

*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.*

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

### **Information from Tuesday, March 24 Webinar:**

As you all know, the situation we are in continues to change. There is a lot of activity and a lot of stalling on Capitol Hill. The House Democrats Phase 3 version of the federal government's response to COVID-19 was recently released. Here is a brief summary of potential employer impacts:

It would provide private sector and public sector employees who have been on the job for at least 30 calendar days with the right take up to 12 weeks of job-protected leave under the Family and Medical Leave Act, regardless of the size of their employer, meaning groups with fewer than 50 employees would be required to offer FMLA. Additionally, after two workweeks of unpaid leave, employees will receive a benefit from their employers that will be no less than two-thirds of the employee's usual pay, up to \$200 a day. This is all proposed. We will, of course, update you as we receive more information.

Regarding healthcare, the proposed bill would provide for a two-month open enrollment period for ACA plans. It would also waive cost-sharing for patients' treatment related to COVID-19 who are enrolled in private insurance coverage, with the Federal government requirement to reimburse insurers for the cost-sharing.

Additionally, it would provide subsidies to allow workers to maintain their employer-sponsored coverage if they become eligible for COBRA or are subject to a temporary furlough. It would establish a two-year risk corridor program to provide payments to individual and small group market plans for extreme losses and help mitigate premium increases for consumers. Again, this is all proposed.

For today, we will discuss what we do know to be in place. We have structured this discussion to cover key areas that our clients have been asking about. We also requested that participants share any questions with us before this discussion. We will address all questions received through 10:00 this morning. 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 in the COVID-19 section on the main page that includes all of this information.

# Risk Management

The initial chaos has somewhat subsided.

- Companies still up and running are managing their organizations around employee issues (health, hygiene, distancing, etc.).
- Please also be aware of response within the workplace (isolation, potential spread, cleaning/disinfecting).

Specific industry guidelines in addition to general guidelines:

- General – The OSHA Guidance Documents on the OSHA website are still good resources.
- Industry-specific guidance is available through CDC, HHS, FDA, NIH as well as state agencies.

## Covid-19 Helpful Links

Federal Government – General <https://www.coronavirus.gov/>

CDC

<https://www.cdc.gov/coronavirus/2019-nCoV/index.html> (CDC Coronavirus Main Site)  
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-criteria.html> (Testing Requirements)  
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html> (Prevent the Spread)

NIH

<https://www.nih.gov/health-information/coronavirus> (NIH Coronavirus Main Website)  
[https://www.niehs.nih.gov/careers/hazmat/about\\_wetp/](https://www.niehs.nih.gov/careers/hazmat/about_wetp/) (Worker Training Program)  
<https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (NIH Info Stability of virus on surfaces)

OSHA

<https://www.osha.gov/SLTC/covid-19/> (OSHA Main Coronavirus Site)  
<https://www.osha.gov/Publications/OSHA3990.pdf> (OSHA Guidance Document for Employers)

FDA

<https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/coronavirus-disease-2019-covid-19> (FDA Main Coronavirus Site)

NY State DOH

<https://coronavirus.health.ny.gov/home> (NY DOH Main Coronavirus Site)  
<https://coronavirus.health.ny.gov/new-york-state-pause> (NY DOH "Pause" program site)

# Business Insurance Claims and Coverage

## General updates within the property and casualty insurance market

The insurance carriers we have spoken with want us to know that they are open for business. As they are a member of the financial world, they are considered "essential" by definition and available. Team members are working remotely and are available to assist with claims, address questions, process endorsement requests, processing renewals, etc.

Another message we're receiving from our carrier partners is that they will remain flexible relative to payment terms:

- Some have issued holds on cancellations for non-payment
- Some are positioning holds on non-renewals
- We have also experienced flexibility with audit payments
- We anticipate most will also be flexible relative to mid-term exposure changes tied to payroll and sales.

