**WorkforceGPS**

**Transcript of Webinar**

**COVID-19 Benefits and Resources Town Hall**

**Tuesday, May 7, 2020**

*Transcript by*

*Noble Transcription Services*

*Menifee, CA*

GRACE MCCALL: And welcome to "COVID-19 Benefits and Resources Town Hall." So without further ado I'd like to turn things over to our moderator for today, Robert Kight, division chief, Office of Workforce Investment, ETA. Take it away, Robert.

ROBERT KIGHT: Thank you, Grace. Good afternoon and good morning, depending on where you are in the country. Again, my name is Robert Kight. I'm a division chief in the Office of Workforce Investment here in the national office at the Employment and Training Administration. I'd like to thank you for joining today's webinar.

We have quite a bit of information to share with you, so let's get started by introducing our speakers for today.

Our first speaker is Olivia Jones; she's a senior analyst at the Wage and Hour Division here at the U.S. Department of Labor.

Michelle Beebe, the division chief for Legislation Office of Unemployment Insurance here at Department of Labor in the Employment and Training Administration.

Joe Canary, director in the Office of Regulations and Interpretations, Employee Benefits Security Administration, here at the Department of Labor.

Amber Rivers, acting director, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, here at the Department of Labor.

And last but not least is Kristy Phillips, senior technical advisor in the Office of Outreach, Education and Assistance, Employee Benefits Security Administration, here at the U.S. Department of Labor.

We're so glad to have all of our speakers with us today and I'm quite sure they have tons of information to impart to you. Next slide. OK.

Today our objective is pretty straightforward. We want to provide overviews of some new and expanded benefits and programs under COVID-19-related legislation. We want to share links to access specific information when the presentation is over. And we want to answer your questions on access, implementation, eligibility, and more.

So with that, why don't we start with our first speaker for the day, Olivia.

OLIVIA JONES: Thank you, Robert. This presentation is provided by the U.S. Department of Labor Wage and Hour Division and will provide an overview of the Families First Coronavirus Response Act, or FFCRA. This law was enacted in response to the COVID-19 public health emergency. Next slide, please.

The presentation is intended as general information only and does not carry the force of legal opinion. The Federal Register and the Code of Federal Regulations remain the official sources for regulatory information published by the Department of Labor. Next slide, please.

Private employers with fewer than 500 employees are covered by the FFCRA. If a private sector employer has 500 or more employees, they are not covered by the FFCRA. Certain businesses with fewer than 50 employees may be exempt from some of the requirements of the act. We will talk about the small business exemption in a few minutes.

Public agencies are also covered under the expanded sick leave provisions, regardless of the number of employees they employ. But whether an employee is entitled to take leave depends on several factors.

Employees of the federal government, state and local government agencies, and similar government units, are generally entitled to paid sick leave under the Emergency Paid Sick Leave Act. Additionally, employees of state, local, and similar government units are entitled to leave under the Emergency Family and Medical Leave Expansion Act, if they meet certain eligibility requirements.

Because the Emergency Family and Medical Leave Expansion Act, known as Title I of the FMLA, those federal government employees subject to Title I are covered, including for example employees of the U.S. Postal Service and Postal Regulatory Commission. Additionally, the Office of Management and Budget – OMB – has authority to exempt certain federal employees from paid sick leave and expanded family and medical leave.

Federal government employees are encouraged to consult with their agency regarding their eligibility for expanded family and medical leave. Next slide, please.

Let's now look more closely at the specific provisions of the Emergency Paid Sick Leave Act. Again, I'll refer to this leave under the act as "paid sick leave" and to this act – as "paid sick leave," and to this act as the "paid sick leave provision."

The paid sick leave provision entitles full and – eligible full- and part-time employees of covered employers to take job-protected paid sick leave up to 80 hours over a two-week period for various reasons related to COVID-19. With the continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Next slide, please.

Employee eligibility is simple. If the employee is working for an employer for one day, he or she is eligible. All employees are eligible, including full- and part-time employees, exempt and nonexempt employees.

The CARES Act amended the FFCRA and provided authority to the director of Office of Management and Budget – OMB – to exclude certain federal employees from paid sick leave and expanded family and medical leave. Next slide, please.

The employee must have a valid qualifying reason to take paid sick leave. Under the paid sick leave provision there are six different qualifying reasons for leave. Let's break them down into two groups.

In the first group – reasons one, two, and three – the employee has a qualifying reason for leave based on his or her own health or situation. One, the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19. Reason two, the employee is advised by a health care provider to self-quarantine, due to concerns related to COVID-19. Or three – reason three, the employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

Under these reasons, the employee is entitled to his or her full regular rate of pay during the period of paid sick leave. However, under certain circumstances an employee may be able to perform his or her work from home. In this case, paid sick leave is not available for the time the employee is teleworking. Next slide, please.

The second group is reasons four and five as they relate to others. Reason four, the employee is caring for someone subject to a federal, state, or local quarantine or isolation order related to COVID-19; or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Reason five, the employee is caring for a child whose school or place of care is closed, or the child care is unavailable, due to COVID-19 precautious. Reason five would apply even if a school is offering remote, virtual classes.

Please note that the Emergency Family and Medical Leave Expansion Act also applies to reason number five. And we will discuss that later in the presentation.

And the final reason, reason number six, when the employee is experiencing a substantially similar condition as specified by the secretary of the U.S. Department of Health and Human Services. To date we have not been notified that a similar condition has been specified. However, one could be specified at any time during the affected period, which is December 31st, 2020.

It is important to understand and distinguish the reason for leave because the entitlements vary based on the reason. An employee taking leave for the reasons in the first group, for his or her own health, would receive full pay during the period of paid sick leave; while employees taking leave for the second group, to care for others, would receive two-thirds pay during the period of paid sick leave. We will discuss this more in a minute. Next slide, please.

