Updated as of March 25, 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT, H.R. 6201

On March 18, 2020, the Senate passed and President Trump signed into law the "Families First Coronavirus Response Act." The Act has multiple components including, but not limited to:

Emergency Family and Medical Leave Expansion

Amends the FMLA to require employers with fewer than 500 employees to provide paid public health emergency leave to certain employees through December 31, 2020. Key provisions include:

- An employee must have been employed for at least 30 days.
- An employee is unable to work or telework due to a need for leave to care for a son or daughter under the age of 18 because the child's school or place of care has been closed, or the childcare provider is unavailable due to an emergency declared by federal, state or local authority with respect to COVID-19.
- The first 10 days of leave may be unpaid and then paid leave is required and will be calculated at 2/3 the employee's regular pay

rate for the employee's regularly scheduled hours, not to exceed $200 per day and $10,000 in total payment.

Emergency Paid Sick Leave

Private employers with fewer than 500 employees and public employers of any size must provide 80 hours of paid sick time to full-time employees who are unable to work or telework for specific reasons related to COVID-19. Part-time employees are entitled to paid sick leave based on their average hours worked over a 2-week period. Key provisions include:

- The amount of hours is available immediately regardless of the employee's length of employment.
- The maximum amounts payable depend on the reason for the absence.
- Employees who are (1) subject to a quarantine or isolation order, (2) advised by a health provider to self-quarantine, or (3) experiencing symptoms and seeking diagnosis, must be compensated at their regular rate of pay, up to a maximum of $511 per day or $5,110 in total payment.

- Employees caring for an individual described in category (1), (2), or (3) above, caring for a son or daughter whose school is closed or childcare provider is unavailable, or experiencing a "substantially similar condition," must receive 2/3 of their regular rate of pay, up to a maximum of $200 per day or $2,000 in total payment.

- Employers may exempt health care providers and emergency responders and the Department of Labor can issue regulations exempting businesses with fewer than 50 employees.

- The Paid Sick Leave provision takes effect on April 1, 2020 and expires on December 31, 2020.

Health Provisions

Group health plans and insurers offering group or individual health insurance must cover COVID-19 diagnostic testing and must include services related to the administration of or necessary for the test.

QUESTIONS PERTAINING TO THE ACT

What is the effective date for the Act?

We believe the Act will be in effect from April 1, 2020, through Dec. 31, 2020.

Are employers with less than 50 employees subject the Act?

Yes. The provisions of the Act, including the Emergency Family and Medical Leave Expansion and Emergency Paid Sick Leave, must be made available to employees as necessary unless the employer intends to pursue an exemption from the Department of Labor. We are still awaiting regulatory guidance on the exemption issue.

Is leave under the Act job protected?

Yes, the Act offers job protection. However, the FMLA's requirement that an employee be restored to the same or equivalent position after leave does not apply to an employer with fewer than 25 employees if the employee's position no longer exists due to economic conditions or other changes in the employer's operations that affect employment and are caused by the public health crisis during the period of leave.

The employer must make reasonable efforts to restore the employee to the same or an equivalent position, and if the reasonable efforts fail, the employer must make efforts to contact the employee and reinstate the employee if an equivalent position becomes available within a one-year period beginning on the earlier of (a) the date on which the qualifying need related to a public health emergency concludes, or (b) the date that is 12 weeks after the date the employee's leave started.

At what rate do employees accrue paid sick leave?

There is no accrual rate or period. The entire 80 hours (or pro-rated for part-time workers) of paid sick leave is available immediately.

Which employees are eligible for these benefits?

The new FMLA provisions would apply to employees who have been employed for at least 30 calendar days. Which is different from the original FMLA requirements that require that the employee has been employed for a year, worked for at least 1,250 hours, and works in a location where there are 50 employees within a 75-mile radius would not apply.

The paid sick leave requirements would apply to all employees under covered employers with no waiting period.

What notice must an employee provide for leave?

The FMLA provisions require employees to provide the employer with "notice of leave as is practicable."

