

HENDERSON BROTHERS UPDATE

Coronavirus & your workforce – Benefits Q&A

Date: March 14, 2020

This document is intended to address many of the questions we are receiving from companies struggling to make sense of the ongoing and developing Coronavirus outbreak. As topics are addressed and clarity is achieved, we will continue to update this document with the most current information.

Leave & Employer Accommodations

1. Can an employee who is personally diagnosed with the Coronavirus or has a family member who is diagnosed with Coronavirus, request FMLA leave?

Yes, an employee can request FMLA leave in this instance. We strongly recommend that you follow the normal FMLA guidelines that you typically use when determining whether or not a requested leave is a qualified leave. While generally a doctor's certification is required for FMLA leave, if an employer understands that an employee has a serious health condition, within the meaning of the FMLA, it is within the employer's discretion to waive the requirement to provide the documentation.

Finally, please remember that, despite all the craziness as this pandemic has evolved, FMLA rules regarding notices, documentation and eligibility have not been waived or expanded. Employers must continue to follow the normal FMLA process as it pertains to the law.

2. For claimants who are quarantined because of exposure to COVID-19 but are not themselves afflicted with the disease, will these claimants qualify for FMLA?

While we recommend that you review each leave request on a case-by-case basis, keep in mind that in order to qualify for FMLA, quarantined employees would need to satisfy the definition of a "serious health condition."

3. What if a claimant has symptoms of COVID-19 and the employer asks them not to return to work until diagnosed/no longer ill?

Employers have the right to require that employees who exhibit coronavirus symptoms stay home until they are symptom free. Keep in mind that employees who are ordered by their employer to stay home are unlikely to be eligible for either disability benefits or FMLA, unless they also have some qualifying medical condition, even if not COVID-19.

With that in mind, some employers have decided to pay employees while on a mandated or self-imposed quarantine due to exposure or suspected exposure to COVID-19, even if telework is not an option.

HENDERSON BROTHERS UPDATE

Much of this is being done to encourage employees to be vigilant and to protect other workers and to stay home if they potentially pose a risk to others. Employers want to avoid a situation where employees come to work because they don't have enough PTO or sick days and are worried about their paycheck. Other employers have opted to advance PTO or sick pay to help an impacted employee.

4. What happens in the event of a company shutdown?

Under the Family Medical Leave Act (FMLA), if an employer ceases operation at a location or employees are not expected to report to work for one or more weeks, the days the employee cannot report to work are not counted against the employee's leave entitlement. As a result, if an employer shuts a location due to the Coronavirus (or another virus), any employees who are out on a qualifying FMLA leave (unrelated to company shutdown) cannot have the time the location is closed counted against their leave entitlement.

5. I have a large hourly workforce and we have to scale back or suspend operations due to the Coronavirus outbreak. What are other companies doing?

This is a very popular and unfortunate question that we are receiving. Many employers have decided to temporarily amend their pay policies or their paid time off policies to help impacted hourly workers. Some are paying their workers anyway or asking them to do some work remotely, as applicable. Others are advancing PTO or sick time to keep employees whole. This truly is an area where employers are working very hard to be accommodating and employee friendly.

Also, impacting this is a wave of school closings which is also stretching the bounds of employer flexibility. In some cases, employers are working to design alternative shifts for employees that may be outside the typical hours or typical Monday-Friday work week so work can still get done and employees can still earn an income.

The Federal government is currently working on several bills to address this issue and we expect bi-partisan support shortly.

6. Should we request a doctor's note when an employee returns to work?

The CDC currently recommends that people who are experiencing symptoms of a respiratory illness stay home from work (<https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>) until they are fever or symptom free.

The CDC has also advised that companies should not require a health care provider's note for employees who are sick with acute respiratory illness to validate their illness or return to work. Many health care facilities may be too overwhelmed or busy to provide this type of documentation and you don't want to provide any additional barriers to employees taking the necessary steps to protect themselves and others.

