

March 25, 2020 HCM Trends

# Webinar FAQ's Remote Employees and the Families First Coronavirus Response Act

HUMAN CAPITAL MANAGEMENT



Benefit Advisors  
NETWORK



The following FAQs are developed from the questions asked during the Benefit Advisors Network, March 25, 2019 [HCM Trends webinar](#) covering Remote Employees and the Families First Coronavirus Response Act. Additional guidance continues to be released by the Department of Labor (DOL), the Internal Revenue Service (IRS) and other governing agencies. The provided responses are current with the release date.

For updated guidance please refer to your trusted Benefit Advisor for additional resources.

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**Q1. There are several states where people are NOT allowed to have face to face meetings as their shelter in place forbids the doors to stay open. How do you advise people terminate in those situations? What are best practices for final paychecks?**

A. While face to face is definitely the best practice, there are times when such as now exceptions must be made. An alternative form personal communication is viable option. I would suggest avoiding email or texting as they are less personal and can leave room for negative interpretation.

Companies should follow their state guidelines for distribution of final paychecks. If employee has direct deposit and policy says last paycheck is manual check, an employer could consider continuing to use direct deposit or if wanting to maintain manual delivery of check deliver via federal express or other secured delivery system.

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**Q2. Posters--if employer is temporarily closed or has furloughed a large number of employees, is posting at the job site still sufficient?**

A. Labor law posters must be posted in a conspicuous site at the job site where employees have access. An employer can satisfy the requirement for the posting of the FFCRA poster by emailing, placing poster on company intranet or public site (where all employees have access) or direct mailing to the employees.

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**Q3. What are the recommendations for IT equipment for remote work for staff? Do most employers provide the equipment or reimburse employees for the use of their PC's to access the network via remote access?**

A. In order to have the ability to maintain best practices for IT security, it is recommended that the employer provide the equipment.

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**Q4. If the workforce is suddenly remote, I understand the need to hold employees accountable but how do you do this successfully without adding to an employee's anxiety during this pandemic, including eLearning children at home, having to take care of high risk persons?**

A. Communication is key. Having individual conversations with the employees to understand their specific needs during this time is a great place to start. Have them participate in the discussion addressing how will activities be accomplished, when will the accomplished. Then have a sign-off of acceptance that both can agree to.

Providing ability to check in and report on progress and any obstacles to achieve goals. Remembering to provide communication of available benefits and resources for assistance.

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**Q5. If an employee fits one of the categories of high risk (age/health), is the employer able to restrict them from working on site? Therefore, withholding pay while paying those not in those categories. I assume not but would like a source for this determination. Thank you.**

A. Despite the COVID-19 pandemic, employers are still subject to the state and federal employment laws which prohibit discrimination in the workplace. Employers must not require an employee to telework based on the employee's status in a protected category – such as the employee's disability, perceived disability, or age. Nor may an employer restrict an employee from working based on the employee's status in a protected category.

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## Family First Coronavirus Response Act

### Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act provision applies to all public and private employers with fewer than 500 employees.

[The Emergency Paid Sick Leave Act](#): Employers are to provide paid sick leave of up to 80 hours to both full and part-time eligible employees (from date of hire) who, are unable to work (or telework) due to a need for leave for only one of the following reasons:

1. “The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
3. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID–19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.”

**For determining calculation of Pay for Emergency Paid Sick Leave, employers would calculate the amount of benefit based upon the reason for the leave.**

### For leave reasons:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19, or
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19, or
- The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.

Employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

### For leave reasons:

- The employee is caring for an individual who has been diagnosed with COVID-19 or under quarantine for symptoms related to COVID-19 or
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

### For leave reason:

- The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID–19 precautions

Employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (including time taken under the Extended FMLA for a period up 12-week).