*These are not necessarily automatic accommodations; and can vary from carrier to carrier; so if anything is needed, we would ask that you please just reach out to a member of our Team to assist you through the process.*

This is important to note within the area of personal insurance as well. Carriers are willing to help with issues tied to payment, coverage modifications, etc. Personal insurance advisors will be available to assist with those calls. If you partner with us for this or not; we're here to help.

## Coverage

Business interruption policies require that there be a direct physical loss of or damage to the insured property in order for coverage to be triggered. Most of the business losses that we're experiencing will likely be the result of declined economic activity as a result of the virus. Some carriers have taken the position of proactively sending notices out to policy holders referencing their coverage position.

That being said- there may be some *rare circumstances* where coverage could be applied, for example- WC, D&O; if you have specific circumstances you would like to discuss, please connect with us.

Lastly, we find ourselves being an intersection of a variety of different businesses and resources. While we do not want to over inundate you with information (we understand that you have a lot being thrown at you right now); we want you to know that we are here to help you in any way we can. If you find you have a specific question or need; please let us know, we're happy to do the research, connect you with the right people and do anything we can to help you through this time.

## Updates from the NYS Workers' Compensation Board (WCB)

- From last week the WCB has now gone to strictly only doing virtual hearings.
- The WCB has suspended handwritten signatures on all documents until further notice.

DISCLAIMER FOR CORONAVIRUS: 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.

- WCB is allowing claimant's attorneys to sign on behalf of their clients with proper consent.
- [Here is the NYS WCB website to for your review updates.](#)

### **Updates from the Department of Financial Services (DFS)**

On 3/19/2020, the DFS issued a memorandum to all CEO's and equivalents of DFS-regulated entities stating that now both NY and Federal governments have declared states of emergency, and that they will be providing guidance to all regulated DFS entities to do their part to alleviate the financial burden to businesses and families. They recognize that the financial impact of this crisis is going to be significant. To make the situation easier for customers, they're allowing people to pay premiums online, are extending due dates, minimizing late fees and re-instatement fees, etc. DFS is advising carriers to increase their resources to assist with claim submissions. Each carrier is being asked to prepare a clear and concise description of coverage benefits that may be triggered as a result of the COVID-19 situation continues to situation. The insurance market is in a state of flux at the moment.

## **Human Resources**

### **New York State Specific Updates**

#### **Executive Order – Decrease in In-Person Workforce**

Governor Cuomo has ordered businesses to decrease their in-person workforce by 100 percent, effective Sunday evening (March 22, 2020 at 8:00 PM). Exemptions have been made for essential service industries, including shipping, media, warehousing, grocery and food production, pharmacies, healthcare providers, utilities, banks and related financial institutions, and other industries critical to the supply chain.

Essential businesses, including any for profit or non-profit, regardless of the nature of the service, the function they perform, or its corporate or entity structure, are not subject to the in-person restriction. (Essential Businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health.)

With respect to business or entities that operate or provide both essential and non-essential services, supplies or support, only those lines and/or business operations that are necessary to support the essential services, supplies, or support are exempt from the restrictions.

For purposes of Executive Order 202.6, "Essential Business," means:

1. Essential health care operations including
  - research and laboratory services
  - hospitals
  - walk-in-care health facilities
  - emergency veterinary and livestock services
  - elder care
  - medical wholesale and distribution

- home health care workers or aides for the elderly
- doctor and emergency dental
- nursing homes, or residential health care facilities or congregate care facilities
- medical supplies and equipment manufacturers and providers

## 2. Essential infrastructure including

- utilities including power generation, fuel supply and transmission
- public water and wastewater
- telecommunications and data centers
- airports/airlines
- transportation infrastructure such as bus, rail, or for-hire vehicles, garages
- hotels, and places of accommodation

## 3. Essential manufacturing including

- food processing, manufacturing agents, including all foods and beverages
- chemicals
- medical equipment/instruments
- pharmaceuticals
- sanitary products
- telecommunications
- microelectronics/semi-conductor
- agriculture/farms
- household paper products

