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

Information from Wednesday, April 8 Webinar:

Risk Management

What do you do when:

- Employee has positive test
- Employee spouse, family member or acquaintance tests positive
- Employee shows symptoms
- Employee spouse, family or acquaintance shows symptoms

What level of PPE should we use:

- Caution; false sense of security
 - Do not violate distancing even if wearing a mask
 - A mask is a mask, not a respirator
- Home Made Masks – CDC posted a “How to make a homemade mask” fact sheet
- Remember it is not just about using PPE; it is about how you integrate the use of PPE with your overall hygiene and prevention program.

Links:

- Response guidance - CDC
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- Mitigation Strategy – CDC
 - <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>
- Cleaning & Disinfecting Guidance – CDC
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

Please feel free to call with your specific questions and situations.

Business Insurance Claims and Coverage

How to Apply for FEMA Assistance:

From https://www.dfs.ny.gov/consumer/register_fema.htm

New Yorkers recovering from the impact of a federally declared disaster can register for disaster assistance from the Federal Emergency Management Agency (FEMA).

Assistance for losses may include grants for temporary housing and home repairs, low-cost loans to cover uninsured property losses and other programs to help recover from the effects of the disaster. Even those with insurance may be eligible for help from FEMA if their insurance policy does not cover all their needs.

Human Resources

On April 1, the US Department of Labor published the first regulations regarding the Families First Coronavirus Response Act (FFCRA).

As a reminder, this went into effect on April 1 and covers private employers with fewer than 500 employees and certain public employers.

In general, the FFCRA requires covered employers to provide eligible employees up to two weeks of paid sick leave at full pay, up to a daily cap, when the employee is unable to work because the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19, has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, or is experiencing COVID-19 symptoms and seeking a medical diagnosis.

The FFCRA also provides up to two weeks of paid sick leave at partial pay, up to a daily cap, when an employee is unable to work because of a need to care for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; because of a need to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons; or because the employee is experiencing a substantially similar condition, as specified by the Secretary of Health and Human Services.

The FFCRA also requires covered employers to provide up to twelve weeks of expanded family and medical leave, up to ten weeks of which must be paid at partial pay, up to a daily cap, when an eligible employee is unable to work because of a need to care for the employee's son or daughter whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 related reasons.

Under the FFCRA, covered private employers qualify for reimbursement through refundable tax credits as administered by the Department of the Treasury, for all qualifying paid sick leave wages and qualifying family and medical leave wages paid to an employee who takes leave under the FFCRA, up to set maximums, and for allocable costs related to the maintenance of health care coverage under any group health plan while the employee is on the leave provided under the FFCRA. More information is available directly through the IRS.

Provided Clarity on Certain Definitions:

Quarantine or isolation orders include a broad range of governmental orders, including orders that advise some or all citizens to shelter in place, stay at home, quarantine, or otherwise restrict their own mobility. The rules explain that an employee may take paid sick leave only if being subject to one of these orders prevents him or her from working or teleworking as outlined.

An employee subject to one of these orders may not take paid sick leave where the employer does not have work for the employee. This is because the employee would be unable to work even if he or she were not required to comply with the quarantine or isolation order.

For example, if a coffee shop closes temporarily or indefinitely due to a downturn in business related to COVID-19, it would no longer have any work for its employees. A cashier previously employed at the coffee shop who is subject to a stay-at-home order would not be able to work even if he were not required to stay at home. As such, he may not take paid sick leave because his inability to work is not due to his need to comply with the stay-at-home order, but rather due to the closure of his place of employment.^[1] That said, he may be eligible for state unemployment insurance and should contact his state workforce agency or state unemployment insurance office for specific questions about his eligibility.

From the Department of Labor: Definition of child: The Department is therefore treating the definitions as the same (*i.e.*, to include children under 18 years of age and children age 18 or older who are incapable of self-care because of a mental or physical disability)

From the Department of Labor: Caring for an individual: For the purpose of paragraph (a)(1)(iv) of this section, "individual" means an Employee's immediate family member, a person who regularly resides in the Employee's home, or a similar person with whom the Employee has a relationship that creates an expectation that the Employee would care for the person if he or she were quarantined or self-quarantined. For this purpose, "individual" does not include persons with whom the Employee has no personal relationship.

Documentation of Need for Leave

An Employee is required to provide the Employer documentation containing the following information prior to taking Paid Sick Leave under the EPSLA or Expanded Family and Medical Leave under the EFMLEA:

- (1) Employee's name;
- (2) Date(s) for which leave is requested;
- (3) Qualifying reason for the leave; and
- (4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

An employee must provide additional documentation depending on the COVID-19 qualifying reason for leave.

