The coronavirus disease 2019 questions and answers for U.S. employers:

Return to work site considerations

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Please note: *The spread of the coronavirus (COVID-19) is a quickly changing situation. For the most up-to-date information and resources, visit the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH). The CDC should be your primary source for emergency preparedness and response to the coronavirus. The below information is designed to guide businesses to known, credible online resources covering the coronavirus and does not constitute medical advice.*

Employers with offices outside the U.S. should review their statutory obligations for reporting suspected cases and paid time off policies with employment counsel to ensure compliance with local and national legislation.

Sections:

Session 1: Legislative and clinical considerations

SCOTT BEHRENS, SHEALYNN BUCK, SHANNON DEMAREE

If an employee has been working remotely for 8+ weeks, has followed social distancing very closely and has no symptoms, is it safe to say the employee does not have the virus? Or could the person still be asymptomatic?

Yes, it is safe to say the individual is not actively infected. If an individual and the individual's household have remained isolated for more than 14 days and no one in the household has developed symptoms, it is unlikely that the individual would be an asymptomatic carrier.

Is daily temperature taking effective since people can be COVID-19 positive but not have a fever/a fever may not be the first symptom?

Temperature surveillance alone has limited utility for screening a population for COVID-19. Temperature surveillance along with symptom screening, according to the latest CDC guidance, may have utility for populations in an area with high risk for exposure. There is utility for daily temperature checks as part of a symptom surveillance protocol for individuals who are in isolation for known exposure to COVID-19, per public health guidance. See Lockton's active temperature surveillance document for more detailed considerations.

Does PPE have to be stored in an isolated location? How do we determine which employees require which PPE/hazard assessment?

Sufficient PPE should be readily accessible for use by personnel who require PPE. The general PPE supply should be stored in a secure location to prevent theft. PPE does not need to be stored in an isolated location for infection control purposes. OSHA outlines hazard assessment and PPE use for employers in "Guidance on Preparing Workplaces for COVID-19."

Session 2: Operational considerations

PAUL PRIMAVERA, MARK MOITOSO, DEBBIE GOLDSTINE

Most of the literature within the CDC guidelines are "recommendations." What is the legal branch that the CDC follows? Is it OSHA?

CDC publishes guidelines and OSHA, in most cases, issues requirements.

You mentioned something about only 10% of your total building capacity can be occupied by employees and/or visitors. Can you elaborate on that?

As mentioned during the webinar, there are many factors to consider. Building occupancy for any reentry plan will depend upon an organization's unique situation and social distancing abilities.

What questions should we ask our employees who may not be comfortable returning to the office?

Seek employment counsel advice on which specific questions can be asked.

Session 3: Workplace safety and workforce planning considerations

KAREN AMATO, AMY BODKIN, SHANNON DEMAREE

Should employees wear gloves?

The CDC recommends gloves be worn by employees in high exposure industries such as healthcare, emergency responders, nursing homes, long-term care facilities, food handling and manufacturing, and correctional facilities. Gloves are not recommended in industries that are not at risk of heavy exposure to the disease. Additionally, due to the shortage of supplies, these should be prioritized for critical workers. Employees who are not used to wearing gloves can risk transmission of particles from the glove by touching their face or the outside of the glove when removing incorrectly.

Can we ask employees who live with high-risk members or those who have family members with high exposure to the disease, such as healthcare workers and first responders, to telework?

If remote work is available and the employee has volunteered this information, the employer can allow the employee to telework.

Can we ask for verification that an employee is a high-risk member to qualify for telework or other accommodations?

Yes, you may request a note from a medical provider confirming the employee is in a high-risk group. However, do not ask about specific health information.

How does the CDC define 'frequent' hand washing?

The frequency of handwashing is based on key times when you could get or spread the disease Examples:

- Before, during and after preparing food.
- Before eating food.
- Before and after caring for someone at home who is sick with vomiting or diarrhea.
- Before and after treating a cut or wound.
- After using the toilet.
- After changing a diaper or cleaning up a child who has used the toilet.
- After blowing your nose, coughing or sneezing.
- After touching an animal, animal feed or animal waste.
- After handling pet food or pet treats.