Now let's turn our attention to the Emergency Family and Medical Leave Expansion Act, the EFMLA. We may also cover the EFMLA – we also may refer to this as the Expanded Family and Medical Leave Act or the – as the act – the Expanded Family and Medical Leave Act provision.

Under the expanded family and leave provision, an employee may take two weeks of unpaid leave, plus 10 weeks of paid leave to care for his or her own son or daughter whose school or place of care is closed, or child care is unavailable, due to COVID-19-related reasons.

For the initial two-week period, the employee may take paid sick leave or substitute any approved vacation leave, personal leave, or sick leave, or medical leave under the employer's policy. For leave needed in the following 10 weeks, the employer must pay the employee an amount no less than two-thirds of his or her regular rate of pay for the hours he or she would normally be scheduled to work. Next slide, please.

All employees, including full-time and part-time employees, of covered employers are eligible for expanded family and medical leave if they have been employed by their employer for at least 30 calendar days. An employee is considered to have been employed by their employer for at least 30 calendar days if their employer had the employee on his payroll for the 30 calendar days immediately prior to the day the leave would begin.

For example, if the employee wants to take leave on April 1st, 2020, they would need to have been on the employer's payroll as of March 2nd, 2020. If the employee has been working for a company as a jointly-employed temporary employee, and the company subsequently hires him or her on a full-time basis, the days he or she previously worked as a temporary employee for the employer count towards the 30-day eligibility period.

Additionally, an employee is considered to have been for at least 30 calendar days if the employee was laid off or otherwise terminated on or after March 1st, 2020, and was rehired or otherwise re-employed by the employer on or before December 31st, 2020, provided the employee had been on the employer for 30 or more of the 60 calendar days prior to the date the employee was laid off. Next slide, please.

Under the expanded family and medical leave provision there is only one qualifying reason for leave. That is to care for a child due to child care – due to a lack of child care or school closures. This is the same as reason five under the paid sick leave provision that we reviewed earlier. Next slide, please.

Small businesses with fewer than 50 employees may be exempt from the requirement of the FFCRA specific to the employee's need to care for a child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions, when the imposition of such requirement would jeopardize the viability of the business as a going concern. Next slide, please.

Covered employers of any size are permitted to exclude health care providers and emergency respondents from the FFCRA leave entitlement. Employers may, but are not required, to exclude these employees from any of the FFCRA leave entitlements. Next slide, please.

The department has published several resources on the Wage and Hour Division's website, including fact sheets, questions and answers, FFCRA posters, and the regulations. After reviewing these materials, if you have additional questions or feedback the department would be glad to hear from you.

The best way to reach us is to contact the local Wage and Hour Division district office at 1-866-4US-WAGE. That's 1-866-487-9243. Or by email at this dedicated address, whd-covid19@dol.gov. Again, our dedicated email address is whd-covid19@dol.gov.

Now let's hear from Michelle with the Office of Unemployment Insurance.

MICHELLE BEEBE: All right, Olivia. Thank you so much. And so with the next slide I just wanted to provide some introductory language on what the unemployment insurance program is.

The program provides a temporary partial wage replacement for unemployed workers that have been attached to the labor force, while they seek their next job. This maintains purchasing power to act as an economic stabilizer, and occurs through payments that are made directly to eligible unemployed workers. It's based on federal law and administered by state employees.

So as we talk through the different programs that are addressed in the CARES Act, these foundational items continue to apply. Consider them the threads that run through everything.

So that being said, there are certain core mechanics to the administration of these programs. So on the next slide we talk about filing for unemployment.

Because this is administered by state employees, an individual must contact the state in which they're filing for an application. And there are four things to keep in mind. You need to file an initial claim. After you file the initial claim, you'll be filing weekly or biweekly certifications, that are also known as continued claims, that show your continued eligibility for the program. Read correspondence from the agency and respond to requests for information from the agency.

So on the next slide, wanted to provide a summary and background of COVID-19 responses as it relates to unemployment insurance.

On March 12th we issued UIPL – which stands for unemployment insurance program letter – 10-20, which addresses permissible flexibility for states under existing federal law. Individuals must be able to work and available to work. This particular piece of guidance provides scenarios on what that looks like. For example, an individual on a temporary layoff can maintain contact with their employer to be considered able and available for work.

The Families First Coronavirus Response Act, which was signed into law on March 18th, contained the Emergency Unemployment Insurance Stabilization and Access Act, or EUISAA – E-U-I-S-A-A. We issued the guidance letter 13-20 on March 22nd.

So a couple things to keep in mind with this particular piece of legislation. This provided emergency administrative grants to states, which is $1 billion available to states in two allotments. Essentially, states attest to doing certain activities that enhance program accessibility. So for example, requiring that employers notify individuals at the time of job separation, individually, of the UI availability in order to receive this emergency administrative grant money.

This statute also includes emergency flexibility to states such are related to temporarily modifying certain aspects of their unemployment law. So for example, this is done is response to the spread of COVID-19. States may have the option to modify or suspend their work search requirement.

For states that need to borrow money to pay benefits if their unemployment trust fund is exhausted based on the volume of unemployment, the statute also provides short-term waiver of interest payments due, and of the interest accrual. Additionally, this piece of legislation offers full federal funding under certain circumstances for extended benefits.

Extended benefits is a permanent federal-state program. The cost is usually split 50-50 between the state and the federal government. It provides up to 13 to 20 weeks of benefits, which is dependent on the state law and the unemployment rate.

On the next slide we get into the CARES Act, which was signed on March 27th. Sections 2102 through 2116 provide many law changes that aid states' unemployment agencies in responding to the economic effects of COVID-19. It's important to note program integrity.

