

# Q & A

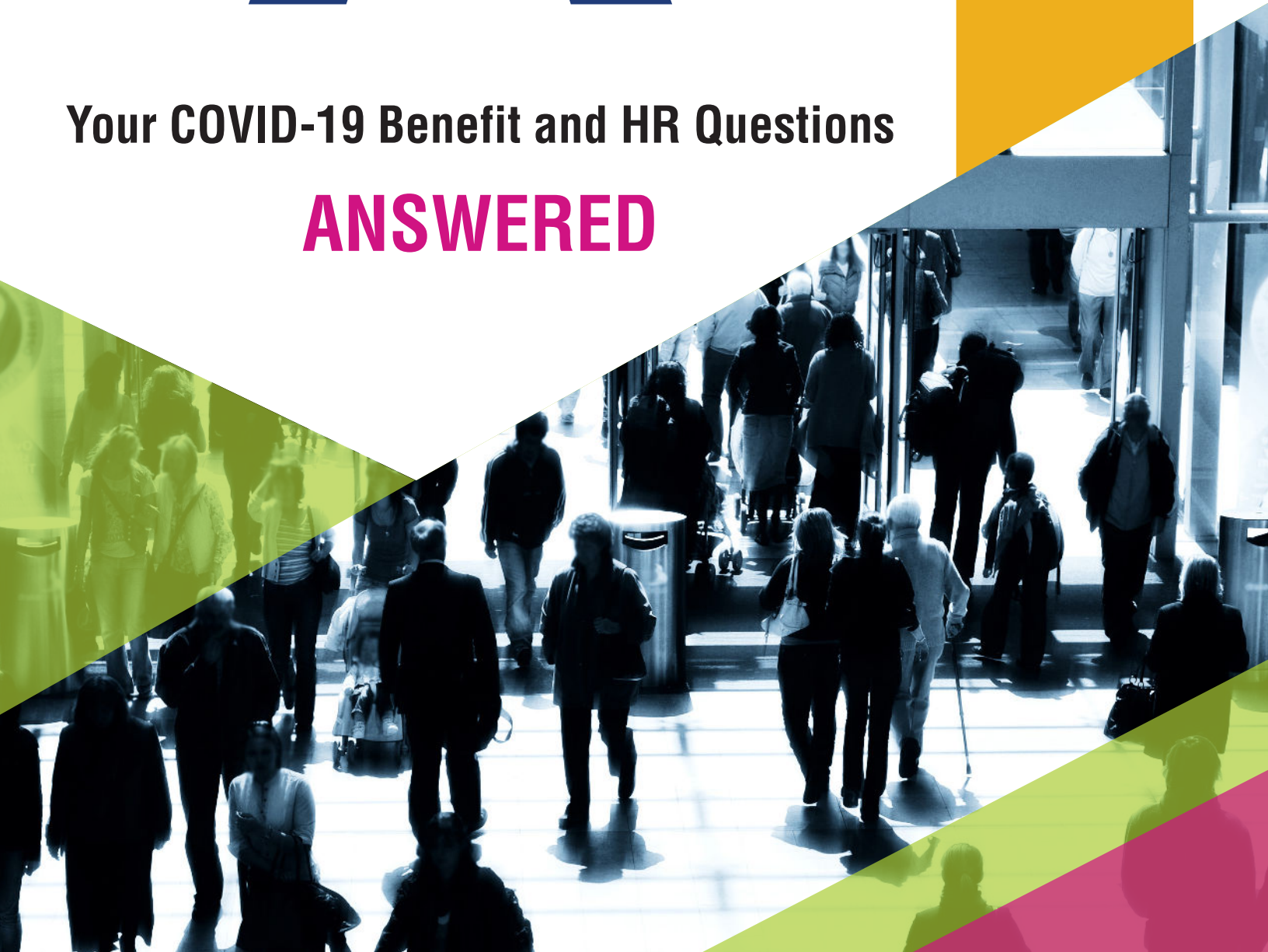
## Your COVID-19 Benefit and HR Questions **ANSWERED**



[psafinancial.com](https://psafinancial.com)



800.677.7887



Like you, we're closely monitoring the impact of the COVID-19 virus; we are putting a great focus on managing risk by following the guidance offered by state and federal health officials. While this global pandemic is impacting our businesses, families, and communities, we are here as your partner through this time.

