



# Legislative Update - California

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# President Trump Signs Executive Order on Pandemic Relief

President Donald Trump recently [signed an executive order](#) and [three memorandums](#) to address pandemic relief in response to the ongoing impact of the coronavirus (COVID-19) pandemic. After negotiations for a relief package between the White House and lawmakers collapsed, the executive actions extend pandemic unemployment benefits, student loan payment deferrals, eviction protections for renters and payroll tax cuts.

- **Actions Extend Unemployment Benefits**
- **Student Loan Payments, Eviction Protections, Payroll Tax Cuts Addressed and Potential Challenges**
- **Stimulus Relief Efforts**

# Actions Extend Unemployment Benefits

- One of the memorandums signed extends [federal unemployment benefits](#). This action creates a new benefit of \$400 per week into December—which is a decrease from the previous unemployment insurance of \$600 per week. The \$600 amount received approval in March and was scheduled to expire at the end of July. According to Trump, states will be responsible for covering 25% of costs, or \$100 per week, per individual.
- Much of the workforce affected by COVID-19 has been reliant on unemployment benefits, which were scheduled to expire at the end of July. Congress and the White House had been negotiating a broader pandemic aid package, with unemployment benefits discussed as a core component. In the absence of an agreement, these actions were taken by Trump to address an extension for pandemic relief programs.

# Student Loan Payments, Eviction Protections, Payroll Tax Cuts Addressed and Potential Challenges

- Included in the series of executive actions was an executive order addressing [eviction protections](#) for renters. The executive order notes the impact that COVID-19 has had on housing, and extends the federal moratorium through 2020, offering protections for renters. This moratorium had also expired in late July. One of the memorandums issued addresses student loan [payment deferrals](#). Payments on federal loans were suspended through September, and Trump's memorandum extends payments through the end of 2020. Lastly, Trump issued a memorandum deferring [payroll tax obligations](#) through 2020, directing the Treasury Department to allow employers to defer payments for the employee portions of specific payroll taxes.
- Generally, federal funding is controlled by Congress, leading to potential challenges for these executive actions.

# Stimulus Relief Efforts

- These executive actions did not address stimulus checks. The U.S. Senate has brought bills forward with stimulus relief as part of a broader pandemic relief package. Discussions regarding stimulus checks may extend into August and September.

# U.S. District Court Overturns Some FFCRA Rules

In a case brought by the New York attorney general, a New York federal district court has vacated portions of [regulations](#) issued by the U.S. Department of Labor (DOL) under the Families First Coronavirus Response Act (FFCRA). As yet, it is unknown whether the DOL will appeal the decision, whether other states will bring similar court actions or, if they do, whether courts in other jurisdictions would reach the same result. Employers are advised to stay updated on developments in these areas to ensure their FFCRA leave policies comply with the law.

- The [opinion](#) struck down the following provisions in the FFCRA leave rules:
  - The requirement that an employer have work available for an employee taking leave;
  - The definition of health care providers who may be denied leave;
  - The requirement that employers consent to intermittent leave; and
  - The requirement that employees provide documentation for leave before taking leave.
- The judge in the case noted that the work availability requirement could “considerably narrow the statute’s potential scope” due to the decrease in work immediately available for employees who otherwise remain formally employed, as a result of the COVID-19 emergency.
- **FFCRA Paid Leave**
  - The FFCRA provides paid leave for specified coronavirus (COVID-19)-related reasons. Two types of leave are required under the act: emergency paid sick leave of up to 80 hours, and up to 12 weeks of partially compensated emergency family medical leave under an expansion to the Family and Medical Leave Act.

# U.S. District Court Overturns Some FFCRA Rules

The decision invalidated the following FFCRA Final Rule provisions:

