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COVID-19: EMPLOYEE BENEFITS FAQ

The following post highlights an employee benefits FAQ related to COVID-19. A PDF of the below information can be found [here](#). For additional COVID-19 resources and risk management recommendations, please visit our [COVID-19 Risk Management Center](#).

The Graham Company understands the uncertainty of the COVID-19 pandemic and its impact on your organization's workforce. In an effort to better support your organization during this unprecedented time, please see below frequently asked questions and additional HR resources:

If an employer has to reduce hours or put employees on a temporary leave of absence due to economic conditions or a lack of work related to COVID-19, are the employees still eligible for benefits? What if employment is terminated?

For employees who are furloughed, but still employed, the answer depends upon the plan eligibility rules and whether there is any leave of absence policies which extend benefit eligibility. If the employees no longer meet plan eligibility requirements or qualify for a leave of absence which extends benefit eligibility, coverage may need to be terminated and COBRA offered unless the employer coordinates a benefit extension with the carrier or stop-loss vendor.

For employees who are laid off (employment is terminated), even if it is expected to be temporary, the former employees will no longer meet the plan eligibility requirements, and therefore coverage may need to be terminated and COBRA offered. As mentioned above for a furlough, the employer could extend benefit



eligibility temporarily beyond employment if the carrier or stop-loss vendor is willing to cooperate.

If we reduce an employee's pay due to economic conditions related to COVID-19, but their hours and work status do not change, can we allow them to make changes to their benefit elections?

Employee elections made on a pre-tax basis through an employer's §125 (Cafeteria) plan are generally irrevocable for the plan year unless the employee experiences a qualifying life event. A reduction in pay without a change in employment status and corresponding change in benefit eligibility is not one of these recognized events, so technically the employer should typically not allow such a change in election.

Will time off related to COVID-19 be covered by short-term disability (STD) plans?

If the employee is suffering from a medical condition related to COVID-19, an STD plan would pay benefits in the same manner as employee suffering from any other similar medical condition such as the flu. It is less likely that an STD plan would pay benefits to an employee who chooses to self-quarantine due to potential exposure to COVID-19 but is not experiencing any medical symptoms, but the particular benefits would be subject to the terms of the plan.

What if we get information about individuals receiving treatment for Coronavirus from the group health plan, what do we need to do to comply with HIPAA privacy and security requirements?

If the information comes from the employer's health plan records (e.g., on a claims report), then it is PHI and it is subject to protections under HIPAA. Employers, as plan sponsors, may only use or disclose this information for purposes of plan administration or as otherwise permitted or required by law. Sharing such information with other employees would not be permitted. However, the employer



could potentially use or disclose PHI for certain public health activities.

For an applicable large employer who uses the look-back measurement method to determine full-time status, will a break in service due to furlough or temporary lay-off impact full-time status for the next plan year?

§4980H rules do not require any hours of service to be counted when the employee is not being paid unless there is a break in service due to FMLA, USERRA or jury duty. In other words, if the time is unpaid, the break in service could negatively impact full-time status (i.e. it would reduce total number of hours over the measurement period) unless we get additional guidance over the next couple months requiring employers to impute hours or exclude these breaks in service from the measurement period during the public health emergency we're currently experiencing.

Which group health plans have to provide coverage for COVID-19 diagnostic testing with no cost-sharing?

All group health plans, both fully-insured AND self-funded must provide diagnostic testing with no cost sharing. This applies to group health plans offered by employers of any size (not just those with fewer than 500 employees).

In addition to the federal mandate to provide coverage for diagnostic testing, there are a few states that have mandated coverage for treatment beyond testing as well. Coverage beyond diagnostic testing will vary by state and by carrier.

How does the Expanded FMLA provision work?

Private employers with fewer than 500 employees and public employers of any size, must allow employees to take up to 12 weeks of job-protected leave for certain qualifying reasons beyond what is currently permitted under the Family



Medical Leave Act (FMLA), including the need to stay home to care for a child due to a “public health emergency” that would include the closure of schools or daycare facilities. Affected employers are eligible for a refundable payroll tax credit to cover the costs of the extended paid leave and related employer health insurance costs.

