mental health support, such as an Employee Assistance Program, or community programs that may help to ease the burden on your staff during this time.

3. Prioritize mental health in your benefits plan and remind employees of offerings that may be especially helpful.

Do you offer an employee assistance program? Look at the number of visits allowed and determine if that needs to be adjusted. If you have a wellness program, there are sometimes coaching services offered that can be helpful as well.

Employers can offer health and wellness tips, online courses, and health challenges to help employees who are struggling with loneliness, anxiety or depression.

4. Use technology to offer mental health resources – ensure your telemedicine program includes behavior health visits and promote this.

Make employees aware of benefits they have through your telemedicine provider. Often behavioral health visits are offered.

Again, a difficult time for employees – it's important to be aware and supportive.

Families First Coronavirus Response Act (FFCRA) - Reminders

The FFCRA provisions are in effect through at least the end of the year (December 31, 2020).

Eligible Employees: *All employees* of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19.

Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.

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

FFCRA FAQ:

I took paid sick leave and am now taking expanded family and medical leave to care for my children whose school is closed for a COVID-19 related reason. After completing distance learning, the children's school closed for summer vacation. May I take paid sick leave or expanded family and medical leave to care for my children because their school is closed for summer vacation?

No. Paid sick leave and emergency family and medical leave are not available for this qualifying reason if the school or child care provider is closed for summer vacation, or any other reason that is not related to COVID-19. However, the employee may be able to take leave if his or her child's care provider during the summer—a camp or other programs in which the employee's child is enrolled—is closed or unavailable for a COVID-19 related reason.

https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

Questions relating to Unemployment Insurance

As always, the state makes the decision on unemployment eligibility on a case-by-case basis, specific to each claimants' situation.

According to information provided by the NY Department of Labor, "If you are able to reemploy an individual, contact the individual directly." If the claimant refuses rehire or fails to report to work, you can notify the Department of Labor directly in writing.

NYS Department of Labor
PO Box 15130
Albany, NY 12212-5130
or fax to: (518) 402-6175

As a reminder, the state makes the ultimate decision on unemployment eligibility on a case-by-case basis, specific to each claimants' situation. An employer should never indicate if someone will or will not be eligible for UI, as the state makes the final determination in all cases.

Equal Employment Opportunity Commission (EEOC)

The EEOC continues to update guidance listed on its website with regards to the Americans with Disabilities Act (ADA) during this pandemic (recent updates below provided on June 11, 2020).

Reasonable Accommodations

D.13. Is an employee entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition? *(6/11/20)*

No. Although the ADA prohibits discrimination based on association with an individual with a disability, that protection is limited to disparate treatment or harassment. The ADA does not require that an employer accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom she is associated.

For example, an employee without a disability is not entitled under the ADA to telework as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure.

Of course, an employer is free to provide such flexibilities if it chooses to do so. An employer choosing to offer additional flexibilities beyond what the law requires should be careful not to engage in disparate treatment on a protected EEO basis.

Return to Work

G.6. As a best practice, and in advance of having some or all employees return to the workplace, are there ways for an employer to invite employees to request flexibility in work arrangements? *(6/11/20)*

Yes. The ADA and the Rehabilitation Act permit employers to make information available in advance to **all** employees about who to contact – if they wish – to request accommodation for a disability that they may need upon return to the workplace, even if no date has been announced for their return. If requests are received in advance, the employer may begin the interactive process. An employer may choose to include in such a notice all the CDC-listed medical conditions that may place people at higher risk of serious illness if they contract COVID-19, provide instructions about who to contact, and explain that the employer is willing to consider on a case-by-case basis any requests from employees who have these or other medical conditions.

An employer also may send a general notice to all employees who are designated for returning to the workplace, noting that the employer is willing to consider requests for accommodation or flexibilities on an individualized basis. The employer should specify if the contacts differ depending on the reason for the request – for example, if the office or person to contact is different for employees with disabilities or pregnant workers than for employees whose request is based on age or child-care responsibilities.

Either approach is consistent with the ADEA, the ADA, and the May 29, 2020 CDC guidance that emphasizes the importance of employers providing accommodations or flexibilities to employees who, due to age or certain medical conditions, are at higher risk for severe illness.

Regardless of the approach, however, employers should ensure that whoever receives inquiries knows how to handle them consistent with the different federal employment nondiscrimination laws that may apply, for instance, with respect to accommodations due to a medical condition, a religious belief, or pregnancy.