PSA has hundreds of clients who are all asking questions. In response to this rapidly changing, unprecedented health threat, we have put together this Q&A resource to help you.

© PSA Insurance and Financial Services. This FAQ provides general information for your reference. It is not intended to provide legal or tax advice and should not be relied on as such. Please see your benefits consultant to review your specific situation. The information included in this FAQ is as of 3/30/2020 and is subject to change. This list is not comprehensive (contact your PSA team for additional guidance).

# EMPLOYEE BENEFITS

Health Care  
Doctor  
Hospital  
Pharmacist  
Nurse  
Dentist  
First Aid  
First Aid

MEDICAL

## **Q IS A GROUP HEALTH PLAN REQUIRED TO PROVIDE CERTAIN COVID-19 DIAGNOSTIC SERVICES FOR FREE?**

**A** Yes. Under the Families First Coronavirus Relief Act (FFCRA), all group health plans must provide coverage without any cost-sharing (deductible, copay, coinsurance) for diagnostic procedures for the detection of COVID-19 and any visit to a health care provider or facility that results in an order for a COVID-19 diagnostic procedure. This includes office visit, urgent care, emergency room, and telehealth.

## **Q IF A QUALIFIED HIGH DEDUCTIBLE HEALTH PLAN IS PROVIDING COVERAGE OF TESTING FOR COVID-19 WITHOUT BEING SUBJECT ANY COST-SHARING, IS AN INDIVIDUAL STILL ELIGIBLE TO MAKE CONTRIBUTIONS TO A HEALTH SAVINGS ACCOUNT?**

**A** Yes. In Notice 2020-15, the IRS stated that until further guidance is issued, a health plan that otherwise satisfies the requirements to be a qualified high deductible health plan will not fail to be a QHDHP merely because the health plan provides health benefits associated with testing for COVID-19 without a deductible, or with a deductible below the minimum deductible (self only or family) for a QHDHP. Therefore, an individual covered by the QHDHP can make tax-favored contributions to an HSA.

In addition, the Coronavirus Aid, Relief, and Economic Security Act (CARES) allows a qualified high deductible health plan to provide all telehealth services (including services unrelated to COVID-19) without a deductible or with a deductible below the minimum deductible without negatively impacting HSA eligibility. This telehealth expansion applies to plan years beginning on or before December 31, 2021. While this change may be automatic in fully insured group health plans, any self-funded group health plan must be amended if it intends to make this benefit change.

## **Q IF A QUALIFIED HIGH DEDUCTIBLE HEALTH PLAN IS PROVIDING FREE TREATMENT FOR COVID-19, INCLUDING INPATIENT CARE, IS AN INDIVIDUAL STILL ELIGIBLE TO MAKE CONTRIBUTIONS TO A HEALTH SAVINGS ACCOUNT?**

**A** Yes. IRS Notice 2020-15 also stated that any health plan which provides for treatment of COVID-19 without imposing the plan's deductible (or imposes a deductible at a level below the HDHP required deductible levels) will not fail to be a qualified high deductible health plan. As such, individuals will still be eligible to contribute to a Health Savings Account. There are some health insurance carriers that have stated that treatment for COVID-19 will be provided at no cost to covered individuals in certain cases. While this change may be automatic in fully insured group health plans with these carriers, any self-funded group health plan must be amended if it intends to make this benefit change.

## **Q IF AN EMPLOYER IMPLEMENTS FURLOUGHS, TEMPORARY LAYOFFS OR HOURS REDUCTION, SHOULD COBRA BE OFFERED?**

**A** It depends. Some health insurance carriers and stop loss carriers are permitting employees who are not working the required number of hours to remain covered for some stated period of time. If an employer wishes to continue to subsidize health coverage at the same level as provided to current employees, then the carrier continuation of coverage is an option. COBRA would then be offered at the end of extended coverage period (if the employee is still not working the required number of hours) or if employment is terminated.

