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# Benefits Law Advisor

A source of insights, news and strategy on affirmative action and EEO compliance matters

## Implications of COVID-19 on Your Health and Welfare Benefit Plans

By Natalie M. Nathanson on March 17, 2020

Employers are grappling with employee benefit issues in response to the 2019 Novel Coronavirus (“COVID-19”). Efforts are being made to pave the way for widespread testing by eliminating cost barriers such as deductibles, copayments, coinsurance, or High Deductible Health Plan restrictions to ensure employees and their families are proactively being diagnosed once symptoms present, to ensure proper care management for the participant, and to assist in preventing the spread of the virus. Read on for more information about the changes that might impact your employer-provided health insurance and what you need to do to comply in this rapidly changing environment:

### Remove Barriers to Coverage

- **Fully-Insured Plans:** Several states (including Washington, New York, California, Vermont, Maryland, Nevada, and Oregon) have issued mandates directing that fully-insured health plans regulated by the Department of Managed Health Care immediately reduce cost-sharing to zero for all medically necessary screening and testing for COVID-19.
- **Self-Insured Plans:** Many claims administrators are offering free testing for COVID-19 to self-funded plans, so employers sponsoring self-insured plans should check with their administrator regarding the voluntary waiver of COVID-19 testing costs. Stop-loss policies usually have (advance) notice requirements that apply when the plan terms are changed, so consider notifying your stop loss carrier of any changes in coverage/benefits.
- **High Deductible Health Plans:** Last week the Internal Revenue Service issued Notice 2020-15 to confirm that until further guidance is issued, a High Deductible Health Plan (“HDHP”) still complies with HSA contribution guidelines if it provides health benefits associated with testing for and treatment of COVID-19 without a participant first satisfying the deductible. The payment for

such tests and treatment of COVID-19 under the HDHP can be considered “preventive care.”

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- **In Vitro Testing:** The Families First Coronavirus Act (R. 6201) was passed by the U.S. House of Representatives in the early hours of March 14, 2020. The bipartisan legislation, which currently applies only to employers of 500 or less, provides a number of important changes, but also makes special provisions for in vitro testing. If enacted as written, a group health plan and a health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan (as defined in the Affordable Care Act)) would be required to provide coverage (without regard to any deductibles, copayments, or coinsurance) for approved in vitro diagnostic products for the detection of COVID-19. Coverage would also be required for certain items and services furnished to an individual during health care provider office visits, urgent care center visits, and emergency room visits that relate to administration of an in vitro diagnostic product for the detection of COVID-19. More...

### Employer Action Required

- **Plan Amendment:** A plan amendment is likely required to reflect any changes in coverage. However, given the urgency of the current situation, it is likely allowable to offer expanded coverage before adopting a plan amendment. Employee communications will be essential to keep your employee population up to date regarding available coverage.
- **Privacy Law Requirements:** Employers should remember that even during the current pandemic, HIPAA privacy rules still apply to “covered entities” such as medical providers or employer-sponsored group health plans regarding individually identifiable health information. While employers who receive information outside of the context of their group health plan are not subject to HIPAA’s restrictions regarding such information, health information should generally be treated as confidential as a range of employment law issues, including under the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, the National Labor Relations Act, and other federal and state laws might apply. More...

### Additional Ways to Help Employees

- **Leave Donation Programs:** Employers can provide leave-sharing arrangements that permit employees to donate PTO, leave, or vacation time in an employer-sponsored leave bank for use by other employees adversely affected by an event declared a major disaster or emergency by the President. More...

- **Cash Payments to Affected Employees:** Section 139 of the Internal Revenue Code provides that a tax-free disaster relief payment can be made in cash to any individual if the payment is a “qualified disaster relief payment.” More...

This is a dynamic situation, and the laws are changing quickly. Check for legal updates regularly, and contact Natalie Nathanson or your local Jackson Lewis attorney for more information.

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