



# **COVID-19**

## **Return-to-the-Workplace Compliance Checklist**

**May 20, 2020**

*This checklist is not exhaustive. It should not be construed as legal advice and because of constant regulatory change, there is no guarantee that the information presented will comply with current regulations. Consult with legal counsel before use.*



## Overview

As employers draft their Return-to-the-Workplace plans most will need to consider several issues including workplace safety, new policy needs, modifications to remote work arrangements, workforce morale, employee benefit changes, and communications, etc. This checklist was designed to help Human Resource professionals uncover and manage compliance risk that arises when workforce policies and welfare benefit coverage is modified due to COVID-19. Note: As a result of strict regulatory requirements, this summary does not include information regarding employer sponsored retirement benefits.

### Section I: Policies

#### Review and revise hiring practices and policies.

- Have staffing needs changed?
- Do you need to change benefits or pay to become more competitive?
- Use remote interviewing techniques as much as possible
- Become familiar with USCIS temporary policies for I-9
- Update onboarding practices
- If you are recalling only some workers who were laid off or furloughed, ensure that your practices for determining whom to recall do not discriminate against any group of employees



#### Review and revise leave policies.

- Understand how the [FFCRA Emergency Paid Sick Leave and Emergency Paid Family Leave requirements](#) compare to your existing PTO/leave benefits.
- Consider implementing new rollovers or grace periods, and revise guidelines for usage if vacation is forfeited when not used by year end
- Consider implementing or revising bereavement leave policies
- Ensure that all employees have access to and an understanding of all leave policies that may apply to them.

#### Review and revise your remote-work policy if needed.

#### Address any changes that might need to be made your employee expense policy, including process for submitting expenses.

#### If subject to FFCRA Paid Sick and Paid Family Leave, make sure your payroll team is familiar with the codes required in payroll to track EE's on FFCRA Emergency paid sick and paid family leave.

#### Update work travel policies considering any new orders in your state(s) and any new practices being implemented in the workplace to keep employees/customers safe.

#### Collaborate with other departments, establish a Pandemic Safety Team/committee to ensure the business

is ready for employees to return. Designate a workplace coordinator or “team lead”. Publish the contact information.

Develop, Implement and Communicate a Return-to-the-Workplace safety plan. Make certain there is a thorough best practices plan in place and implement the components for required cleaning & sanitizing protocol, social distancing & work areas, screening, personal protective equipment use, visitor and client meeting procedures, materials management, employee communication and support. **HBI has a Pandemic Recovery Plan Guide to help employers implement best practices for the information summarized above.**

Have open and continuous communication to employees about the return to in-person operations and the workplace plan:

- EEs need to understand what is expected of them – e.g. social distancing, how to reduce the spread, when they must wear masks when they should stay home if they feel ill, discourage handshaking, use email, call or video instead of face-to-face, etc.
- Emphasize who should be contacted if there is a problem or question about the new policies and requirements.
- Consider creating and distributing/posting a COVID-19 Safety Reporting Form that provides employees an opportunity to report their concerns about safety. Form would include: Nature of Concern, Location of Concern, contact information.



Distribute all new or amended policies – e.g. amended paid time off (PTO, sick, etc.), Remote Work, FFCRA Emergency Paid Sick and Paid Family Leave, COVID-19 Contagious Disease Policy, Travel, Bereavement, etc. **HBI has sample policies.**

Update Handbook

## Section II: Welfare Benefit Coverage

If you have a Wellness Plan, determine how you will address the rest of the plan year – how will you handle the earning of incentives with a shorter period to earn them? Reschedule cancelled activities if appropriate, provide new activities. Provide new wellness materials with COVID-19 content. Change dates in communications if needed.

Make certain COVID-testing (including Serological tests that measure the level of antibodies) is covered at no cost share to members on all health plans. This includes insured and self-insured comprehensive group health plans.

Communicate the CARES Act provisions that expand coverage in HRAs, Health FSAs, and HSAs to include certain OTC (and menstrual products).

Consider adding new CARES Act student loan benefits available to employees. Employers can provide up to \$5,250 tax-free to employees to pay for student loans. These payments are allowed only through the end of 2020.

For the remainder of 2020 as a result of [new regulations](#), employers may choose (but are not required) to allow employees to make the following prospective election changes even if they are not clearly permitted under regular §125 rules:

- Elect health coverage if the employee previously waived
- Revoke an existing election health coverage and make a new election to enroll in different health coverage sponsored by the same employer or move from single to family coverage
- Revoke an existing election for health coverage, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer

For Medical FSAs and DCAPs, plan sponsors may decide to allow:

- Mid-year changes to pre-tax elections through an employer's cafeteria plan generally cannot be changed unless the employee experiences a recognized life event or change in status under §125 rules.
- For the remainder of 2020, employers may choose (but are not required) to allow employees to make prospective election changes to begin, end, increase or decrease contributions to a health FSA or DCAP even if they are not clearly permitted under §125 rules.
- Additionally, sponsors may increase the maximum FSA carryover permitted for plan years beginning in 2020 to \$550 (previously \$500).

