



EMPLOYER INSIGHTS: Employee Benefits

COVID-19



AssuredPartners

What Issues Businesses are Facing

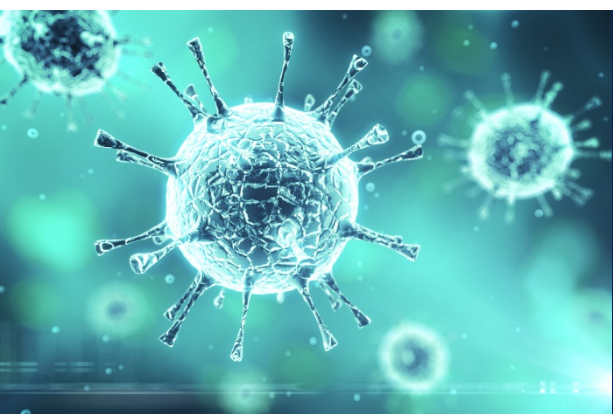
AssuredPartners wants to help you understand the insurance implications to your business. The costs associated with the outbreak are mounting and business disruptions have been set in motion. What we do know is that there are many factors in play and most of them are unknown. What we don't know, is how the market will respond and at what level the government will step in and offer guidance and assistance.

In these uncertain times, AssuredPartners has assembled the following resources focused on general understanding, liability, risk and coverage considerations and will continue to monitor the situation.

Some of the consideration areas are listed below:

- Overall Health & Welfare
- Compensation
- Benefits
- Financial Risk Analysis
- Worker Exposure
- Employer's Response
- Coronavirus Relief Bill
- Communicating with Employees
- Employees Working from Home
- What's Next

The information provided not intended as legal advice and should not be relied upon in lieu of your own legal guidance. The information and resources provided are not specific to your policy or coverage. Local and federal health agencies can be consulted for the latest news and directives.



**For up-to-date information, please visit
our Resource Center:**

<https://www.assuredpartners.com/Coronavirus-Resources>

Overall Health & Welfare

As the number of reported cases of the novel coronavirus (COVID-19) continues to rise, employers are increasingly confronted with the possibility of an outbreak in the workplace.

Employers are obligated to maintain a safe and healthy work environment for their employees but are also subject to several legal requirements protecting workers. There are several steps that employers can take to address the impact of COVID-19 in the workplace. It is recommended that employers:

- Closely monitor the [CDC](#), [World Health Organization](#) and state and local public health department websites for information on the status of the coronavirus.
- Proactively educate their employees on what is known about the virus, including its transmission and prevention.
- Establish a [written communicable illness policy](#) and response plan that covers communicable diseases readily transmitted in the workplace.
- Consider measures that can help prevent the spread of illness, such as allowing employees flexible work options like working from home.

The Centers for Medicare & Medicaid Services (CMS) released a list of [frequently asked questions](#) (FAQs) on Essential Health Benefit (EHB) coverage and the Coronavirus (COVID-19). Under the Affordable Care Act (ACA), EHB reflects the scope of benefits covered by a typical employer and covers at least 10 specified categories of items and services.

Employee Leave Requirements

If an employee, or an employee's family member, contracts COVID-19, the employee may be entitled to time off from work under federal or state leave laws. An illness like COVID-19 may qualify as a serious health condition under the FMLA if it involves inpatient care or continuing treatment by a health care provider. Employees may also be entitled to FMLA leave when taking time off for medical examinations to determine whether a serious health condition exists.

Many states and localities also have employee leave laws that could apply in a situation where the employee or family member contracts COVID-19. Some of these laws require employees to be given paid time off, while other laws require unpaid leave. Employers should become familiar with the laws in their jurisdiction to ensure that they are compliant.

Some employees may wish to stay home from work out of fear of becoming ill. Whether employers must accommodate these requests will depend on whether there is evidence that the employee may be at risk of contracting the disease. A refusal to work may violate an employer's attendance policy, but employers should consult with legal counsel prior to disciplining such an employee. However, if there is no reasonable basis to believe that the employee will be exposed to the illness at work, the employee may not have to be paid for any time that is missed.

Compensation

If employees miss work due to COVID-19, whether they are compensated for their time off will depend on the circumstances. Employees may be entitled to paid time off under certain state laws if they (or a family member) contract the illness. In other cases, non-exempt employees generally do not have to be paid for time they are not working. Exempt employees must be paid if they work for part of a workweek, but do not have to be paid if they are off work for the entire week. Note that special rules may apply to union employees, depending on the terms of their collective bargaining agreement.

Benefits

In IRS Notice 2020-15, the Internal Revenue Service advised that HDHPs (High-Deductible Health Plans) can pay for 2019 Novel Coronavirus (COVID-19)-related testing and treatment, without jeopardizing their status. This also means that an individual with an HDHP that covers these costs may continue to contribute to a health savings account (HSA).

In Notice 2020-15, the IRS said that health plans that otherwise qualify as HDHPs will not lose that status merely because they cover the cost of testing for or treatment of COVID-19 before plan deductibles have been met. The IRS also noted that, as in the past, any vaccination costs continue to count as preventive care and can be paid for by an HDHP. Employees and other taxpayers in any other type of health plan with specific questions about their own plan and what it covers should contact their plan.