- After touching garbage.
- After being in a public place or shared space and touch items or surfaces touched by others.
- Before touching your eyes, nose and mouth, as that's how germs spread.

Can we ask employees to avoid travel during their personal or vacation time?

An employee can't be restricted from travel on their personal time, but the employer may require employees to self-isolate at home for 14 days, particularly if the employee has traveled to a high-risk area or one with high community spread. Consideration should be made as to whether the employee's travel destination is any different than the normal exposure in their community. If telework is not available during the self-isolation period, discuss the policy with your outside counsel.

Why wouldn't we require employees to work from home unless it's necessary for them to be in the office?

In addition to following state and local stay-at-home orders, employers can make decisions to extend telework. Long-term teleworking can cause a feeling of isolation and loneliness, contributing to the mental health impact of the disease. Companies should consider the risk of employees returning to the office based on the local situation and current community spread, against the impact that isolation, stress and anxiety may have on employee's mental well-being and productivity. A survey to assess employee's readiness and desire to return to the office may be helpful.

What are the impacts of stigma from COVID-19?

Please refer to the article Cultivating understanding- what you should know as you return to work during COVID-19.

Does Lockton have links to supply sources?

The workplace safety planning guide includes a recommended supply list. Due to the varying capacity of suppliers and federal regulations that can impact supply chains, availability is constantly changing, and we are unable to maintain a current list with any confidence. Lockton consultants may be able to assist with recommendations.

I noticed that you didn't have reducing workforce as an option for planning considerations…

If an organization's return to work site strategy includes reducing an organization's workforce, either through terminating furloughed employees or reduction in workforce (RIF), the organization should:

- If providing severance agreements (releases), ensure compliance with Older Workers Benefits Protection Act (OWBPA) requirements.
- Comply with notice and reporting requirements such as Worker Adjustment and Retraining Notification (WARN) Act and state specific "Mini WARN Acts."
- Provide unemployment notices and COBRA continuation information.
- Ensure proper compensation of terminated employee, such as state and municipality specifics regarding final pay, payment of paid time off (PTO), vacation or sick pay.
- Remind terminated employee of any applicable covenants, contracts or agreements or release of such agreements.

We have employees that have been on paid leave. Is it best practice to send these employees a letter with information about returning?

For employees returning from paid leave post-COVID-19, it is recommended that organizations send each employee a return to work letter just as an organization would do for employees who have been furloughed. (See the return to work letter example in the toolkit.) In addition, it is recommended organizations also inform employees who have been on paid leave about new or changes to company policies and safety protocols/processes.

If we already brought a few furloughed employees back, should we go back and provide a letter? It was within the last week so we could if recommended.

If the furloughed employee is already back at work, a pandemic return to work furlough letter is not required. However, it is recommended the organization obtains acknowledgement from the employee regarding new or changes to company policies and safety protocols/processes.

Session 4: Paid leave and absence management considerations

LISA CARLSON, PAUL BOTKIN, ED FENSHOLT, STACIE ENGELMANN

If an employee is currently receiving pay under EPSLA or FMLA+, and the location closes due to COVID reasons, does job protection still apply?

The DOL FAQs provide that if an employer has closed one or more locations because of a quarantine or isolation order, and as a result of that closure the employee has no work available to perform, that employee is no longer entitled to leave under FFCRA and the employee should seek unemployment compensation instead. Job protection would cease as of the date the employee is no longer entitled to FFCRA.

I was told FMLA+ counted toward the usual 12-week limit. Do employees taking FMLA+ to care for kids who are out of school due to the school being closed get an additional 12 weeks?

No, an employee is only entitled to 12 weeks of FMLA in total, including FMLA+.

Does FMLA+ exclude hospital workers?

Any employee working in a hospital may be exempt from coverage under FFCRA – both EPSLA and FMLA+. Whether FMLA+ is extended to all workers, some but not all workers, or no workers at all is a determination made by the employer hospital.

If we have more than 500 employees, please confirm EPSLA and FMLA+ does not apply but some state paid family leave requirements may apply.

