



COVID-19 Fast-Moving Legislative Changes Podcast Transcript

April 20, 2020

Paul Montanari 0:00

Welcome to Cigna's podcast series, designed to help our clients understand the latest information surrounding COVID-19. Cigna is providing resources and tools to help support our clients, customers and producers during this uncertain time. My name is Paul Montanari, and I'm the Cigna Group Insurance Vice President of Operations, and have been with Cigna for 13 years. I'm hosting this podcast from home where my family and I are first and foremost healthy and doing our best in this new norm. I'm happy to be here today, focusing this podcast on the topic of the fast-moving legislative environment, and how employers can remain compliant amidst evolving changes. We've received many questions and we know it can be confusing and hard to know what's correct and up to date.

Paul Montanari 0:50

Our special guest today is Jenny Merrithew, Product Strategy Senior Director. Jenny is Cigna Group Insurance's Solutions Lead for all our core products -- Disability, Life, Accident -- as well as today's hot topic, absence management. Focusing on the environment around us, as well as what's coming down the road, Jenny and her team set up Cigna to provide solutions that our clients, customers and producers need. So, Jenny, thank you for joining me today. Let's get started. Let's start with a broad question. How is Cigna managing all of these regulatory changes to support our clients?

Jenny Merrithew 1:29

Thank you, Paul, for having me today. Today's topic is so important here at Cigna because even more than ever, we have to constantly be scanning the regulatory environment, participate in industry groups, and leverage both our internal and external legal resources to stay on top of these rapidly changing regulations and all of the revisions to paid, unpaid leave, and then disability plans. We created a reference guide that outlines a lot of the federal and statutory leaves, state-paid sick leave and disability plan changes. It's posted at Cigna.com and our COVID-19 Employer Resource Center. And we'll continue to update it with the latest information. Obviously, there are many city, municipal, county orders that apply as well. However, we've tried to provide the laws and changes most impactful for the leaves that we manage daily.

Paul Montanari 2:29

Yeah, I saw that. The guide is an extremely helpful tool. This information is laid out state-by-state, and it's really easy to follow. Now, I believe New York is one of the first states to pass legislation in response to Coronavirus. Can you help us all understand the new law and how their disability leave and paid family leave plans are impacted?

Jenny Merrithew 2:51

Sure, Paul, and thank you for that question. You're correct. The New York legislature passed an emergency bill in March that requires employers to provide paid sick leave, and job protection for employees who are ordered quarantined and/or isolated due to an actual or suspected COVID-19 infection. Employees that are caring for someone under a quarantine or isolation order are also qualified for enhanced benefits. Employees working for companies with fewer than 100 workers are entitled to additional enriched benefits from their employer's insurance carrier.

Jenny Merrithew 3:30

Some of the key things to know are that the enriched benefits for disability and paid family leave will have a combined maximum of \$2,884.62 a week. Weekly benefit rates are in excess of the amounts previously provided under these programs. If employees can work from home, they are not entitled to these quarantine benefits. Employees must actually provide an official quarantine or isolation order issued by a public health official. A healthcare provider's direction to stay home does not, in and of itself, qualify employees for the expanded COVID-19 benefits.



Paul Montanari 4:12

Jenny, it's my understanding that some of the complexity of the law for the employee eligibility varies depending on the size of the employer's total employee population. Is that right?

Jenny Merrithew 4:24

Yes, you've got it, Paul, and it is kind of complicated. Here are some of the basics. Employers with 10 or fewer employees, and a net income of up to a million dollars based on their 2019 net income, must provide unpaid leave for the duration of the quarantine order, and enhanced disability and paid family leave can begin immediately.

Jenny Merrithew 4:50

Employers with 10 or fewer employees and a net income of more than a million dollars and all employers with 11 to 99 employees must provide at least five days of paid leave, and enhanced disability and paid family leave. Quarantine benefits may begin after the five days of paid sick leave.

