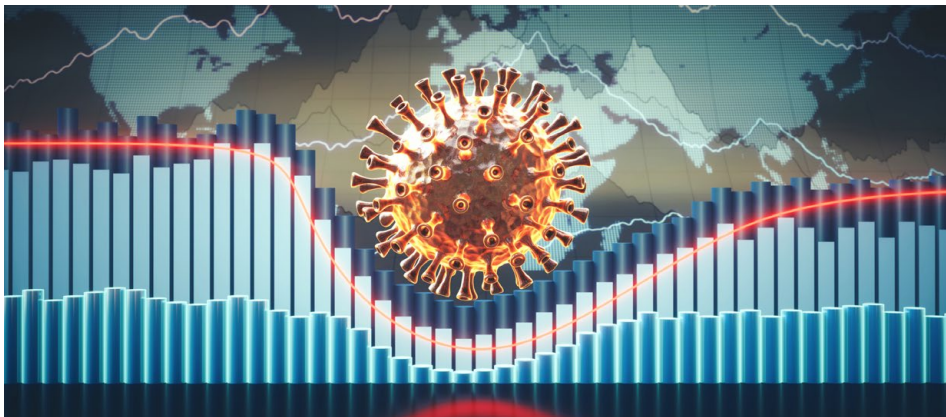


Pandemic Fallout

Handling Group Health Coverage for Laid-off, Furloughed Staff



AS THE COVID-19 pandemic wears on, many employers have had to lay off or furlough staff due to a tremendous drop-off in business. Besides the loss of income they face, these workers will often also lose their employer-sponsored health insurance.

With this in mind, many employers have been wondering if they can permit coverage to continue during the time the staff is temporarily laid off or furloughed due to the COVID-19 outbreak. If you are looking at options for keeping these employees on your group plan, you'll need to read your policy to see if it's possible and explore all of your options.

The options

Most group health plans will define what constitutes an eligible employee. Typical requirements include working at least 30 hours a week. The policy may also address how long an employee can be absent from work before they lose eligibility for the plan. Some policies allow coverage to continue for a furloughed employee, but not for someone who is laid off.

Another option is to approach your group health plan provider and ask them to amend policy language to allow for laid-off or furloughed staff to continue coverage. If your policy doesn't address these workers or prohibits keeping them on the plan, you will need to approach the insurance company about this.

Due to the COVID-19 pandemic, several states have issued orders requiring or encouraging insurers to let employers make changes to their eligibility requirements.

Some states have extended grace periods to give employers and workers more time to make their premium payments if they are under financial duress. You can check with your state's insurance department to see what accommodations are available.

If you maintain health insurance for furloughed employees, you need to decide if you will require them to continue paying for their share of the premium. Some employers allow employees to defer their contribution until they are working again.

Whatever you decide, you will need to have the appropriate documentation and administrative procedures in place.

COBRA and exchanges

Most employers who have staff they cannot keep on the group health plan, will be required to offer them and their covered beneficiaries continuation coverage through COBRA.

But COBRA can be expensive, and most workers are better off purchasing coverage on an Affordable Care Act insurance exchange.

They can qualify for a premium tax credit if they have seen their income fall or disappear, and shop for a plan that will likely cost them less than COBRA continuation coverage. If any employee is laid off, they qualify for a special enrollment period to sign up on the exchanges.

Additionally, about a dozen states have also opened up special enrollment periods during the coronavirus crisis for people who are suddenly uninsured to sign up for coverage. ❖

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Changes to Health Plans Must Be Documented, Circulated

A NUMBER OF plan sponsors have made changes to their group health plans in response to the COVID-19 pandemic, such as covering testing and sometimes treatment without any cost-sharing by the plan enrollee.

But any changes that are made must be followed up by amending the plan and communicating the changes to the enrollees.

Under the Employee Retirement Income Security Act, all health plans are required to deliver a Summary Plan Description (SPD) to enrollees to inform them of the full spectrum of coverage and their rights under the plan.

Whenever a plan sponsor makes a material modification to the terms of the plan or the information required to be in an SPD, they must amend the plan and let participants know about the change through a Summary of Material Modification (SMM).