Coverage Issues

There have been many updates in this area. States like California have already issued a notice telling all fully insured carriers to cover the costs without any cost-sharing measures. Self-funded plans have options about covering the costs with or without cost-sharing measures. Some TPAs are taking the position that they are covered without cost-sharing unless/until a self-funded group opts out.

Please check with your Account Manager and Account Executive about how this may affect your plan. And, rest assured that with IRS Notice 2020-15, if you choose to have the cost covered without deductible, copay or coinsurance your plan participants' HSAs will not be effected.

Financial Risk Analysis

Our data analytics team has been working diligently on created a projection model for our clients to help them understand the financial implication of COVID-19 to their self-funded health plans. Given the variance of severity of the virus based on age and gender, the model accounts for the group's specific demographics. Additionally, the biggest unknown remains..." how many people are going to get sick?" Our formula offers a range of modeling options so groups can understand the range of potential cost. We stress that, like everything else, this is fluid and can easily change. This is a guidepost, not a fine measurement.

If you are interested in learning more about our COVID-19 cost model, please contact your AssuredPartners account team.

Worker Exposure

Worker risk of occupational exposure to SARS-CoV-2, the virus that causes COVID-19, during an outbreak may vary from very high to high, medium, or lower (caution) risk. The level of risk depends in part on the industry type, need for contact within 6 feet of people known to be, or suspected of being, infected with SARS-CoV-2, or requirement for repeated or extended contact with persons known to be, or suspected of being, infected with SARS-CoV-2. To help employers determine appropriate precautions, OSHA has divided job tasks into four risk exposure levels: very high, high, medium, and lower risk. The Occupational Risk Pyramid shows the four exposure risk levels in the shape of a pyramid to represent probable distribution of risk. Most American workers will likely fall in the lower exposure risk (caution) or medium exposure risk levels.

Very High Exposure Risk

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures. Workers in this category include:

- Healthcare workers (e.g., doctors, nurses, dentists, paramedics, emergency medical technicians) performing aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on known or suspected COVID-19 patients.
- Healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients (e.g., manipulating cultures from known or suspected COVID-19 patients).
- Morgue workers performing autopsies, which generally involve aerosol-generating procedures, on the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death.

High Exposure Risk

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19. Workers in this category include:

- Healthcare delivery and support staff (e.g., doctors, nurses, and other hospital staff who must enter patients' rooms) exposed to known or suspected COVID-19 patients. (Note: when such workers perform aerosol-generating procedures, their exposure risk level becomes very high.)
- Medical transport workers (e.g., ambulance vehicle operators) moving known or suspected COVID-19 patients in enclosed vehicles.
- Mortuary workers involved in preparing (e.g., for burial or cremation) the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death.

Moderate Exposure Risk

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. In areas without ongoing community transmission, workers in this risk group may have frequent contact with travelers who may return from international locations with widespread COVID-19 transmission. In areas where there is ongoing community transmission, workers in this category may have contact with the general public (e.g., in schools, high-population-density work environments, and some high-volume retail settings).

Lower Exposure Risk (Caution)

Lower exposure risk (caution) jobs are those that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2 nor frequent close contact with (i.e., within 6 feet of) the general public. Workers in this category have minimal occupational contact with the public and other coworkers.

Employer Response

When determining how to respond to the coronavirus, employers should consider the local disease severity, impact on employees at a higher risk of adverse health conditions, an increased absenteeism plan to continue essential business functions and coordination with local and state health officials. In addition, the CDC recommends the following strategies:

- Actively encouraging sick employees to stay home. Ensure that your sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies
- Separate sick employees
- Emphasize staying home with sick, respiratory etiquette and hand hygiene by all employees
- Perform routine environmental cleaning
- Advise employees before traveling to take certain steps such as checking the CDC's Traveler's Health Notices and notifying supervisors should they become sick while traveling

Coronavirus Relief Bill

The U.S. House of Representatives passed the [Families First Coronavirus Response Act](#) (the "Act") in an overwhelming vote on Saturday, March 14, 2020. President Trump has endorsed the legislation and the U.S. Senate approved.

The Act will be the second emergency Coronavirus response measure to be passed. President Trump had previously signed a bill to provide \$8.3 billion in funding to federal health agencies and declared a national emergency on Friday, March 13, 2020, over the pandemic.

Provisions of the Act

In addition to the funding for economic assistance and COVID-19 testing, the Act contains provisions intended to support workers:

- 14 days of paid sick leave, at two-thirds (or more) of their regular rate of pay, for government workers and employees of companies with fewer than 500 employees. Leave is available to workers who are sick, have to care for a sick family member or have a child whose school or childcare facility has closed due to the Coronavirus.
- Expansion of the Family and Medical Leave Act (FMLA) for employees of companies with fewer than 500 employees, requiring paid leave at the two-thirds rate after 14 days.
- A tax credit for employers that provide paid sick leave benefits required by the Act.
- Additional funding for state unemployment programs.

The Act does not contain a payroll tax suspension that was proposed by President Trump.