- **1. Work-Availability Requirement:** The prerequisite for taking FFCRA leave is that the employer has work available for the employee to perform. If the employee is not scheduled to work whether it's due to a furlough, business closure or otherwise, there is [no work schedule from which to take leave](#).
  - The court determined that the DOL could not require that employees actually be working in order to take FFCRA leave.
  - The final rule required employees provide their employers with supporting documentation prior to taking FFCRA leave. The court struck down the advanced documentation requirement; employers should not require the submission of documentation as a precondition to taking FFCRA leave.
  - Revised DOL guidance as to the timing of such documentation is anticipated.
- **2. Health Care Provider:** The FFCRA statutory language permits employers to exclude health care providers from taking FFCRA leave. Here, the DOL adopted a broad definition of health care providers that includes anyone employed by a hospital, doctor's office, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, any facility that performs laboratory or anyone employed by an entity that contracts with a Medical Institution to provide services or maintain facility operations.
  - While the case does not define who constitutes a "health care provider" the decision makes it clear who is not, i.e., non-medical personnel are not exempted from the FFCRA.
- **3. Intermittent Leave:** The Final Rule regarding intermittent leave provides that workers can take less than their full leave allotment only when they don't pose an infection risk, and only when the worker and their employer agree to intermittent leave. This would result in a worker who has COVID-19 symptoms and is seeking a diagnosis (essentially posing an infection risk) to be unable to take intermittent leave, while a worker who has to care for their child (and who does not pose an infection risk) could, with permission.
  - In those situations where intermittent FFCRA leave is generally permitted under the regulations, employers must permit employees to take such leave intermittently. The court ruled there was no rationale for requiring employer permission for intermittent leave for qualifying conditions that do not pose an infection risk.

*State of New York v. U.S. Department of Labor, et al., August 3, 2020* <https://www.fmlainsights.com/wp-content/uploads/sites/813/2020/08/State-of-NY-v.-USDOL.pdf>

# Latest News

## Biden Chooses Running Mate

- Sen. [Kamala Harris](#) on Tuesday became the first Black and South Asian American woman chosen for national office by a major political party, when former Vice President [Joe Biden](#) [named the moderate former prosecutor](#) to be his running mate this fall. In California, she was the first woman, and first Black woman, to serve as the state's top law enforcement official. She is the first Black woman from California to serve in the US Senate, and second from any state, after Illinois' Carol Moseley Braun. Harris is also the first person of Indian descent to appear on a presidential ticket. And if Biden defeats President Donald Trump in November, Harris would become the first woman in US history to serve as vice president. Harris follows Democrat Geraldine Ferraro, in 1984, and Republican Sarah Palin, in 2008, as only the third woman to be chosen as the running mate on a presidential ticket. Both of those campaigns lost to icons of the opposing parties -- Ronald Reagan and Barack Obama, respectively.

# Latest News

- President Trump signed two executive orders this week:
  - [one](#) permanently expanding certain telehealth services as well as setting up a potential payment model aimed at providing hospitals in rural communities a more consistent stream of Medicare payments, and
  - [the other](#) instructing federal agencies to purchase certain drugs and medical supplies from American manufacturers.
- President Donald Trump said the federal government has reached an agreement with Moderna Inc. to acquire 100 million doses of its experimental COVID-19 vaccine in a deal worth \$1.5 billion. Moderna will sell the vaccine, which it has already received \$955 million in government funding to test, for about \$15 per dose and \$30 for a two-dose regimen
- The World Health Organization released guidance recommending that dental patients postpone their routine oral health checkups, dental cleanings and other preventive care in order to curb the spread of COVID-19 at dental offices. The WHO said "frequent exposure to saliva, blood, and other body fluids" puts dental workers at risk of contracting COVID-19, though the organization noted that urgent dental care and emergencies are exceptions to its guidance.

# California Legislative Updates

## *San Francisco*

On July 17, 2020, Mayor London Breed signed the Healthy Buildings Ordinance creating requirements for cleaning and employee training. Large non-city-owned commercial office buildings and tourist hotels are required to provide: Personal Protective Equipment (PPE) and testing for COVID-19 (at no cost to employees).

## *Hermosa Beach*

On July 28, 2020, the City Council voted to enforce face-covering mandates with a fine of \$100 for a first offense, \$200 for the second offense and \$350 for each additional offense.

## *Contra Costa County*

On July 28, 2020, the Board of Supervisors implemented fines for businesses up to \$1000 for violating face covering laws or not adhering to social distancing. In addition, individuals not abiding by the face covering law face tickets of \$100 for their first violation, \$200 for their second, and \$500 for any after that. Enforcement officers also have the discretion to issue a “notice of violation.”

## *Workplace Safety*

Effective September 1, 2020, a gun violence restraining order may be filed against an employee that poses a significant danger by having a gun. An employer, co-worker or school employee may file a court petition.

## *Alameda County*

On July 28, 2020, County Supervisors extended the moratorium on evictions until September 30, 2020.