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

Department of Health released interim Guidance for Public and Private Employees Returning to Work Following COVID-19 Infection or Exposure – May 31, 2020

Specifically, this guidance provides protocols and policies for employees seeking to return to work after a suspected or confirmed case of COVID-19 or after the employee had close or proximate contact with a person with COVID-19.

https://coronavirus.health.ny.gov/system/files/documents/2020/06/doh_covid19_publicprivateemployeereturntowork_053120.pdf

Benefits

IRS Releases 2021 HSA Contribution Limits and HDHP Deductible and Out-of-Pocket Limits

In Rev. Proc. 2020-32, the IRS released the inflation adjusted amounts for 2020 relevant to HSAs and high deductible health plans (HDHPs). The table below summarizes those adjustments and other applicable limits.

	2021	2020	Change
Annual HSA Contribution Limit (employer and employee)	Self-only: $3,600 Family: $7,200	Self-only: $3,550 Family: $7,100	Self-only: +$50 Family: +$100
HSA catch-up contributions (age 55 or older)	$1,000	$1,000	No change
Minimum Annual HDHP Deductible	Self-only: $1,400 Family: $2,800	Self-only: $1,400 Family: $2,800	No change
Maximum Out-of-Pocket for HDHP (deductibles, co-payment & other amounts except premiums)	Self-only: $7,000 Family: $14,000	Self-only: $6,900 Family: $13,800	Self-only: +$100 Family: +$200

Out-of-Pocket Limits Applicable to Non-Grandfathered Plans

The ACA's out-of-pocket limits for in-network essential health benefits have also been announced and have increased for 2021.

	2021	2020	Change
ACA Maximum Out-of-Pocket	Self-only: $8,550 Family: $17,100	Self-only: $8,150 Family: $16,300	Self-only: +$400 Family: +$800

Note that all non-grandfathered group health plans must contain an embedded individual out-of-pocket limit within family coverage, if the family out-of-pocket limit is above $8,550 (2021 plan years) or $8,150 (2020 plan years). Exceptions to the ACA's out-of-pocket limit rule are available for certain small group plans eligible for transition relief (referred to as "Grandmothered" plans). A one-year extension of transition relief was announced on January 31, extending the transition relief to policy years beginning on or before October 1, 2021, provided that all policies end by December 31, 2022. (This transition relief has been extended each year since the initial announcement on November 14, 2013.)

Next Steps for Employers

As employers prepare for **the 2021 plan year**, they should keep in mind the following rules and ensure that any plan materials and participant communications reflect the new limits:

- HDHPs cannot have an embedded family deductible that is lower than the minimum HDHP family deductible of $2,800.
- The out-of-pocket maximum for family coverage for an HDHP cannot be higher than $14,000.
- All non-grandfathered plans (whether HDHP or non-HDHP) must cap out-of-pocket spending at $8,550 for any covered person. A family plan with an out-of-pocket maximum in excess of $8,550 can satisfy this rule by embedding an individual out-of-pocket maximum in the plan that is no higher than $8,550. This means that for the 2021 plan year, an HDHP subject to the ACA out-of-pocket limit rules may have a $7,000 (self-only)/$14,000 (family) out-of-pocket limit (and be HSA-compliant) so long as there is an embedded individual out-of-pocket limit in the family tier no greater than $8,550 (so that it is also ACA-compliant).

REMINDER: PCORI Fees Due By July 31, 2020

Employers that sponsor self-insured group health plans, including health reimbursement arrangements (HRAs) should keep in mind the upcoming July 31, 2020 deadline for paying fees that fund the Patient-Centered Outcomes Research Institute (PCORI). As background, the PCORI was established as part of the Affordable Care Act (ACA) to conduct research to evaluate the effectiveness of medical treatments, procedures and strategies that treat, manage, diagnose or prevent illness or injury. Under the ACA, most employer sponsors and insurers were required to pay PCORI fees until 2019, as it only applied to plan years ending on or before September 30, 2019. However, the PCORI fee was extended to plan years ending on or before September 30, 2029 as part of the Further Consolidated Appropriations Act, 2020.

The amount of PCORI fees due by employer sponsors and insurers is based upon the number of covered lives under each "applicable self-insured health plan" and "specified health insurance policy" (as defined by regulations) and the plan or policy year end date. This year, employers will pay the fee for plan years ending in 2019.

For plan years that ended between January 1, 2019 and September 30, 2019, the fee is $2.45 per covered life and is due by July 31, 2020.

Since the extension of the PCORI fee deadline in December, issuers and sponsors of self-funded plans have been anxiously awaiting information from the IRS concerning the applicable PCORI fee for plans with plan years ending between October 1, 2019 and before October 1, 2020. On June 8, 2020, the IRS Issued Notice 2020-44, which sets the applicable PCORI fee for these plans at **$2.54** per covered life. As of June 8, the IRS has not released the second quarter Form 720. The second quarter Form 720 **must** be used to pay the PCORI fee.