The programs and provisions of the CARES Act operate in tandem with the fundamental eligibility requirements of the federal-state unemployment program. And so these include that the individuals are no longer working through no fault of their own, and that they continue to be able to work and available to work. So flexibilities we discussed in earlier guidance letters continue to – are generally limited to dealing with the effects of COVID-19.

So on the next slide I'd like to talk about short-time compensation. This is a critical link to avert layoffs and also to bring back the skilled workforce.

So short-time compensation, or STC, is also known as worksharing or as shared work. It's a layoff aversion program in which an employer, under a state-approved plan, can reduce the hours for a group of workers. And those workers, in turn, receive a reduced unemployment benefit payment.

This preserves the employee's job and the employer's trained workforce during a disruption to the firm's regular business activity. During this time the employer continues to pay health benefits and retirement benefits.

STC can also serve as a way of bringing back most or all of the temporary laid off workforce back to the job, even if social distancing measures or a decline in business prevents operating at full staffing level. So not only is it important in averting layoffs in the first place, but it also plays a critical role as our economy begins to open again.

On the next slide – (audio break) – a brief summary of what the CARES Act does for STC. So the Section 2108 provides that states with an existing STC program may receive 100 percent federal funding for benefits. States without an existing program may receive a 50 percent federal reimbursement by running a temporary federal program. And then the CARES Act also provides for up to $100 million in grants to be shared across states for the implementation and improved administration of the STC program.

So while STC is focused on individuals still working or that have returned and are working partial hours, next we're going to move on to the programs for individuals that are unemployed.

And so on the next slide I'd like to walk through the programs that were created by the CARES Act. Then at the end of this I'll provide a chart that shows how it all fits together for an individual customer experience.

Pandemic Emergency Unemployment Compensation is available for an individual that exhausts their regular unemployment benefits. It's available from March 27th through December 31st and provides up to 13 weeks of benefits to covered individuals. A covered individual is someone who has exhausted their regular unemployment claim; has no rights to regular unemployment claim, either in that state or in another state or in Canada; and is able to work, available to work, and actively seeking work.

Flexibility for work search. There is flexibility required for work search under PEUC for specific circumstances. States can also apply to work search flexibilities from the EUISAA legislation discussed earlier. It's important to note that even so, the individual must be able to work and available to work.

On the next slide we introduce Pandemic Unemployment Assistance. And this is for an individual who's not eligible for regular unemployment. So this includes our self-employed individuals, our gig workers, as well as those that may be disqualified from regular unemployment.

It's available between January 27th and December 31st and provides up to 39 weeks of benefits to covered individuals. A covered individual under this program is not eligible for regular unemployment and, most importantly, self-certify that they are able to work and available to work, except that they're unemployed, partially unemployed, unable or unavailable to work because of one of the listed COVID-19-related reasons.

This is one exception to the able to work and available to work requirement, as long as the individual meets one of the listed reasons. The individual must self-certify at the time of filing the initial claim, as well as on weekly certification, that they – that one of those listed reasons continues to apply.

On the next slide, this provides a quick overview of the Pandemic Unemployment Assistance program and the Disaster Unemployment Assistance program. Some states have much more experience in administering the disaster unemployment. We'll provide this on the slide deck, but I'm not going to spend too much time here.

On the next slide I'd like to talk about the extra $600 that's being provided with unemployment benefits. And so this is available between March 27th and July 31st. An individual that's collecting regular unemployment, PEUC, PUA, extended benefits, short-time compensation, TRA, disaster unemployment, and self-employment assistance.

If the individual is eligible for at least $1 of these underlying benefits, then the individual will receive the full $600 FPUC payments for that week.

And so now to bring it together on the next slide. This is a coordination of programs. And we've got two tracks on here. The first track is an individual that qualifies for regular unemployment. So in that case, we start at the beginning of the chart.

Regular unemployment, the duration is going to be dependent on state law. The weekly benefit amount is going to be based on state law. If the individual exhausts that, they may be eligible for PEUC. This is available for up to 13 weeks of benefits and is – the weekly benefit amount is based on the regular unemployment claim.

If they exhaust that and continue to be unemployed, and if the state has triggered on to extended benefits – meaning their unemployment rate has reached a certain level – then the individual can qualify for up to 13 or 20 weeks of extended benefits. The weekly benefit amount here is also based on their regular unemployment claim.

If an individual exhausts extended benefits and continues to be unemployed, then the individual can receive Pandemic Unemployment Assistance. In order to do so, they must meet one of the COVID-19-related reasons that are listed in the CARES Act. The duration of this is up to 39 weeks, minus any weeks that individual received regular unemployment and extended benefits.

The WBA – or the weekly benefit amount – for Pandemic Unemployment Assistance does depend on – in accord with the guidance that was issued in UIPL number 16-20. So that's track number one.

If an individual becomes eligible for one of the prior claim type on this chart while they are collecting something else, then they have to go back in the chart. So for example, if an individual is collecting PUA and the state triggers on to extended benefits, then the individual must stop collecting PUA and go back to file for extended benefits.

Track number two is an individual that is not eligible for regular unemployment. So these would be the self-employed, gig economy workers, those with insufficient work history. In this case, the individual would go to the PUA amounts as soon as it's determined they're not eligible for regular unemployment. And as long as they meet one of the COVID-19-related reasons, then they can begin filing for Pandemic Unemployment Assistance – the PUA.

Now, throughout all of this is the extra $600 per week. And whichever piece of this the individual is collecting, if they qualify for $1 of underlying benefits then the individual can collect the full $600 of FPUC each week.

This provides a summary of the programs and benefits that are available to individuals. I'd like to take a moment on the next slide to discuss the unemployment relief for governmental entities, nonprofit organizations, and federally-recognized Indian tribes that's provided in the CARES Act.

