



# Family First Coronavirus Response Act

Any questions?

[hello@highflyerpayroll.com](mailto:hello@highflyerpayroll.com)

March 20, 2020



# Presenters



- Craig Broome, Highflyer Payroll President  
(O) 225-933-8330 | (M) 225-266-5915 | [craigb@highflyerpayroll.com](mailto:craigb@highflyerpayroll.com)



- David Theard, Licensed Attorney (previously specialized in labor and employment law for eleven years) and Employee Benefits Consultant with BXS  
(O) 504-875-3036 | (M) 504-583-6555 | [david.theard@bxsi.com](mailto:david.theard@bxsi.com)



# Agenda

## Agenda:

- H.R. 6201 Bill Update/Analysis
  - Paid FMLA Leave
  - Paid Sick Leave
  - Employer Tax Credits
- FLSA Compliance: Things to Keep in Mind Regarding Pay, Especially with a Remote Workforce
- Impact on Workers' Compensation
- Impact on Health Benefits for Layoffs or Furloughs
- Q&A



# Legal Disclaimer



- The information provided on this webinar does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available on this site are for general informational purposes only. Information on this webinar may not constitute the most up-to-date legal or other information. This webinar contains links to other third-party websites. Such links are only for the convenience of the reader, user; Highflyer Payroll and its members do not recommend or endorse the contents of the third-party sites.
- Readers of this content should contact their attorney to obtain advice with respect to any particular legal matter. No reader, user, or browser of this information should act or refrain from acting on the basis of information on this site without first seeking legal advice from counsel in the relevant jurisdiction. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Use of, and access to, this website or any of the links or resources contained within the site do not create an attorney-client relationship between the reader, user, or browser and website authors, contributors, contributing law firms, or committee members and their respective employers.
- The views expressed at, or through, this content are those of the individual authors writing in their individual capacities only – not those of their respective employers, or committee/task force as a whole. All liability with respect to actions taken or not taken based on the contents of this site are hereby expressly disclaimed. The content on this posting is provided "as is;" no representations are made that the content is error-free.

March 20, 2020



# Family First Coronavirus Response Act (H.R. 6201)

President Trump Wednesday night signed the Families First Coronavirus Response Act (H.R. 6201), hours after the Senate overwhelmingly approved the legislation. On March 16, the House of Representatives passed by unanimous consent a revised version of the bill that made technical corrections to the legislation that the House originally approved March 14.

The legislation eliminates patient cost-sharing for COVID-19 testing and related services, establishes an emergency paid leave program, and expands unemployment and nutrition assistance. Moreover, the bill provides a temporary increase in the Medicaid Federal Medical Assistance Percentage (FMAP), and creates two mechanisms for coverage of testing for the uninsured – one through the Medicaid program and another through the Public Health and Social Services Emergency Fund.

Today we will focus on the key pieces that impact Employers and Employees.



# Emergency FMLA Leave

- Signed into law on March 18, 2020, effective April 2, 2020 as an extension of FMLA.

## Who

- Applies to employers with less than 500 employees.
- Employees who have been on payroll for 30 days or more are eligible.

## What

- Expansion of FMLA, which requires 12 weeks of leave for serious health condition.



# Emergency FMLA Leave

## What

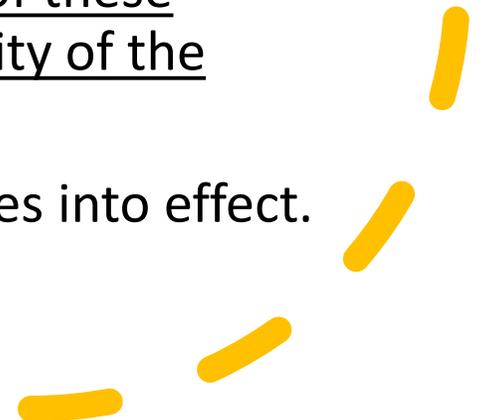
- **Reason for Leave:** Eligible employees can take up to 12 weeks of FMLA leave for a qualifying need “related to a public health emergency,” or in this case, COVID-19.
  - This means the “employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable” due to COVID-19.