Reason for leave	Daily pay rate/cap	Total pay cap
Quarantine or isolation order.	Regular rate of pay up to a cap of \$511	\$5,110
Advice from a health care provider to self-quarantine.		
Experiencing symptoms of COVID-19 and seeking a medical diagnosis.		
Caring for an individual subject to a quarantine or isolation order, or who has been advised by a health care provider to self-quarantine.	Two-thirds the regular rate of pay, up to a cap of \$200	\$2,000
Caring for own child whose school or place of care has closed, or whose care provider is unavailable due to COVID-19.		
Experiencing other substantially similar condition specified by the secretary of health and human services.		

[Shrm.org](http://Shrm.org)

There is an exemption from the Emergency Paid Sick Leave for an employer of *an employee that is a health care provider, or an emergency responder* may exclude such an employee from application of this subsection.

**Q1. Is the Emergency Paid Sick Leave paid from day 1 or there an allowed unpaid time such as 10 days etc.?**

A. Effective April 1, 2020 through December 31, 2020, the Emergency Paid Sick time is immediately available for eligible employees. There is no waiting period.

**Q2. With the April 1st date...if an employer has already furloughed employees, could the employer bring the employees back to active work (either on site or from home) on April 1st (or a later date) and then implement the Emergency Paid Sick Leave (in order to get more pay to employees they expect to bring back to work AND access the payroll tax credit.**

A. No, if prior to the FFCRA's effective date, the employer furloughed employees and stopped paying them due to a lack of work, the employees are not eligible for Emergency Paid Sick Leave or the Expanded FMLA, but they may be eligible for unemployment insurance benefits.

**Q3. It is my understanding that the first 10 days of Emergency Paid Sick leave is unpaid then time after is 80 hours paid.**

A. Under the Emergency Paid Sick Leave Act an employee is eligible up to 80 hours of paid time off from day 1 of eligible leave.

Under the Emergency Family and Medical Leave Expansion Act EFMLA the first 10 days may be unpaid. An employee may elect to use any accrued paid time off made available by the employer or an employee may qualify for pay under the Emergency Paid Sick Leave.

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**Q4. Will employees be eligible for Emergency Paid sick leave if there is a state quarantine, but your company is an essential business (logistics)?**

A. Yes, If an employer has fewer than 500 employees and the employee has a qualifying reason under the Emergency Paid Sick Leave Act.

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**Q5. Can you pay an employee 100% of their regular rate for caring for a child who is out of school if that amount is under \$200 per day or do you have to pay 2/3rd?**

A. The requirement is that the employee is entitled to pay at 2/3 of their regular rate of pay or applicable (federal or state) minimum wage whichever is higher for to \$200.00 per day and a total of \$2,000.00 for up to 80 hours for the Emergency Paid Sick Leave and up to \$12,000.00 for remaining time (no more than up to 12 weeks total) if also taking EFMLA.

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**Q6. Does the sick leave start only after 4/2 or is it in effect for covered cases that happened before that date or before the act was passed?**

A. The Paid Sick Leave under FFCRA is effective April 1, 2020 and is not retroactive.

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**Q7. Are employees required to use PTO before using paid sick leave under the FFCRA?**

A. An employer may not require an employee to use company provided paid leave before using Emergency Paid Sick Leave.

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**Q8. What if we offer staff childcare but the child doesn't normally attend our staff childcare? Would they still be able to use paid leave if they have different childcare options?**

A. An employee may still be eligible for Emergency Paid Sick Leave and Emergency FMLA if they do

not use a company provided childcare facility. Under the E-FMLA a child care provider is defined as a “provider who receives compensation for providing child care services on a regular basis, including an ‘eligible child care provider’ (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 ([42 U.S.C. 9858n](#))).”

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**Q9. If you work for a Critical Infrastructure Industry, does HR need to prepare letters for employees to continue to work?**

A. There is no exemption for employees of Critical Infrastructure industries, only for healthcare providers or emergency responders.

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**Q10. If an "employer must shut down due to city or state requirement" the employees would qualify for the Emergency Paid Sick Leave. Would this be the case for what has happened in New York, California & Illinois.**

A. Those are examples of what would be qualifying reasons

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**Q11. Can you please clarify if a public employee, with over 500 employees is covered under the sick leave portion of this law?**

A. The employee threshold for the Emergency Paid Sick Leave Act is *fewer than 500 employees*. This applies to all both private and public employers.