- (b) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(i), an Employee must additionally provide the Employer with the name of the government entity that issued the Quarantine or Isolation Order.
- (c) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(ii) an Employee must additionally provide the Employer with the name of the health care provider who advised the Employee to self-quarantine due to concerns related to COVID-19.
- (d) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(iii) an Employee must additionally provide the Employer with either:
 - (1) The name of the government entity that issued the Quarantine or Isolation Order to which the individual being care for is subject; or
 - (2) The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.
- (e) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(v) or Expanded Family and Medical Leave, an Employee must additionally provide:
 - (1) The name of the Son or Daughter being cared for;
 - (2) The name of the School, Place of Care, or Child Care Provider that has closed or become unavailable; and

(3) A representation that no other suitable person will be caring for the Son or Daughter during the period for which the Employee takes Paid Sick Leave or Expanded Family and Medical Leave.

- The Employer may also request an Employee to provide such additional material as needed for the Employer to support a request for tax credits pursuant to the FFCRA. The Employer is not required to provide leave if materials sufficient to support the applicable tax credit have not been provided. **Generally, employers should exercise caution when denying leave for this reason.**
- For leave taken under the FMLA for an employee's own serious health condition related to COVID-19, or to care for the employee's spouse, son, daughter, or parent with a serious health condition related to COVID-19, the normal FMLA certification requirements still apply.

Recordkeeping

An employer is required to retain all documentation provided for four years, regardless of whether leave was granted or denied.

If an employee provided oral statements to support his or her request for paid sick leave or expanded family and medical leave, the employer is required to document and retain such information for four years.

If an employer denies an employee's request for leave pursuant to the small business exemption, the employer must document its authorized officer's determination that the prerequisite criteria for that exemption are satisfied and retain such documentation for four years.

The guidance further explains what documents the employer should create and retain to support its claim for tax credits from the Internal Revenue Service (IRS). A more detailed explanation of how Employers may claim tax credits can be found at <https://www.irs.gov/forms-pubs/about-form-7200> and <https://www.irs.gov/pub/irs-drop/n-20-21.pdf>.

<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

Small Business Exemption - FFCRA

The FFCRA covers private employers with fewer than 500 employees and certain public employers. Small employers with fewer than 50 employees may qualify for an exemption from the requirement to provide paid leave due to school, place of care, or child care provider

closings or unavailability, if the leave payments would jeopardize the viability of their business as a going concern. The DOL also published FAQs on this topic.

1. **When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?**

An employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing (a) paid sick leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons and (b) expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

2. **If I am a small business with fewer than 50 employees, am I exempt from the requirements to provide paid sick leave or expanded family and medical leave?**

A small business is exempt from certain paid sick leave and expanded family and medical leave requirements if providing an employee such leave would jeopardize the viability of the business as a going concern. This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the three conditions described in Question 58 is satisfied.

The Department encourages employers and employees to collaborate to reach the best solution for maintaining the business and ensuring employee safety.

New York Paid Family Leave - Change

The Workers' Compensation Board in NY has adopted on an emergency basis an amendment to clarify that employees may take family leave to care for a family member **diagnosed** with the COVID-19 virus.

The amendment is to section 355.9 of Title 12 NYCRR. A Notice of Emergency Adoption will be published in the April 15, 2020 edition of the [State Register](#).

This emergency rulemaking is effective for 90 days upon filing March 27, 2020.

<http://www.wcb.ny.gov/content/main/wclaws/Covid-19SeriousHealthCondition/>

If the doctor of the infected patient feels the patient needs additional care by the employee, they may complete the PFL 4 and the employee may submit with the proper Paid Family Leave claim.

The patient must have been diagnosed with Covid-19 to qualify for Family Care under PFL.

This is effective immediately.

NY Pause – Extension

Amid ongoing COVID-19 Pandemic, on April 6, 2020 Governor Cuomo announced New York Pause Functions will be extended for an additional two weeks.

This directs schools and nonessential businesses to stay closed for an additional two weeks through April 29, 2020.

<https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-announces-nys-pause-functions-extended-additional>

Employee Benefits

Coronavirus testing and treatment is now covered in full by most major health insurance carriers on their insured plans. Self-insured groups are required to cover testing in full however treatment can be subject to normal cost sharing.

The CARES Act now allows telehealth to be covered pre-deductible on HDHPs for all visit types. Many carriers are now offering telemedicine (MDLive, Teladoc) free for all visits, including for PCPs who submit claims for telehealth. Self-insured groups would have to adopt this enhancement. It does not have to be free, can be normal cost or reduced.

The CARES Act also allows for expanded use of HSA, Medical FSAs, and some HRAs. Effective 1/1/20 over-the-counter drugs can be purchased with HSA, FSA, and HRA funds.

COBRA administrators are being flexible for layoffs/furloughs. If employers want to subsidize premiums it can be setup to only bill the amount not covered by the subsidy.

