



» 3/26/20 | 2020-08

Senate Passes the Coronavirus Aid, Relief, and Economic Security Act

Introduction

On March 18, 2020, the President signed the Families First Coronavirus Response Act (H.R. 6201, “the FFCRA”). The FFCRA was intended as an initial response to the COVID-19 crisis with the understanding that there would be subsequent legislation providing additional relief. (See [Alert 2020-05 - Congress Passes Coronavirus Relief Act.](#)) On March 25, 2020, the Senate passed a second bill, the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748, “the CARES Act”). The House is expected to pass this legislation as well and the President has indicated he will sign it shortly thereafter. Like the FFCRA, the CARES Act contains numerous measures intended to stabilize the economy. It includes an unprecedented spending and relief package, including expanded unemployment insurance, aid to small businesses, cash payments to households, aid to states, emergency funding for health care supplies and investments, and money for industry bailouts. Our immediate focus is the CARES Act’s implications for group health plans and employer provided leaves of absence and paid leave provisions. These provisions are addressed below.

Key Provisions of the CARES Act

Unemployment Provisions: The CARES Act provides significant changes to unemployment insurance (UI), establishing a new system that expands eligibility and generally increases benefits to provide almost full replacement of wages for the lower 50% of wage earners. These benefits are available to individuals who are unemployed, underemployed, or unable to work because their place of employment is closed due to COVID-19, or as a result of their own COVID-19 related personal illness, quarantine, or need to care for a family member. The benefits are not available for individuals who have the ability to telecommute with pay or for those who are receiving paid sick leave or other paid leave benefits. Employers should not have to administer any coordination of paid leave policies with these provisions.

New Paid Sick Leave and Paid Family and Medical Leave Tax Credits: The CARES Act also addresses the payroll tax credits designed to reimburse employers for new paid sick leave provisions and paid Family and Medical Leave under the FFCRA. It provides that employers do not need to make deposits (weekly or monthly) of their payroll taxes in advance of the quarterly deadline to file Form 941 if foregoing the deposit is in anticipation of a credit allowed under the FFCRA. It also provides that the Treasury Secretary will issue forms and instructions to allow for advanced payments of anticipated premium tax credits. The option for advanced payments of premium tax credits could mean significant financial relief for employers.

COVID-19 and Paid Family and Medical Leave Eligibility: The FFCRA FMLA expansion requires “covered employers” (private employers with fewer than 500 employees) to provide “eligible employees” with up to 12 weeks of leave (the latter 10 weeks are paid) if an employee is unable to work due to a school closures or where childcare is not available as a result of the COVID-19 crisis for a son or daughter under 18 years of age. The CARES Act contains a provision addressing certain breaks in service with respect to the 30 days of employment required for an employee to be eligible for this leave. It provides that the 30 day eligibility

provision is waived if: (1) an employee was laid off on or after March 1, (2) prior to the layoff the employee worked for the employer for at least 60 days, and (3) the employee is later rehired.

COVID-19 and New Paid Sick Leave and Paid Family and Medical Leave: With respect to the new paid sick leave provision and the expanded Family and Medical Leave Act provision of the FFCRA, the CARES Act provides that the Federal Office of Management and Budget has the authority to exclude certain Federal workers from coverage.

COVID-19 and HIPAA: The CARES Act provides that the Secretary of Health and Human Services must issue guidance on sharing of patients protected health information (PHI) under HIPAA not later than 180 days from the date of enactment.

ERISA Deadlines: The CARES Act gives the Secretary of Labor the authority under ERISA to delay certain ERISA deadlines due to a public health emergency. With respect to health and welfare plans, this likely applies to 5500 filings and SAR distribution but will require subsequent formal action to actually delay any required filing.

HSAs and Telemedicine: The CARES Act amends Section 223 of the Internal Revenue Code to allow for all telemedicine services to be considered health savings account (HSA) compatible, preventive coverage. This means that telemedicine will not disqualify an individual from being eligible to make contributions to a HSA, even if not related to COVID-19. It also provides that all menstrual care products will be reimbursable as medical care expenses from an HSA or health-FSA.

COVID-19 Testing: The FFCRA requires all group health plans and individual health insurance to provide coverage without cost sharing for COVID-19 testing, products related to testing, and any medical appointment related to testing, including office, emergency, telehealth or urgent care visits. The CARES Act provides general guidance about permissible reimbursement rates for COVID-19 testing. It states that all providers must state a cash price for COVID-19 testing on its website. Where a provider has a negotiated rate that rate can be charged throughout the period of the emergency declaration. If a plan or provider does not have a negotiated rate it will be reimbursed at the cash price listed for testing on its public website or may negotiate a lesser reimbursement rate.

COVID-19 Immunizations: The CARES Act provides that any COVID-19 item, service or immunization that is intended to prevent or mitigate COVID-19 and that is rated A or B by the US Preventive Services Task Force will be immediately covered without cost by all group health plans and individual health insurance as an ACA preventive care item.

Conclusion

We will continue to monitor this very fluid situation and provide the latest information on the COVID-19 pandemic, including emerging legal challenges and practical recommendations.

Compliance Alert is presented by the Compliance Practice Group of Alliant Employee Benefits

CA License No. 0C36861

© 2020 Alliant Employee Benefits, a division of Alliant Insurance Services, Inc. All rights reserved.

Disclaimer: This material is provided for informational purposes only based on our understanding of applicable guidance in effect at the time and without any express or implied warranty as to its accuracy or any responsibility to provide updates based on subsequent developments. This material should not be construed as legal or tax advice or as establishing a privileged attorney-client relationship. Clients should consult with and rely on their own independent legal, tax, and other advisors regarding their particular situations before taking action. These materials and related content are also proprietary and cannot be further used, disclosed or disseminated without express permission.