# Going Back To The Office?

## California Specific reopen checklist

# POST CORONAVIRUS RETURN TO WORK CLEANING CHECKLIST

As employers prepare return to work plans, workplace cleanliness is a topic on the minds of many. In the wake of the coronavirus disease (COVID-19) pandemic, cleaning practices play a crucial role when reopening workplaces. The Center for Disease Control and Prevention (CDC), and the Environmental Protection Agency (EPA) outline best practices for employers regarding routine cleanings of a workplace to best prevent the spread of COVID-19. To get started, employers can consider topics on this checklist when planning or updating cleaning routines.

Routine Cleaning Practices	YES	NO	N/A
Are routine cleanings conducted frequently?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do cleaning routines begin by cleaning with soap and water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do cleaning practices use disinfectants listed by the EPA to use against SARS-CoV-2, the virus that causes COVID-19?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are all multi-touch surfaces such as doorknobs part of routine cleanings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are electronic devices being routinely cleaned according to manufacturer's instructions or with alcohol-based cleaning solutions with at least 70% alcohol?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are soft surfaces such as carpeted floor, rugs and drapes being routinely cleaned with soap, water and appropriate cleaners designated by manufacturer's recommendations or an EPA-recommended disinfectant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are soft laundry items, such as towels, linens and work-related clothing being routinely cleaned using manufacturers' instructions, with the warmest possible water setting?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are high-touch outdoor surfaces such as bars or railings included in cleaning routines?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If employees are using face coverings or masks, is a cleaning procedure in place?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Workplace Equipment and Supplies	YES	NO	N/A
Are HEPA air filters operational and well-maintained?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is hand sanitizer provided to employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are sanitizer wipes provided to employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are cleaning supplies stocked, including EPA-recommended disinfectants?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*This checklist is merely a guideline. It is neither meant to be exhaustive nor meant to be construed as legal advice. It does not address all potential compliance issues with federal, state or local standards. Consult your licensed representative at MyHRConcierge Agency or legal counsel to address possible compliance requirements. © 2020 Zynwave, Inc. All rights reserved.*

# Open Enrollment, Everything is Different for 2020

Open enrollment following the COVID-19 pandemic will be unlike any other in recent memory. Many organizations are still trying to recover from extended closures and maintain safe working environments—open enrollment is the last thing on their minds. Yet, procrastinating on enrollment planning can actually cause more issues than it solves.

## Open Enrollment Trends to Watch

- Expect major disruptions to open enrollment this year. From an operational standpoint, COVID-19 might surge in the fall and force states to re-close businesses. From a personnel standpoint, employees may not be comfortable returning if they feel unsafe in the workplace. These are two worst-case scenarios, but they exemplify the multitude of potential disruptors stemming from COVID-19 this enrollment period.
- ***Virtual Open Enrollments***
  - In fact, many organizations are expected to hold entirely virtual open enrollments due to health-related fears. A virtual enrollment process typically includes an online enrollment platform for selecting benefits, remote meetings between employees and HR, and downloadable benefits resources.
  - While virtual enrollment will almost certainly be the new standard, it's not necessarily the solution for everyone. Employees' technology skill levels, language barriers and past expectations will all influence what open enrollment looks like across different organizations. It's up to individual employers to decide how to pair virtual enrollment solutions with other resources to meet the unique needs of their employees and the organization as a whole.

# Open Enrollment, Everything is Different for 2020

## *Preparation for Open Enrollment*

- Preparation will be the key factor for a successful open enrollment this year. Employers should talk to stakeholders early and prepare to answer any employee questions. Employees will need to know exactly how they will be enrolling, when enrollment is happening and where they can find help. Solidifying this information early will help keep everyone on the same page.

## *Employee Outreach*

- Employers should consider reaching out to employees to determine what kind of enrollment process will work best for them. However, it should be clear that these suggestions must fit in with larger workplace operations. For instance, in-person meetings may not be an option.

# ACA Affordability Contribution Rate Set

## ACA Affordability Contribution Rate Set at 9.83% for 2021

- Under the Affordable Care Act's employer shared responsibility (pay or play) rules, applicable large employers—generally those who have 50 or more full-time employees (including full-time equivalent employees)—may be subject to a penalty if they do not offer affordable health insurance coverage that provides minimum value to their full-time employees and their dependents.

For plan years beginning in 2021, the Internal Revenue Service has [announced](#) that coverage will generally be considered affordable if the employee's required contribution for the lowest-cost self-only health plan offered is 9.83% or less of his or her household income for the taxable year. For plan years beginning in 2020, the applicable percentage is 9.78%.

Given that employers are unlikely to know an employee's household income, they may use a number of safe harbors to determine affordability, including reliance on Form W-2 wages.