However, COBRA should always be offered, using reduction in hours as the qualifying event, when an employee that is furloughed will be asked to pay more than what they were paying as an active employee.

Carrier coverage continuation is also an option for small employers in Maryland who have reduced the scheduled hours of their employees or have employees outside of the state since Maryland's continuation provision only applies to Maryland residents, and only when the loss of coverage is due to termination of employment.



# EMPLOYEE BENEFITS

Health Care  
Doctor  
Hospital  
Pharmacist  
Nurse  
Dentist  
First Aid  
First Aid  
First Aid

MEDICAL

## **Q WHAT OTHER OPTIONS ARE AVAILABLE TO AN INDIVIDUAL IF COBRA IS TOO EXPENSIVE?**

**A** Instead of enrolling in COBRA, there may be other more affordable coverage options for individuals through the Health Insurance Marketplace (which may provide subsidized coverage), Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA continuation coverage.

## **Q IF AN EMPLOYER CONTINUES BENEFIT COVERAGE DURING A FURLOUGH OR TEMPORARY LAY-OFF, HOW WILL THE EMPLOYER COLLECT THE EMPLOYEE'S SHARE OF THE PREMIUM COST?**

**A** An employer could look to guidance in the FMLA that discusses collection of premiums for continued benefits during unpaid FMLA. The options include requiring the employee to make periodic payments (either monthly or in accordance with the normal payroll schedule) or allowing the employee to repay their share of the contributions when they return to work (which enables the employee to repay on a pretax basis).

## **Q IF AN EMPLOYER IMPLEMENTS FURLOUGHS, TEMPORARY LAYOFFS OR HOURS REDUCTION, HOW IS THE ACA'S EMPLOYER MANDATE IMPACTED?**

**A** In determining full time status, an hour of service is each hour for which an employee is paid or is entitled to payment. Under the monthly measurement method, an employee is full time if they had 130 hours of service in a month; therefore, an employee who has been furloughed, laid off or had their hours reduced below 130 per month will not be treated as full time and will not expose the employer to an ACA employer mandate penalty (applies to both "no offer" and "unaffordable offer" penalties). However, as discussed in more detail below, an offer of COBRA coverage due to reduction in hours is still reported as an offer of coverage (this is not the case for a terminated employee).

Under the lookback measurement method, an employee who measured as full time in a measurement period generally must be reported as full time for the duration of the stability period, even if hours are reduced. An employer has several options in these circumstances:

- Allow the employee to maintain eligibility as a full time employee. While this is not always permitted under the terms of the insurance contract, many health insurance carriers and stop loss carriers are specifically allowing this for a stated period of time due to the COVID-19 pandemic. This may require termination of employment when COBRA is offered at the end of extended coverage period to eliminate penalty exposure.
- In the case of an employee who was hired into a full time position (and therefore not subject to an initial measurement period) and has a status change due to reduction in hours, allow the employee to maintain eligibility for three months with approval of health insurance carrier or stop loss carrier, if needed. An employer may stop reporting the employee as full time after three months and continue to determine the employee's status on a month to month basis as long as the employee has less than 130 hours of service in each of those three months.
- Terminate health coverage and offer COBRA. An offer of COBRA due to reduction in hours still qualifies as an offer of coverage which limits the employer's exposure to the "no offer" penalty. However, there is still exposure to the "unaffordable offer" penalty based on the COBRA premium for employee-only coverage for the plan in which the employee was enrolled.

## **Q IS AN EMPLOYEE PERMITTED TO DROP HEALTH INSURANCE COVERAGE DUE TO A REDUCTION IN PAY OR OTHER FINANCIAL HARDSHIP DUE TO COVID-19?**

**A** Generally, no. If an employee remains eligible for health insurance coverage and the employee's share of the premium cost is made on a pre-tax basis through a section 125 plan, reduction in pay or financial hardship is not a status change or cost/coverage change that would allow an employee to drop or change their health insurance. To date, the IRS has not provided any COVID-19 relief related to section 125.

