March 27, 2020

COVID-19 and Group Benefits
Frequently Asked Questions (FAQ)

In these unprecedented times, employers are going to be faced with challenging decisions and there are going to be gray areas in the various Federal and State rules and regulations that apply to Group Benefits. Many of the previous regulations and rules didn't account for these severe circumstances. All employers need to make a good faith effort to comply with them and apply them consistently.

Q1. What is COVID-19 and what are the symptoms?

Coronavirus disease (COVID-19) is an infectious disease caused by a new virus not previously identified in humans. The disease causes respiratory illness (like th flu) with symptoms such as a fever, chills, cough, shortness of breath or sore throat. Those who develop serious illness are found to have pneumonia. The pneumonia vaccine does not protect a person from developing pnemonia from this virus.

Q2. How does it spread?

COVID-19 can spread from person to person, primarily between people who are in close contact within about 6 feet of one another, through respiratory droplets produced when an infected person coughs or sneezes. It also may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then by touching their mucous membranes (mouth, nose, eyes). It is believed it can live on surfaces in the range of hours to days. Some early studies indicate that it may also be passed through stool/feces.

Q3. Is it true that people can infect others before they themselves show any symptoms?

Yes. It is believed a person can be contagious several days before symptoms appear and up to 14 days after symptoms have ended. Please refer to www.coronavirus.gov

Q4. Is there a vaccine?

There is currently NO vaccine to protect against COVID-19. While there are numerous efforts underway to develop a vaccine, (in fact you may have heard the first human trial began on 3/17/2020) historical experience would suggest it will be at least a year before one is commercially available to the general public. Please refer to www.coronavirus.gov

Q5. Who is most at risk?

Most cases of COVID-19 worldwide have been mild and >80%[i] of infected individuals have been able to fully recover at home. However some people are at higher risk of getting very sick from this illness and should take additional precautions. Those people include:

- People over the age of 60, particularly people those over the age of 80;
- People who have chronic medical conditions like heart disease, diabetes, chronic lung disease, chronic renal disease[ii], cancer and obesity; and
- People who have a suppressed immune system from medications or those that have a compromised immune system.

Early indication is that the cause of death in individuals with COVID-19 is sepsis, ARDS and/or cardiac arrest[iii]. Please refer to www.coronavirus.gov

Sources
1. China Centre for Disease Control & Prevention, Statistica
2. China Centre for Disease Control & Prevention, Italian Portal of Epidemiology for Public Health
3. medRxiv 2020.02.26.20028191

Q6. If an employee is immune compromised, should they take FMLA first and then file for unemployment during the COVID-19 Pandemic?

As soon as an employee suffers any triggering event for unemployment purposes they should file. If they also potentially qualify for any other forms of paid family or sick leave then they should also avail themselves of those options and properly communicate those other sources of income to unemployment if required to when filling out the application. Keep in mind that the only basis for receiving paid FMLA benefits due to COVID-19 is if the schools/child care are no longer available and that the employee cannot work on site or at home (see FFCRA below). Employees can still take other forms of traditional FMLA but they will be unpaid.

Q7. Can an employer ask an employee if they have been exposed or are experiencing symptoms of COVID-19?

According to the EEOC, during a pandemic, ADA-covered employer may ask employees if they are experiencing symptoms of the pandemic virus. Employers must maintain all information about employees illness as a confidential medical record in compliance with the ADA.

Q8. Can an employer send an employee home that is experiencing symptoms?

Yes. The CDC state that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

Q9. Is an employer restricted by the Health Insurance Portability and Accountability Act (HIPAA) from disclosing that an employee tested positive for COVID-19?

HIPAA imposes strict rules on covered entities, including group health plans, with respect to the handling of identifiable health information – or PHI. Covered entities are prohibited from disclosing PHI for reasons other than treatment, payment, or health care operations. However, there are some exceptions to these rules that are particularly relevant to COVID-19.