## 4. Essential retail including

- grocery stores including all food and beverage stores
- pharmacies
- convenience stores
- farmer's markets
- gas stations
- restaurants/bars (but only for take-out/delivery)
- hardware and building material stores

## 5. Essential services including

- trash and recycling collection, processing and disposal
- mail and shipping services
- laundromats
- building cleaning and maintenance
- child care services
- auto repair
- warehouse/distribution and fulfillment
- funeral homes, crematoriums and cemeteries
- storage for essential businesses
- animal shelters

## 6. News media

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7. Financial Institutions including

- banks
- insurance
- payroll
- accounting
- services related to financial markets

8. Providers of basic necessities to economically disadvantaged populations including

- homeless shelters and congregate care facilities
- food banks
- human services providers whose function includes the direct care of patients in state-licensed or funded voluntary programs; the care, protection, custody and oversight of individuals both in the community and in state-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support

9. Construction including

- skilled trades such as electricians, plumbers
- other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes

10. Defense

- defense and national security-related operations supporting the U.S. Government or a contractor to the US government

11. Essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses including

- law enforcement
- fire prevention and response
- building code enforcement
- security
- emergency management and response
- building cleaners or janitors
- general maintenance whether employed by the entity directly or a vendor
- automotive repair
- disinfection

12. Vendors that provide essential services or products, including logistics and technology support, child care and services:

- logistics
- technology support for online services
- child care programs and services
- government owned or leased buildings
- essential government services

If the function of your business is not listed above, but you believe that it is essential or it is an entity providing essential services or functions, you may request designation as an essential business.

Houses of worship are not ordered closed however it is strongly recommended no congregated services be held and social distance maintained.

Every business is strongly urged to maintain social distance to the extent possible, even if designated essential.

### **COVID-19 Paid Sick Leave**

On March 18, 2020, Governor Cuomo signed legislation that took effect immediately upon passage that guarantees New York workers job protection and financial compensation while they are on a **mandatory or precautionary quarantine** (*issued by the state of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order due to COVID-19*). The leave available depends on employer size as of January 1, 2020, and, in some cases, an employer's net annual income. This benefit is not available to employees who are able to work through remote access or other means. Below is an overview of the available benefits:

- **Employers with 10 or fewer employees and a net income less than \$1 million**
  - Job protection for the duration of the quarantine order.
  - Guarantee access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement.
  - These benefits may provide wage replacement up to a maximum combined total of **\$2,884.62** per week.
    - Eligible employees can use NY Paid Family Leave (PFL). This is insurance coverage that provides up to 60% of an employee's pay, up to a maximum weekly benefit of \$840.70.
    - If the weekly wage is higher than \$840.70, an employee can receive additional benefits through disability benefits insurance up to a maximum weekly disability benefit of \$2,043.92, for a total of \$2,884.62 per week.
- **Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than \$1 million**
  - At least 5 days of paid sick leave.
  - Job protection for the duration of the quarantine order.
  - Guarantee access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement.
  - These benefits may provide wage replacement up to a maximum combined total of \$2,884.62 per week. (Similar to the breakdown described above.)
- **Employers with 100 or more employees, as well as all public employers** (regardless of number of employees):
  - At least 14 days of paid sick leave.
  - Job protection for the duration of the quarantine order.
  - Intent is that the paid sick leave will cover the quarantine period.

### **Leave for Quarantine/Isolation of Employee's Child**

The Governor's legislation also provides Paid Family Leave for working parents whose minor dependent child is subject to an order of mandatory or precautionary quarantine or isolation. In addition to job protection, eligible employees may receive up to a maximum benefit of **\$840.70** per week for the duration of the quarantine.

### **Please Note**

- Employers required to provide paid sick leave must **provide that leave separate from (in addition to)** any existing sick leave accruals. We have received numerous questions on this – important to note!
- **If a business temporarily closes or goes out of business** because of COVID-19 employees may be eligible for Unemployment Insurance. For more information or to apply online, visit the [NYS Department of Labor website](#).