And so first of all, the states are encouraged to interpret or amend their state laws in a manner that provides maximum flexibility to reimbursing employers, specifically as it relates to timely payments and assessment of penalty of interest. So the amount that an employer owes is based on how much in unemployment benefits is based – how much in unemployment benefits is paid to their former employees, the mechanics of it.

Step one is that the state will first pay unemployment benefits to an eligible individual use the state unemployment trust fund. Step two is that the employer will make a payment back into the unemployment trust fund to cover the cost of these unemployment benefits. Step three is that the state can now, using these federal funds from the CARES Act, reimburse the employer for up to one-half of the amount of unemployment benefits paid.

Now, it's possible that the state could provide some relief of payments due. And this next example shows how this is operationalized when a state provides 30 percent relief. And so in this example we're going to walk through the lines.

In this case, the compensation that was paid out of the unemployment trust fund is $1,000. The state provides 30 percent relief, which means that the amount of payment due by the employer is $700. In this case, the federal government will transfer 50 percent of that $1,000 to the state, so $500.

The employer makes their payment of $700. Once the employer makes their payment of $700, then the state will reimburse that employer for the $500, which is one-half of the amount of compensation paid. In the end, the employer ends up paying a net amount of $200, which is the $700 they paid in, minus the $500 reimbursement.

The net impact on the state unemployment trust fund is -$300, which is the $1,000 in unemployment benefits paid, minus the $700 that the employer paid back into the unemployment trust fund.

And so on the next slide, in summary, the unemployment program provides temporary wage replacement for unemployed workers. This maintains purchasing power, which also acts as an economic stabilizer. These programs are based on federal law and they're administered by state employees. On the Office of Unemployment Insurance website, which is the address listed here, we include a list of guidance, policies, and resources to help states respond to the COVID-19 pandemic. For questions about the application process, individual eligibility, and employer charges, we encourage individuals to contact that state unemployment insurance agency for additional details.

All right. And so with that I'd like to go ahead and pass it on to Kristy Phillips with the Employee Benefits Security Administration.

KRISTY PHILLIPS: Thanks, Michelle. And we can go ahead to the next slide. Thank you.

So for those of you who may not know, EBSA assures the security of retirement plans and health plans and other similar workplace benefits of America's workers and their families. And we do this by developing effective regulations, assisting workers and retirees, and education benefit plan sponsors, fiduciaries, and service providers.

So in response to the coronavirus outbreak, EBSA provided deadline relief and other guidance for impacted employee benefit plan participants and beneficiaries, as well as for – (inaudible) – that sponsor and run employee benefit plans. Next slide.

This slide's just a summary of the guidance that we have produced and posted on our website in response to the coronavirus outbreak. And we'll touch on each of these. Next slide.

But before we get into the details of our coronavirus relief and the guidance that was issued by EBSA, I want to just give you a little bit of information about one particular facet of what our agency does. So we have an active education and assistance program to help dislocated workers, including those who have been impacted by the coronavirus outbreak. We also provide compliance assistance to employers through this program.

So we have about 115 benefits advisors across the country that can answer inquiries from workers or employers or really anybody who has any kind of questions about employee benefit plans. Most inquiries come to us by telephone, but we do get a lot of inquiries through our website, through email, regular mail. But in fiscal year 2019 our benefits advisors handled almost 167,000 inquiries from the public.

Our benefits advisors also do outreach, including presentations about a variety of employee benefit plan issues, and are available to participate in Rapid Response sessions dislocated workers or meetings with employers to explain what happens to retirement and health benefits after a layoff.

Of course, during the last seven weeks those meetings and – (inaudible) – happening by telephone and webinar. But we ramped up our outreach efforts in response to COVID-19 and we've been contacting our state and federal partners to reach as many workers and employers as we can.

So if people need to reach EBSA, they can email us through our website at askebsa.dol.gov. Or they can call us on the toll-free number on this slide, which is 866-444-3272. And the individual will be automatically routed to the field office that covers the zip code or area code where they're contacting us from. We have 13 field offices around the country. Next slide.

Dislocated workers and employers impacted by economic disruptions need help from EBSA on a variety of topics.

We can explain COBRA continuation of health coverage. As some of you might know, COBRA is the name of a federal law that allows certain individuals to continue their employment-based health plan, even though they've experienced an event that would normally result in a loss of health coverage. In the context of economic disruption like we're experiencing now, the most common COBRA qualifying events are termination of employment or reduction in hours.

We also advise people about their right to special enrollment in their spouse's employment-based health plan after certain life events. This includes marriage or adding a child to the family, but also loss of eligibility for employer-based health coverage, as usually happens after a termination of employment.

We inform people about special enrollment in health coverage options offered through the Health Insurance Marketplace. Some people are eligible for tax credits to help them pay for coverage if they obtain a policy through the Health Insurance Marketplace. Some folks are even eligible for cost-sharing reductions to limit their out-of-pocket expenses.

We can direct people to healthcare.gov if people want to apply for Medicaid or the Children's Health Insurance Program, which are state-run health benefit programs that receive federal funding.

And lastly, we can assist people who are thinking of taking money out of their employment-based retirement plans. Some plans offer loan options that allows employees to borrow a portion of their retirement account. Or in some circumstances a person might be able to get a – (inaudible) – distribution. And plan participants who no longer work for the employer might have other retirement distribution options available to them, depending on the rules of their particular retirement plan. Next slide.

EBSA has information and publications on our website that are helpful to dislocated workers. Our publications and other materials cover all the topics I mentioned, among other things. And individuals can find these materials on our webpage dedicated to people experiencing work disruptions. The web address is the first one listed on this slide.

There's also a variety of information on our website that's geared towards businesses that offer employee benefit plans, especially small businesses. And I want to draw your attention to the second web address on the slide. That's the location where we post upcoming webinars that we're hosting that are open to the public. So if people want to listen in, they can ask questions, but it's a variety of information that's helpful to people who are experiencing disruption like a layoff.