First, a disclosure may be made to public health authorities for the purpose of preventing or controlling a disease. Second, disclosure may be made to individuals who are at risk of contracting or spreading the disease so long as another law permits the disclosure. And third, disclosure may be made when necessary to prevent or lessen a serious or imminent threat to the health and safety of another person or the public. In all instances, though, covered entities must ensure that only the minimum necessary information is shared.

Importantly, employers are likely to obtain information on the health status of an employee in their role as employer, such as where an employee calls in sick or requests to work remotely in order to self-quarantine. Information obtained in this manner is not subject to HIPAA's disclosure rules, but the information may nevertheless be subject to other state and federal regulations like the ADA.

In short, employers should exercise caution before disclosing the health status of an employee. In many cases, an employer will be able to provide a safe work environment for employees without having to make disclosures of personal health information.

Q10. Can we ask any person who tests positive to tell us who they worked closely with in the past 14 days and inform those people, keeping the identity of the infected person confidential?

There is no guidance on this question yet. For now the employer should proceed with caution. An employer may ask an employee who they worked closely with in the past 14 days (staff, customers, vendors, etc.). Ask the employee if he or she grants the employer permission to disclose the fact that the employee is infected to manager(s) or supervisor(s). Notify employee's co-workers who may have come into contact with employee at work within the past 14 days that they may have been exposed to COVID-19 and may wish to see a healthcare provider. Do not identify the infected employee by name and avoid making any direct or indirect references that would lead the co-workers to guess the identity of the employee.

Q11. Can an employer require documentation before allowing an employee to return to work?

Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

Q12. Will testing for COVID-19 be covered as a preventive service under the Affordable Care Act (ACA)?

The cost of COVID-19 testing is considered an essential health benefit but is not classified as a preventative health benefit.

Q13. How can an employer provide no-cost coverage for COVID-19 testing and treatment?

The Families First Coronvirus Response Act, signed by President Trump on March 18, 2020, mandates that group health plans and health insurers cover COVID-19 testing without imposing any cost sharing (such as deductibles, copayments or coinsurance) or prior authorization or other medical management requirements.

This mandate applies to fully insured and self-insured group health plans as well as Health insurance issuers offering group or individual coverage. It includes any items or services provided during a visit to a provider (in-person or telehealth), urgent care or emergency room.

This coverage mandate does NOT require health plans and issuers to cover COVID-19 treatment at no charge.

The IRS in Notice 2020-15 has advised that high deductible health plans (HDHPs) can pay for COVID-19 testing and treatment before plan deductibles have been met without jeopardizing their status. According to the IRS, individuals who are participating in these plans may continue to contribute to their HSAs.

Q14. What impact do reduced work hours have on employee eligibility for coverage under the group health plan?

Group health plans often determine eligibility for coverage based on the hours worked by the employee or the employee's status as full-time. A reduction in hours may result in loss of eligibility under the terms of the plan, but the specific terms of the plan will control. Where the terms of the plan are vague with respect to evaluating eligibility, employers should take a reasonable approach to making such determinations and should apply the criteria consistently to all employees.

For employees whose eligibility is determined by the use of a look-back measurement period, eligibility will remain locked in place for the full duration of any stability period regardless of a reduction in hours, though these employees may have the opportunity to voluntarily drop coverage (see Q/A 10).

Q15. Are employees permitted to make mid-year election changes under benefit programs due to a reduction in hours?

A Section 125 plan, or a cafeteria plan, allows employees to pay for certain benefits on a pre-tax basis by complying with the rules of the Internal Revenue Code. Participant elections generally must be irrevocable until the beginning of the next plan year. However, regulations permit employers to design their cafeteria plans to allow employees to change their elections during the plan year if certain conditions are met.

For changes in employment status that involve a reduction of hours, a "reduction of hours" event may allow certain election changes even if benefit eligibility is not affected (e.g., because the employee is locked into full-time status during a stability period and remains eligible for health coverage). Here, the employee would be allowed to make a mid-year election change to drop medical coverage.

Similarly, if the employee must pay a greater portion of the premium as a result of the reduction in hours (e.g., a change from full-time to part-time status requires the employee to contribute a greater amount towards the cost of coverage), then the cost-change rules should permit the employee to make an election change to a lower-cost medical option. In lieu of selecting a lower-cost option, the employee may choose to revoke coverage.

