

HENDERSON BROTHERS UPDATE

Managing Paid Leave and COVID-19

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As COVID-19 continues to cause disruption to our lives and businesses, employers are taking steps to keep their workforce healthy and minimize interruption. The ever changing landscape presents employers with new issues to plan and manage, particularly as employee pay becomes a significant concern. Following is a summary of the three likely scenarios your business will be faced with in the coming weeks and months, and considerations for each.

Scenario 1: Employees that are diagnosed with COVID-19

This may be the most clear issue for employers to manage. When an employee is diagnosed with COVID-19, disability and leave benefits should be similar to income continuation with any other illness. For most employer plans, this means that for the first week of absence due to illness, paid sick leave, PTO or vacation would provide income continuation. For illness that lasts more than a week, short-term disability (STD) benefits would begin. Initial indications are that the disability insurers will be covering claimants diagnosed with novel coronavirus, but employers should confirm with their carriers to ensure coverage.

One STD coverage exception could be for employees who contract COVID-19 while traveling on business. In this situation, the employee could be eligible for income continuation under workers' compensation. If an employer's STD plan covers occupational health claims with the workers' compensation time off benefits offsetting any STD benefit or if it excludes events covered under workers compensation all together, no STD benefit may be payable.

Scenario 2: Employees that are not diagnosed with COVID-19 but are unable to work

There will be situations where an employee has not been diagnosed with COVID-19 or has no reason to believe they're at risk, but unable to work. The employee may be quarantined (either by their employer or by authorities), their work site may be closed or they can not get to work due to an impact to public transportation. Some employees will be able to work remotely and perform as they would under normal circumstances. But many employees will not be able to work if they are not physically at their work location. If this is for a short duration, leave pay under normal means may be sufficient. If the length of absence is increased however, employees may exhaust their time off.

Most disability policies will not cover this absence scenario as most plans require an employee to have a physical impairment to be considered disabled. We do not expect carriers to make exceptions for coronavirus but employers should confirm how their vendor is handling. Employers with self-funded plans have the option of covering such absence periods as disability, but they must treat all employees consistent with their policy.

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If an employer has an emergency leave policy in place, they may have the flexibility to adapt the policy for the novel coronavirus pandemic allowing for leave consideration for a different period of time than the disability policy states or for specific locations affected by an outbreak. Employers that do not currently provide paid sick leave to their workers or who provide limited paid time off, may evaluate the use of emergency leave to extend paid sick leave as needed during this outbreak without adding a permanent benefit entitlement.

Scenario 3: Employees that are not diagnosed with COVID-19 but are unwilling to work

This scenario will likely be the most difficult for employers to manage. Some employees may fear that commuting to or being at work puts them at risk for coronavirus. Many employees may not be able to leave the home due to school and community resource closures. Employers must determine the valid reasons for missing work. We expect that most employers will be following their current paid time off policies if employees are absent in these situations.

When making determinations on how to manage paid leave for the complex situations coronavirus presents, employers should be thoughtful about not only the cost implications of their decisions but also the longer term ramifications that today's decisions can have on their workforce.