In addition, Notice 2020-44 provides transition relief to issuers and self-funded plan sponsors for purposes of calculating the PCORI fee for plan years ending on or after October 1, 2019 and before October 1, 2020. The rationale provided by the IRS is because issuers or plan sponsors may not have anticipated the need to identify the number of covered lives during this time period because they believed the PCORI fee expired on September 30, 2019.

Accordingly, the IRS provides that plan sponsors of impacted plans may continue to use the actual count, snapshot, or Form 5500 method to calculate the average number of lives and determine the applicable PCORI fee. These methods are discussed more fully later in this alert. Additionally, the IRS also provided that plan sponsors of impacted plans may opt to use a "reasonable method" to calculate the average number of covered lives for the plan year ending on or after October 1, 2019 (but before October 1, 2020) as long as the method is applied consistently for the duration of the plan year.

For example, a plan year that ran from July 1, 2018 through June 30, 2019 will pay a fee of $2.45 per covered life and use the snapshot, Form 5500, or actual count method to determine the average number of covered lives. On the other hand, calendar year 2019 plans will pay a fee of $2.54 per covered life and use the snapshot, actual count, Form 5000, or another reasonable method to calculate the average number of covered lives for the plan year.

The insurance carrier is responsible for paying the PCORI fee on behalf of a fully insured plan. The employer is responsible for paying the fee on behalf of a self-insured plan, including an HRA. In general, health FSAs are not subject to the PCORI fee.

Employers that sponsor self-insured group health plans must report and pay PCORI fees using [IRS Form 720, Quarterly Federal Excise Tax Return](#).

NOTE: Employers must wait until the second quarter Form 720 is released by the IRS to pay the fee. If this is an employer's last PCORI payment and they do not expect to owe excise taxes that are reportable on Form 720 in future quarters (e.g., because the plan is terminating), they may check the "final return" box above Part I of Form 720.

Also note that because the PCORI fee is assessed on the plan sponsor of a self-insured plan, it generally should not be included in the premium equivalent rate that is developed for self-insured plans if the plan includes employee contributions. However, an employer's payment of PCORI fees is tax deductible as an ordinary and necessary business expense.

Business Insurance Claims

Commercial Lines Coverage and Claims

- The question involving Business Interruption and coverage in relation to COVID-19 continue as key pieces of involvement in Litigation
- Most insurance policies, if they have not already, are adding a virus exclusion at the time of renewal

- Workers Compensation claims have slowed down, but as businesses start to re-open, we could see new claims being presented
- Some clients have been significantly impacted by COVID-19 workers compensation claims, with upwards of 400 employees testing positive
- Should businesses implement COVID-19 Liability Waivers? They will not stop the lawsuits from being filed and will not necessarily insulate the client, but they do provide the customer with awareness about the risk associated with COVID-19
- Employment Practice Liability claims are on the rise and we expect to see more relative to providing a safe place to work, discrimination and violation of Civil Rights

Retirement

With companies trying to adjust to the "new normal", many employers may not have their retirement plan top in mind. Potential proactive assessments could potentially preempt unwanted plan surprises down the road.

Assess and Prioritize Financial Wellness.

- Financial wellness has been a "hot topic" for years; however, in the wake of COVID-19, related programs will be in extremely high demand.
- The 2019 Employee Financial Wellness Survey by PwC showed that even in an economic boom, nearly 3 out of 5 employees said financial matters were the top source of stress. So, as we start finding our way to a new normal, implementing a proactive financial wellness program may help offset the negative effects of financial stress for your employees. Lean on your Advisor and your Record-keeper to help build a program that fits your culture and demographic.

Fiduciary Risk Management.

- If you sponsor a Retirement Plan, then you are having to, or you already did, choose whether or not to adopt CARES Act distribution provisions. This is a fiduciary decision, and one that should be thoughtfully considered and documented.
- During the unprecedented chain of events we are seeing unfold thus far in 2020, an extra layer of fiduciary care couldn't hurt. So, no matter what you decided for your plan, it is extremely important that you document why you believe you are acting in the best interest of the participants and their beneficiaries. As with ERISA and plaintiff attorneys, if it's not documented, it didn't happen.

Project Nondiscrimination Testing Failures.

- As we all know, a number of extreme measures have been taken to help weather COVID-19, including laying off or furloughing employees, reducing salaries, and reducing or suspending company 401(k) matches, which can affect the actual deferral percentage (ADP) and the actual contribution percentage (ACP) retirement plan test results.
- Based on Plan Sponsor Council of America's CARES Act Snapshot Survey, 16% of companies have had to reduce/suspend company matches. Ff your company happens

to be one of them, it could be very beneficial for you to perform mid-year projection testing. Mid-year projections may help anticipate nondiscrimination testing failures. If the projections point towards testing failure, there are a number of plan design options that can be chosen. Depending on the situation, you should speak with your Plan Advisor and your TPA for assistance with navigating through your plan design options.