# Emergency FMLA Leave

## What

- **Required Pay**: The first ten days of leave (two weeks) are unpaid. The employee, however, can substitute accrued paid leave during this time period, including emergency paid sick leave (which Craig covers next).
  - The remaining ten weeks are to be paid at 2/3 the employee's regular rate a pay for the number of hours the employee would usually be scheduled to work.
  - Maximums- \$200 per day, \$10,000 total per employee.
- **Small Employers**: The Act gives the Secretary of the Department of Labor the authority to issue regulations exempting business with fewer than 50 employees from these requirement when the imposition of these requirements would jeopardize the viability of the business as a going concern.
- No regulations yet, hopefully before it goes into effect.



# Emergency FMLA Leave

## What

- **Job Restoration**: Emergency FMLA leave is job protected, and the employer must restore an employee to the same or equivalent position upon return to work.
  - Exception for employers with fewer than 25 employees when position no longer exists due to operational changes due to COVID-19 (economic downturn, etc).



# Emergency FMLA Leave

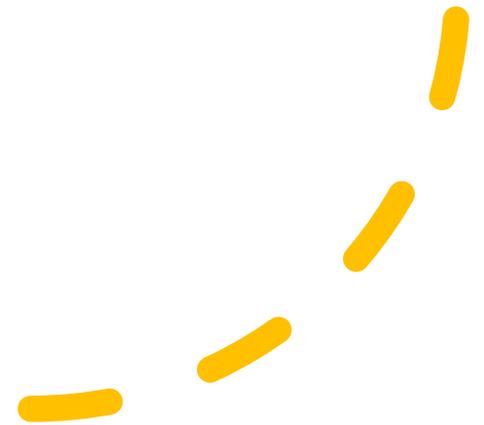
## What

- **Question**: If this law applies to me, am I able to layoff employees or reduce my workforce prior to the effective date of April 2 and avoid these requirements?
- **Answer**: Although this is not completely clear, as it currently stands, the answer to this question is probably yes. The law contains no retroactivity provisions. However, guidance may be issued in the near future clarifying this issue.



# Paid Sick Leave Act

**The Emergency Paid Sick Leave Act** is contained in Division E of H.R. 6201 and requires certain employers to provide employees with two weeks of paid sick time if the employee is unable to work (or telework) for the following coronavirus-related reasons:



# Paid Sick Leave Act

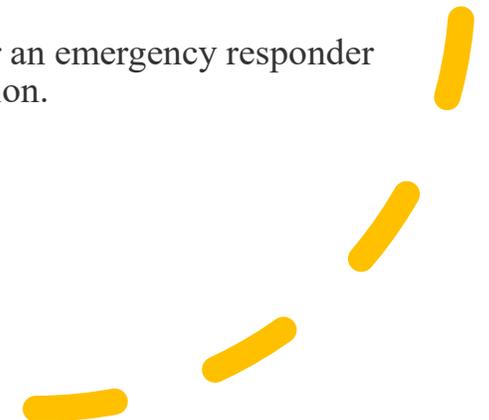
## PAID SICK TIME REQUIREMENT

GENERAL.—An employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

- (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 child care 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.

Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

- (1),(2),(3), Care for you and your person
- (4), (5,) Caring for others(6)



# Paid Sick Leave

## Who

- Fewer than 500 employees
- Sick, exposed, or caretaker
- No time on job exclusions
- The Secretary of Labor can:
  - provide regulations to exclude certain health care providers and emergency responders from the definition of employer.
  - exempt small businesses with fewer than 50 employees from the bill's paid leave requirements if those requirements would jeopardize the viability of the business.



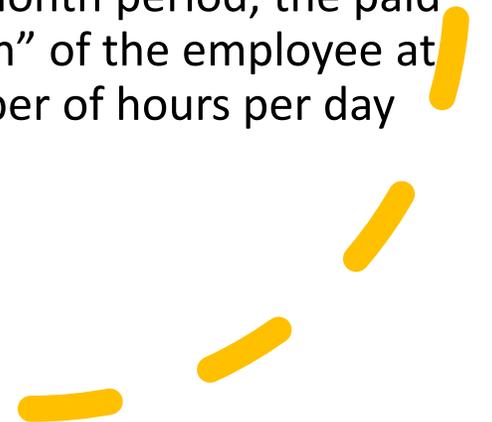
# Paid Sick Leave

## What

- **Full-time** employees are entitled to 80 hours of paid sick leave.
- **Part-time** employees are entitled to the number of hours that the employee works, on average, over a two-week period.

For hourly employees whose schedules vary, the employee's paid leave rate should equal the average number of hours that the employee was scheduled per day over the six-month period prior to the leave.

If the employee did not work in the preceding six-month period, the paid leave rate should equal the "reasonable expectation" of the employee at the time of hiring with respect to the average number of hours per day that the employee would be scheduled to work.