While a reduction in hours will provide for some election change opportunities for medical coverage, such opportunities for Health FSA coverage are rarer. In general, a reduction in hours that does not affect the employee's eligibility will not provide an opportunity for a mid-year election change under the Health FSA. Conversely, participants should be permitted to make election changes to DCAP coverage where the cost of dependent care increases or decreases mid-year, or where the need for dependent care increases or decreases, which may be the natural result of a reduction in hours.

Q16. What impact does a furlough (i.e., an extended leave) (vs a layoff) have on employee eligibility for coverage under the group health plan?

Typically, an employee placed on furlough is treated similarly to an employee on an unprotected leave of absence. If the employer has an existing policy or practice that dictates how long an employee may remain eligible for coverage during furlough or an unprotected leave of absence, that policy should be followed. In the absence of such a policy, the employer should implement a policy that is reasonable and that is applied consistently. Note that many insurance carriers impose a limit on the length of this period, so employers should ensure that their chosen policy complies with carrier requirements.

Employers often provide for up to one month of continued eligibility while on an unprotected leave, though some may provide for more and others less. If the leave extends beyond this period of time, the employee's coverage will terminate and COBRA will be offered (if applicable). If the employee later returns to active employment, he/she will have an opportunity re-elect coverage as an active employee.

During the leave, the employee and employer should continue to make their normal premium contributions. Therefore, the employer will want to provide clear communication at the start of the leave regarding the amount of premium owed and the due date for payment.

Q17. How can an employee fund flexible spending accounts ("FSAs") during a temporary layoff or furlogh?

- **The Prepay Option**- The employee may pay, before commencing the leave, the contributions that would have normally been paid during the leave period. The employee choosing this option voluntarily elects to reduce their final pre-leave paycheck, or to make special salary reduction contributions that will cover their share of the contributions for all or part of the expected duration of the leave. The employee's regular salary reduction election for the duration of the leave is then suspended, but the benefit election remains in force. When the leave ends, the employee's previous salary reduction resumes for the duration of the plan year.
- **The Pay-as-You-Go Option**-The employee pays their normal contribution that was previously being taken as a salary reduction, to the employer. This is a post-tax contribution. If they are using their unused sick or vacation days to fund the leave, the contributions may then be pre-tax. These payments are to be made in installments during the leave. When the leave ends, the employee's previous salary reduction election resumes for the duration of the plan year. If the employee fails to make the installment payments, the employer is allowed to recoup those payments upon reemployment, using the catch-up option.
- **The Catch-Up Option**-The employer and employee agree in advance that the employer will advance payment of the employee's FSA contributions during the leave, and that the employee will pay the advanced amounts when they return from the leave. Once the employee returns from the leave, they make special catch-up salary reduction contributions to cover the FSA contributions that were missed while they were on leave. Upon return, the normal salary reductions resume for the duration of the plan year. These catch-up contributions may be pre-tax if they are taken from the compensation of the employee. If the employee does not make the required contributions while on leave, the employer may use the catch-up option to recoup the employee's share; even without the employee's prior agreement. **There is an added risk to the employer as the employee is allowed to spend up to the entire election amount for the plan year. The uniform coverage rule is not suspended.**

Q18. Can an employee suspend their FSA during a temporary layoff or furlough?

Yes. If the employee decides to suspend the FSA during the leave, expenses incurred during that period of layoff or furlough will not be eligible for reimbursement because coverage under the health FSA was not in effect. Upon return, the employee may elect to reinstate a level of coverage that is reduced by the amount of contributions missed during the leave, at the original contribution amount or they could elect to reinstate the level of coverage that was in effect when the leave began, provided that the employee pays the missed contributions. Under either option, it appears that there is a single period of coverage (with an aggregate coverage limit before and after the leave).

Q19. What impact does a layoff (i.e., a termination of employment) have on employee eligibility for coverage under the group health plan?