Material changes

To qualify as “material,” a change must be important to plan enrollees. Examples include adding or eliminating a benefit, changing insurance companies, or changing rules for dependent eligibility.

There are a number of plan changes related to COVID-19 that would have to be included in the SMM and SPD.

CHANGES THAT MUST BE DOCUMENTED

- Offering continuing coverage to staff who would otherwise lose coverage due to a furlough, layoff or reduction of hours.
- Changing eligibility terms to allow workers who may not have been eligible for coverage before to secure coverage (this could include part-time workers).
- Covering a larger portion of an employee’s premium share.
- Adding an employee assistance program to provide counseling for workers who may be undergoing unusual stress.
- Adding telemedicine coverage.
- Using funds in health savings accounts and flexible spending accounts to purchase over-the-counter medications.
- Covering COVID-19 testing with no cost-sharing.
- Covering COVID-19 treatment without cost-sharing.

Some of the above changes are required by new laws and health plans must respond accordingly by changing their SMMs and SPDs. For example, the Families First Coronavirus Response Act requires that group health insurance and individual health insurance plans cover coronavirus testing with zero cost-sharing.

And the Coronavirus Aid, Recover and Economic Stabilization Act reverses an Affordable Care Act rule that barred policyholders from using funds in HSAs and FSAs to pay for over-the-counter medications.

When the plan sponsor adopts these changes, it must also amend its plan summaries.

And SMMs must be delivered to plan participants within 60 days after a change has been adopted. You can deliver the SMM by mail, e-mail or posting it on your company’s intranet site. It’s recommended at this time that you opt for e-mail delivery.

One of the issues that may come up with any changes implemented in response to the COVID-19 outbreak is that some of the changes may be temporary.

If that’s the case, the plan needs to include the termination date of any benefits that are adopted on a temporary basis.

However, if you don’t know how long the temporary benefits will be in effect, their temporary nature must be communicated in the SMM. Employers need to issue another SMM when the benefit or coverage term ends.

The takeaway

This is an unusual time and unusual times call for unusual measures. It’s unusual for changes to be made to a plan in the middle of a plan year but because of the way the pandemic crash-landed, many plan sponsors have had to make changes.

That said, you should work with us and your carrier on ensuring that the amended documents are sent out to staff.

As the employer, you should be aware of all the changes that have been made in response to COVID-19 so you can discuss them with any employees that have concerns or questions. ❖



COVID 19

More Workers Sue Employers over COVID-19 Issues

AS THE COVID-19 pandemic wears on and more employees go back to work, the risk of catching the disease for workers has spawned a growing wave of employment litigation.

Lawsuits are flying as employers struggle to keep their workplaces safe and negotiate an often-confusing mishmash of new and existing laws and regulations. Regulators have been issuing new rules for dealing with COVID-19 among workers, and Congress has passed laws addressing workers and the pandemic.

Law firm Ogletree Deakins reviewed court filings for March through May and found that COVID-19-related lawsuits fell into a number of categories. The list is instructive for any employer who has continued operating or has opened or is about to reopen operations after local stay-at-home orders are lifted.

Knowing what kind of actions are most prevalent can also help you devise strategies to avoid being sued in the first place.

Here are the types of claims, and the percentage of all COVID-19-related claims against employers that they account for:

40%: Whistleblowing, retaliation and wrongful discharge

– These lawsuits will typically include allegations of retaliation for objecting to unsafe working conditions and exposure to individuals with COVID-19 symptoms in the workplace.

23%: Unsafe working conditions – Allegations usually include:

- That an unsafe workplace has caused sickness and/or death due to COVID-19.
- That an employer has failed to take appropriate measures to adequately clean and sanitize workplaces.
- That an employer has failed to provide necessary personal protective equipment, present adequate handwashing areas and sanitizing dispensers, or enforce social distancing protocols.

15%: Disability discrimination – Allegations usually include:

- Forced leaves of absence.
- Alleged failures to accommodate, including denials of requests to work from home.
- Faking leave due to COVID-19 concerns.

12%: Family and Medical Leave Act/Families First Coronavirus Response Act – Allegations usually include:

- Failure to provide leave related to COVID-19.
- Retaliation for utilizing leave related to COVID-19.