That is correct; if there are 500 or more employees as of the date an employee's leave begins, EPSLA and FMLA+ are not available. Be cautious if you reduce workforce through layoff or furlough because the employee count is reduced by those employees for purposes of the employee count on the first day of leave. State paid leave requirements will apply.

What if an employee gives birth after April 1? Does she get 10 weeks of paid time off under FMLA+?

It appears the employee may not be prevented from getting paid FMLA+ so long as the leave is needed because the baby's child care provider (or anticipated child care provider) is unavailable for a COVID-19 related reason under DOL FAQs (FAQ 20). However, during a period that the employee is receiving sick pay due to a disability under short-term disability, the employee is arguably unable be a primary caregiver for the child, so they should not be entitled to FMLA+ during that period.

Can we require a letter from the child care provider that identifies they are no longer available due to COVID-19 for purposes of FMLA+?

- No, if your employee requests leave to care for his or her child whose school or place of care is closed, or the child care provider is unavailable, you may only request the following as documentation of the need for leave:
- The name of the child being cared for.
- The name of the school, place of care, or child care provider that has closed or become unavailable.
- A statement from the employee that no other suitable person is available to care for the child.

If my business has reduced hours for full-time hourly employees who are in the office performing essential jobs that cannot be done from home (e.g., shipping essential medical products), can we apply the reduced hour time to determine FFCRA entitlement? We have paid these employees for a full 40 hours of work each week.

You must pay the employee his or her regular rate of pay provided over the past six months. It is not perfectly clear how a temporary reduction in hours affects entitlement under FFCRA, however, if employees had been hired as full-time employees and the reduction is temporary, it is probably advisable to determine FFCRA entitlement on the basis of the employee's full-time schedule.

If an employer was exempt from the LA city sick pay due to closure for 14+ days, and now that employer is reopening, does that employer still need to offer the sick pay?

LA city sick pay is required of employers who have 500 or more employees. If, upon reopening, the employer has more than 500 employees and your employee had worked for you from February 3 through March 4, 2020, that employee is likely to continue to be eligible for LA city sick pay. If the employer upon reopening is less than 500 employees, the employees would be entitled to paid leave under FFCRA.

What type of documentation can we request for an employee who has self-quarantined or a family member who has been quarantined or diagnosed?

According to DOL FAQs, if an employee requests leave because they are subject to a quarantine or isolation order, or to care for an individual subject to such an order, you should request the name of the government entity that issued the order. If an employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice, you should also document the name of the health care provider who gave advice. In addition, the employee must provide the name and relationship of the individual the employee is caring for.

Is pay under COVID-19 while under EPSLA for sick leave included as workers' compensation included earnings?

Pay under EPSLA is considered wages. Because workers' compensation is determined on a basis, whether those wages are included may vary by state.

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Session 5: Employee benefits and workforce considerations

MARK KUONEN, BRIANA BIRKENMEIER

No applicable questions.

Session 6: Retirement considerations

PAM POPP, SAM HENSON, DANIEL LENNINGTON, DONN HESS, MATT MAIER

Can I delay the deposit of my safe harbor contribution?

The current safe harbor contribution deadlines still apply. If the plan uses the payroll period method to calculate its safe harbor match, the match for elective deferrals and employee contributions made during a plan year quarter must be deposited no later than the last day of the next quarter. Nonelective safe harbor contributions and annual safe harbor matching contributions must be deposited no later than 12 months after the close of the plan year. To get the deduction for the previous tax year, these safe harbor contributions must be deposited by the due date of the plan sponsor's tax return for that plan year.

My safe harbor plan currently calculates safe harbor matching contributions on a per pay period basis. Can we amend the plan midyear to change the calculation to an annual safe harbor match?

You should ask your plan document provider if this is a midyear safe harbor amendment they can make considering IRS Notice 2016-16 guidance. This guidance, along with a related IRS Issue Snapshot, allows changes from a per pay period to an annual period method for calculating the matching contribution to be made midyear if updated notices and election periods are provided as soon as practical. The link to the IRS Issue Snapshot is here.

Our plan calculates the safe harbor match annually. How do we address the true up provision when suspending the match midyear?

