



COVID-19 QUESTIONS: ONE STOP FAQ

Up to date as of May 4, 2020.

Can employees change their cafeteria plan elections because of COVID-19 and/or lack of income?	Not at this time, although employees who experience a 125 plan qualifying event can change applicable elections.	For more details on qualifying events click here . For more details on the penalties for allowing employees to make changes without an event click here .
We are subject to the new FFCRA paid leave provisions. We have been able to provide our employee with technology to telework during our state's shelter in place orders. One of our employees is unable to do so because their child needs care while their daycare is closed. Do we have to offer leave to this employee?	Yes, the employee would be eligible for both Emergency Family and Medical Leave Expansion Act (EMFLEA) leave as well Emergency Paid Sick Leave (EPSL)	For information on common COVID-19 scenarios and the type of leave they trigger click here .
Can we change our benefit plan offerings (increase premiums, reduce benefits, increase telemedicine benefits, change co-pays, etc.)?	Yes, plan sponsors have broad discretion to change their plans, even in the middle of the plan year. Employers should pay attention to notice requirements though, which will vary depending on the type of change that is made.	For information on notice requirements based on the type of plan change click here .

<p>Many of our employees have had to cancel planned procedures, such as LASIK eye surgery and are worried about being able to spend down their FSAs before the end of the plan year. Can we return their money to them?</p>	<p>Unfortunately no, as of May 1, 2020. If the IRS provides new guidance on this, it would be welcomed.</p>	<p>For more information on how to help employees best manage their account based plans, such as FSAs, dependent care accounts (DCAPs), and commuter benefits click here or here.</p>
<p>We need to provide employees with ERISA notices for our non-calendar year plan, but we don't have email addresses for everyone and we normally handed these out on paper. Do we have any relief?</p>	<p>Yes, temporary regulatory relief has been extended for providing ERISA notices, certain 5500 filing deadlines (not all), as well as relief on certain coverage election and benefit decisions.</p>	<p>For information on DOL relief for group health plans, and relief for participants and beneficiaries on benefit elections, COBRA premiums, and more click here.</p>
<p>We have employees out on furlough or other unpaid leaves due to COVID-19. What are our options for collecting the employee portion of their benefit premiums?</p>	<p>There are three methods for collecting premiums during leaves, pay in advance, pay as you go, and pay upon return. There are tax considerations for these methods, and employers can use 1, 2, or 3 of the methods, depending on their business goals.</p>	<p>For information on collecting employee premiums during leave click here.</p>
<p>We had to furlough many of our employees, and we hope they can return to work this summer. Are we allowed to have these employees pay 100% of the premium during this time, as we cannot afford to pay our employer portion during the furlough?</p> <p>How do I calculate qualified health plan expenses and qualified leave wages for the Families First Coronavirus Response Act (FFCRA) tax credits?</p>	<p>Generally speaking, you can change the employer/employee shares so long as your insurance carrier will permit the change. If you are an applicable large employer (ALE) under the ACA you should continue to keep affordability in mind, as you likely still have an obligation to offer affordable, minimum value, minimum essential coverage to your full time employees. Furloughed employees who are not working are still considered full time employees under the ACA in certain situations.</p> <p>Employers should seek legal counsel or speak with their financial advisor for assistance.</p>	<p>For information on employee terminations, furloughs, COBRA, and more click here.</p> <p>For an educational overview of these expenses click here.</p>

<p>I'm not sure if the Families First Coronavirus Response Act (FFCRA) applies to my business. How do I determine if it applies?</p>	<p>Employers who are unsure of how to handle controlled group and affiliated employer questions should speak to their legal counsel.</p>	<p>For an educational overview of which employers are generally subject to the new leaves provided by the FFCRA click here.</p>
<p>We sponsor a high deductible health plan (HDHP) with a health savings account (HSA) for employees. Can we offer no-cost testing for COVID-19 without jeopardizing these employees HSA eligibility?</p>	<p>Yes, the IRS has provided exceptions to HSA eligibility rules for certain COVID-19 related testing and treatment.</p>	<p>For information on COVID-19 and the impact on HSAs click here.</p>
<p>We hire seasonal employees during the summer months. Is there anything we should consider in regards to the Families First Coronavirus Response Act (FFCRA)?</p>	<p>Yes, there are special rules on how to calculate how much leave seasonal employees are entitled to under COVID-19 related leaves provided by the FFCRA.</p>	<p>For information on calculating leave for seasonal employees click here.</p>

Questions that required attorney-client privilege, required additional facts to answer, or were highly dependent on state and local laws were unable to be answered in this FAQ.

The information provided in this FAQ is not, is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the agency, our lawyers or our clients. This is not legal advice. No client-lawyer relationship between you and our lawyers is or may be created by your use of this information. Rather, the content is intended as a general overview of the subject matter covered. This agency and Marathas Barrow Weatherhead Lent LLP are not obligated to provide updates on the information presented herein. Those reading this alert are encouraged to seek direct counsel on legal questions.

Updated as of 05/04/2020.