The paid sick leave provisions state that after the first workday (or some portion thereof) that an employee receives paid sick leave, an employer may require the employee to follow reasonable notice procedures in order to continue receiving the paid sick leave.

Is carryover required for unused emergency paid sick leave?

No. Unused, emergency paid sick leave does not carry over from one year to the next.

Can an employer require an employee who takes emergency paid sick leave to find a replacement worker?

No. An employer may not require an employee to find a replacement worker when the employee takes emergency paid sick leave.

Does an employer have to pay out unused emergency paid sick leave if the employee separates from employment?

No. An employer is not required to pay unused emergency paid sick leave if an employee separates from employment.

Are employers with 500 or more employees obligated to provide paid sick or leave benefits under the Act?

No. However, they must still must comply with obligations under state or local paid sick leave or paid family and medical leave laws and administer sick or paid time off or paid leave provided under existing company policies or collective bargaining agreements.

Does the 500-employee requirement refer to a location or company-wide?

The company must have less than 500 employees company-wide not just a singular location.

Are employees who work under multi-employer bargaining agreements eligible for the benefits of these leave provisions?

Yes. Both the FMLA and paid sick leave provisions state that an employer who is a signatory to a multi-employer collective bargaining agreement may fulfill its obligations by making contributions to a multi-employer fund, plan or program based on what paid leave each of its employees is entitled to while working under the agreement. The fund, plan or program must enable employees to receive pay for the FMLA leave.

If an employer with more than 500 employees has an employee who contracts COVID-19, can the employer require the employee to use sick time and/or other PTO?

The answer is possibly. Whether an employer can require an employee to use sick time and/or other PTO depends on the employer's existing policies. For employers subject to FMLA, an employee suffering from the virus is likely experiencing a serious health condition. In this case, the FMLA policy would govern. If the FMLA policy requires employees to use PTO for serious health conditions, the employer could require it. However, if the FMLA policy allows the employee to choose whether to use paid time off or unpaid leave for a serious health condition, the employee would be able to choose whether to use PTO or to take the leave unpaid.

For employers not subject to FMLA, employer policies regarding sick time and/or PTO will govern, including employer policies addressing state and locally required PTO.

If an employee of an employer with more than 500 employees is out of work caring for a family member who is suffering from COVID-19, can an employer require the employee to use sick time and/or other PTO?

The answer is possibly. It depends on employer's existing policies. For employers subject to FMLA, a family member suffering from the virus is likely experiencing a serious health condition. In this case, the FMLA policy would govern. If the FMLA policy requires employees to use PTO to care for a family member, the employer could require it. However, if the FMLA policy allows the employee to choose whether to use paid time off or unpaid leave for a serious health condition, the employee would be able to choose whether to use PTO or to take the leave unpaid.

For employers not subject to FMLA, employer policies regarding the use of PTO to care for a family member, if any, will govern. In the absence of a policy, employers could require employees to use PTO to care for a family member. However, CDC is suggesting that employers consider flexibility regarding PTO policies, which could include making exceptions to existing policies by allowing employees to take unpaid leave before paid leave is exhausted and/or providing additional paid leave.

If an employee is currently on FMLA, prior to the enactment of the Families First Coronavirus Response Act, how will the Act affect that individual?

If an employee is currently eligible and using FMLA, there are no changes to the policy. However, if an employee is using FMLA and their place of work has been subject to closure, the closed days will not be deducted against the employee's FMLA balance.

If an employer already has a generous paid sick leave policy, does the employer have to make employees exhaust these paid benefits before it is eligible for the payroll tax credit under the Act?

No. Employers must allow employees to use the hours available to them through the Emergency Paid Sick Leave before requiring them to use any other paid leave benefits. Payroll tax credits will then be applied accordingly.

Are tax credits available to help offset the cost of providing the paid sick leave?

Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified sick leave wages paid by the employer. Qualified sick leave wages are capped at $511 per day, or $200 per day if the leave is for caring for a family member, and 10 days. The tax credit is applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified sick leave exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties on failing to deposit payroll taxes in anticipation of the credit. We are still waiting for final guidance to be issued on the mechanics of the payroll credit/refund process.

Are tax credits available to help offset the cost of providing the paid FMLA?

Each quarter, private sector employers subject to the requirement are entitled to a fully refundable tax credit equal to 100% of the qualified paid FMLA wages paid by the employer. Qualified paid FMLA wages are capped at $200 per day and $10,000 overall. The tax credit is

applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified paid FMLA exceed the taxes they would owe. The Treasury Secretary is provided with regulatory authority intended to help with cash flow issues, for example by waiving penalties or failing to deposit payroll taxes in anticipation of the credit. We are still waiting for final guidance to be issued on the mechanics of the payroll credit/refund process.

Should businesses lay off employees now or pay them two weeks of sick pay at 100% and just get the payroll tax credit?

Businesses will have to decide if the Act impacts or delays their decision to lay off employees and when. There are many factors to consider when making this decision. Baker Tilly can help perform a high-level analysis to include cash flow and the employee populations using both the Emergency Paid Sick Leave and the Emergency FMLA Expansion vs layoff to help businesses make these decisions. Contact us.

What amounts will be considered allocable "employer's qualified health plan expenses" for purposes of the payroll tax credits?

We are awaiting final regulations from the Department of Labor to define the cost and the calculation in determining for credit purposes.

Is the payroll tax credit for paid sick leave and/or emergency family medical leave under this Act only applicable to amounts paid and payable 15 days after enactment, or will these credits apply to sick leave paid and payable before this date?

Current guidance suggests no retroactivity. We believe the Act will only be effective for the period of 4/1/2020 -12/31/2020.

COVID-19 WORKPLACE GENERAL INFORMATION

For the latest information regarding COVID-19, please visit these important websites:

- Centers for Disease Control and Prevention (CDC)
- World Health Organization (WHO)

What if an employee appears sick?

If any employee presents themselves at work with continued coughing, sneezing, fever or difficulty in breathing, this indicates that they should go home and seek medical attention. While these symptoms are not always associated with influenza and the likelihood of an employee having COVID-19 is low, it pays to err on the side of caution. It is important to not overreact to situations potentially related to COVID-19 in order to prevent panic in the workplace.

When sending employees home, do not identify the individuals by name to not risk a violation of confidentiality laws.

Can we ask an employee to stay home or leave work if they exhibit symptoms of COVID-19 or the flu?

Yes, you can ask them to leave work, go home and tell them they cannot come back until they

are symptom free. You are permitted to ask them to seek medical attention but you cannot require that they be tested for COVID-19.

An employee has tested positive for COVID-19. What should we do?

You should follow the CDC guidelines for all procedures and instructions once an employee has tested positive. These procedures may change and will be updated accordingly. In the event of changes, all those impacted should receive a direct communication from leadership.

One of our employees has a suspected, but unconfirmed case of COVID-19. What should we do?

Continue to take the same precautions you have been to prevent the spread of the virus and seek the advice of your local health department as to next steps. The potentially infected worker should self-quarantine and seek medical assistance.

One of our employees self-reported that they came into contact with someone who had a presumptive positive case of COVID-19. What should we do?

Take the same precautions as noted above. Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees and notify leadership for further instruction. Be sure not to identify the individual for confidentiality purposes.

TRAVEL

Can we prohibit an employee from traveling to a non-restricted area on their personal time?

Employers generally cannot prohibit otherwise legal activity, such as non-business related travel abroad by an employee. You should advise employees to follow the CDC and Department of State guidelines whenever travelling internationally. However, if an employee chooses to travel to an affected area, upon return you may monitor the employee for signs of illness and require self-quarantine.

We have an employee who recently traveled to a country that is not on any restricted list, but we are worried about the risk of transmission. Should we institute a quarantine?

Follow the same preventive steps and guidance contained within this FAQ to protect the organization as much as possible. The employee can always voluntarily self-quarantine.