# Draft Forms 1094-C and 1095-C for 2020 ACA Reporting Released

## 2019 ACA Reporting is Due in Early 2020

The IRS has released draft 2020 versions of Forms [1094-C](#) and [1095-C](#) that employers will use in early 2021 to report on the group health insurance coverage they offered during the 2020 calendar year. Draft instructions related to these forms for the 2020 calendar year have not yet been released. In addition, draft 2020 versions of Forms 1094-B and 1095-B (and related instructions) are not available at this time.

- The draft 2020 Forms 1094-C and 1095-C are substantially similar to the final 2019 versions. However, the draft Form 1095-C includes:
  - **Additional codes in Code Series 1** related to offers of individual coverage health reimbursement arrangements (ICHRA); and
  - **A new section to enter the zip code** used to determine affordability for an ICHRA, if one was offered to the employee.
- Applicable Large Employers (ALE), organizations that averaged 50 or more full-time employees (or equivalents) during the preceding calendar year, are required to follow these deadlines:

■ Form 1095 provided to Employees	January 31
■ Paper Filing to the IRS	February 28
■ Electronic Filings to the IRS	March 31

# Draft 1094/1095 - The Problem

- 1A. Minimum essential coverage providing minimum value offered to you with an employee required contribution for self-only coverage equal to or less than 9.5% (as adjusted) of the 48 contiguous states single federal poverty line and minimum essential coverage offered to your spouse and dependent(s) (referred to here as a Qualifying Offer). This code may be used to report for specific months for which a Qualifying Offer was made, even if you did not receive a Qualifying Offer for all 12 months of the calendar year. For information on the adjustment of the 9.5%, visit IRS.gov.
- 1B. Minimum essential coverage providing minimum value offered to you and minimum essential coverage NOT offered to your spouse or dependent(s).
- 1C. Minimum essential coverage providing minimum value offered to you and minimum essential coverage offered to your dependent(s) but NOT your spouse.
- 1D. Minimum essential coverage providing minimum value offered to you and minimum essential coverage offered to your spouse but NOT your dependent(s).
- 1E. Minimum essential coverage providing minimum value offered to you and minimum essential coverage offered to your dependent(s) and spouse.
- 1F. Minimum essential coverage NOT providing minimum value offered to you, or you and your spouse or dependent(s), or you, your spouse, and dependent(s).
- 1G. You were NOT a full-time employee for any month of the calendar year but were enrolled in selfinsured employer-sponsored coverage for one or more months of the calendar year. This code will be entered in the All 12 Months box or in the separate monthly boxes for all 12 calendar months on line 14.
- 1H. No offer of coverage (you were NOT offered any health coverage or you were offered coverage that is NOT minimum essential coverage).
- 1I. Reserved for future use.

- 1J. Minimum essential coverage providing minimum value offered to you; minimum essential coverage conditionally offered to your spouse; and minimum essential coverage NOT offered to your dependent(s).
- 1K. Minimum essential coverage providing minimum value offered to you; minimum essential coverage conditionally offered to your spouse; and minimum essential coverage offered to your dependent(s).
- 1L. Individual coverage health reimbursement arrangement (HRA) offered to you only with affordability determined by using employee's primary residence location ZIP Code.
- 1M. Individual coverage HRA offered to you and dependent(s) (not spouse) with affordability determined by using employee's primary residence location ZIP Code.
- 1N. Individual coverage HRA offered to you, spouse and dependent(s) with affordability determined by using employee's primary residence location ZIP Code.

- 1O. Individual coverage HRA offered to you only using the employee's primary employment site ZIP Code affordability safe harbor.
- 1P. Individual coverage HRA offered to you and dependent(s) (not spouse) using the employee's primary employment site ZIP Code affordability safe harbor.
- 1Q. Individual coverage HRA offered to you, spouse and dependent(s) using the employee's primary employment site ZIP Code affordability safe harbor.
- 1R. Individual coverage HRA that is NOT affordable offered to you; employee and spouse or dependent(s); or employee, spouse, and dependents.
- 1S. Individual coverage HRA offered to an individual who was not a full-time employee.
- 1T. Reserved for future use.
- 1U. Reserved for future use.
- 1V. Reserved for future use.
- 1W. Reserved for future use.
- 1X. Reserved for future use.
- 1Y. Reserved for future use.
- 1Z. Reserved for future use.

# Employer-Provided Health Insurance Offer and Coverage

▶ Do not attach to your tax return. Keep for your records.  
▶ Go to [www.irs.gov/Form1095C](http://www.irs.gov/Form1095C) for instructions and the latest information.