When suspending the safe harbor match midyear, and that match is normally calculated on a plan year basis, you prorate the annual compensation limit through the effective date of the amendment. For example, if you suspend your match June 1, the maximum compensation taken into account is $142,500, or one-half of the 2020 $285,000 compensation limit.

We still want to make the company contributions we promised our employees for 2019, can we delay their timing?

In order to deduct the company contributions for the year, you must deposit company contributions by the due date (with extensions) of the company's tax return. That could be as late as September or October for calendar year filers. In addition to the deductibility deadline, other rules specify when various contributions must be deposited to maintain the plan.

We've experienced delays in depositing employee deferrals and loan repayments into the plan. Is this a problem?

If you failed to deposit employee contributions and loan repayments on time, consider correcting this through the DOL's Voluntary Fiduciary Compliance Program (VFCP), minimizing the risk of being selected for a DOL audit. Contact your Lockton account service team for information on Lockton's VFCP service offering.

We may need to temporarily lay off employees, how would that impact their plan eligibility once they are rehired?

Employees eligible for the plan at the time of layoff (even if not actively contributing) will usually be eligible for the plan immediately upon rehire and typically don't have to wait until the next plan entry date. For those who were not eligible for the plan as of their layoff date, you will need to review your plan's rules. On rehire, they may be able to join the plan on the next scheduled plan entry date. However, the plan may require them to complete as much as a year of service depending on the specific plan terms and the employee's pre-layoff tenure.

Do furloughed employees count against the 20% threshold in a partial plan termination?

It's unlikely since there is no severance of employment in a furlough. Admittedly, the partial plan termination rules reserves the IRS the determination to "consider other facts and circumstances." We are unaware of any guidance where a short-term furlough would trigger a partial plan termination.

If we lay off employees, are they eligible for a plan distribution?

Generally, a layoff would be considered a severance of employment, and consequently a distributable event. This is different than a furlough, which does not involve a severance of employment.

Have Form 5500 filing deadlines been extended?

Only for certain fiscal year plans. Under Notice 2020-23, the filing of the Form 5500 is extended for plan sponsors that that have a filing deadline falling on or after April 1, 2020 and before July 15, 2020. The extension will help only those plans with a June 30 plan year-end that had filed for an extended deadline of April 15 (the regular Jan. 31 deadline plus 2.5 months). These plans will now have until July 15 to file. As of now, for plan sponsors with calendar year plans, the July 31 deadline is fast approaching.

A plan sponsor who misses the deadline should consider using the DOL's Delinquent Filer Voluntary Compliance Program (DVFCP). It can reduce penalties but does not waive them.

We plan on rehiring many of the employees we laid off. Do we apply their prior plan deferral and investment elections when they return?

Generally, absent plan language to the contrary, an eligible rehired employee will need to make a new deferral election to contribute to the plan. A rehired employee who remained a plan participant after termination may have current investment elections on file. Contributions for a rehired employee without current investment elections on file will be invested under the plan's terms, more than likely into the plan's QDIA.

Our plan includes automatic enrollment and auto-escalation. How do we apply these provisions to employees we rehire?

Generally, absent plan language to the contrary, an eligible rehired employee would be automatically enrolled at the plan's default percentage if an affirmative election is not made on a timely basis. If the plan is a QACA, the plan may say that a new "initial period" could be triggered when an employee does not have a default elective contribution for an entire plan year. In these instances, a plan could elect to automatically enroll rehired employees at the plan's initial default percentage. If, however, an employee is rehired and hasn't gone an entire plan year without default contributions, the employee must be automatically enrolled at the default contribution percentage he would have been at had he not left the employer. A QACA plan also can be written to apply this provision to rehires if there has been more than an entire plan year without default contributions. Likewise, a plan may say that an employee who has gone an entire plan year without default elective contributions in an EACA, who is then subject to automatic enrollment, may request a permissible withdrawal pursuant to the plan's provisions.

We realized recently that some employees missed getting required disclosures. How do we correct this?

Send missed disclosures as soon as possible. Depending on the type of disclosure, a plan may lose its fiduciary defense for the time period if lacking the disclosure information resulted in a participant loss and the participant files a lawsuit.

Can a terminated employee receive a coronavirus-related distribution?