LIMITING POSSIBLE EXPOSURE

Should our office restrict business travel?

Our recommendation is to restrict all non-essential business travel both internationally and domestically and continue to heed the recommendations of state and federal public health officials.

Should our office limit visitors during this time?

Our recommendation is to limit the number of visitors to the office and continue to heed the recommendations of state and federal public health officials.

HIPPA AND THE ADA

Does the COVID-19 emergency remove HIPAA privacy rules?

No. The government recently sent a stern reminder to all employers that they must still

comply with the protections contained in the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule during the COVID-19 outbreak.

Can we send employees home who exhibit potential symptoms of any contagious illnesses at work?

Yes. Sending an employee home who displays symptoms of any contagious illnesses would not violate the ADA's restrictions on disability-related actions or other employment laws.

REMOTE WORK ARRANGEMENTS

May we encourage employees to work remotely as an infection control strategy?

Yes. The CDC and the Department of Labor have opined that telework is an effective infection control strategy. The EEOC has also stated that employees with disabilities that put them at high risk for complications of any pandemic influenza or virus may request to work remotely as a reasonable accommodation to reduce their chances of infection during a pandemic.

Does this situation change anything relative to the payment of wages under the Fair Labor Standards Act (FLSA)?

No, there are no changes to the guidelines of the FLSA. It is important to remember the following:

- The FLSA requires employers to pay non-exempt workers at least the minimum wage for all hours worked and at least 1 ½ times the regular rate of pay for hours worked in excess of 40 in a workweek.

- Salaried, exempt employees generally must receive their full salary in any week when they perform any work, subject to very limited exceptions.

Do employers need to track remote hours worked?

Yes, employers must keep an accurate record of hours worked for all employees including those participating in telework or other flexible work arrangements.

Employers are encouraged to establish hours of work for those individuals working remotely and a mechanism for recording those hours. It is also suggested to schedule a weekly call to keep lines of communication open and to keep employees informed as the situation continues to evolve.

Do employers need to reimburse business expenses related to remote work or other alternate work arrangements?

Many employers are paying for business expenses such as internet access, new computers, printers, phone lines and even increased electricity uses. From a legal standpoint, employers may not require employees covered by the FLSA to pay or reimburse the employer for these types of expense if doing so reduces the employee's earnings below the required minimum wage or overtime compensation.

In addition, if remote work is being provided to an employee with a disability as a reasonable accommodation, the employer may not require the employee to pay or reimburse the employer for these types of business expenses.

SAFETY REQUIREMENTS

The Department of Labor's Occupational Safety and Health Administration (OSHA) does not hold employers liable for nor expect employers to inspect employees' home offices. However, employers who are required to keep records of work-related injuries and illnesses will still be responsible for maintaining these records for home office occurrences.

Is COVID-19 a recordable illness for purposes of OSHA logs?

Yes, you must record instances of employees contracting COVID-19 if the employee contracts the virus while on the job. The illness is not recordable if the employee was exposed to the virus while off the clock.

STATE AND LOCAL WAGE LAWS

Does the Families First Coronavirus Response Act take the place of other federal, state and local wage laws?

No. When employers are covered by both federal and state or local wage laws, the law that is most favorable to the employee must be followed. Employers should be mindful of any local predictable scheduling laws that may require employees to post work schedules days or weeks in advance. These ordinances can require businesses to respect employees' right to decline hours not originally posted, such as when shifts are combined, and to pay for at least some of the hours not worked when an employee is sent home early from a shift or is scheduled for an on-call shift but not called in.

OFFICE CLOSURE

If a non-exempt employee cannot work from home, will that individual have to use PTO if the office closes due to virus concerns?

Employers should be as accommodating and flexible as possible with workers impacted by this situation. Employers can require employees to use time that they have under PTO policies to be paid while they cannot come to work, have been instructed not to come to work, or there is a lack of work for them because of supply, demand or product shortages. Employers can also allow employees to run a negative balance and replenish the negative balance on the borrowed PTO when they return to work.

