



COVID-19 Q&A: EMPLOYMENT ISSUES CATCHALL

Webinar held March 19, 2020. FAQ up to date as of March 30, 2020.

Question	Answer
One of our clients is seeking guidance on laying off employees and maintaining benefits without putting anyone on COBRA, is this going to be permitted?	If the carrier agrees to continue benefits as long as premiums are paid, this could be permitted.
Can they simply institute a policy to offer an extension of benefits during this unique situation where they remain on the employer benefits and the employer pays, for up to a 60 day max?	This could be permitted, if the carrier agrees to continue benefits as long as premiums are paid.
We have a client asking a question about decreasing a salaried employee's pay. Is it possible for an employer to cut pay for exempt employees so long as the final pay still meets the minimum amount (~\$648 a week)?	Yes, but it's very fact-sensitive and certain rules apply. They will need to consult with employment counsel.
Please clarify salaried exempt vs non-exempt. Specifically with regard to the following: if we lay off our employees but ask salaried employees to work a few hours a week from home, do we need to pay them a full week's salary?	Yes, if they work any portion of the week they must be paid for the week.
If employers close, do they still need to pay the family and/or sick leave? If there is no work available?	If the employer closes--therefore, all employees are terminated--FMLA and sick leave are not required to be paid. Keep in mind that FLSA and state wage and labor laws still apply in regards to pay.

Question	Answer
<p>Our company was planning layoffs due to the impact COVID-19, does the Families First Act change that? Are we now required to instead grant this leave for anyone who has been here for more than 30 days?</p>	<p>No; the company can still layoff employees.</p>
<p>If a company closes temporarily (such as a day care center, restaurant, etc) and employees are not able to work at all, but have not been exposed/show symptoms/tested positive and don't have children to care for, is their only option unemployment? I don't believe I've seen any coverage for them under the new federal and NYS laws.</p>	<p>Unemployment or the leave provisions under the FFCRA, if the employer is willing/able to continue employment.</p>
<p>Is unemployment available for 1099 relationships?</p>	<p>Generally, no, although unemployment benefits are state-specific.</p>
<p>If someone is furloughed, can they stay on medical benefits?</p>	<p>An employer can check with the carrier (or stop-loss carrier) to see if benefits can be maintained as long as premiums are paid. If not, the employer should offer COBRA to qualifying individuals. Furlough in relation to benefits treated as a reduction in hours qualifying event.</p>
<p>Question on paying exempt employees: We are a NH employer with a bi-weekly pay period. Do we have to pay the two full weeks if they work anytime during that pay period?</p>	<p>Generally, no.</p>
<p>If your payroll is biweekly, if you have an exempt employee work one day during that time do you have to pay the two weeks pay? Comparing to a weekly payroll.</p>	<p>Generally, no.</p>
<p>I'm not clear on how a layoff (i.e. termination) and offer of COBRA could trigger ER mandate penalty if the COBRA is unaffordable and they get a subsidy. Even in a stability period, once the employee is terminated the employer wouldn't be obligated to offer coverage, correct (reported as 1H/2A)?</p>	<p>It would not. Once an employee is terminated the employer mandate responsibility ends.</p>
<p>Furlough. Can they be paid utilizing PTO?</p>	<p>Generally, yes. Any PTO would be paid out at termination.</p>

Question	Answer
Does the furlough have to be week by week or can it be for a longer period of time such as 4 weeks and then on a week to week basis?	Employers should have flexibility to define the length of their furlough.
Relative to furloughs, insurers are working with state regulators on state filed fully insured plans for flexibility. May take a week or more for specific direction. Need to look at Life and disability contracts as well.	Yes.
If our business was mandated to close - there are certain things that need to be done in office on a daily basis that is essential to our business, can a person come in to do these things then leave?	Generally, yes.
If a client is going to lay off employees for an unknown period of time but would like to continue those employees on their health insurance program, can they amend their Employee Handbook with the parameters? Are there considerations that they must address?	Generally, yes. They need to obtain carrier approval though.
What employees do we have to pay if we are a healthcare practice?	All except "certain" providers and first responders, which terms should be defined in future guidance.
We have a client asking a question about decreasing a salaried employee's pay. Is it possible for an employer to cut pay for exempt employees so long as the final pay still meets the minimum amount (~\$648 a week)?	See above.
If someone is furloughed can they get unemployment benefits as well? Can you explain the difference between furlough and lay off?	Generally yes, if unpaid. Unemployment is state-specific, so refer to local state guidelines. Benefits typically continue during furlough, but these aren't strictly defined terms.
If we have a salaried employee that wants to use both paid and unpaid time to cover out of the office is this allowable?	Yes, but ensure that employee remains exempt.
On the previous slide it said Health Insurance premiums may be allocated to qualified sick leave wages - any more info on this?	Not yet, but more guidance is expected.

Question	Answer
Can you require your exempt employees to work 32 hours a week (kind of like furlough) as long as they still meet the salary threshold for that week?	Generally, yes.
Please clarify salaried exempt vs non-exempt. Specifically with regard to the following: if we lay off our employees but ask salaried employees to work a few hours a week from home, do we need to pay them a full week's salary?	Yes.
We have approx. 30 employees..... Do I need to honor requests to pay paid-time-off in lieu of being laid off?	Accrued leave generally must be paid upon termination.
Could you highlight the emergency paid sick leave act? How does this apply? ex: If a nursing home sends home an employee who is presenting with a cough as a preventive measure. Would the employee be eligible for paid sick leave?	Yes, if the employee is told to self-quarantine by a physician.
What if an employee is already on FMLA, unrelated to COVID? Does their leave need to be paid?	No.
How are employees paid for the FMLA leave due to the pandemic - do they apply for government payment or do we pay via payroll?	It is paid through payroll. The employer is responsible for paying Emergency FMLA and Emergency Paid Sick Leave.
If the employee is off work only because the customer has temporarily closed their business due to COVID-19 crisis do they receive these FMLA benefits?	Probably no; see other answers relating to Emergency Paid Sick Leave (Emergency FMLA does not apply to this situation).
We have asked employees to work from home. We have an employee that we were planning to terminate. Can we still do this at this time or do we have to wait until employees come back to work?	Generally, yes.
If someone hires a nanny to care for their children who are off of school due to COVID-19, does the nanny need to be a licensed caregiver?	This is irrelevant to FFCRA. It is up to the parent to determine who they would like to hire. As it relates to a DCAP (dependent care FSA), who they hire could be effected as to if the DCAP applies to payment to that individual.

Question	Answer
Our company was planning layoffs due to the impact COVID-19, does the Families First Act change that? Are we now required to instead grant this leave for anyone who has been here for more than 30 days?	No. Generally, layoffs can proceed.
What you if you furlough exempt and non-exempt employees on day a week. So they will work 4 days vs. 5 days per week?	Would need to pay the exempt employees for the week.
With respect to continuing benefits during a furlough or temp layoff, what about small employers who do NOT have an SPD in effect and the fully insured contract makes no mention of such a circumstance. These employers desire to keep benefits as active.	Need to check with the carrier. They should release a statement on their position.
Do the employees have to exhaust their PTO/vacation prior to getting furlough?	No, although accrued leave would be paid out upon termination.
How long can you furlough someone?	No defined time frame.

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.

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