



# National Compliance Update

## USI EMPLOYEE BENEFITS

Updated March 11, 2020

# Coronavirus: Health Coverage and Employee Leaves of Absence

*This article has been updated from its original publication date to reflect recent IRS guidance on QHDHPs and HSAs.*

As the new coronavirus disease 2019 (“COVID-19”) continues to spread, many employees are wondering whether there is coverage under their medical plan and whether they can take a leave of absence. The following provides some high-level information intended to address these inquiries. This information is up to date as of March 9, 2020, is general in nature, and subject to change.

## HEALTH COVERAGE

[According to the CDC](#),<sup>1</sup> individuals who feel sick with fever, cough, or difficulty breathing, and have been in close contact with a person known to have COVID-19, or live in or have recently traveled from an area with ongoing spread of COVID-19 should call their healthcare professional. The healthcare professional will work with the state’s public health department and CDC to determine if the individual needs to be tested for COVID-19. Keep in mind that tests associated with COVID-19 have not been readily available to date.

## IS THE TEST COVERED?

### 1. General Coverage.

In most traditional group health plan arrangements, testing for COVID-19 should be covered like other diagnostic tests (e.g., the flu test or rapid strep test) when medically necessary.

Non-traditional group health plans (e.g., skinny plans (preventive care only), some reference-based pricing arrangements, and short-term limited duration insurance) may not provide coverage.

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<sup>1</sup> It is important to receive guidance from trusted sources such as the CDC, as misinformation is circulating widely.

The plan document terms should be consulted.

## 2. State Law

Some states, including [Alaska](#), [California](#), [New York](#), [Oregon](#), and [Washington](#), have issued statements and/or emergency rules requiring (among other things) insurance carriers to cover services associated with testing for the COVID-19 without cost-sharing.<sup>2</sup>

These rules generally apply to fully insured health plans, including small and large group plans.

Self-funded group health plans subject to ERISA are not required to comply with state mandates. Employers with self-funded group health plans should work with their benefits consultants and third-party administrators to determine whether to adopt plan changes to align with the state action. In some situations, the carrier (or TPA) is asking employers with self-funded health plans to “opt-in to” (or to “opt-out of”) of the enhanced benefit options.

## 3. HSA-compatible QHDHPs

A qualified high deductible health plan (“QHDHP”), in part, is a health plan with a minimum deductible (\$1,400 for self-only coverage and \$2,800 for coverage other than self-only for 2020). An individual with a QHDHP and no other disqualifying coverage may be eligible to establish and contribute to a health savings account (“HSA”).

Generally, a QHDHP may not provide benefits for any year until the individual meets the deductible for that year. However, there is a safe harbor that permits coverage for preventive care prior to meeting the deductible. The definition of preventive care is limited and includes:

- ACA mandated preventive items and services;
- periodic health evaluations, such as annual physicals (and the tests and diagnostic procedures ordered in conjunction with such evaluations);
- routine prenatal and well-child care;
- immunizations for adults and children;
- tobacco cessation and obesity weight-loss programs;
- certain screening devices as listed in IRS Notice -2004-23; and
- items and services associated with certain chronic conditions as identified in IRS Notice 2019-45.

However, except as it relates to certain identified chronic conditions, preventive care does not include any service or benefit intended to treat an existing illness, injury or condition.<sup>3</sup>

On March 11, 2020, the IRS issued relief specific to COVID-19 testing and treatment as it relates to QHDHPs. IRS Notice 2020-15:

- Permits QHDHPs to provide medical care services and items associated with testing for and treatment of COVID-19 without a deductible or with a deductible below the minimum statutory threshold (for 2020, \$1,400 for self-only coverage and \$2,800 for family coverage).

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<sup>2</sup> It is likely that other states have adopted (or will adopt) similar rules after this article was set for publication. This includes Colorado, Florida, Georgia, Hawaii, Maryland, Pennsylvania, and Utah.

<sup>3</sup> IRS Notice 2019-45 and IRS Notice 2004-50, Q/A-27.

- Clarifies that individuals covered by a QHDHP that provides reimbursement for expenses associated with testing for and treatment of COVID-19 before satisfaction of the minimum statutory deductible will not be disqualified from HSA eligibility.

Notice 2020-15 states that this relief is available due to the unprecedented public health emergency posed by COVID-19 and the need to eliminate potential administrative and financial barriers to testing for and treatment of COVID-19. It is stand-alone relief associated with COVID-19 and does not expand on the definition of preventive care. The guidance does not modify previous guidance with respect to the requirements to be a QHDHP in any manner other than with respect to testing for and treatment of COVID-19.

## OTHER BENEFITS AND PROTECTIONS

### 1. **Disability benefits.** Will a COVID-19 diagnosis trigger a short-term disability benefit?

[Per the CDC](#), reported illnesses associated with COVID-19 range from mild symptoms to severe illness. Therefore, each employee will need to be evaluated on a case-by-case basis, depending on the individual's condition and the definition of disability under the terms of the plan. For example, someone who is asymptomatic but asked to stay home may not be eligible for disability benefits while someone who is hospitalized would be eligible.

Employees in California, Hawaii, New Jersey, New York, Rhode Island and Puerto Rico have access to state mandated disability leave.

### 2. **Leave**

Employers should evaluate whether employees with COVID-19 qualify for paid leave. Arizona, California, Connecticut, Washington D.C., Maryland, Massachusetts, Michigan, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington have different forms of paid leave laws (sick, family, and/or medical). In addition, paid leave may be available under a city law, employer policies, collective bargaining agreements, etc.

Employers should also evaluate whether employees with COVID-19 qualify for unpaid FMLA leave due to the employee's own serious health condition. Further, an employee may qualify for unpaid FMLA leave due to a family member's serious health condition.

Whether an employee on a non-FMLA leave is eligible to continue benefits will depend on the benefit plan and applicable law.

## EMPLOYER ACTION

Employers may reach out to USI with any benefit-related inquiries. COVID-19 raises many other issues such as employment-related issues in which case employers should reach out to counsel.

For more information on COVID-19:

- Dedicated USI website, <https://www.usi.com/public-health-emergencies/>
- CDC dedicated website, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

**USI** [usi.com/locations](http://usi.com/locations)

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