In the event of a closing, how long should the office be closed?

We realize closing an office due to a quarantine situation is unusual. We have no guidelines as to the maximum timeframe. Employers should follow all CDC recommended protocols related to office closure and re-opening.

Will employees be paid for the entire time an office is closed?

This will depend upon the office policy. Some employers are granting employees additional paid time off to cover time used because of an office closure due to the coronavirus.

IMPACT ON BENEFITS AND GROUP HEALTH PLAN ADMINISTRATION

If our employees are no longer working, are they still entitled to group health plan coverage?

The answer is not necessarily. You need to check your group health plan document (or certificate of coverage if your plan is fully insured) to determine how long employees who are not actively working may remain covered by your group health plan. Once this period expires,

active employee coverage must be terminated (unless the insurance carrier or self-funded plan sponsor otherwise agrees to temporarily waive applicable eligibility provisions), and a COBRA notice must be sent.

If your plan is self-funded and you would like to waive applicable plan eligibility provisions, you should first make sure that any stop-loss coverage insurance carriers agree to cover claims relating to participants who would otherwise be ineligible for coverage.

What happens to group health plan coverage if employees are not working and unable to pay their share of premiums?

In the normal course of business, group health plan coverage would cease when an employee's share of premiums is not paid on a timely basis. However, several actions might be taken to allow coverage to continue.

1. The insurance carrier providing the health coverage may voluntarily continue the coverage while the disaster is sorted out and until an employer reopens its doors.

2. The employer may make an arrangement with the insurance carrier providing health coverage to pay the employees' share of premiums to keep coverage in place (at least

temporarily) and possibly until the employer can reopen its doors.

3. The employer can arrange with the employee to provide their share of the premiums through a means other than payroll deduction.

Each situation will be different depending upon the insurance carrier and the relationship between the employer and the insurance carrier. Your situation will need to be individually assessed.

Employers should also consider the impact that a reduction on hours may have on employee eligibility, i.e. full-time hours vs. a reduced work schedule.

An employee's dependent day care spending needs have changed. Will the employee lose the funds in the dependent care account that they won't have the opportunity to use?

When there is a change in the cost of a contract with a dependent care provider or if an employee changes the dependent care provider, these events are considered a Qualifying Life Event for the dependent care FSA plan. The plan allows for a change in election that is consistent with the change in provider or cost that the employee is experiencing. There are a variety of ways that employees can consider changing Dependent Care FSA elections at this time to support current day care needs:

- **Suspend the election.** If day care has closed during this time and is not billing for services, employees may consider suspending their elections. Should employees choose to do this, they may re-elect once day care services resume.
- **Modify the election.** Employees may increase or decrease their elections if day care providers have adjusted their fee schedule during this time.
- **Add an election.** Should family needs require that employees seek new provider services that have a cost, they may add an election. For example, if an employee hires a baby sitter to care for their children while working at home. This will qualify so long as the babysitter is over the age of 19 and not an individual whom you claim a deduction for.

Since the children of many employees are unexpectedly out of school, people are looking to hire someone to watch them in the home. Can the employee enroll in the dependent care FSA?

Yes, employees may enroll in a dependent care FSA to save and pay for in-home care needs. When employees file claims for reimbursement they will need to provide a written statement by the in-home care provider that includes their name, tax ID number (SSN), name of child, dates of service and type of care provided. Care for children under the age of 13 or an adult dependent that is physically or mentally handicapped qualifies under the dependent care FSA.

If an employee is no longer commuting to work, can the employee change the pre-tax transit or parking election?

Yes, employees may make changes to pre-tax commuter benefits throughout the year to meet spending needs. Employees should avoid accumulating a balance in their pre-tax commuter plans as the remaining funds are forfeited when they leave the company. Employees should consider suspending their commuter benefit election at this time and re-electing once commuting needs resume.

WORKERS' COMPENSATION

If I have an employee who alleges they contracted the coronavirus while at work, will this result in a compensable workers' compensation claim?