VOID

CORRECTED

OMB No. 1545-2251

**2020**

## Part I Employee

## Applicable Large Employer Member (Employer)

1 Name of employee (first name, middle initial, last name)		2 Social security number (SSN)		7 Name of employer			8 Employer identification number (EIN)		
3 Street address (including apartment no.)				9 Street address (including room or suite no.)			10 Contact telephone number		
4 City or town		5 State or province	6 Country and ZIP or foreign postal code		11 City or town		12 State or province	13 Country and ZIP or foreign postal code	

## Part II Employee Offer of Coverage

## Employee's Age on January 1

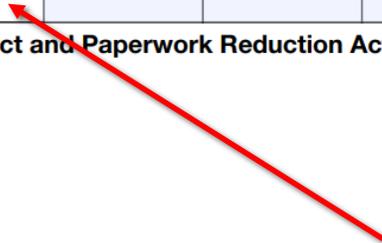
## Plan Start Month (enter 2-digit number):

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)													
17 ZIP Code													

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form **1095-C** (2020)



# Guidance on Premium Refunds from Carriers

Recently, we have seen insurance carriers across the country notifying employers that they will be (or have already) receiving premium credits. This is because of reduced utilization of benefits due to COVID-19 stay at home or quarantine orders issued by a local, state, or federal agency.

These premium credits are not to be confused with Medical Loss Ratio (MLR) rebates, but employers are asking how to use or distribute these credits. Like the MLR rebates, a determination must be made as to whether these credits are “plan assets” under ERISA.

The plan document will usually determine whether these types of rebates or credits are plan assets. If the plan documents are unclear, the Department of Labor (DOL) looks at how premiums are funded. Simply said, they look at the proportional ratio of contributions made by both the employer and the employees. Employee contributions to an ERISA plan are considered plan assets. So, in a situation where employees pay all or part of the premiums, the employer cannot profit from those payments.

The premium credits are a bit easier to deal with because no cash is being sent to the employer. The credit is being applied towards future premiums due. So, in order to make sure that the employees benefit from that credit the employer can suspend employee payroll deductions and apply the credit until exhausted. If the credit is not enough to completely suspend the contributions, then payroll deductions can continue making sure all credit amounts are applied to premiums. Employer contributions can also be suspended until their portion of the credit is used.

- If the carrier issues a refund to the employer and it is determined that employee contributions are a plan asset, a distribution method back to those employees needs to be put in place. That can take the form of:
  - A benefit enhancement to the plan
  - A premium reduction (as discussed above)
  - A refund back to the plan participants

Keep in mind, unintentional mishandling of plan assets is prohibited under ERISA and could possibly lead to civil or criminal liability.

# Resources

## ACA Hotline



-  Call **1.844.5.ACA.411\***
-  Email **ACA411@benefitmall.com**
-  Visit **www.healthcareexchange.com**
-  Tweet **@HCEExchange**

\*To access the ACA hotline, please visit [www.benefitmall.com/ACA411](http://www.benefitmall.com/ACA411) to accept the hotline terms and conditions. By accepting the terms and conditions, you will receive access to the toll free ACA hotline.

## What is the Employment Practice Helpline?

Almost every employer at one time or another is confronted with a difficult situation involving its employees. The current COVID-19 emergency has heightened these situations. Consulting with competent legal counsel or getting strategy tips from counsel can often make or break a situation. Unfortunately, some employers are reluctant to obtain such advice out of fear of the initial monetary cost.

The Employment Practice Helpline is a toll-free advice line and dedicated email address which gives brokers and their clients access to some of the country's most prominent labor and employment attorneys who will provide guidance through the most effective means to resolving complicated employment issues such as:

- Family Medical Leave
- EEOC Charges of Discrimination
- Wage and Hour Compliance
- ERISA
- COBRA
- Terminations/Reductions-In-Force
- Disciplining Employees
- Employee Benefits
- Employment Related Concerns
- And more!

## How do my clients use the Employment Practices Helpline?

Once the broker has completed the [enrollment form](#) and emailed it to FordHarrison, they should notify their client that they have access to the helpline and they may use it at their leisure by calling the toll-free number or utilizing the email address below. This is legal advice being offered, providing attorney/client privilege, so the communication must be direct to the client rather than through the broker.

**(855) 769-6955**

or

**[benefitmallhelpline@fordharrison.com](mailto:benefitmallhelpline@fordharrison.com)**



# Questions?

Please use the chat box and I will do my best to answer your questions