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## Emergency Family and Medical Leave Expansion Act

Under the Emergency Family and Medical Leave Expansion Act, (EFMLA) eligible Employers (defined as having a threshold of fewer than 500 employees) are to make paid leave available to both full-time and part-time employees who have been employed for at least 30 calendar days. A health care provider or emergency responder employer may choose to exclude an employee from this provision. This provision becomes effective April 1, 2020 and is in effect until December 31, 2020.

For EFMLA, an eligible employee (employee who has been employed at least 30 calendar days) is able to take up to 12 weeks leave when they are unable to work or perform telework (working away from the employers respective worksite such as at home) for the purpose of if:

- an elementary or secondary school or care center has been closed, or
- when a paid caregiver is unable to care for child due to a public health emergency.

The first 2 weeks (up to 80 hours) of this leave is taken as paid sick leave at 2/3 the employee’s regular rate of pay under the PHEL and the remaining leave is also taken at 2/3 the employees’ regular rate of pay under EMFLA.

**Q1. How does this act FMLA extension apply to businesses that are normally not subject to FMLA (less than 50 employees)?**

A. An exemption exists for small business with fewer than 50 employees from providing EFMLA if that would jeopardize the viability of the business as a going concern.

Currently no guidelines exist as to how this exemption is to be applied. We encourage you to stay connected to your Trusted Benefits Advisor as we will continue to provide information through them as it is forthcoming.

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**Q2. If someone used regular FMLA during the beginning of the year, can they use also the Emergency FMLA?**

A. Only to the extent of having available time, and if the requirements of the Emergency FMLA are met.

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**Q3. Please clarify, Employees off to provide care for their children due to school closure are given both leaves? Emergency Paid Sick Leave for 2 weeks at 2/3 pay, then another 2 weeks at 2/3 for Medical Leave Expansion, correct? The they are allowed another 10 weeks paid leave?**

A. An employee taking leave due to school or place of care closures 1 or childcare provider is unavailable due to COVID-19 precautions is eligible for both leaves for a total of up to 12 weeks of paid leave. If they are taking: **the paid sick leave (2 week leave)** they are eligible for up to 2 weeks of paid leave at 2/3 rate of pay for a maximum of \$200.00 per day or \$2,000 total over the 2 week period.

If they are taking the **expanded family and medical leave**, they are eligible for up to 12 weeks of paid EFMLA at 2/3 of pay for up to \$200.00 per day or \$12,000 total for the entire 12 week period.

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**Q4. For the paid family and medical leave expansion, are employees able to take this paid leave intermittently? For example, if a parent shares custody of their child with the other parent and needs to have paid leave for two days a week to care for child whose school is closed. OR if they are sick with COVID-19 and some days they feel well-enough to work, but others they do not, and are requesting to use emergency FMLA time?**

A. Yes, if the employer allows it. The DOL encourages employers and employees to collaborate to achieve flexibility and to meet their mutual needs. The DOL is supportive of such voluntary arrangements.

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**Q5. Can emergency FMLA and emergency paid sick leave run concurrently?**

A. Maybe, although this is not addressed in the legislation. However, if an employee is eligible for leave under the Expanded FMLA and the reason for the Emergency Paid Sick Leave also qualifies for leave under the Expanded FMLA, then it is likely that the leave would run concurrently.

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**Q6. Is this in addition to FMLA, for example, if someone has used all FMLA time are we required to give an additional 12 weeks for this act?**

A. The E-FMLA extends the reasons an employee may be eligible for leave not the length of time an employee may be eligible for leave.