When an employee is laid off (or terminated) from employment, he/she is no longer eligible for coverage under the group health plan as an active employee. Coverage will generally terminate no later than the last day of the month in which the termination of employment occurs. Employers should not allow terminated employees to continue participating in the plan as active employees beyond this date.

An employer who wishes to provide some form of continued financial contribution towards the cost of coverage may do so by subsidizing or reimbursing a portion of the COBRA premium (if COBRA is available **and elected**). However, employers should specify the period of time during which a subsidy or reimbursement will be provided and note that the cessation of the subsidy or reimbursement will not be considered a loss of coverage that will trigger a special enrollment opportunity for Marketplace coverage or other employer-sponsored coverage.

In lieu of a subsidy or reimbursement of COBRA premiums, an employer may instead provide a severance payment that is intended to cover a portion of the cost of insurance premiums. The severance payment will be treated as taxable income.

Q20. What coverage options do employees have following a layoff (i.e., a termination of employment)?

In general, coverage under the group health plan will terminate no later than the last day of the month in which the layoff occurs. Former employee-participants who wish to obtain other coverage, and those in states where the maintenance of health coverage is required, will have options.

If the employer-sponsored plan is subject to COBRA or a similar state continuation of coverage law, the former employee (and any dependents who were enrolled in the group health plan) can elect to continue the same coverage for a period of up to 18-36 months. The cost of coverage under COBRA is 102% of the monthly premium, though the cost for coverage provided under state continuation laws may be higher.

As an alternative to continuation coverage under the group plan, the loss of coverage experienced by former employee-participants will trigger a special enrollment period for mid-year enrollment in an individual plan on the Marketplace. The deadline for enrollment is 60 days following the date that coverage was lost.

Finally, the loss of coverage experienced by former employee-participants may create an opportunity for mid-year enrollment on another employer-sponsored health plan, such as through a spouse or a parent. The deadline for enrollment is typically 30 days following the date that coverage was lost. The plan's documents should be consulted for further details.

Q21. Do we have to provide notice to our employees of a layoff?

As state and local governments continue imposing increasingly restrictive rules to help slow the spread of COVID-19, employers should be aware that the federal WARN Act may require them to provide written, advance notice of certain plant closings and mass layoffs. A WARN notice provides information about assistance available through the State Rapid Response Dislocated Worker Unit and allows transition time for affected workers to seek alternative jobs or enter skills training programs. In general, this requirement applies to businesses that:

- Have 100 or more full-time workers (not counting workers who have less than six months on the job and workers who work fewer than 20 hours per week) and plan to lay off at least 50 people at a single site of employment; or
- Employs 100 or more workers who work at least a combined 4,000 hours per week, and is a private for-profit business, private non-profit organization, or quasi-public entity separately organized from regular government.

Under the law, covered businesses must provide a WARN Notice to affected employees at least 60 days in advance of a plant closing or mass layoff. However, employers may qualify for one of three exceptions to this rule. More information about the WARN Act is available in the DOL's Employer's Guide to Advance Notice of Closings and Layoffs.

Q22. What is the Family First Coronavirus Response Act (FFCRA)?

A new law signed by President Trump on Wednesday, March 18, 2020 which goes into effect on April 1, 2020 and ends on December 31, 2020. Among other things, the FFCRA creates paid emergency sick leave for employees impacted by COVID-19 through the Emergency Paid Sick Leave Act (EPSLA), and amended the Family and Medical Leave Act (FMLA) to provide additional paid FMLA leave for specific COVID-19 related reasons.

Q23. What does the FFCRA include?

Generally, the Act provides that employees of covered employers are eligible for:

- Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.
- The ACT includes a refundable tax credit for employers intended to offset the full cost of providing employees with the paid leave required by the ACT.
    - On Friday March 20th, the Departments of Treasury and Labor issued a joint notice (IR 2020-57) clarifying that, in order to expedite employers' receipt of the cash benefits of the tax credits, employers will be permitted to reduce the amount of ordinarily-required payroll tax deposits by the amount of allowable tax credits (rather than depositing cash with the IRS and then filing for a refund). The release states employers will be able to reduce deposits of withheld federal income taxes, Medicare and Social Security taxes with respect to all employees up to the amount of allowable credits.