Jenny Merrithew 5:14

Employers with more than 100 employees must provide 14 days of paid sick leave, and then the standard disability and/or paid family leave benefits can begin. It's important to note though, that these employees are not entitled to the enhanced disability and paid family leave benefit rates and would instead be paid at the traditional standard rates.

Jenny Merrithew 5:39

Important to note here is the new Federal Emergency Paid Sick Leave Act that requires employers under 500 lives and public employees to provide emergency paid leave for some of the same covered reasons.

Paul Montanari 5:56

Thanks for sharing all those important points. So, can an employee receive disability and paid family leave benefits at the same time?

Jenny Merrithew 6:05

Great question. Yes. Provided that you have fewer than 100 workers, an eligible employee can receive both benefits due to the quarantine of themselves or a family member. If the employee qualifies for both benefits, paid family leave benefits are paid first, and then disability benefits are paid up to the combined maximum.

Paul Montanari 6:30

Thanks, Jenny. This is great information and super helpful. Can you also help our listeners understand the new law passed in New Jersey regarding COVID-19?

Jenny Merrithew 6:39

Yes. Absolutely, Paul. New Jersey actually made it a little easier with the emergency legislation that was just actually passed but amended in the past few days. In essence, it modifies their Earned Sick Leave, Family Leave Act, temporary disability and family leave insurance benefits during epidemic-related emergencies like COVID-19.

Jenny Merrithew 7:01

During a state-declared emergency such as COVID-19, covered conditions have been altered to include taking care of a child due to the closure of a school or a place of care for a child by order of a public official due to an epidemic or other public health emergency. Or, where a mandatory quarantine order or a recommendation from a healthcare provider prompts an employee to be unable to work, or an employee cannot work because they're caring for someone who has been quarantined.

Jenny Merrithew 7:38



In the situation of someone's own illness, the usual seven-day benefit waiting period for disability insurance payments to begin has been waived for COVID-19-related conditions. But it's important to note that the rate of pay at which the employees are going to be paid remains the same.

Jenny Merrithew 7:55

As a reminder, if a disability is due to COVID-19, unlike New York, the New Jersey State Disability Benefits are payable for periods of quarantine when certified by a healthcare provider. They're possibly more revisions to come. And so, we'd ask you to check back frequently to our website at Cigna.com.

Paul Montanari 8:18

Okay, thanks for pointing that out, Jenny. Are there other state changes or updates coming that our listeners should be aware of?

Jenny Merrithew 8:25

Yes. We're seeing some trends where a lot of states are waiving waiting periods, updating the definition of a serious health condition, and addressing scenarios where employees are unable to work because they have to care for a child whose school or daycare centers are closed. And as you know, states aren't the only ones making changes. The federal government has passed legislation to support employees as the pandemic continues to impact businesses and families across the nation.

Paul Montanari 8:55

That's a great point, Jenny. Speaking to the federal government, can you tell us a little bit more about the new Families First Coronavirus Response Act. Or I guess is what we've now shrunk down and just call FFCRA. What are the implications of it for our employers?

Jenny Merrithew 9:12

While there are many components to the FFCRA, the one impacting our industry the most is an emergency expansion to the FMLA, and the Emergency Paid Sick Leave Act, or the EPSLA. Both apply to private employers with fewer than 500 employees and all public agencies as defined under the FMLA. But they do slightly different things. The EPSLA requires covered employers to provide paid sick leave to employees who are unable to work or telework, for certain reasons related to the COVID-19 pandemic.

Jenny Merrithew 9:51

The FFCRA expansion to the FMLA expands FMLA-covered leave reasons to include the leave reason needed to care for a child under the age of 18, if the child's school or place of care, or the childcare provider, is unable to be open due to COVID-19. Additionally, while the first two weeks of FFCRA FMLA leave can be unpaid, after that, the FMLA leave for this covered reason must be paid.