For EFMLA, an eligible employee (employee who has been employed at least 30 calendar days) is able to take up to 12 weeks leave when they are unable to work or perform telework (working away from the employers respective worksite such as at home) for the purpose of if:

- an elementary or secondary school or care center has been closed, or
  - when a paid caregiver is unable to care for child due to a public health emergency.
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**Q7. If you are an employer under 500, can you pay your employees as normal whether at work or not or even if remote working do you need to apply the new FMLA to them since paying them goes above that requirement?**

A. The provisions of the FFCRA apply to those eligible employees who cannot work or cannot work remotely due to qualifying reasons under the EFMLA for the purpose of:

- an elementary or secondary school or care center has been closed, or
- when a paid caregiver is unable to care for child due to a public health emergency.

An employer can eligible employees more than what the FFCRA requires however the employer will only be eligible for tax credit to the extent of the allowable amount under the FFCRA. An employer should maintain records on employees taking leave, the amount of leave taken and the reason for the leave.

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**Q8. Could you please share the source where it states that the emergency FMLA is now in effect from 4/1/2020?**

A. This information was published in the DOL guidelines which can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

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## Health Care Provider

**Q1. Has guidance been released about what a health care provider is - is it just the actual provider giving service or does administrative staff qualify for the exemption?**

A. As guidance is still being issued by the Department of Labor for the application of FFCRA we shall most likely see more information come out on this. However, the terms “certain health care providers and emergency responders” applies to employees.

For guidance since this FFCRA is expanding the FMLA, we look to the FMLA for the definition of a health care provider. This is a limited term meaning

The FMLA Act defines **health care provider** as:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the [State](#) in which the doctor practices; or
2. Any other [person](#) determined by the [Secretary](#) to be capable of providing health care services.

Others capable of providing health care services include only:

1. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the [State](#) and performing within the scope of their practice as defined under [State](#) law;
2. Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under [State](#) law and who are performing within the scope of their practice as defined under [State](#) law;
3. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an [employee](#) or family member is receiving treatment from a Christian Science practitioner, an [employee](#) may not object to any requirement from an [employer](#) that the [employee](#) or family member submit to examination (though not treatment) to obtain a second or third certification from a [health care provider](#) other than a Christian Science practitioner except as otherwise provided under applicable [State](#) or local law or collective bargaining agreement;
4. Any [health care provider](#) from whom an [employer](#) or the [employer's](#) [group health plan's](#) benefits manager will accept certification of the existence of a [serious health condition](#) to substantiate a [claim](#) for benefits; and
5. A [health care provider](#) listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.



The phrase authorized to practice in the [State](#) as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

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**Q2. Question on the FFCRA, does a senior living facility qualify as a health care provider? Assuming yes, if they do and can opt out of offering PHEL, does that mean they can opt out for all employees including administration, dietary, housekeeping? Or only direct care givers?**

A. Refer to Q/A 22 for definition of a health care provider. Those employees who fall under those categories should be those considered for the health care provider exemption.

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**Q3. If an employer is a health care provider, do you know what they are supposed to do if they want to opt out of paying the two weeks? if we are excluded, do we still have to post a notice and let them know they are excluded?**

A. Health Care provider for the purposes of FFCRA is a definition given to an employee and not an organization. Please see Q 22 above for details. For details on opting out of providing paid leave for a healthcare provider, we are awaiting guidance from the Department of Labor. We encourage you to stay connected to your Trusted Benefits Advisor as we will continue to provide information through them as it is forthcoming.

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## Health & Welfare Benefits

**Q1. Testing with no cost sharing...most of the large carriers had agreed prior to FFCRA to cover C-19 testing without cost sharing. Are there any details we need about such testing prior to this March 18th Act?**

A. It may depend on the state in which the plan is written. Many states imposed coverage requirements at no cost sharing for fully-insured plans and plans purchased on the Marketplace Exchange. On March 11, the IRS also released Notice 2020-15 that allows for plans to cover COVID-19 testing and treatment without cost sharing and not have it impact HDHP or HSA eligibility. While the FFCRA does not appear to require no cost sharing before March 18, employers may face other obligations.