Yes. A coronavirus-related distribution is available to a terminated employee who meets the criteria of a qualifying individual and a plan amendment does not carve them out.

Can a participant take a coronavirus-related distribution because their spouse is on furlough?

No. The coronavirus-related distribution is available under two circumstances. A participant can take the distribution if the participant or the participant's spouse or dependent is diagnosed with the virus by a CDC-approved test. The distribution is also available if the participant experiences adverse financial consequences as a result of the participant being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, or closing or reducing hours of a business owned or operated by the individual due to COVID-19. It's not available to a participant as a result of the participant's spouse or dependent being laid off.

We may need to temporarily reduce our employee's pay to keep our business afloat. Our employees would continue to work their normal hours. Are these employees eligible for a coronavirus-related distribution?

As written, the CARES Act does not contemplate a reduction in salary as a coronavirus-related distribution triggering event. A participant must experience adverse financial consequences from being quarantined, furloughed or laid off, having work hours reduced or being unable to work due to lack of child care. There is an argument that a reduction in pay may cause adverse financial consequences, but without regulatory guidance it's not clear if the IRS would take a wider view and consider a pay reduction a qualifying factor.

What does self-certification look like for coronavirus-related distribution?

Plan sponsors may rely on plan participants' affirmations that they qualify. Ask your Lockton service team how your service provider is capturing certification.

Can an employee who was behind on their loan payments before March 27 use this relief to delay their loan going into default?

No. Loan payments that were due before March 27, 2020 must be made current under the loan terms to prevent the loan going into default. Only loan payments due between March 27 and December 31 for an affected participant can be delayed.

Can an employee treat a deemed distribution of a defaulted loan as a coronavirus-related distribution?

Yes. If a participant has a loan being offset and treated as a distribution in 2020, and that individual meets the qualifying criteria, the defaulted loan could be considered a coronavirus-related distribution.

Session 7: Business continuity and P&C considerations

MARK MOITOSO, DEBBIE GOLDSTINE, PAUL PRIMAVERA

This information is mainly aimed at U.S. employers. Where should we go for guidance on global insurance policies/coverages that impact employees in other countries?

See Lockton's document on Considerations for Multinational Companies.

If an employee notifies us that someone in their house has been exposed to an individual that has tested positive and our employee later ends up testing positive, at what point is it considered workers' comp and we should report? Would it be when that employee notifies us of their positive test or when another employee of ours that has worked with that individual tests positive?

See Lockton's coverage guidance document.

Is there any more detail on loss of income?

See Lockton's coverage guidance on Property Business Interruption.

We are debating filing a property claim for business interruption. What date do we use if we do?

Insurance carriers have the sole authority to evaluate and communicate their coverage positions on presented claims. We recommend any potential losses related to COVID-19 be reported in a timely manner. A loss date can be left unknown and will depend upon your unique loss situation.

Session 8: Healthcare plan considerations

ED FENSHOLT, ETHAN MCWILLIAMS, MARK HOLLOWAY

Of the three programs – FFCRA, ERC and PPP- which are only available to employers with fewer than 500 employees?

- The Families First Coronavirus Response Act (FFCRA) applies to private employers only if they have fewer than 500 employees, but it applies to all state and local governmental employers. However, governmental employers cannot claim the tax credits.
- The Employee Retention Credit (ERC) is available to employers of any size, including tax-exempt employers, but not any federal, state or local governmental entities.
- Paycheck Protection Program (PPP) is available for businesses that have been in operation prior to Feb. 15, 2020, and, generally, cannot have more than 500 employees (including part-time employees) whose principal place of residence is in the U.S. There are exceptions to the size standard, allowing some larger businesses to apply, based on the size of their receipts relative to others in their industry.

You indicated the IRS requires an employer pay wages to an employee in order to claim qualifying health expenses under the Employee Retention Credit. Has the IRS changed its position on that issue?

Yes, just recently. Originally the IRS said a larger employer (more than 100 full-time employees) had to pay at least some wages during furlough periods in order for the employer's health plan expenses with respect to the furloughed employees to be eligible for the Employee Retention Credit. After our webcast, the IRS reversed its position after receiving pressure from the Senate Finance Committee. Thus, during any unpaid leave or furlough by either a small employer or a larger employer, qualifying health expenses paid by the employer in that period can be claimed as a credit (subject to the $10,000 maximum).