# Paid Sick Leave

## When

- Immediately upon effective date, which is 4.2.2020
- Once an employee's coronavirus-related need for using the emergency paid sick leave ends, then the employer may terminate the paid sick time.
- Further, paid sick time provided under H.R. 6201 shall not carry over from one year to the next.



# Paid Sick Leave

## How Much

- **Paid Leave Rate:** Employees who take paid sick leave because they (1)(2)(3) are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis are entitled to be paid at their regular pay rate or at the federal, state or local minimum wage, whichever is greater. In these circumstances, the paid sick leave rate may not exceed \$511 per day, or \$5,110 in aggregate.
- Employees who take paid sick leave to care (4) (5) (6) for another individual or child or because they are experiencing another substantially similar illness (as specified by HHS) are entitled to be paid at two-thirds their regular rate. In these circumstances, the paid sick leave rate may not exceed \$200 per day, or \$2,000 in aggregate.
- The bill requires the Secretary of Labor to issue guidelines to assist employers in calculating paid sick time within 15 days of the bill's enactment 4.2.2020.



# Paid Sick Leave

- **Effect on Existing Paid Leave Agreements:** An employer may not require an employee to use other paid leave provided by the employer before using the paid sick time provided under H.R. 6201.
  - **Employee Notice Requirement:** After the first workday (or portion of a day) an employee receives paid sick time, an employer may require the employee to follow “reasonable notice procedures” in order to continue receiving paid sick time.
  - **Employer Notice Requirement:** Employers shall post and keep posted, in conspicuous places, notice of the emergency paid sick leave requirements made available under H.R. 6201. Within seven days of the enactment of the bill, the Secretary of Labor will provide a model notice for use by employers.
- 3.25.2020



# Paid Sick Leave

- **Multiemployer Bargaining Agreements:** H.R. 6201 provides that employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave for coronavirus-related reasons.
- **Prohibitions and Enforcement:** Employers may not discharge, discipline, or discriminate against any employee who (a) takes paid sick leave or (b) has filed a complaint or proceeding or testified in any such proceeding related to the benefits and protections provided by H.R. 6201. Further, employers may not require, as a condition of providing paid sick time, that an employee search for a find a replacement employee to cover the hours during which the employee is using paid sick time.
- Employers who violate the paid sick leave requirements or retaliation prohibitions of H.R. 6201 shall be subject to civil penalties under the Fair Labor Standards Act.
- **Effective Date and Expiration:** The requirements set forth under Division E of H.R. 6201 are in effect 15 days after the enactment of the legislation 4.2.2020 through 12.31.2020.



# Employer Tax Credits

H.R. 6201 provides for employer tax credits to offset the costs associated with the paid public health emergency leave and sick leave required for employees under Divisions C and E of the bill.

- **Payroll Tax Credit:** The bill provides a refundable tax credit worth 100 percent of qualified public health emergency leave wages (as provided by Division C) and qualified paid sick leave wages (as provided by Division E) paid by an employer for each calendar quarter through the end of 2020. The tax credit is allowed against the tax imposed under the employer portion of Social Security and Railroad Retirement payroll taxes.

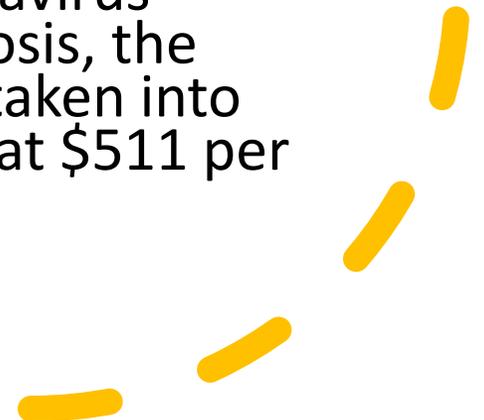


# Employer Tax Credits

## How Much

**Credit Amount:** The bill allows employers to take tax credits for qualified public health emergency leave wages and qualified sick leave wages:

- **Credit Amount for Public Health Emergency Leave Wages.** The amount of qualified public health leave wages taken into account for each employee is capped at \$200 per day and \$10,000 for all calendar quarters.
- **Credit Amount for Sick Leave Wages.** In instances when an employee receives paid sick leave because they are subject to a quarantine or isolation order, have been advised by a health care provider to self-quarantine, or are experiencing coronavirus symptoms and seeking medical diagnosis, the amount of qualified sick leave wages taken into account for each employee is capped at \$511 per day.