### **New York Unemployment Information**

Important Information for Unemployment Insurance Claimants (directly from NY UI website):

The federal government enacted the Families First Coronavirus Response Act, which includes extended unemployment benefits. New York has not qualified for these extended benefits at this time, but will continue to monitor the situation and leverage all federal resources to help New Yorkers survive the economic hardships associated with the novel coronavirus. If New York State DOES qualify for the extended benefits, New Yorkers do NOT need to do anything new. We will post additional information here as it becomes available. Please do NOT call our unemployment hotline with questions about extended benefits -- this helps us keep our phone lines available for your fellow New Yorkers who need to file new claims. Thank you for your understanding and patience.

NYS is waiving the 7-Day waiting period for Unemployment Insurance benefits for people who are out of work due to Coronavirus (COVID-19) closures or quarantines. PA has provided the same.

If you are filing a new unemployment insurance claim, the day you should file is based on the first letter of your last name. If your last name starts with A - F, file your claim on Monday. For last names starting with G - N, file your claim on Tuesday. For last names starting with O - Z, file your claim on Wednesday. If you missed your filing day, file your claim on Thursday, Friday or Saturday. Filing later in the week will not delay your payments or affect the date of your claim, since all claims are effective on the Monday of the week in which they are filed. Source: <https://labor.ny.gov/unemploymentassistance.shtm>

### **Federal Updates**

#### **Families First Coronavirus Response Act**

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act into law. The act applies to private employers with fewer than 500 employees and covered public-sector employers.

The act contains two main components: the Emergency Paid Sick Leave Act, which provides paid sick time to employees unable to work due to a need for leave based on specified COVID-19-related reasons; and the Emergency Family and Medical Leave Expansion Act, which provides unpaid and paid leave under the Family and Medical Leave Act (FMLA) for employees who are unable to work due to a need for leave to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency. The complete text of the bill can be found [here](#).

### **Family and Medical Leave Expansion Act**

Below please find an overview of the Family and Medical Leave (FMLA) Expansion Act:

- Job-protected family leave is available to employees to take care of a child under 18 years of age who is home because their school or daycare has been closed because of COVID-19.
- The first 10 days of this FMLA leave is unpaid. During this time period, an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave, but an employer cannot require an employee to do so.
- Thereafter, employees must be paid up to "two-thirds of their salary" and benefits will vary between full-time and part-time employees. This number is capped at \$200 per day (\$10,000 total) for each employee.
- Employers with 50 employees or less can apply for an exemption to the law if they can show that paying this benefit would "jeopardize the viability of the business."
- Employees are eligible for emergency FMLA leave if they have been employed for at least 30 days.

### **Paid Sick Leave**

Below please find an overview of the Paid Sick Leave provisions:

- The law provides 80 hours of paid sick leave to full-time employees. Paid sick leave is also available for part-time employees on a pro-rated basis, based on the average number of hours worked over a two-week period.
- The leave can be used because an employee has been subject to quarantine because of COVID-19 symptoms, if they are taking care of an individual who has been quarantined or ordered to self-quarantine, or if they are taking care of a child whose school or daycare has closed because of COVID-19.
- Paid sick leave is to be paid at the employee's salary, as outlined below:
  - For employees caring for a child or family member, sick leave pay is capped at two-thirds the rate the employee would otherwise receive, up to a maximum of \$200 per day and \$2,000 total per employee.
  - For employees caring for themselves, sick leave pay is capped at \$511 per day and \$5,110 total per employee.
- Employers with 50 employees or less can apply for an exemption if paying sick leave would "jeopardize the viability of the business."

In addition, employees are immediately eligible for paid sick time, regardless of how long the employee has been employed by the employer. Employers may not require employees to use other paid leave provided by the employer before the employee uses the paid sick time available under this act.

Employers are eligible for reimbursement of 100% of the amount paid under this emergency legislation through tax credits.