If employers want to keep laid off or furloughed employees on the active plan and pay the premiums that is an option as well.

Dependent care FSA changes allowed if you don't need as much with day cares and before/after school programs closed.

Some carriers are allowing a special enrollment period. During the state of emergency current employees who are not enrolled can enroll in health insurance. Special enrollment periods vary by carrier.

Cyber

Sadly we have seen an uptick in cyber events both in general as well as targeted coronavirus related cyber attacks – up 37% over the past month.

- Cyber Criminals are opportunistic
- Preying on people's fear and curiosity
- Fake coronavirus websites – Started with a fake CDC map - Malware
- Targeted coronavirus Phishing & Smishing campaigns – WHO, CDC, Govt Agencies, etc.
- Fake cures, treatments, donations, general misinformation to take advantage and psychological manipulation of people
- Social Media – Malicious Links, don't click enter website yourself
- Issues with video applications like Zoom and "Zoom Bombs" FBI warning
- Recent attacks on HHS and other health care providers – cyber criminals claim will cease
- DOJ said it will prioritize and prosecute coronavirus scams and fraud
- FBI did warn of increased attacks on CA, NY and WA
- Increase utilization of remote workers
- NY SHIELD Act March 21, 2020 just viewing or access to, increased fines and notification requirements

Practice Good Cyber Hygiene

- Employee training – think before clicking – don't panic
- Multifactor authentication and 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

Retirement

Things have been hastily changing on a daily basis. Over the past two weeks, my colleagues Joe Hatfield and Chuck Baracco have provided timely updates on this weekly call pertaining to the newly enacted CARES Act and the impact on Retirement Plans. This morning, I will reemphasize the items that Plan Sponsors need to know about regarding the changes to their retirement plans. As many of you perhaps already know, Plan Sponsors MAY ELECT to allow expanded distributions and loans to assist plan participants. Some record-keepers are adopting these changes automatically, via Negative Consent, unless the Plan affirmatively “Opts-Out.” I would like to emphasize how important it is to please pay attention to the communications your record-keepers are sending as their processes are all different. Plan sponsors need to review these communications and make their own decisions about how to proceed. For example, employers who are closed down or operating at reduced capacity may want these options for their workers. But other employers who are not laying off or furloughing workers may not see a need to run the risk of increased plan leakage in the long run from loan defaults and distributions. Either way, Plan Sponsors need to make sure they don’t “accidentally” adopt these changes by ignoring notices from their record-keepers—done properly, the plan can be deemed to have adopted a change proposed through a negative consent notice process in which a failure to object is acceptance.

Elective Distribution and Loan Rules:

- Coronavirus-Related distributions are those made in 2020, up to \$100,000 (aggregate across plans) from 401(k), 403(b) or IRAs
- No 10% penalty for distributions < age 59 1/2
- Taxed over three years, no (mandatory 20%) withholding
- Can repay over three years instead
- Coronavirus-related loans permitted up to \$100,000, or to the total vested account balance if lower (includes any existing loans)
- The expanded loan provisions essentially eliminate the 50% collateral requirement, permitting a participant to borrow up to \$100,000. Further, any loan payments due between March 27th and December 31, 2020 may be delayed for one year, but interest will still accrue. The loan will be re-amortized in 2021 to reflect the accrued interest, but the delay will not result in the loan otherwise being treated as extending beyond the maximum repayment period (typically 5 years, except for home loans).
- Loan suspension for the remainder of the year has been implemented. Some record-keepers have already added the loan suspension feature to all of their plan clients – regardless if the Plan Sponsor elects to add the new coronavirus-related loan provision.

- Some record-keepers are waiving fees for all new loans and coronavirus related distributions – check with your RK to decipher if they too have announced this
- Eligibility for both the distribution and the loan:
 1. Participant (or spouse or dependent) diagnosed with COVID-19
 2. Spouse of depended diagnosed with COVID-19
 3. Adverse financial consequences due to effects of COVID-19
 - a. Participant self-certifies
- One additional provision: Defined Contribution (DC) Plans MAY suspend RMDs in 2020: DC plans may be retroactively amended to permit participants to suspend receipt of RMDs in 2020

Lastly, The American Retirement Association has been advocating for relief from certain provisions under the Internal Revenue Code and ERISA due to ongoing and future business impacts of the COVID-19 pandemic. There are certainly many concerns relating to retirement plans, especially retirement plans sponsored by small businesses - issues continue to arise surrounding funding requirements for defined contribution plans. We anticipate more to come on this in the near future.