Jenny Merrithew 10:29

As most listeners probably know, regular FMLA leave has been, and remains, unpaid. The EPSLA and the emergency FMLA expansion is effective from April 1st of 2020 and expires on December 31st of 2020. Any paid leave taken prior to April 1st by an employee would be considered a voluntary employer-provided leave, and would not decrease the employee's entitlement to leave under the FFCRA or cut against their EPSLA entitlements.

Jenny Merrithew 11:05

It's important to note that any employee, including one that has been employed for a single day, is eligible for EPSLA. For the extended FMLA reason employees are eligible after only 30 days of employment, which is much shorter than the eligibility requirement for the existing unpaid FMLA, which is 1,250 hours and a year of service.

Paul Montanari 11:32



Wow, that's a lot there, Jenny. And I'm sure there's much more sitting behind this. Can you go a little bit deeper for me to help me understand a couple of other key points?

Jenny Merrithew 11:41

Absolutely, Paul. As outlined before, there are two separate parts that are important to understand. So, let me walk through them. First, there's only one way to qualify for the expanded paid FMLA and that is if an employee can't work or telework because they have to care for a minor child whose school or place of care has been closed, or if the childcare provider is unable to provide services due to the COVID-19 public health emergency. Employees are eligible for 12 weeks of protection, but that is not an additional period of time. So, as an example, if they had previously taken six weeks of FMLA, provided they qualify under this additional reason, they would be entitled to an additional six weeks, of which the first 10 days of emergency FMLA is unpaid. After that, employees must be compensated at two thirds of their regular pay, which is capped at \$200 per day, and a maximum of \$10,000.

Jenny Merrithew 12:47

During those 10 days of unpaid FMLA, the employee may be paid from the newly-enacted short term Emergency Paid Sick Leave Act, or other available accrued paid leaves, such as vacation or personal time, if they have that available. It's important to note that there is an exemption for first responders and healthcare workers, namely because they so are so essential right now from a public health perspective.

Jenny Merrithew 13:18

The second part of the Act is the Emergency Paid Sick leave or EPSLA. In essence, it requires employers to provide an emergency short duration of pay in the event of workers impacted by COVID-19 for a few reasons that include quarantine, COVID-19 illness, caring for a family member who's under quarantine or who has been diagnosed with COVID-19, or caring for a child whose school or place of daycare has been closed. The last reason is the same as the expanded FMLA leave.

Jenny Merrithew 13:53

There are six covered situations in which payment is required to be made. The amount that employees are entitled to receive depends on why they were out, but ranges from a cap of \$200 to \$511 a day. For full time workers, you get 80 hours of paid sick leave, and part-time workers get prorated based on the number of hours they've worked. For Group Disability plans that include employer-paid sick leave as an offset, these payments would traditionally be offset under those plans.

Paul Montanari 14:29

Thanks, Jenny. Really helpful. I want to go back to a comment you made a couple minutes ago and make sure I understand this right. So, while the original FMLA applies to private employers with 50 or more employees, this expanded emergency FMLA under the new FFCRA applies to private employers that have also less than 500 employees, placing a new ceiling on who qualifies. Is that right?

Jenny Merrithew 14:57

Yep. And as you can imagine, it's the small businesses that are truly hit hardest right now. Obviously, when laws apply in some situations and not in others, things can get a little complicated. But generally speaking, this particular law is intended to protect small businesses and even those typically smaller than what the FMLA traditionally covers.

Paul Montanari 15:20

So, what type of help is available for employers required to comply? It sounds like the paid leave portion of the FFCRA could be really impactful to them from a financial perspective.