Can employers subsidize COBRA premiums for those who lose coverage due to a furlough or lay-off related to COVID-19?

Yes, but the safest approach is to subsidize coverage in the same fashion for all similarly situated individuals, especially if the plan is self-funded and subject to §105(h) nondiscrimination rules, which generally restrict the extent to which employers can favor highly compensated individuals on a tax-favored basis.

Employers who plan to subsidize COBRA premiums only temporarily (e.g. 2-3 months), that should be clearly communicated to employees in case the situation continues beyond that time frame.

For employees who are furloughed but still employed and benefit eligible, are they precluded from filing for unemployment?

While many states will consider an individual eligible for unemployment benefits even if the employer continues to make group health plan available, it is not safe to assume that this is the case in all 50 states as each state has its own requirements. There is some great information published on the National Association of State Workforce Agencies Website, see here for a consolidated list of Unemployment Insurance related information:
<https://www.naswa.org/resources/coronavirus>.

Can an employee open a Dependent Care Account (DCA) or stop their contributions to a DCA now that schools and daycares have shut down? Also when the daycare reopens, would that be considered a qualified



event where employees can elect and make a new contribution to the DCA?

Yes, these are all considered a qualifying event. Even if the employee is working from home and keeping their child at home, since they are no longer making payments to the daycare, that is a change in the amount owed to the DCA (which is a qualifying event).

Will there be an extension for FSA claims beyond the standard March 31 deadline?

At this time, there is no change to the March 31 deadline. This only applies to plans that have a claim run-out deadline of March 31.

What are my options for providing Telemedicine at no cost to my employees for all services, not just those related to COVID-19?

Telemedicine is permitted to be offered to members at no cost- for Covid-19 related conditions and general medicine on most plans. It is unclear if the IRS will enforce eligibility penalties when also participating in an HSA plan. We think the risk of participating in no cost telemedicine while continuing to contribute to an HSA is low.

Are carriers willing to extend grace periods for premium payments as a result of COVID-19?

Given the financial impact of COVID-19, some carriers are willing to extend grace periods for a period, if needed. Please contact your Graham Benefits Account Management Team for additional assistance.

Are there any pandemic related provisions or exclusions in my Stop-Loss policy? Will costs associated with testing and treatment for COVID-19 be



covered under my Stop-Loss policy?

There are no pandemic related provisions or exclusions in Stop-Loss policies. Expenses related to testing and treatment of COVID-19 will be covered under Stop-Loss as long as they are covered under your plan and meet the policy terms as with any other claim.

How does diagnosis or treatment of COVID-19 impact an employee's Hospital Indemnity, Accident and Critical Illness policies?

The diagnosis and treatment of COVID-19 is not covered under Accident and Critical Illness policies. However, individuals who have been hospitalized for more than 24 hours due to a COVID-19 related illness will be eligible for reimbursements under a Hospital Indemnity plan.

Will an employee whose hours have been reduced because of a lay off, having to go on FML, or a furlough resulting from COVID-19, still meet the eligibility requirements for disability insurance?

Most disability policies will treat employees that are quarantined, having been temporarily laid off or furloughed, on leave to take care of children, or having reduced hours as actively at work as eligible for coverage. Claims for COVID-19 will be evaluated the same as any other illness. As with all claims they must satisfy the definition of a disability. Each claim will be reviewed consistent with policy terms and applicable insurance law.

Benefit Offerings that Should be Promoted:

1. **Telemedicine:** Whether offered thru the medical carrier or a 3rd party, this solution can help prevent the spread of the virus and remove anxiety of waiting in a doctor's office. Costs are lower than a traditional visit and care can be

accessed 24/7. Anxiety and depression can make a person's health matters worse. Review your telemedicine partner's treatment of behavioral health. Some have set up special triage lines just for COVID-19.

2. **Employee Assistance Programs (EAP):** Employees may experience higher levels of stress than ever before. The EAP can be the “go-to” resource for any employee determining where to go for questions.
3. **Financial Wellness:** As many will experience furloughs, lay-offs or reduction in hours, financial concerns are expected to rise. Employees may feel panic stricken as many may not have set up a plan for times like these or they may need reassurances. Now is the best time to reintroduce financial wellness services.

Additional resources can be found [here](#).