



COVID-19 and Employee Benefits Considerations

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The Office for Civil Rights, U.S. Department of Health and Human Services released a [bulletin](#) to remind covered entities that the privacy protections under the Health Insurance Portability and Accountability Act of 1996, et seq. (“HIPAA”) are “not set aside during an emergency” such as the COVID-19 pandemic.

Covered entities are health care providers, insurers, clearinghouses – and include employers who provide self-insured health care insurance plans, medical clinics, or act as intermediaries between the employee and a health care insurer.

HIPAA prevents a covered entity from disclosing a patient/insured’s COVID-19 status. However, HIPAA does allow disclosure necessary for treatment, public health activities, family and friends involved in a patient’s care, and to prevent a serious and imminent threat.

There may be a temptation to disclose someone’s COVID-19 status in order to assist with treatment, protect the public or co-workers, or prevent an outbreak. This temptation can be highly dangerous. It is critical to understand that these exceptions can be highly technical, and should not, under any circumstances, be made without obtaining the advice of counsel. HIPAA violations can result in significant fines and penalties, as well as expose both companies and their individual employees to state law privacy claims.

Even if you or your company are not ‘covered entities’ under HIPAA, you can still be exposed to liability for disclosing someone’s COVID-19 status under state privacy laws, the Americans with Disabilities Act, or otherwise. Speak with counsel first before making a disclosure.

The Internal Revenue Service has [announced](#) that high deductible health plans (“HDHPs”) may pay for COVID-19 testing and vaccinations (when available), as well as “all medical care service received and items purchased” for the treatment of COVID-19 before a plan participant satisfies the plan’s high deductible. The guidance is intended to allay concerns that HDHPs could jeopardize their qualified status by paying for COVID-19 tests and treatment below the deductible amount.

As employers institute temporary furloughs due to COVID-19, or otherwise have employees on extended leave because of school closings and quarantines, it is important to check health plan documents and certificates of coverage to determine how long employees who are not actively working may retain coverage under a group health plan. Some employees may lose their eligibility for group health coverage as an “active employee” and a COBRA notice must be sent. While self-insured health plans may choose to waive applicable eligibility provisions, plan administrators should consult their stop-loss carriers to make sure stop-loss carriers agree to cover claims related to participants who would otherwise be ineligible for coverage.

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The Wisler Pearlstine team of employment attorneys is ready to address your COVID-19 questions and concerns. Please contact us if you have concerns about the impact of COVID-19 in the workplace.

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