We have a collective bargaining unit and contribute to a Taft-Hartley multiemployer health care plan. Are these payments qualified health plan expenses for purposes of FFCRA and ERC?

We believe so. The FFCRA and ERC say that employer payments to a health plan described in section 5000(b)(1) can qualify as qualified health expenses, and a Taft-Hartley fund meets the definition of a group health plan under section 5000(b)(1).

One of the webcast slides indicated "no express rule that allows self-insured employer to use premium equivalent rates for PPP health costs." Please explain how self-insured employers calculate health insurance costs for determining PPP loan forgiveness.

A self-insured employer can take into account its claim payments and related costs as part of "payroll costs" for determining loan forgiveness. An employer seeking forgiveness of a PPP loan must submit to the lender that is servicing the loan a loan forgiveness application, which must include the documentation required by the lender, including payroll tax filings reported to the IRS and state income, payroll and unemployment insurance filings, verifying the number of full-time equivalent employees on payroll and payroll costs for the following periods:

- The eight-week covered period of the loan.
- February 15, 2019 through June 30, 2019 or January 11, 2020 or February 29, 2020, depending on the dates used to measure any drop-in employees or salary.
- In the case of a seasonal employer, February 15, 2019 through June 30, 2019.
- The last full quarter prior to the covered period.
- February 15, 2020 through April 27, 2020.

We have had a layoff of approximately 85% of our staff. We have, however, qualified for PPP and we are currently paying a large number of the 85% the mandated 75% of wages. How do we maximize loan forgiveness?

To obtain maximum loan forgiveness, no more than 25% of the loan proceeds may be applied to mortgage, rent and utility payments over that eight-week period, under mortgages, leases and utility service agreements made prior to Feb. 15, 2020. The remaining 75% of the loan proceeds must be applied to payroll costs over the eight weeks following the loan. If more than 25% of the loan proceeds are used for purposes other than payroll, the total amount of loan forgiveness will be reduced. The loan forgiveness amount is subject to additional reductions depending on the extent to which the borrower reduced the number of its employees or their wages over a prior time period similar in length to the period for which the loan is intended to assist the borrower. The order in which these reductions occur is not clear. SBA is expected to issue additional guidance on that point, well before June 30.

What types of plans are impacted by the guidance which extends deadlines for submitting claims, appeals and requests for external review?

Plans covered by this guidance include ERISA-covered group health plans (major medical, dental, and vision plans) as well as disability plans and "other welfare plans." We also think that health FSA plans are likely included in this guidance. A conservative approach here might just treat all ERISA-covered benefits plans sponsored by your organization as covered by these extensions, with the approval of your carriers and reinsurers, as appropriate. Required claims submission and appeals periods as outlined in ERISA and provided for in plan documents for these plans must be tolled during the outbreak period.

If an employee elects COBRA during the extended election period, but never makes a COBRA premium payment, how do we handle that individual's coverage and incurred claims?

In this extended situation and in relation to the standard COBRA deadlines, an individual's COBRA continuation coverage is only actively in force once the individual makes a timely COBRA election and pays his required COBRA premium amount. In this situation, where an individual might elect COBRA but not have to pay for several months due to the premium payment grace period extension, plans and administrators have two options: they can "pend" all claims incurred by that individual during a period for which they have not yet paid their applicable COBRA premium, until the payment is made, OR they can pay the claims on a normal basis and retroactively reverse the claims payment and try to recoup amounts paid to providers on the back end if and when coverage is retroactively terminated. Neither is particularly "better," but at the least, check with your carrier or claims administrator so you understand how your plan will handle these situations. In any case, your plan will not ultimately be required to pay for claims for any period during which a COBRA election is in place, but the premium is never paid.

Regarding the recently imposed requirement to suspend the running of the clock for various deadlines like COBRA elections and payments, claims and appeals, and HIPAA special enrollment requests, are employers required to amend their plans and forms to reflect these requirements, or supply any notice at all? Does the new rule address this at all?