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**Q2. Has it been made clear if BOTH testing and care is covered or is the no cost applicable to testing only?**

A. The Families First Coronavirus Response Act and the new CARES Act state that only testing and its related services need to be covered at no cost sharing. Related services include the test itself, as well as an office visit, urgent care, or emergency room visit as associated with test. For example, a member



cannot be charged for urgent care if the purpose of the urgent care visit was to get tested or determination of testing for COVID-19. If the visit does not result in a test or provides services unrelated to COVID-19, it can be subject to cost sharing. Treatment of COVID-19—such as being admitted to the hospital due to complications—is not required to be at no cost sharing.

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**Q3. If an employee stops their contribution to the dependent care FSA because their day care is closed, do they have the option to start that benefit contribution back up once daycares are open again?**

A. If a participant experiences a qualifying life event in their Dependent Care FSA such as a change in childcare provider, change in cost or change in coverage an change may be made to the benefit contribution consistent with that event.

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**Q4. On the HDHP slide, it mentioned testing & treatment, but everything we're hearing from the carriers is that only testing is considered preventive under HDHP, but treatment is still subject to ded/coi. Can you please clarify?**

A. Treatment can also be covered at no cost sharing without impact HDHP status; however, it is not required. This allowance is made under IRS Notice 2020-15. A plan can still require cost sharing for treatment of COVID-19 but cannot require it for testing and testing services. Likewise, a plan cannot require prior authorization or medical management in relation to COVID-19 under the FFCRA.

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**Q5. Can there be changes in Medical FSA elections?**

A. A qualifying life event would need to occur in order to make changes in Medical FSA elections. Qualifying

Events include:

- Change in employment status for self, spouse or dependent
  - Change in legal marital status (marriage, divorce, death of spouse)
  - Chang in dependents (birth or adoption of child, death of a dependent).
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## Tax Credit

**Q1. I an employee is out for the full 12 weeks, does the employer only get the tax credit for the first 2 weeks of pay, and no tax credit for the remaining 10 weeks of pay?**

A. The Tax credit is to provide to give employers a 100% credit for the amount allowable and paid to an eligible employee under both the Emergency Sick Leave and the EFMLA.

We await continuing guidance from the Internal Revenue Service. We encourage you to stay connected to your Trusted Benefits Advisor as we will continue to provide information through them as it is forthcoming .

Information continues to be made available on the [IRS website](#).

## Unemployment Insurance Benefits

### **Q1. Are there any provisions with unemployment to cover those that are not employed by companies that are currently required to pay in?**

A. Unemployment has been expanded by the Department of Labor (DOL). On March 12, 2020 the DOL issued guidance that provides Unemployment benefits may be available for employees when an employer temporarily ceases operations due to COVID-19, preventing employees from coming to work; (2) An individual is quarantined with the expectation of returning to work after the quarantine is over; and (3) An individual leaves employment due to a risk of exposure or infection or to care for a family member. In addition, federal law does not require an employee to quit in order to receive benefits due to the impact of COVID-19.

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## Miscellaneous

### **Q1. The site for AZ governor doesn't work.**

A. Thank you for this information. The site is back up and can be accessed at <https://azgovernor.gov/>.

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### **Q2. Can I hand out the 1 page poster to all staff?**

A. Yes, it is available on the Center for Disease Control's (CDC) website which can be accessed at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/share-facts.html>

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### **Q3. Is the poster out? can't find any on DOL's website.**

A. The poster may be found on the Department of Labor website [https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

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**Q4. Are your materials copyrighted? Are we able to share with employees?**

A. You are able to share. Please be sure that proper credit is given to articles/graphics/quotes.

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**Q5. What does it mean on page 31 about snap suspended?**

A. The FFCRA included various provisions one of which is to expand benefits available under the Supplemental Nutritional Assistance Program for low-income jobless workers. The requirements under SNAP are that participants may be disqualified from receiving SNAP benefits if they do not meet certain work requirements. Those requirements have been lifted for the period covered by FFCRA.

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Bobbi Kloss has served as Director of Human Capital Management Department for Benefit Advisors Network since February of 2014. She also oversees all HR-related functions for BAN internal practices. She has a deep understanding of the increasingly complex and diverse HR industry, with more than 20 years of Human Resource Generalist and executive-level Human Capital Management experience.