*Tax credits* will be allowed to offset anticipated costs for both the paid FMLA leave and emergency paid sick leave. Employers are allowed a credit against the employer portion of Social Security taxes equal to 100% of the qualified paid FMLA leave and paid emergency sick leave mandated by this law that is paid during each calendar quarter. Source: National Law Review.

### **Prompt Payment for the Cost of Providing Leave** (Provided by Treasury.gov)

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns ([Form 941](#) series) with the IRS.

Under guidance that will be released next week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.

### **Examples**

If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments, and file a request for an accelerated credit for the remaining \$2,000.

<https://home.treasury.gov/news/press-releases/sm952>

The act will become effective on April 2, 2020, and expire on December 31, 2020. Employers must post notice of the requirements of the act "on the premises of the employer where notices to employees are customarily posted;" the Secretary of Labor is required to make available a model notice within seven days of the act's enactment.

## Employee Benefits

Last Wednesday evening (3/18/20), the **Families First Coronavirus Act** (H.R. 6201) was signed into law. The Act federally mandates that all plans waive the cost share **associated with testing** for the coronavirus, as well as the office visit, urgent care visit, or emergency room visit when the **purpose of the visit is** to be tested for coronavirus.

These mandates are removing the cost barriers to testing. If someone tests positive for coronavirus and requires treatment, the treatment will be covered, but subject to normal cost sharing.

To recap, testing is covered in full, however treatment is subject to your plans usual copay, deductible, and/or coinsurance.

In addition to these mandates, some carriers are also waiving the cost of telemedicine visits for any purpose. This is primarily to keep traffic to a minimum at provider offices. The expansion of telemedicine is a carrier by carrier decision, so please check with your carrier or consultant if you're not sure if your plan has expanded coverage.

Another new legislation that is being discussed, the **Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act** (as it relates to employee benefits) includes the further expansion of telemedicine services and Health Savings Account usage. The CARES Act includes a provision that would allow employers and health plans to cover telemedicine services prior to a participant on a high deductible health plan meeting their annual deductible, without jeopardizing their Health Savings Account eligibility. Previous IRS guidance allowed for pre-deductible testing and related office visit coverage, while this would allow telemedicine visits for any ailment to be pre-deductible.

Also included in the CARES Act is the elimination of the Affordable Care Act requirement for an individual to have a prescription to purchase over-the-counter medications with HSA funds. Eliminating this requirement would allow for the purchase of over-the-counter medications or other drugs with tax favored HSA funds.

The Act as currently written does not include measures to address surprise billing, COBRA affordability, or the potential high-cost for those in need of Coronavirus treatment. We are continuing to monitor the progress and ever changing provisions of the Act.

## Retirement

### Federal Initiatives:

The American Retirement Association, along with two dozen other trade organizations, is urging Congress to provide immediate relief to retirement plan sponsors, participants and retirees in the wake of the Coronavirus.

In general, the proposed recommendations address both DC and DB plans, as well as IRAs, as a way to provide financial assistance to workers who may be unable to work and to preserve current cash flow to employers to ensure that they can pay workers and continue their businesses.

**Streamline loan procedures and liberalize hardship distribution rules.** Congress should allow penalty-free qualified distributions and loan modifications for individuals impacted by COVID-19 such as:

- waiving the 10% penalty on early withdrawals;
- permitting individuals three years to repay the distribution; and
- permitting individuals to include the distribution in income ratably over three years.

The recommendations also call for:

- doubling the current plan loan limits to the lesser of \$100,000 or 100% of the participant's vested account balance in the plan;
- allowing three years to repay income tax associated with a loan default; and
- allowing individuals who borrow from their plan and have a repayment due during the months following the outbreak to delay their loan repayment for up to one year.

#### **State Initiatives:**

The Federal Government and FEMA have declared NYS a major disaster area. With this declaration, if a 401k plan permits hardship distributions, plan sponsors may be able to approve hardship distributions. Check your plan documents to see if you have the provision outlining the following: expenses and losses (including loss of income ) incurred by an employee because of a natural disaster declared by FEMA.