To assist plan participants who fail to submit enough claims to use all contributions during the plan year, health FSAs are also permitted to adopt up to a 2½ month grace period or a carryover, but not both.

If a premium credit is provided by your insurer for voluntary or contributory coverage, determine participants' pro-rata premium share and return it to them as a reduction in contribution or cash payment.

### **Section III: Welfare Benefit Eligibility**

Does your existing policy and/or document language address your reinstatement or rehire needs?

- If you want to treat returning employees differently than what is stated in your policy/document, you have latitude to amend your Plan immediately if the change improves the Plan for individuals.

For Applicable Large Employers (ALEs), consider the ACA Employer Mandate (Play or Pay) Break in Service provision for reinstatement of medical if you use the look-back measurement methodology to determine FT status ("ACA FT").

- Identify whether the rehired EEs have been gone for 13 weeks or less
- If less than 13 weeks for EEs that were treated as FT and enrolled in medical during the stability prior to layoff, offer reinstatement of medical immediately on the date of return or the 1st of the month following to avoid potential Play or Pay penalties

For ALEs, consider the exposure to Play or Pay (a) or (b) penalties if you use the look-back methodology for determining full-time for medical. Furloughed EEs (still employed) that were ACA FT prior to furlough should still be treated as ACA FT while employed but working no hours. Also consider employees working part-time now that were ACA FT prior to COVID-19.

- Evaluate your exposure to the ACA Section 4980H (b) penalty. Employees that averaged 130 hours or more during the company look-back (“ACA FT”) should continue to be eligible for company subsidized health benefits during the current stability period while furloughed or working reduced hours. Any ACA FT employee that was terminated from coverage and offered COBRA may now be receiving an “unaffordable” offer-of-coverage. If the employee declines the “unaffordable” COBRA and enrolls in the public Exchange with subsidized premium instead, the IRS could assess the 4980H(b) penalty for each month the individual is still employed. The (b) penalty is \$3,860 on an annual basis; \$322 each month.



Monitor dental, vision, life, and disability insurer requirements if you intend to cover non-actives (and part-time in some cases). Several insurers have published an end-date for their special COVID-19 continuation of coverage arrangement.

Be consistent on how long coverage is continued for non-actives and establish a timeline and plan for termination of coverage (offer COBRA, communicate direct-pay life insurance options, portability for voluntary coverage, etc.).

Be aware that any changes made for a group of employees should include all “similarly situated” employees to reduce the likelihood of creating a discriminatory plan.

Consider how to address employees that dropped voluntary coverage during layoff and want to re-enroll.

- If the voluntary insurer has not communicated already what it will allow when employees return, confirm that employees will be given the option to reelect coverage and find out if Evidence of Insurability will apply to voluntary life insurance, voluntary disability, etc.

Consider how you will handle calls from COBRA participants on dental and/or vision that would like to extend their COBRA because they could not use their benefits. In some cases, you may be able to get approval from a dental, vision insurer to extend COBRA another few months.

Update COBRA process to comply with the new [Extension of Certain Timeframes for Employee Benefit Plans](#) (i.e., Individuals now have more time to elect COBRA, more time to pay premiums during this COVID-19 “Outbreak Period”).

Make certain you are distributing the new [COBRA model notices](#) that contain expanded language for Medicare beneficiaries.

## Section IV: COVID-19 Absences, Mandated Paid Sick & Paid Family Leave

- Determine compliance obligations for COVID-19 mandated paid sick and paid family leave.
- Become familiar with options available to employees when they do not qualify for mandated FFCRA paid leave benefits but must stay home due to a COVID-19 issue – continue to pay them and use “Paycheck Protection Program” money if available, lay off and tell them to apply for unemployment?
- Draft and communicate policy, leave request forms, return to work protocol and self-certification process for EEs returning after illness. **HBI has sample policies and forms.**
- Monitor state and city paid leave laws for additional requirements that might apply. **HBI has state-by state guides for state paid leave requirements.**
- Determine employees subject to contribution “catch-up” upon return, establish payroll process for charging premiums owed. If certain employees are permanently laid off, recognize COBRA coverage cannot be withheld pending receipt of back premiums.

## Section V: General Wage & Hour Issues

- Determine whether returning exempt employees working in a modified position maintain exempt status.
- Remember the principle that exempt, salaried employees generally must receive their full salary in any week in which they perform work, with limited exceptions.
- Make certain that you are following state laws when communicating a reduction in wages to salaried employees. If there is no contract, in most states including PA, the employer may, with 24 hours advance written notice, change the salary and method of pay prospectively. No retroactive pay decrease is permissible.
- Carefully evaluate whether you have any state notice requirements when changing the classification of hourly to salaried.
- Determine whether you must pay hourly employees for COVID-19 screening time.