Q24. Who is subject to and who is covered under the Family First Coronavirus Response Act?

Private Sector employers with less than 500 employees and Public Sector with at least one employee. It covers both Full-Time and Part-Time employees in both sectors.

Q25. Who is exempt from the Family First Coronavirus Response Act?

Employers with more than 500 employees are exempt and are not eligible for the tax credits. Employers over 500 employees can always do something for their employees, it just won't fall under the FFCRA.

Employers of "health care providers" and "emergency responders" may exempt those employees.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the DOL, which will be addressed in more detail in forthcoming regulations. At this time, you should not send any materials to the DOL when seeking a small business exemption for paid sick leave and expanded family and medical leave.

Q26. As an employer, how do I know if my business is under the 500-employee threshold and therefore must provide paid sick leave or expanded family and medical leave?

An employer has fewer than 500 employees if, at the time an employee's leave is to be taken, the employer employs fewer than 500 full-time and part-time employees within the United States (including any state, the District of Columbia, or any territory or possession of the United States). In making this determination, employers should include:

- Employees on leave;
- Temporary employees who are jointly employed by the employer and another employer (regardless of whether the jointly-employed employees are maintained on only one employer's payroll); and
- Day laborers supplied by a temporary agency (regardless of whether the employer is the temporary agency or the client firm if there is a continuing employment relationship).

Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold.

Q27. How do you determine the employee threshold for commonly owned subsidiaries?

Typically, a corporation (including its separate establishments or divisions) is considered to be a single employer, and its employees must each be counted towards the 500-employee threshold. Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees. If two entities are found to be joint employers, all of their common employees must be counted in determining whether paid sick leave must be provided under the Emergency Paid Sick Leave Act, and expanded family and medical leave must be provided under the Emergency Family and Medical Leave Expansion Act.

In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

Q28. Which employees are eligible?

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

Q29. What are the Qualifying Reasons for leave?

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Q30. What is the duration of leave?

For reasons (1)-(4) and (6): A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Q31. How is the pay calculated?

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to $511 per day and $5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the

applicable minimum wage, whichever is higher, up to $200 per day and $12,000 in the aggregate (over a 12-week period).

An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

Paid sick time provided under this Act does not carryover from one year to the next. Employees are not entitled to reimbursment for unused leave upon termination, resignation, retirement, or other separation from employment.

Q32. Can an employee take 80 hours of paid sick leave for self-quarantine and then another amount of paid sick leave for another reason provided under the Emergency Paid Sick Leave Act?

No. They may only take up to two weeks – or 10 days – (80 hours for a full-time employee or, for a part-time employee, the number of hours equal to the average number of hours that the employee works over a typical two-week period) of paid sick leave for any combination of qualifying reasons. However, the total number of hours for which they can receive paid sick leave is capped at 80 hours under the Emergency Paid Sick Leave Act.

Q33. Are the paid sick leave and expanded family and medical leave requirements retroactive?

No they are not retroactive. An employer cannot count paid leave given to an employee before the Act takes effect against the employee's total allotment of FFCRA leave.

Q34. Can you deny paid sick leave if paid sick leave has already been granted for a reason identified in the Emergency Paid Sick Leave Act prior to the Act going into effect?

No. The Emergency Paid Sick Leave Act imposes a new leave requirement on employers that is effective beginning on April 1, 2020.

Q35: Is the two weeks of paid sick leave only for first responders?

It is not. In fact, there is language in the expansion of the FMLA that actually gives the right to exclude "certain emergency personnel" in the final regulations.

> *"(3) REGULATORY AUTHORITIES.—The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—*
> *"(A) to exclude certain health care providers and emergency responders from the definition of eligible employee under section 110(a)(1)(A);*

Q36: Are there any particulars on the Federal CARES Act that would increase unemployment benefits? We are concerned all our employees will want to go on layoff and we need them to continue working as we are an essential medical supplier.