6%: Wage and hour – These lawsuits will typically include allegations of failure to pay for hours worked prior to business closures due to COVID-19 concerns. These cases are expected to grow as more employees work remotely and employees spend time off the clock for temperature checks and health screenings at some firms.

The takeaway

Ogletree predicts that employee-initiated lawsuits that relate to COVID-19 will increase as states and local municipalities ease stay-at-home orders and more people go back to work.

The law firm has the below tips to reduce the risk for coronavirus-related employment lawsuits. ❖

AVOIDING LEGAL ACTION

- Keep policies up to date, particularly those related to harassment, discrimination, retaliation and the FMLA.
- Train managers, supervisors and HR staff on how to respond appropriately if employees make requests or express concerns regarding COVID-19 safety practices.
- Prepare a COVID-19 workplace safety plan and communicate and train your staff on the plan.
- If you are conducting health screenings, temperature checks or virus-testing, make sure that you do so safely by complying with social distancing requirements and with privacy laws in mind (you may want to consider having employees sign releases so they can't sue you for conducting the testing).
- Document the steps your organization takes if an employee tests positive for COVID-19. If you are changing their pay, make sure you give them notice of those changes in advance.
- If you are cutting staff, make sure you set uniform rules and criteria for who stays and who is let go or furloughed, in order to avoid claims of discrimination. Seniority, for example, is a good way to avoid discrimination allegations..



What Insurers, Employers Expect in Pandemic Aftermath

A NOTHER STUDY has come out predicting that COVID-19, as devastating as it has been, will have little effect on 2021 group health plan rates as well as offerings.

The study by eHealth Inc. also found that many insurers have increased utilization of telemedicine and that many of them are extending benefits related to coronavirus testing and treatment.

Here are the main points of the study:

- **Waiving COVID-19 testing costs** – 97% of insurer respondents say they are waiving out-of-pocket costs for coronavirus testing.
- **Waiving treatment costs** – 58% of the insurers say they're waiving out-of-pocket costs for COVID-19 treatment. Among insurers who say they have done this, Eighty percent say they have waived all out-of-pocket costs, while 20% say they have waived only a portion of members' out-of-pocket expenses.
- **Premium assistance** – 60% of carriers are letting enrollees financially affected by the coronavirus defer premium payments.
- **Few insurers anticipate raising 2021 premiums due to coronavirus** – 83% say they do not anticipate raising rates for 2021 in response to the crisis, while 17% anticipate raising rates no more than 5%. Eighty seven percent of respondents offering Affordable Care Act plans say it is unlikely they will leave the ACA market due to coronavirus.
- **More telemedicine services** – 96% of insurers say they are seeing increased demand for telemedicine services that include virtual doctor visits. 85% think the crisis will drive increased demand for telemedicine benefits into the future.
- **Elective or non-emergency services spike** – 80% of insurers expect a spike in these claims after the crisis is over. Seventy three percent of those who anticipate a spike believe it will come within the next six to 12 months.

- **More use of mental health benefits** – 33% of insurers surveyed say they have seen an increase in utilization of mental health benefits by members since the beginning of the coronavirus crisis.

Rate hikes, but more involvement

The Centers for Medicare and Medicaid Services has predicted that the country could spend \$4 trillion on all forms of health care this year, which is 5.2% higher than in 2019.

Willis Towers Watson's "COVID-19 Benefits Survey" estimates that due to COVID-19 testing and treatment, health insurance premiums could increase as much as 7% on top of the 5% increase employers previously projected for 2021.

At the same time, the survey found that despite facing unprecedented challenges and rapidly shifting business priorities due to COVID-19, many organizations are taking steps to protect the health and wellbeing of their employees. ❖

STEPS EMPLOYERS ARE TAKING

- Employers are focusing on promoting virtual medical care by raising awareness and reducing point-of-care costs.
- Over 80% of employers have offered or are planning to offer expanded access to virtual mental health services.
- Nearly two-thirds of companies will prioritize access to mental health solutions in their 2021 health care program.
- About two in five employers are planning to revise their 2021 health care strategy.
- Employers are looking to communicate more on existing benefits.
- Companies are addressing benefits for employees on leave and furlough.



MENTAL HEALTH DEMAND: Many employers plan to enhance mental health services for their employees.