The recent guidance does not expressly address notification to employees of the suspension of these deadlines, but ERISA, HIPAA and COBRA all require that employees be notified of their rights under, for example, claims and appeals, HIPAA special enrollment and COBRA election and payment rules. The recent guidance changes those rights, hence it may be prudent to provide enrollees with a consolidated notice (which is easier than amending plans and modifying forms to reflect this short-term rule). Lockton has a model notice available for clients who would like to use it.

You referred in the webcast to a break in service rule involving a 13- or 26-week break in service. I keep hearing there are other rules for breaks between four and 13 weeks. What are those rules about?

An employer may treat an employee, for ACA purposes, as a newly hired employee if the employer has a break in service of at least four weeks and the break is at least as long as the employee was working before the break. So for example, an employee who is with the employer for three weeks could be treated as a newly hired employee, for ACA purposes, after a four-week break, and an employee who is with the employer for seven weeks could be treated as a newly hired employee after at least a seven week break.

We did not deal with this shorter break in service rule, called the "rule of parity," because we were illustrating situations where the employee had qualified as an ACA full-time employee over an entire standard measurement period, and thus needed to be treated as an ACA full-time employee for the ensuing stability period. That would require, of course, the employee to have been employed far longer than 13 weeks, mooting the application of the rule of parity.

Why would you not consider the return from furlough as a qualifying life event to re-enroll in the plan?

Under cafeteria plan rules, not only do you need the qualifying life event (the IRS refers to these as “change in status” events), but the change in status must affect eligibility. In our example, the furloughed employee remained eligible during the furlough, losing coverage not due to a loss of eligibility but due to failure to pay premium. The employee’s return from unpaid furlough did not affect eligibility. Nevertheless, we think it unlikely the IRS would care, in these pandemic circumstances, about allowing the employee to re-enroll on a pre-tax basis upon the employee’s return to paid status.

For employees who were furloughed for less than 13 weeks and return as ACA full-time employees, you said it’s important to offer coverage as soon as we can upon the employee’s return to minimize the risk of ACA penalties. Is it safe to offer coverage the first of the month following an employee's return to work from furlough?

Yes, we think that’s acceptable.

Session 9: Cyber security and privacy considerations

ANTHONY DAGOSTINO, TIM SMIT, MARYAM RAD

What are the consequences of a data leak/breach for companies conducting temperature scans/keeping records, but are bound by HIPPA?

Potential liability claims, regulatory inquiries, and/or enforcement actions are some potential consequences of noncompliance with applicable laws and/or regulations. Potential notification of both employees and, pending the size of breach, perhaps local and regional media, and OCR, triggering OCR audits which could potentially find other noncompliant areas, can cause fines and possible reputational damage.

Would an independent contractor working remotely on a company device and/or application considered part of the company's network?

It will depend on a variety of factors such as the scope and parameters of the independent contractor's functions for the organization, the agreement between the independent contractor and the organization, and the definition of "employee" and "network" under the insurance policy.

Are there any types of incidents that should be specifically added in cyber insurance as a result of the pandemic?

While there are increased risks when working remotely, the best cyber insurance policies have broad language encompassing incidents of any nature that do not require the scheduling of perils for data losses of any type of media (digital, hard copy, voice, etc). Please review your policy carefully.

It was mentioned that policyholders with increasing economic pressures should tap into their cyber carriers for resources, such as training and tabletops. How large of a national account should we be to justify making those requests? $100K+ premium?

Thresholds differ by insurance carrier, but today we see many free services offered by the major cyber insurance providers for companies paying premiums as little as $5,000. Almost all offer cyber risk management portals for all clients, regardless of how much premium is paid. Lockton also provides their clients with free access to a risk management portal containing free tools like security policy templates, regulatory guidance, training modules and other resources. Please speak with your Lockton Associate for more details.

What is the panel's take on video conferencing platforms?

All video conferencing tools provide controls for the user/client to maximize and implement to reduce risk of compromised sessions, personal information being captured and reported/uploaded to other platforms. We recommend that organizations review all of the privacy and security controls available for the chosen video conferencing platform and implement best practices in accordance with the organization's own internal privacy and security policies.