# EMPLOYEE BENEFITS

Health Care  
Doctor  
Hospital  
Pharmacist  
Nurse  
Dentist  
First Aid  
First Aid

MEDICAL

## **Q CAN AN EMPLOYER INCREASE THE EMPLOYEE'S SHARE OF THE PREMIUM COST IN THE MIDDLE OF THE PLAN YEAR DUE TO ECONOMIC REASONS?**

**A** Generally, yes. The section 125 cost change rules allow an employer to change the employer subsidy amount in the middle of the plan year. The employer is permitted to impose an automatic cost change, which does not allow an election change in the middle of the plan year. In addition, if the cost change is deemed significant (not defined in the section 125 cost change regulations), then a participant may (a) continue coverage and elect an increased contribution; (b) elect alternative similar coverage; or (c) drop coverage if no similar alternative is available. Similar alternative coverage would include other options available through the same employer or another employer (including spouse). The employee must elect the same coverage level in the new plan option. The only time an employee could drop completely is if there is no similar alternative coverage available.

## **Q ARE CARRIERS PROVIDING PREMIUM RELIEF IF A PLAN SPONSOR IS UNABLE TO PAY THEIR FULL PREMIUMS IN A TIMELY MANNER?**

**A** Certain carriers have announced temporary flexible approaches to the grace period for payment of premiums. Because each carrier is handling this differently, it is best to contact your PSA team to find out the specifics for your plans. Employers are reminded that they have a fiduciary duty under ERISA to use employee payroll deductions only for benefit costs and not for other purposes.

## **Q ARE CARRIERS ALLOWING SPECIAL ENROLLMENT PERIODS FOR EMPLOYEES WHO ARE NOT CURRENTLY ENROLLED AND WOULD LIKE TO ENROLL?**

**A** Certain carriers have announced flexible approaches to allowing eligible employees who are not currently enrolled to elect coverage mid-year. Even if permitted by a carrier, this 'special enrollment' is not a qualified life event under section 125, thus employee premium contributions must be paid post-tax. This is only for a limited time and only if the employer wishes to allow this.

# EMERGENCY LEAVE

## **Q IS AN EMPLOYEE DIAGNOSED WITH COVID-19 ELIGIBLE FOR EMERGENCY PAID SICK LEAVE UNDER THE FFCRA?**

**A** Generally, yes. If the employer is subject to the Emergency Paid Sick Leave provisions of the FFCRA, the employee is eligible for the paid sick leave beginning April 1, 2020 as long as a) the employee is in self-quarantine on the advice of a health care provider (and has documentation to support this) and b) the employee is unable to telework.

## **Q IS AN EMPLOYEE ENTITLED TO RECEIVE PAID LEAVE IF THE EMPLOYEE CANNOT WORK DUE TO THE NEED TO CARE FOR A CHILD WHEN SCHOOLS HAVE BEEN CLOSED DUE TO COVID-19?**

**A** Perhaps. If the employer is subject to the Emergency Paid Sick Leave and Emergency Family & Medical Leave Expansion Act provisions of the FFCRA, the employee is eligible for the paid sick leave and paid FMLA beginning April 1, 2020 if the employee is unable to work or telework due to child care needs. The DOL is encouraging employers and employees to collaborate to achieve flexibility and meet mutual needs in these circumstances. Such arrangements may include taking intermittent FMLA or teleworking on a different work schedule (such as early in the morning or late at night).

## **Q ARE THERE ANY SMALL EMPLOYER EXCEPTIONS TO EMERGENCY PAID SICK LEAVE AND EMERGENCY FMLA?**

**A** Yes. An employer with fewer than 50 employees may be exempt from providing Emergency Paid Sick Leave and/or Emergency FMLA due to school or place of care closures or child care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the small business as a going concern. This is the only qualifying reason that allows for an exemption from Emergency Paid Sick Leave.