Communicating with Employees

As part of their efforts to prevent the spread of COVID-19 in the workplace, employers should consider communicating information about the illness to employees. The CDC, WHO and OSHA have all created informational material on the virus and its symptoms, prevention and treatment that can be helpful for employees.

Employee education is one of the best lines of defense for a workplace. General preventive health practices, like washing hands, can safeguard workers even when they're at home.

Occupational Safety and Health Act of 1970

Under the federal Occupational Safety and Health Act of 1970, employers have a general duty to provide employees with safe workplace conditions that are, "free from recognized hazards that are causing or are likely to cause death or serious physical harm." Workers also have the right to receive information and training about workplace hazards, and to exercise their rights as employees without retaliation.

There is no specific Occupational Safety and Health Administration (OSHA) standard covering COVID-19. However, some OSHA requirements may apply to preventing occupational exposure to COVID-19. In addition to the General Duty clause, OSHA's Personal Protective Equipment (PPE) standards and Bloodborne Pathogens standard may apply to certain workplaces, such as those in the healthcare industry.

Employers should continue to monitor the development of COVID-19 and analyze whether employees could be at risk of exposure. It is also important for employers to consider what preventative measures they can take to maintain safety and protect their employees from potentially contracting COVID-19.

Also, OSHA requires many employers to record certain work-related injuries and illnesses on their OSHA Form 300 (OSHA Log of Work-Related Injuries and Illnesses). OSHA has determined that COVID-19 is a recordable illness when a worker is infected on the job. Establishments that are required to complete an OSHA 300 log should be sure to include all COVID-19 infections that are work related.

The Americans with Disabilities Act

The Americans with Disabilities Act ("ADA") protects applicants and employees from disability discrimination. It is relevant to COVID-19 because it prohibits employee disability-related inquiries or medical examinations unless:

- They are job related and consistent with business necessity; or
- The employer has a reasonable belief that the employee poses a direct threat to the health or safety of him- or herself or others (i.e., a significant risk of substantial harm even with reasonable accommodation).

According to the Equal Employment Opportunity Commission (EEOC), whether a particular outbreak rises to the level of a "direct threat" depends on the severity of the illness. Employers are expected to make their best efforts to obtain public health advice that is contemporaneous and appropriate for their location, and to make reasonable assessments of conditions in their workplace based on this information.

The EEOC has said that sending an employee home who displays symptoms of contagious illness would not violate the ADA's restrictions on disability-related actions because advising such workers to go home is not a disability-related action if the illness ends up being mild, such as a seasonal influenza. On the other hand, if the illness were serious enough, the action would be permitted under the ADA as the illness would pose a "direct threat." In either case, an employer may send employees home, or allow employees to work from home, if they are displaying symptoms of contagious illness.

The ADA requires that information about the medical condition or history of an employee, obtained through disability-related inquiries or medical examination, be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record. Employers should refrain from announcing to employees that a coworker is at risk of or has a disease. Instead, employers should focus on educating employees on best practices for illness prevention.

HIPAA Privacy Rule

Please note that HIPAA Privacy laws generally will not apply to an employer in this situation. HIPAA Privacy laws apply to covered entities including health care providers, health care clearinghouses and health plans. In general, the employer will not learn of COVID-19 diagnoses through their health plan. Much of the information the employer obtains will be either self-reported from the employees or potentially through public health authorities that contact the employer if a member of their workforce has a positive test.

Employees Working from Home

The recommendation of working from home can be a new experience for some and present new opportunities for others. Below are several helpful resources from our trusted partner, LinkedIn, on the working from home environment.

- [Working Remotely](#) – 1 hour
- [Time Management: Working from Home](#) – 1hr 25 min
- [Being an effective Team Member](#) – 31 min
- [Productivity Tips: Finding Your Productive Mindset](#) – 59 min
- [Leading at a Distance](#) – 36 min
- [Balancing Work and Life](#) – 28 min
- [Thriving @ Work: Leveraging the Connection between Well-being and Productivity](#) – 41 min
- [Managing Stress for Positive Change](#) – 57 min

What's Next

AssuredPartners will continue to monitor the situation and will work closely with our clients to respond to any potential claim situations. As the situation progresses, we will communicate in a timely manner to keep our clients abreast of marketplace modifications. If you should have any questions about this topic and how it directly impacts your coverage, please contact your AssuredPartners team.

All future updates will be located on our Resource Center:

<https://www.assuredpartners.com/Coronavirus-Resources>

This communication does not capture all lines of coverage, all exposures or reflect advice specific to your needs. If you have questions regarding your specific coverages, please contact your local AssuredPartners broker team.

About AssuredPartners

Headquartered in Lake Mary, Florida and led by Jim Henderson and Tom Riley, AssuredPartners, Inc. acquires and invests in insurance brokerage businesses (property and casualty, employee benefits, surety and MGU's) across the United States and in London. From its founding in March of 2011, AssuredPartners has grown to over \$1.5 billion in annualized revenue and continues to be one of the fastest growing insurance brokerage firms in the United States with over 185 offices in 30 states and London. For more information, please visit www.assuredpartners.com.