Jenny Merrithew 15:32

While we would obviously encourage consultation with an employer's own advisors and legal counsel. employers will receive payroll tax credits dollar-for-dollar to cover the cost of these mandated FFCRA and



FMLA paid expansion programs. In addition, on March 27th of this year, President Trump signed the Coronavirus Aid, Relief and Economic Security or otherwise known as CARES Act, the third major piece of legislation passed to address the COVID-19 outbreak. This legislation, which contains more than \$2 trillion of spending, has a number of provisions that will impact individuals and small businesses. This ranges from emergency paid sick leave acts city-by-city and state-by-state. And there's lots of stimulus tax credits, small business loans, and employer relief already provided or contemplated in additional bills.

Paul Montanari 16:31

I'm sure that'll be a welcome relief for many. What about for larger employers? Or those that have smaller entities? Can they choose to provide some of these expanded FMLA program benefits to their employees?

Jenny Merrithew 16:44

Employers should not really designate leave as FMLA if it doesn't qualify for FMLA because an employee is entitled to 12 weeks of FMLA in any 12-month period, and this may interfere with the employee's right to take those 12 weeks due to other qualifying reasons. Typically, employers with more than 500 workers are exempt from the law. Obviously, there are unique circumstances and employers should seek their own legal and tax advice to determine whether they are covered under the FFCRA, under the integrated or joint-employer tests, among other things. The United States Department of Labor has issued additional guidance, and it can be found on their website.

Paul Montanari 17:29

Thanks, Jenny. With all the changes taking place that you've already mentioned, would you expect amendments or other modifications to these benefits to continue, such as payment or protection for quarantine, maybe waiving waiting periods or for covering childcare?

Jenny Merrithew 17:45

Well, we're in the midst of this pandemic. And while I believe the largest immediate changes are behind us, extensions or adjustments are possible, depending on how long this will last. Paid leave legislation, generally speaking, has been an incredibly hot topic for the past several years. A pandemic like this continues to bring to the forefront a few things. It highlights the continued focus on a conversation we've been having about financial health. There's a ton of data already out there about Americans and whether or not they have savings in the event of an emergency like this, or a crisis in which they have to pay medical bills or typical living costs. So, making sure as many Americans as possible are in tune with their financial health in a crisis like this can help. This epidemic is likely going to continue the robust conversation about paid leave, generally speaking, and potentially speed up a formal paid federal leave program in the long term. I also think this highlights how resilient and quick many employers can respond in a crisis. Think about the vast amount of employees that had to start working from home - whether they are able to be productive - and generally contemplating that as an alternative, where needed in the future.

Paul Montanari 19:07

Yeah, it'll be interesting for sure to see what changes we've made as a result of the COVID-19 pandemic. So, if you could summarize for me, how is Cigna positioned to help employers through all of these changes?

Jenny Merrithew 19:22

Great question, Paul. And as I mentioned previously, we have developed a location where we are providing answers to the most frequently asked questions and information that we referenced here today. You can find that at Cigna.com in the COVID-19 Employer Resource Center. In addition, and as I mentioned, we have vast resources available to customers each and every day. Our My Secure Advantage Program, which is a full service financial wellness program, includes 30 days of prepaid expert money coaching for all types of financial planning, which can be especially critical during times like these.

Jenny Merrithew 20:05



We also realized as the COVID-19 situation continues to change, this may be stressful for some employees or their family members. Cigna has opened up a helpline at 855-287-8400 that is available 24/7 for employees and their family members to speak with qualified clinicians about how to cope with anxiety, stress or other issues related to the impact of COVID-19.

Paul Montanari 20:37

Well, Jenny, it's been wonderful speaking with you today and I really want to thank you for the time that you've put into this. Your knowledge and insights have been really helpful, and I believe will absolutely position our clients and brokers to better understand all of the fast-moving legislative changes as a result of COVID-19.

Jenny Merrithew 20:56

Thanks for having me today, Paul. I hope this has helped our listeners so that they can navigate the changing legislative landscape related to COVID-19.

Paul Montanari 21:06

Thanks, everybody, for listening. This is all the time we have for today, but stay tuned for future podcasts on other very important topics.

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