HENDERSON BROTHERS UPDATE

7. Do I have the right to check the body temperature of my employees as they arrive for work?

While technically you do have the right to check the temperature of your employees as they arrive for work, this is not an approach we recommend. Simply taking the temperature of your employees as they arrive for work can lead to false assumptions and mild hysteria. We recommend that you encourage employees to be smart about their health and the health of others and to stay home if they are not feeling well.

Benefit Implications of the Coronavirus Outbreak

1. How/when does the Coronavirus constitute a disability?

An employee is considered disabled when they meet the definition of disability outlined in their policy. If an employee were to develop symptoms, their claim would need to be assessed to determine eligibility for benefits based on the terms of their policy, the same as we would for any other illness.

2. What if an employer with a self-funded (ASO) Short Term Disability program determines that benefits should be paid for employees impacted by the Coronavirus?

It is within an employer's discretion in this case to direct the STD carrier to approve benefits under a self-insured STD program. We would suggest, however, that you consult with legal counsel prior to finalizing a decision such as this.

3. From an ancillary coverage perspective, are there any plan or policy limitations that would impact a COVID-19 related claim?

First and foremost, each policy should be checked individually to determine what type of policy limitations may exist. We recommend that you contact your HBI consultant for specific questions about coverage limitations. Every carrier is recommending that, if there are doubts as to whether or not a particular situation or issue is covered, to file a claim and wait for the claim to be reviewed. Every carrier that we work with has pledged that each claim received will be reviewed consistent with policy terms and applicable insurance law.

Generally speaking, the following will likely be applicable:

- **Life Insurance:** For Group Life Insurance (Basic, Optional, Dependent, etc.), there are no policy limitations that would limit a claim payment resulting from COVID-19, provided the individual met all other certificate requirements.
- **Accidental Death and Dismemberment (AD&D):** AD&D policies do not cover diseases. Therefore, death due to COVID-19 is excluded, as are all deaths caused by disease.

HENDERSON BROTHERS UPDATE

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- **Hospital Indemnity:** Because COVID-19 is a viral infection it would be considered a sickness and the Sickness Hospital benefits (admission and confinement) would be payable provided the individual met all other certificate requirements.
- **Accident Insurance:** The definition of an “accident” includes that it is not a sickness so this condition would not be covered under a standard accident plan for COVID-19. However, it would be covered if the accident plan happens to include Sickness Hospital benefits (admission and confinement) and would be payable provided the individual met all other certificate requirements.
- **Critical Illness/Cancer Insurance:** Because COVID-19 is likely not specifically listed as a “covered condition” it would not be covered under most Critical Illness products
- **Disability Insurance:** There are no policy limitations that would apply for COVID-19. Carriers will evaluate each claim in accordance with the terms of the policy and use claim processes already in place for disability claims.

4. If the Health Screening Benefit is included in a Critical Illness, Accident or Hospital Indemnity Insurance certificate, would the Health Screening Benefit be payable if someone received a laboratory screening test for the Coronavirus?

It is highly likely that the Health Screening Benefit would be payable for a Coronavirus laboratory screening test (regardless of the test result), subject to the requirements for payment of that benefit and the other terms and conditions of the policy/rider.

5. An employee was exposed to COVID-19 while on an airplane and is now under quarantine. Under the Life Insurance policy, is the employee considered Totally Disabled and eligible for Waiver of Premiums?

In this case, claimants would likely not satisfy the definition of disability in the applicable plan solely due to being quarantined. If the claimant develops COVID-19 or some other qualifying sickness while quarantined, the claim would be reviewed per the requirements of the plan.

6. For claimants who are quarantined because of exposure to COVID-19 but are not themselves afflicted with the disease, will these claimants be considered disabled?

Claimants are unlikely to satisfy the definition of disability in the applicable plan solely due to being quarantined. If the claimant develops COVID-19 or even some other qualifying sickness while quarantined, and it meets the definition of disability within the policy, benefits would be reviewed for payment.

HENDERSON BROTHERS UPDATE

7. If I have to temporarily lay-off employees due to the Coronavirus' impact on my business operations, is this a COBRA qualifying event?

Yes. This would be treated under COBRA as any other reduction in force or termination of employment. The employee and their qualified beneficiaries would be entitled to the appropriate state or federal COBRA Continuation.