EBSA also has a dedicated webpage for information related to our coronavirus response. And I'm sure the Department of Labor has a webpage that sort of gathers all the agencies' collected coronavirus guidance. So that's on this slide as well.

And with that I will turn it over to my colleague, Amber Rivers.

AMBER RIVERS: Thanks so much, Kristy. So now I'm going to cover some of the information that was included in the guidance that EBSA has issued related to the Families First Coronavirus Response Act and the CARES Act.

As was mentioned previously in this presentation, the Families First Coronavirus Response Act was enacted March 18th, 2020, and included Section 6001 which dictates requirements for group health plans and health insurance issuers to cover the testing for COVID-19, as well as related items and services.

On March 27th, the CARES Act was enacted, which included Section 3201, which amended Section 6001 of the Families First Act to include a broader range of diagnostic testing for COVID-19; as well as Section 3202 which dictates the reimbursement for the COVID-19 test, as well as some transparency requirements.

On April 11th, Department of Labor, Employee Benefits Security Administration, Department of Health and Human Services, as well as the IRS and Treasury, issued FAQs part 42 to provide information related to these requirements.

And just two points I'd like to make before going over the guidance. The departments are working together with stakeholders, including employers, health insurance companies, states, and health care providers, to help them comply with the law; and are also working with families and individuals to help them understand the new law and benefit from it, as intended.

The departments do anticipate issuing additional guidance about the Families First Act, the CARES Act, and other health care coverage issues related to COVID-19. Next slide.

So I'd like to talk about some of the general requirements discussed in FAQ part 42. So this guidance talks about what types of plans are subject to these requirements. The types of plans that are subject to the requirements include group health plans that are sponsored by employers covered by ERISA, as well as health insurance issuers that offer both group and individual health insurance coverage. This includes grandfathered health plans under the Affordable Care Act; however, short-term limited duration insurance and accepted benefits are not subject to these requirements.

The guidance also specifies when plans and issuers must comply with these requirements. As I stated earlier, the Families First Act was enacted on March 18 and so plans and issuers must comply with these requirements with respect to testing and related items and services furnished on or after March 18, and must continue to do so throughout the duration of the public health emergency.

The guidance also specifies the types of items and services that must be covered. There are two sets that I will focus on. One will be the specific diagnostic test and then I will talk a little bit about the related items and services.

So the statute prescribes very specific tests that must be covered under these requirements. This includes tests that are approved by the FDA, tests that developers request emergency use authorization for, tests that are authorized by states, and also gives HHS authority to prescribe additional tests that must be covered.

The FAQ also talks about serology tests, or they're also called antibody tests, and states that these also must be covered in accordance with these requirements.

I mentioned that in addition to the actual diagnostic tests that must be covered under these requirements, plans and issuers must also provide coverage for related items and services. And so the guidance specifies that items and services furnished during a visit that results in an order for, or administration of, a COVID-19 test must be covered. And this is determined by the attending physician.

So for example, if a patient presents to the ER and the attending physician orders a flu test and a blood test to determine whether or not a COVID-19 test is needed, and then ultimately orders a COVID-19 test, those items and services must be covered.

The guidance also specifies what constitutes a visit. This is construed broadly. So in addition to traditional office visits that take place in person, telehealth visits are covered, urgent care visits are covered, visits to the ER are covered, as well as drive-thru testing sites.

Lastly, these coverage requirements apply both in and out of network. And to the extent a plan or issuer must provide – (inaudible) – testing or related items and services, they are prohibited from imposing any cost sharing, as well as any medical management on these items and services. Next slide.

In addition to guidance on the new requirements, FAQs also provide nonenforcement relief for health plans and issuers who are working to provide COVID-19 testing, COVID-19 treatment, and to provide increased access to telehealth in light of the stay-at-home orders currently in place.

Under ERISA, group health plans and health insurance issuers are required to provide summaries of benefits and coverage under certain timeframes that ERISA prescribes. More specifically, to the extent a plan or issuer makes a material modification to the terms of their coverage that affects the content of a Summary of Benefits and Coverage, they must notify participants and beneficiaries 60 days in advance of that change taking effect.

In order to help facilitate immediate access to these vital services, the department will not take any enforcing action against the plan or issuer, provided they provide notice as soon as practicable. HHS also encourages states, who is the primary enforcement authority for health insurance issuers, to take a similar approach.

So again, this relief extends to plans and issuers who would like to provide greater benefits for, or reduce or waive cost sharing for, COVID-19 testing, treatment, or telehealth services. Next slide.

Plans and issuers have also requested flexibility to provide COVID-19 testing to employees who are not covered under their group health plan, and without assuming additional regulatory obligations. So the guidance – (inaudible) – provides two ways that might be accomplished.

The first is an employee assistance program. And the guidance states that an employer may provide an EAP for testing for COVID-19 and it will constitute an accepted benefit that does not need to comply with the additional group health plan requirements that are included in part 7 of ERISA.

Additionally, guidance also specifies that an employer may offer benefits to diagnose and test for COVID-19 at an on-site medical clinic and remain an accepted benefit.

So I'd also like to talk about some additional guidance that EBSA has issued related to the COVID-19 public health emergency. As a result of the public health emergency, many participants and beneficiaries covered by group health plans may encounter some problems in exercising their rights to special enroll into group health plans, and to elect COBRA continuation coverage.

Under ERISA Section 518, the Employee Benefits Security Administration has the authority to extend (important ?) timeframes during national emergencies that are otherwise applicable to group health plans, disability and other welfare benefit plans or pension plans, and their participants and beneficiaries. The Internal Revenue Service has similar authority under the Internal Revenue Code.