## **Q IS EMERGENCY PAID SICK LEAVE ALSO FMLA?**

**A** No, Emergency Paid Sick Leave is a separate entitlement, though it is similar to FMLA in that it also requires job protection and health plan continuation. However, there are situations where both Emergency Paid Sick Leave can overlap with a period of FMLA or Emergency FMLA.

- If leave is being taken under the Emergency Family & Medical Leave Expansion Act (when unable to work or telework), the first two weeks of the emergency FMLA is unpaid, but may be payable as Emergency Paid Sick if elected by the employee
- If leave is being taken due to the COVID-19 diagnosis of the employee or a family member and there are complications such that the diagnosis results in a serious health condition, then standard FMLA would apply if the employee is otherwise eligible.

## **Q HOW DOES EMERGENCY FMLA COORDINATE WITH STANDARD FMLA?**

**A** Emergency FMLA and standard FMLA coordinate for a total leave entitlement (both paid and unpaid) of 12 weeks in accordance with the employer's established 12-month FMLA measurement period. Any employee who has already used FMLA in the employer's current FMLA measurement period will not receive an additional FMLA entitlement under Emergency FMLA.

## **Q CAN AN EMPLOYEE WHO IS CURRENTLY ON FMLA BE LAID-OFF OR TERMINATED IF THE EMPLOYER EXPERIENCES A DOWNTURN IN BUSINESS DUE TO COVID-19?**

**A** Generally, yes. An employee on FMLA leave is not protected from actions that would have affected him or her if the employee was not on FMLA leave. An employee who is on FMLA leave may be considered for layoff during a reduction in workforce so long as the employee's use of FMLA is not a factor in the employer's decision as to which employees will be subject to termination.

# GENERAL HR

## **Q IF AN EMPLOYEE HAS TESTED POSITIVE FOR COVID-19, SHOULD AN EMPLOYER ALERT THE OTHER EMPLOYEES?**

**A** The answer depends on **how** the employer found out the employee tested positive. If the employer discovered an employee tested positive via health plan claims information, then this information would be considered protected health information under HIPAA and should not be disclosed. While employers could use this information to take reasonable precautions against the spread of COVID-19 to other employees, they must do so without violating the confidentiality requirements under HIPAA. However, if the sick employee were to voluntarily disclose that they have tested positive, or the employer learns of an employee's diagnosis through other ways outside of the group health plan, this information would not be subject to HIPAA and transparency to other team members would likely be okay, so long as the identity of the sick employee is not revealed. Transparency would indicate that employers communicate to others that one (or more) employee has tested positive for COVID-19, and that they may have been exposed and should self-monitor for any symptoms of COVID-19 and seek a medical diagnosis if necessary.

## **Q HOW MUCH INFORMATION CAN AN EMPLOYER REQUEST FROM AN EMPLOYEE WHO CALLS IN SICK, IN ORDER TO PROTECT OTHER EMPLOYEES? CAN AN EMPLOYER TAKE EMPLOYEES' TEMPERATURES UPON THEIR ARRIVAL TO WORK?**

**A** Guidance specifies that employers may ask employees if they are experiencing any symptoms known to be associated with the COVID-19 (i.e. shortness of breath, fever, cough, etc.). Employers must keep questions specific to the virus and make it clear that this is the extent of the information they're looking for. Any information obtained from the employee must be retained confidentiality and disclosed only on a need to know basis.

The Equal Employment Opportunity Commission (EEOC) has issued guidance that employers may take employees' temperatures during the COVID-19 pandemic. However, employers should also take other safety precautions as not all individuals who have COVID-19 develop a fever.

## **Q CAN EMPLOYERS REQUIRE EMPLOYEES TO STAY HOME IF THEY HAVE SYMPTOMS? ARRIVAL TO WORK?**

**A** Yes, if an employee is exhibiting signs of COVID-19, they may be sent home or required to stay home. This is also true if an employee's family member is showing symptoms of COVID-19.