It depends. If the employee is a health care worker or first responder, the answer is likely yes (subject to state law). For other categories of employees, the analysis will be on a case-by-case basis. The key point will be whether the employee contracted the virus at work and whether the contraction of the disease was "peculiar" to their employment. Even if the employer takes all of the right steps to protect the employees from exposure, a compensable claim may be determined where the employee can show that they contracted the virus after an exposure,

the exposure was peculiar to the work, and there are no alternative means of exposure demonstrated.

Unless there is specific state legislation on this topic, an employee seeking workers' compensation benefits for a coronavirus infection will still have to provide medical evidence to support the claim. Employers who seek to contest such a claim may be able to challenge the allowance if there is another alternative exposure or if the employees' medical evidence is merely speculative.

Employers should also be aware that individual states are taking action on this issue and state-specific regulations should be carefully reviewed before any decisions are made or course of action is determined.

UNEMPLOYMENT INSURANCE

Will employees qualify for unemployment benefits if COVID-19 causes an employer to shut down its operations?

Generally, unemployment benefits are available to individuals who are unemployed through no fault of their own. If an employer must shut down operations and no work is available, individuals may be eligible for unemployment benefits if they meet the monetary and weekly eligibility criteria.

Employers should also be aware that individual states are taking actions specifically related to COVID-19 unemployment applications. Individual state-specific regulations should be carefully reviewed before any decisions are made or course of action is determined.

EMPLOYMENT AND COBRA BENEFITS

What is the difference between a layoff and furlough?

A layoff is a temporary separation from payroll because there is not enough work for the employees. In this situation, employers generally believe that conditions will improve and intend to recall employees to work. Employees can typically collect unemployment benefits and employers often try to maintain benefit coverage for a defined period of time as an incentive for these employees to remain available for recall.

A furlough is considered an alternative to a layoff. When an employer furloughs its employees, the employees are required to work fewer hours or to take a certain amount of unpaid time off, with the expectation that they will return to work when business operations return to normal. Employers must be mindful of the FLSA regulations when it comes to employee pay under these circumstances. Employers are only required to pay non-exempt employees for the hours they actually work, including any overtime. Exempt employees must be paid their full salary for any week in which they perform work. This is why employers will often put a mandatory furlough in place for all employees for a specified number of weeks.

Can I reduce someone's salary for the period we are not working?

Under the FLSA, employers generally only have to pay non-exempt employees for the hours they actually work, whether at home or at the office. However, employers must pay at least the minimum wage for all hours worked, and at least time and one half the regular rate of pay for overtime (hours worked in excess of 40 in a workweek). Salaried exempt employees must

receive their full salary in any week in which they perform any work, subject to certain very limited exceptions.

I already laid off most of my workforce before the Families First Coronavirus Response Act passed, what do I do now?

For those employees that have already been laid off, the provisions of the Act do not apply. For any remaining workers, carefully review the provisions of the Act and determine if they apply to your remaining employees.

I am considering a temporary layoff or furlough. Should we offer COBRA benefits?

A layoff or furlough is considered a reduction of hours event for COBRA purposes because the employee is still considered active and a termination action has not taken place. When considering whether to offer COBRA in these scenarios, it is important to consider how the IRS regulations define the loss of coverage. These regulations state that if group health plan eligibility requires a specific number of hours to be worked in a given period and if the hours requirements are not met, then this is considered a reduction in hours. If a loss of coverage will not take place due to the reduction in hours, then the employee will remain on active coverage and the event will not trigger a COBRA offer requirement.

If you are an employer that utilizes a specific "look-back" measurement period in order to determine eligibility, particular attention is needed to ensure that you are continuing coverage of active benefits for an employee that is in the stability period.

COBRA should be offered when the actual loss of coverage occurs, not when the reduction in hours takes place that could eventually lead to a loss in coverage. Review your group health plan documentation and work with your insurance carrier to determine when the active member plan benefits will end.

As an employer, can I pay for all or a portion of COBRA benefits for my employees?