On April 28th, EBSA and the IRS published a joint notice that extends timeframes for requesting special enrollment in a group health plan, as well as the period for making a COBRA election and the date for COBRA – (inaudible) – to be paid. Extension of these timeframes aims to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established timeframes.

So the relief requires group health plans to disregard the period from March 1st until 60 days after the announced end of the public health emergency. And so the pre-established timeframes that are covered by this relief, and pulled for all plan participant beneficiaries and qualified beneficiaries, are for the following periods.

It would include the 30-day period or 60-day period, depending on which special enrollment we're talking about, with the period to request special enrollment, the 60-day election period for COBRA continuation coverage, and the 45-day period for making COBRA premium payments. Additionally, employers have, through the national emergency, plus 60 days to provide the COBRA election notice.

With that I will turn it over to my colleague Joe Canary to talk about the rest of the guidance that EBSA has issued. Thank you.

JOE CANARY: Thank you, Amber. So my role is to talk about two more publications the Department of Labor and Employer Benefits Security Administration put out on COVID relief.

The first is the department issued a frequently asked questions document on health and benefit retirement issues, to help employee benefit plan participants and beneficiaries impacted by the coronavirus outbreak understand their rights and responsibilities under ERISA.

Although focused on participants and beneficiaries, the document also is a good resource for employers and plan fiduciaries in understanding their responsibilities when dealing with participants and beneficiaries under these challenging circumstances.

We developed these FAQs over time. There have been FAQs issued in the case of prior disasters and emergencies where we try to focus on questions and issues that we think people face in these kinds of circumstances, try to provide them with information and assistance in navigating through this time. And making sure that their employee benefits – health, retirement, and other – are still there for them to use during this period.

But the – as Kristy stated, there's – in addition to those FAQs, you can call our benefit advisors to the extent there are issues that are not directly addressed there, or if you'd like additional information beyond what's in the written document.

All this information is on a dedicated disaster relief webpage at EBSA. So you can go and see and download it from there. The FAQs are broken into two parts. One is 12 questions about health benefits, and the second is 11 questions about retirement benefits.

The health benefits cover things like obtaining information about current coverage and how to submit benefit plans. Provides some information on what may happen when you – the employer goes out of business or an employee is laid off in terms of loss or reduction of health care coverage.

In those circumstances where people are laid off, there's also information about how to obtain replacement coverage, things like COBRA continuation coverage, special enrollment rights that Amber talked about, and access to health insurance through individual marketplaces. There's also a fair amount of information on where you can go to get additional information, with links that bring people directly to other resources on health issues.

The second portion of the FAQs is about retirement benefits. There it's about obtaining information from plans. When employers are running plans, they often face challenges during these periods in getting information out, having employees onsite to answer questions. So their normal operations can be challenged. And so we try to provide some guidance to people about how to go about obtaining information about benefits and how to make a claim for retirement benefits.

People also during these times are looking to take distributions or take loans out of the plans, so there's some information about how to do that. Plans can be terminated and that presents people with challenges. So there's some explanation of what happens when a plan terminates and what people should be doing to protect their rights and benefits.

There's some information about what they should do if they are not getting information from their plan or their plan fiduciaries, and including reaching out to the Employee Benefits Security Administration for help. And then another slide that gives information on where to find additional information. So the next slide, please. One more slide, please.

So the second and the last piece of guidance we'll talk about today is a disaster relief notice. Different than the FAQs, this relief notice is focused on more employers and plan fiduciaries. It's Disaster Relief 2020-01. As Amber described, this is also an exercise of the relief authority that the EBSA has under Section 518 of ERISA.

It extends to time or (plan ?) officials to furnish benefit statements, things like annual funding notices, summary plan descriptions, and other ERISA-required notices, disclosures, and documents that would be otherwise due during what is defined as a relief period under the notice. The relief period is applicable for notices, disclosures, or documents that were due to be provided beginning March 1.

And that relief period ends 60 days following the announced end of the COVID-19 national emergency. That notice may be issued government-wide or the Department of Labor may issue a follow-up notice to indicate that the relief under this notice – the 60-day period – is triggered.

The condition is that to be eligible for that relief it's not a blanket relief from providing any information. Rather, the plan and plan fiduciaries must make good faith effort to furnish as soon as reasonably practicable under the circumstances the notices, disclosures, and documents.

We do say in the notice that good faith can include use of electronic communication, so that it may be email or text or continuous access websites that will be used to provide information in place of or in addition to normal mailing. Next slide.

In addition to that 518 relief, the notice also says that there are certain forms and information that employee benefit plans and certain group health arrangements have to file with the U.S. Department of Labor. The notice describes the relief there that extends those filings that were due as of April 1, that anything due on or after that date is extended and it would be due July 15, 2020. That relief tracks IRS relief that IRS granted for certain other tax filings.

Then finally, the notice includes general compliance assistance guidance for plans and plan fiduciaries. There is some instructions and guidance on what to do about getting verification for plan loan requests, including plan loan provisions under the recently-enacted COVID-19 legislation, the CARES Act.

There is information about handling participant contributions, loan payments to 401(k) plans. Employers, when they're withholding those kind of payments or receiving them from employees, have an obligation to properly transmit them to the employee benefit plan. And there is some instructions about what our expectations are for employers in properly handling those contributions.

Blackout notices is a special kind of notice where the plan has to tell employees and participants that – before there's going to be a temporary suspension, limitation, or restriction on their ability to direct or diversify their investments, obtain loans, or take plan distributions. There is some relief for those notices in this disaster relief notice, and some instructions on what we would expect plan fiduciaries to do.

And then generally there's some general compliance issues with guidance for employers and a place where they can call to try to get additional information from us if they're facing individual circumstances that are not covered by the written relief.

And I think that then is the end of the EBSA section of the presentation. Thank you for your attention.