## **Q WHEN CAN A SICK EMPLOYEE RETURN TO WORK, AND CAN EMPLOYERS REQUIRE A SICK NOTE?**

**A** If an employee is away from work due to self-quarantine, they should only discontinue isolation precautions after consulting with their health care provider and in consideration of current state and local health department guidance. If an employee is out due to illness, prior to returning to work, the employee should consult with their healthcare provider.

Note: An employer may require a doctor's note or fitness for duty certification for employees to return to work; however, the CDC asks that employers do not ask for this due to the high volume of requests healthcare professionals would receive.

## **Q FOR EMPLOYERS WHERE REMOTE WORK IS A NEW CONCEPT, WHAT ARE BEST PRACTICES FOR IMPLEMENTING THIS KIND OF PROGRAM?**

**A** When implementing a remote working arrangement, it is important to set standards and expectations for all employees. A good telecommuting policy should outline performance and productivity standards, hours of work, reachability expectations, and office expenses. Managers and employees should schedule set times to check in with one another. If video conferencing is an option, having regular "face-to-face" communication with other staff will help employees feel connected.



# GENERAL HR

## Q IF MY COMPANY CLOSES TEMPORARILY, DO WE STILL NEED TO PAY EMPLOYEES?

- A** This will be determined based on how your employees are classified under the Fair Labor Standards Act (FLSA).
- *Non-Exempt employees* only need to be paid for the hours worked, **even at home**. If an employer is closed for a period, Non-exempt employees need not be paid, unless they perform work from home.
  - *Exempt employees* are paid a set salary for any work done (**including at home**) in the course of a workweek. If an employer is closed for a full workweek, and no work is performed at home by the employee during that time, there is no obligation to pay.

## Q IF AN EMPLOYER NEEDS TO LAY OFF STAFF DUE TO LOSS OF PRODUCTION FROM COVID-19, CAN THEIR EMPLOYEES FILE/COLLECT UNEMPLOYMENT?

- A** Generally, yes. While eligibility requirements and waiting periods are determined by state law, typically, individuals must meet the following eligibility requirements to collect unemployment:
- The individual must be unemployed through no fault of his/her own, as defined by state law
  - The individual must have earned at least a minimum amount in wages before he/she were unemployed
  - The individual must be able and available to work, and he/she must be actively seeking employment

In layoff or closure scenarios, employers should be prepared to respond to requests for verification or information from the state unemployment insurance department.

## Q HOW SHOULD MY COMPANY HANDLE I-9 VERIFICATIONS WHILE REMOTE WORKING ARRANGEMENTS ARE IN PLACE?

- A** For employers and workplaces that are operating remotely as a precaution due to COVID-19, the DHS has announced that it will temporarily defer the requirements for employers to review an employee's identity and employment authorization documents in-person. Employers must still inspect the Section 2 documents over video conference, fax, or e-mail and obtain and retain copies of the documents within three business days. Employers are instructed to enter "COVID-19" as the reason for the physical inspection delay in the additional information field in Section 2.

Once offices reopen, all employees who completed Form I-9 using remote verification must report to their employer within three business days for in-person verification of their provided I-9 documentation.

This only applies to workplaces working remotely however, and in a scenario where a new employee is physically present at their work location, an in-person examination of the documentation will still be required.

## Q IF OUR CURRENT BUSINESS POLICIES DON'T REFLECT WHAT THE NEW LAW IS MANDATING, DO WE NEED TO UPDATE OUR POLICIES?

- A** No, it is currently best practice to create temporary policies to bring companies in compliance with the new law. These temporary policies should reflect both an effective date and a termination date and remain in effect for the duration of the law.

---

You can reach your PSA contact just like you normally would. If you are having trouble reaching your agency contact, please call 410-821-7766 or call toll free: 1-800-677-7887. We will be providing updates to you via email and updating our website at [www.psafinancial.com/coronavirus](http://www.psafinancial.com/coronavirus).