So, this morning has touched on the CARES Act provisions. I'll flip to the other side of the coin of our retirement plans: market performance. Certainly we've experienced grave volatility within the financial markets since late February. Work with your Plan Advisors and record-keepers to ensure your plan participants have access to the resources they need in these critical circumstances. On that note, OGRA will be partnering with various money managers over the coming weeks and months for timely live webinars that will discuss the financial markets and economic climate - that you and your plan participants can call into. Our first one will be rolling out tomorrow morning at 10:30am – presented by Nuveen – if you are interested in joining the call please feel free to e-mail me: Mike@OneGroupRA.com

Again, please lean on us if you have any questions or need additional guidance. Thank you.

Small Business Relief

My update today will address the Paycheck Protection Program (PPP) portion of the CARES Act – which was passed to provide financial relief to Small Businesses (500 or less employees or if you fall with SBA guidelines certain exceptions).

In case you weren't with us last week this program is being administered through local banks and other approved lending institutions via the SBA 7A program.

Bank Updates

- Most banks and bankers are overwhelmed with PPP inquiries.

- Depending on the size of the bank they are processing from dozens to hundreds of PPP applications.
- Smaller, local community banks that don't have the online systems of larger banks may have to re-enter application information on both the lender and SBA portals.
- Meanwhile large commercial banks are being blitzed with hundreds or more likely thousands of online applications.
- Most banks/SBA lenders are following know-your-customer guidelines and giving priority to existing clients and not accepting applications from non-clients. Some have temporarily stopped taking new applications.
- Minimally you must have a checking account with the bank as loan funds are being direct deposited.
- The SBA has indicated that approval and funding is on a first come, first served basis.
- Get your application in ASAP. Make sure it is complete, accurate, and most importantly has the required supporting documentation attached – each bank will have a list of what is needed. Payroll records and information. Review it with your CPA if possible before submission.
- Try to contact your banker following submission to let them know you've made application (if online) and get confirmation of receipt.
- Timing of loan approval, processing and closing will vary from bank to bank.
- If you have relationships with multiple banks go with the one you feel you have the best relationship with and who you feel will be your biggest advocate.
- If you're keeping a list of things to do when this is over, I recommend building a strong relationship with your bank.
- If you need recommendations for bank contacts now or in the future feel free to reach out to me.

One important issue I want to touch on you may not currently be considering: banks have ways to offer you financial relief outside of the PPP or other SBA programs. Many of them are already offering these services on their websites

1. Approving or increasing normal W/C Line of Credit
 2. Deferring or providing forbearance for the principal payments on mortgage and term loans – typically 3 months. Also doing this on personal mortgages, credit cards, etc.
 3. Loan modification or rewrite whereby you extend term of loan
 4. They are waiving ATM fees, OD fees, late fees allowing no penalty CD withdrawals.
- Spoke to a dental practice yesterday that did all of the following
 - Applied for a PPP loan
 - Had their existing working capital line raised from \$25M to \$100M and got the interest rate lowered substantially.
 - Got a 3-month deferment on their commercial mortgage principal payments.
 - Talked to the vendor with whom they had financed a large equipment purchase – that vendor agreed to halt all payments for as long as needed with no interest accrual.

- Takeaway: Talk to your vendors and all other creditors.

PPP Program Updates or Clarifications

- 1) Two Applications - The PPP loan program is going to require two applications submitted at different times.

The first is the Loan Request application and the second the Loan Forgiveness application

Begin that conversation with your banker and ask if they have a calculation worksheet you can review.

- 1) What is the maximum loan amount?

2.5 x the Average monthly payroll for the past twelve months. To calculate average monthly payroll, use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee.

Remember the primary purpose of this program and intended use of money is to sustain payroll for your employees.

- 2) What is the interest rate and what are the repayment terms? - These have changed as of last Friday -

Originally the rate was quoted at up to 4% but it is now 1.0%

Repayment was quoted with a 6-12 month deferment of payments followed by a 10 year repayment term. That has changed to a 6 month payment deferment with a 2 year maturity.

- 3) Do independent contractors count as employees for purposes of PPP loan calculations?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan calculation.

The CARES Act did indicate that an employer could count compensation to or income of a sole proprietor or independent contractor, But SBA guidance seems to indicate that employers should not include those payments in their payroll calculation and that IC's should apply for their own PPP loan.

- 4) Review Forgiveness of Loan Amount

- How much of the loan will be forgiven?
- How much could that forgiveness be reduced? (can happen if funds used improperly or payroll costs and or FTE's go down by more than 25% between periods).
- How can you offset that reduction by bringing employees back or restoring wages?

Refer you to a great handout – U.S. Chamber of Commerce 4 page brochure and talk to your CPA

- Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the 8 week period following the closing date of the loan.
- Important to note the 25% is an important number here
- Reduction in payroll costs can't exceed 25% and not more than twenty-five percent of the forgiven amount may have been spent on non-payroll costs.
- Therefore, to maximize loan forgiveness, significant payroll will have to be paid in the 8-weeks after the loan origination date.