MR. KIGHT: OK. This is Robert. Let's give a round of applause, wherever you are, to our presenters for today. Thank you very much for the information. And we hope that you find it very helpful. So at this point let's go into our question-and-answer period.

OK. One of the first questions coming up. I'll read them and then I'll throw it to one of our presenters to respond. "If you have a full-time job but supplement income by Uber or Airbnb, which is affected by COVID, do you qualify for PUA – Pandemic Unemployment Assistance – if you are still working your full-time job?" Michelle, can you take that one?

MS. BEEBE: Sure. Thank you, Robert. And so Pandemic Unemployment Assistance – you file the initial claim and then you continue to file the weekly certifications showing that your eligibility continues. If you are working full time, you'll be required to report those earnings, which may end up disqualifying you from Pandemic Unemployment Assistance. So the advice I would give is absolutely file to see if you're eligible, but know that your full-time earnings may disqualify you.

MR. KIGHT: OK. Thank you, Michelle. Oh, great. Here's question number three, the next question, "Is there guidance on how this affects the public sector, specifically state and local government?"

MS. JONES: Great question.

MR. KIGHT: Can you take this one, Olivia?

MS. JONES: Sure. Thank you very much. I wanted to share that we have lots of wonderful resources, in addition to the links in the PowerPoint slide, on our webpage. And specifically our FAQs.

In regards to the question, public agencies are considered covered employers, regardless of the number of employees they employ. So they would – the public – the employee of the public agency, under the FFCRA, provides protections in two spaces. The emergency paid sick leave provides paid sick leave of up to 80 hours over a two-week period for six different reasons related to the COVID-19. And then the expanded family and medical leave provides an additional 10 weeks for lack of child care due to the public health emergency, COVID-19.

So public employees and public agencies could be entitled – would – those are public employers. However, the employee of the public agency would be eligible to use the paid sick leave, OK, on the federal, state, and local. It doesn't matter how many employees. But when you get into the expanded family medical leave due to lack of child care, some federal employees may not be covered because, again, these protections extend to the Title I of the FMLA. But then the – it is possible for some federal, state, and local employees to be eligible to use the expanded FMLA due to lack of child care. Thank you.

MR. KIGHT: Thank you. Thank you. Next question, "What constitutes a significant diminution of work for an independent contractor to be entitled to PUA?" Michelle, will you take that one?

MS. BEEBE: Absolutely. And so this is a situation when an independent contractor is forced to significantly limit his or her performance of customary work duties because of the COVID-19 public health emergency. So as we mentioned in the previous question regarding PUA, the individual will still be reporting their earnings each week. However, if their earnings have decreased to a point that it's less than their weekly benefit amount, they may be eligible for a partial Pandemic Unemployment Assistance payment.

MR. KIGHT: OK. Thank you. "Are the paid and sick leave entitlement in addition to what is provided, or is it inclusive of what the government agency already provides?" Olivia, can you take that one?

MS. JONES: Thank you. Sure. The paid sick leave under the expanded – Emergency Paid Sick Leave Act, which is under the FFCRA, is an additional benefit to what the agency would provide. And this is effective as of April 1st through December 31st of 2020.

I'm assuming they're asking in regards to benefits, such as the amount of leave or the employer's – (inaudible) – leave that you have available. When the leave is used for the expanded family and medical leave due to school closure or lack of child care, the employer can require the employee to use their accrued paid time off during the 10 weeks that they're on the paid leave.

MR. KIGHT: OK. Thank you. Thank you. Here's the next one, "I did a teledoc appointment due to flu-like symptoms the day before the act was enacted. Wonder if my insurance will credit my account." Amber, can you take that one?

MS. RIVERS: Happy to. So unfortunately, because you received the services prior to the act, unfortunately it's not going to fall within the required items and services. However, I really would encourage you to check the terms of your coverage. Call your plan administrator or your health insurance company. Like I mentioned, the department issued guidance encouraging plans and issuers to cover and provider greater access to telehealth services. So you might want to check to see whether or not your plan would still cover it under that relief and what, if any, cost sharing would be applicable.

MR. KIGHT: OK. Thank you. Thank you. OK. Our next question, "We were told we can offset PUA up to 50 percent to pay back regular state overpayments for your own state. Do we need to apply the state overpayments laws that are applied to unemployment if state law limits overpayment offset for unemployment compensation to less than 50 percent? Do you apply state law or DUA law for the offset?" Michelle?

MS. BEEBE: And so for this, the individual has an overpayment of regular unemployment and they're currently collecting Pandemic Unemployment Assistance. The two parameters to keep in mind is that you must offset the PUA payments to recover the overpayments, and that that offset must be up to 50 percent. And so if your state opts to go less than 50 percent, as long as you're still conducting the offset and as long as it doesn't exceed 50 percent, then you're OK>

MR. KIGHT: OK. Thank you. Thank you. Olivia, I'm going to ask you to take the next one. "So far all of these acts are for private employers with less than 500 employees." (Inaudible, cross talk.)

MS. JONES: That is correct. The FFCRA applied to private sector employers. That includes employers for-profit and not-for-profit. Only private sector employers are required to comply with the act if they have fewer than 500 employees; that is, 499 employees or less.

MR. KIGHT: OK. Thank you. Thank you. The next question, "What are the limitations to the employee's ability to claim benefits such as wage income limits?" Michelle, do you mind taking this one?

MS. BEEBE: Yes, thank you, Robert. And so this is going to be state-specific in terms of how wages earned while collecting unemployment benefits will impact your weekly benefit amount. Generally speaking, you would be disqualified if those earnings are higher than the weekly benefit amount. For a more specific answer, it would depend on the state that you're filing in.

MR. KIGHT: Ok. Thank you. Thank you. I think you have another here. If you can take the next one also, Michelle. "Is there at some point a confirmation, a documentation required in regards to the self-attestation when filing?"