Yes. Employers can, at their discretion, decide to subsidize COBRA premiums. In order to do so the employer should decide the length of the subsidy to be provided (typically in months) and the amount (whether it will be a percentage-based subsidy or flat dollar amount). Employers should work with their COBRA administrators to ensure that the offer of COBRA to impacted employees includes the subsidy provisions.

Will there be any government assistance to help pay for COBRA benefits?

As of now there has been no mention of government assistance to help pay for COBRA benefits. This could change as the situation continues to evolve and federal, state and local officials evaluate the situation.

If I reduce my employees' hours below 30 per week, do I have to continue to offer health insurance?

Check your group health plan documents in order to determine eligibility for the plan. If your employees experience a reduction in hours and their coverage ends, this is considered a COBRA qualifying event. How you qualify hours' eligibility to join the plan will also assist you in determining when the loss of eligibility for active employee benefits should take place and coverage should end.

If you are considering keeping your employees on active benefits during the reduction in hours, a plan modification or waiver of plan eligibility provisions may be required. You should engage your health care insurance provider and stop-loss carrier (when applicable) to agree on claim payment for participants who may typically be considered ineligible due to the hours requirement.

If an employee is offered COBRA and cannot afford it, what other options do they have for health care coverage?

You may qualify for free or low-cost care through Medicaid based on income and family size. In all states, Medicaid provides health coverage for some low-income individuals, families and children, pregnant women, the elderly, and people with disabilities. In some states the

program covers all low-income adults below a certain income level. Visit your state's Medicaid site for more information.

Who is eligible for Medicaid and how do they apply?

Medicaid eligibility requirements are set in each state using the federal minimum standards. Many states have expanded Medicaid coverage above these federal minimums. In order to be eligible for Medicaid, applicants need to meet the requirements at both federal and state level. This may include income, residency, immigration status, and proof of citizenship. Individuals can visit their state's Medicaid site to find out if they qualify and to apply. Applicants can submit using an online application by phone or by paper. Applicants should avoid submitting the application in-person.

RETIREMENT PLANS

How will our employer retirement plan be affected due to a layoff?

An employer who is considering a large layoff, closing of a location or division must also consider the impact on the retirement plan, specifically partial termination regulations. Typically, when 20% of your total plan participants are laid off in a particular year, a partial termination is deemed to have occurred. There are several requirements that are automatically enacted once this occurs.

If the employer uses the safe harbor matching contributions or non-elective contribution formula, the change to stop the safe harbor contribution formula can only be made if specific requirements are satisfied, including a 30-day advance notice to the participants.

Employers should also consider the impact on loans and hardship withdrawals affecting these employees.

It is imperative that employers carefully analyze all of the requirements necessary in order to make a change and to implement to be compliant and ensure that the change cannot be challenged. Please refer to your plan documents for further information.

WARN REQUIREMENTS

If I am an employer considering a reduction in force or furlough, what do I need to factor in as part of my decision-making process?

When considering any type of reduction in force or furlough, employers must pay particular attention to the FLSA and state wage and hour laws, the impact on benefit plans and policies, termination notices and final paycheck requirements, selection criteria, immigration issues, unemployment benefits and the federal WARN and state WARN or "Mini-Warn" statutes.

When is a federal WARN notice required?

A WARN notice is required when a business with 100 or more full-time workers (not counting workers who have less than 6 months on the job and workers who work fewer than 20 hours per week) is laying 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. Employers may be private for-profit businesses, private non-profit organizations, or quasi-public entities separately organized from regular government.

How much notice is required to comply with the Federal WARN act?

Employers are required to provide employees with 60 days' notice for compliance.

Are there any exceptions to the 60 day notice requirements of the Federal WARN Act?

There are three (3) exceptions to the 60 day notice requirement: (1) a faltering company; (2) unforeseeable business circumstances; and (3) natural disaster. However, employers must still issue notices as soon as possible. Compliance with federal and state WARN laws must be reviewed and determined on a case-by-case basis.