Keep in Mind – Possibility of a Service Provider Exiting the Business

- Financial firms have been shedding pieces of themselves to focus on products regarded as core to their offering. Scale has been seen as increasingly important to help manage the costs associated with investing in technology, compliance systems, etc. It's always been good practice, and our guidance, to perform a holistic review of all of your providers every two years and perhaps even a bit sooner this time around.

Risk Management

COVID-19

- The good news: New York's numbers continue to improve
  - NYC is beginning to open up
  - Other counties across the state are progressing through their re-opening processes
- Reality to consider:
  - The virus is still out there
  - There is still no cure
  - There is still no vaccine
  - When the virus infiltrates an organization, its effects can be devastating (i.e. nursing homes)
- Other states are still seeing rising hospitalization rates
  - People need to be conscious of these rising numbers, especially because peak travel season is upon us
- Caution and care are still warranted:
  - Enforce the elements of your re-opening plan
  - Don't skip steps or take shortcuts
  - Continue regular communication
  - Be wary of what is on the horizon
- STAY VIGILANT!

Other Updates: Risk Management

- Umbrella coverage tightens…

    - Many have probably seen and/or heard of the tightening in the umbrella market or the underlying coverage that impacts umbrella coverage (i.e. auto, cyber, general liability)
    - The market was tightening prior to COVID-19
        - COVID-19 caused more uncertainty, which in the language of underwriters means 'caution', which can mean higher prices
- So what do we do?
    - In regard to COVID-19 precautions, stick to your formal and enforceable reopening plan
    - Make sure you have a formal and well enforced Fleet Safety Program
        - Underwriters are asking for them
        - What does such a program involve?
            - Driver selection / retention
            - Driver Performance Monitoring
            - Driver Training
            - Vehicle Condition
            - Recordkeeping (especially for CDL drivers)
            - Telematics
            - Non-owned vehicle program (those drivers using their own vehicle regularly for business purposes)
    - By implementing a solid program you do three things:
        - Reduce your potential for an incident
        - Build your defense prior to needing it
        - Build the underwriter's confidence in your organization's ability to prevent significant claims

Cyber

Coronavirus Cyber Discussions

- Unfortunately, we have seen an uptick in cyber events both in general, as well as targeted, COVID-19-related cyber attacks
- Cyber criminals are opportunistic, preying on people's fear and curiosity
- Fake COVID-19 websites are on the rise
- Targeted COVID-19 Phishing & Smishing campaigns (WHO, CDC, Government agencies, etc.)
    - Ex: fake cures, treatments, donations and general misinformation to take advantage and psychologically manipulate people
- Social Media - malicious links
- Attacks on HHS and healthcare facilities seeking treatment and research data
- Increase utilization of remote workers
- Wiper Attacks - malware that is designed to completely eradicate data

- Fraud with PPP loans and Unemployment
- NY SHIELD Act

Practice Good Cyber Hygiene

- Employee Training - think before clicking
- Multifactor authentication & utilization of a VPN
- Use strong passwords or passphrases
- No public Wi-Fi
- Secure mobile devices
- Install/update anti-malware (Next Gen & AI)
- 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?**

Small Business Relief

Congress recently passed the Paycheck Protection Flexibility Act, which made the following changes to the PPP program:

- Extends the coverage period for borrowers from 8 weeks to 24 weeks, however borrowers may still use the 8 week period for forgiveness purposes. This flexibility is designed to make it easier for more borrowers to reach full, or almost full, loan forgiveness.
- Extends the safe harbor date from 6/30/20 to 12/31/20 for the restoration of employee and salary reductions made prior to April 26, 2020.
- Amends the threshold requirement for use of PPP loan proceeds for payroll expenses, decreasing it from 75% to 60%. Borrowers may now use up to (but no more than) 40% of the total PPP funds on permissible non payroll expenses.
- Extends the repayment terms of the non-forgivable portion of the loan from 2 to 5 years and extends the interest deferment period from 6 months to 1 year.
- Borrowers who have not applied for forgiveness 10 months after the end of their covered period will be required to start making payments on their PPP loan.
- The Flexibility Act also includes major changes to exemptions for loan forgiveness reductions and FTE headcounts. A borrower's reduction in the number of FTE's will not affect forgiveness of the borrower in good faith.
- Ability to document the inability to hire individuals who were employees on 2/15/20 and the inability to hire similarly qualified employees for those unfilled positions on or before 12/31/20.
- Ability to document the inability to return to the same level of business activity that they were operating at prior to 2/15/20 due to compliance with CDC, OSHA, and guidelines as a result of COVID-19.

As always, a number of questions remain unanswered and some information is unclear, but it is expected that the SBA will issue further guidance and clarification.

In the meantime, consult with your CPA, Business Advisor and or banker.