MS. BEEBE: And so with this I'm assuming that we're still talking about Pandemic Unemployment Assistance. And keep in mind, to qualify for PUA you need to not be eligible for regular unemployment, extended benefits, or PDUC; and that you are unemployed or partially unemployed for one of the listed COVID-19-related reasons. So whether or not you qualify for regular unemployment will be determined by the state agency. Whether or not one of the listed COVID-19 reasons applies to you is based on this self-attestation. This is something where you'll fill out the form that's provided by the agency and you'll report what that is at the time of your initial claim, as well as each continued claim that you file throughout the period. And so it is based on self-certification.

MR. KIGHT: OK. Thank you. Michelle, I might as well tell you you're very popular today, so the next question I'm also going to throw your way. OK. Just one second there. OK. "Do employees in California workshare receive the additional $600 a week through the CARES Act as well?"

MS. BEEBE: And so workshare is also known as short-time compensation or STC. This is one of the underlying benefits that qualifies for the extra $600. And so if you qualify for at least $1 of benefits – meaning $1 of STC – then you will receive the full $600 – the full $600 payment.

MR. KIGHT: OK. Thank you. Thank you. "For PUA I understand we deduct weeks (saved ?) on UI or PEUC or EB up to 13 weeks from the weeks of PUA. If a claimant has exhausted or expired prior to the start date of PUA, do we deduct previously-paid UI? Claimant exhausts 8/30/2019 and has potential eligibility under PEUC. Would we deduct the 26 weeks of UI and the 13 weeks of PEUC from their PUA benefits, or would we just deduct UI and EB/PUA received after 2/1?"

MS. BEEBE: OK. I think this individual deserves a certificate for UI acronyms. Well done. All right. So PUA is available for up to 39 weeks, minus your regular unemployment weeks collected, as well as your extended benefit weeks collected. So the weeks of PEUC do not impact that 39-week limitation. When we're looking at which weeks of regular unemployment and extended benefits to subtract from 39, we look at any weeks that were paid during the pandemic assistance period, which is January 27th to December 31st of 2020.

MR. KIGHT: OK. Thank you. Thank you. Michelle, "How does a PUA participant verify his application has been accepted or not?"

MS. BEEBE: And so this will be dependent on the state in which they're filing. I will note that one of the conditions to receive the emergency administrative grant for states is that they notify applicants when an application is received and is being processed. And in any case where the application is unable to be processed, that they provide information on what steps an applicant can take. So I would encourage the participant to check with the state UI agency.

MR. KIGHT: OK. Thank you. Here's another one for you, Michelle. "How does teleworking part-time, 15 hours per week, after receiving UI affect benefits?"

MS. BEEBE: And so as the individual is filing their weekly certifications to collect benefits – whether they're collecting regular unemployment, PEUC, or PUA – the individual will need to report any earnings that they received. Depending on state law, that may result in a partial weekly benefit amount being paid.

MR. KIGHT: OK. Thank you. "Where would a person go to file for PUA?"

MS. BEEBE: And so for this, an individual will need to contact their state UI agency. We advise individuals to file in the state where they were working at the time that they became unemployed because of COVID-19.

MR. KIGHT: OK. Let's go to Amber next. "COVID-19 testing, including diagnostic, et cetera, are covered under our health insurance. So we do not have any out-of-pocket payments?" That's a question. Amber?

MS. RIVERS: Thanks, Robert. So the Families First Act specifies that plans and issuers shall not impose any cost-sharing. So that's going to include deductibles, copayments, and co-insurance. So that cannot be imposed on the required diagnostic test, as well as the related items and services, as I discussed. In addition, plans and issuers are not permitted to apply any prior authorization requirements for other medical management requirements to those services.

MR. KIGHT: OK. Thank you. Thank you. Here's a question and I'll let you all decide who to take this. This is, "Is the $600 taxable? And how can a client have that taken out?" Who would like to take that? (Pause.) All right. We'll come back to that one.

Let's see here. The next one, "Who would be the lead carrier for someone who has multiple part-time jobs or full-time jobs? Can you collect from different programs based on this?" Michelle?

MS. BEEBE: And so in this one it wouldn't necessarily be collecting from different programs. What I would encourage that individual to do is file a claim for unemployment with their state UI agency. That state agency will look at your – the employers that you had generally during the last 18-month time period. If you had multiple employers and they were considered covered by unemployment, then they would look at all of the wages from all of those employers to determine if you qualify for benefits.

MR. KIGHT: OK. OK. While I have you, Michelle, "If you are a part-time employee who lost all employment, can you qualify for PUA?"

MS. BEEBE: And so the first thing to do would be to contact the state's unemployment agency. In some states you may be a part-time employee and still qualify for regular unemployment. So the state agency will determine if that's the case.

If you do not qualify for regular unemployment, then they would look at the reason that you're unemployed. And if it's one of the listed COVID-19-related reasons, then you may qualify for PUA.

MR. KIGHT: OK. OK. I think we'll probably take a few more questions. "If you were working part-time before the coronavirus and get laid off, are you eligible for any kind of unemployment, even if you don't have a qualifying number of weeks?" Michelle, can you take that?

MS. BEEBE: And so it is possible. So more to the previous question is, depending on the state, you may qualify for regular unemployment with those part-time wages. If not and you are unemployed because of one of the listed COVID-19-related reasons, then you may otherwise qualify for PUA.

MR. KIGHT: OK. OK. All right. We're coming down to the end now. So are there any closing remarks, any additional information that any of our speakers would like to leave with our participants today? (Pause.)

OK. If not, again we thank everyone for being here. I think our speakers made a gallant effort to respond to many of your questions, some that we were unable to get to today. We'll ensure we get those out to you. But we thank you for your participation and being with us this afternoon or this morning, depending on where you are in the country.

I turn it over to you, Grace. Thank you.

(END)