The new and as yet unsigned Federal CARES Act has some benefits in regards to unemployment. Specifically, unemployment insurance provisions now include an additional $600 per week payment to each recipient for up to four months, and extend UI benefits to self-employed workers, independent contractors, and those with limited work history. The federal government will provide temporary full funding of the first week of regular unemployment for states with no waiting period and extend UI benefits for an additional 13 weeks through December 31, 2020 after state UI benefits end. Keep in mind that this

bill is technically not law yet. Also, there could be jurisdictional specific UI benefits that are not impacted by Federal legislation but are based on what the state is actually doing.

Q37: If a company is forced to be closed, will the employees be eligible for unemployment?

Each states Unemployment Insurance Agency determines a persons eligibility and not the employer. On March 12th, the DOL issued new guidance outlining state flexibilities in administering their unemployment insurance programs to assist Americans affected by the COVID-19 outbreak. The federal law allows states to pay benefits where:

- An employer temporarily ceases operations due to COVID-19, preventing employees from coming to work;
- An individual is quarantined with the expectation of returning to work after the quarantine is over; and
- An individual leaves employment due to a risk of exposure or infection or to care for a family member.

In addition, federal law does not require an employee to quit in order to receive benefits due to the impact of COVID-19. Although, an individual receiving paid sick leave or paid family leave is still receiving pay. Thus, generally speaking, the individual is not "unemployed", so the individual is ineligilble for unemployment insurance.

The CARES Act will provide $1billion to help support unemployment needs under specific circumstances.

Q38: How has Michigan changed the Unemployment Insurance requirements?

Governor Whitmer has issued Executive Order 2020-10 which was an expansion of unemployment benefits. The order includes:

- Supension of the strict compliance with voluntarily leave making a person ineligible. Basically leaving work for COVID-19 is an involuntary leaving and not a voluntary leaving disqualification
    - A person voluntarily leaving (or medical LOA) due to COVID-19 is considered involuntary
        - Self-Isolation due to immunocompromised, displaying the symptoms, contact with someone with confirmed diagnosis in last 14 days, need to care for someone with confirmed diagnosis, or a family care responsibility as a result of a government directive
    - A governmental directive is an involuntary lay-off
    - Employer must deem employee laid off and must seek a registration and work search waiver from the UIA
- Extending the maximum benefit period from 20 weeks to 26 weeks
- An employee filing a claim within 28 days of the last day work will be considered to have filed on time
- Employer must not be charged for unemployment benefits if employees become unemployed because of an Executive Order requiring employers to close or "limit operations"
    - Stay Home Order (EO 2020-21) caused closure or "limited" your operations – no charges
        - Employers should keep an eye on their unemployment reports. You may be charged and will have to dispute the charge with UIA due to your operations being limited or shut down due to the executive order.
- The unemployment agency may approve a shared-work plan, regardless of whether the employer's reserve in the employer's experience account as of the most recent computation date preceding the date of the employer's application is a positive number

Q39. What is the best way to tell our employees to apply for Michigan Unemployment?

Filing online remains the fastest way for Michiganders to apply for unemployment benefits at Michigan.gov/UIA

The Unemployment Insurance Agency urges Michiganders to file during off-peak hours to avoid longer load times. Users are asked to be patient and not click more than once to reload a page. Filing online remains the fastest way for Michiganders to apply for unemployment benefits. And filing during off-peak times is even faster. Off-peak hours are 8 p.m. to 8 a.m.

Download the Unemployment Insurance 101 infographic to learn more.

Q40. If an employee contracts COVID-19, would they be eligible for workers comp?

Generally speaking, it could be difficult to clearly trace infection of COVID-19 back to the workplace in order to try and make a claim it was a workplace injury. That being said, it is worth a call to the carrier to review the policy language and see how they are handling these situations.

Q41. What are the most trusted information resources?

44North Covid-19 Resources Page

Coronavirus.gov

Centers for Disease Control and Prevention (CDC)

World Health Organization (WHO)

Michigan.gov/coronavirus

Occupational Safety and Health Administration (OSHA)

U.S. Department of Labor