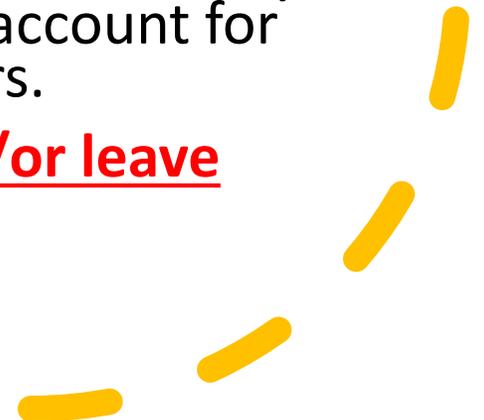


# Employer Tax Credits

## How Much

- In instances when an employee receives paid sick leave because they are caring for another individual or child or because they are experiencing another substantially similar illness (as specified by HHS) the amount of qualified sick leave wages taken into account for each employee is capped at \$200 per day.
- In determining the total amount of an employer's qualified sick leave wages paid for a calendar quarter, the total number of days that the employer can take into account with respect to a particular employee for that quarter may not exceed 10 days minus the number of days taken into account for that employee for all previous quarters.

**Keep Track of your earnings codes and/or leave payments**

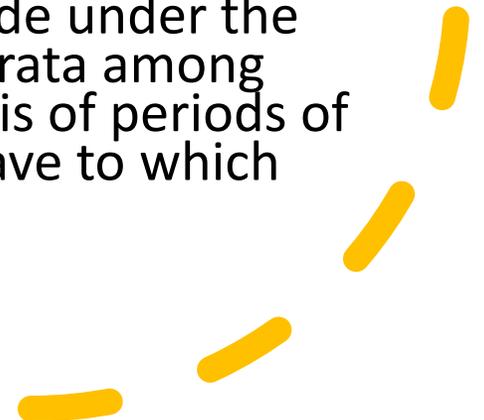


# Paid Sick Leave

**Credit for Health Plan Expenses.** The credit allowed is increased under the Bill by so much of the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which the credit is allowed.

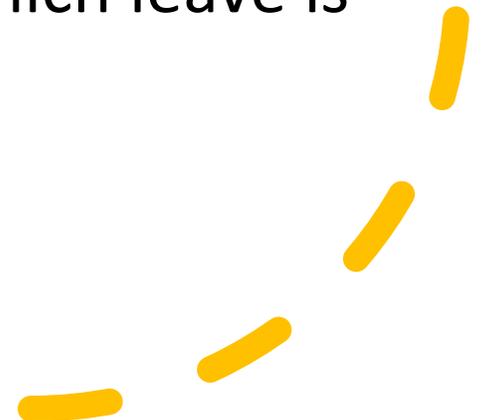
Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan.

Qualified health plan expenses will be allocated to qualified sick leave wages as the Secretary of the Treasury (or the Secretary's delegate) may prescribe in future guidance. Except as otherwise provided by the Secretary, such allocations are treated as properly made under the provision if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).



# Paid Sick Leave

**Refundability of Excess Credit:** The amount of the paid sick leave credit that is allowed for any calendar quarter *cannot* exceed the total employer payroll tax obligations on all wages for all employees. If the amount of the credit that would otherwise be allowed is so limited, the amount of the limitation is refundable to the employer in the quarter for which leave is taken.



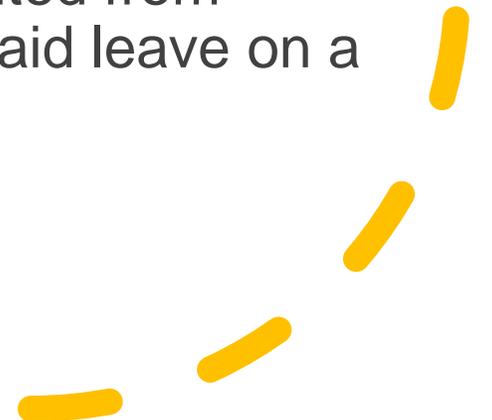
# FLSA and Covid-19

- Fair Labor Standards Act governs minimum wage and overtime requirements.
  - Many employees working from home, teleworking, or not working at all.
- For **non-exempt, hourly employees**- FLSA generally applies to hours actually worked.
  - Press the need to hourly employees working remotely to accurately track their time and to follow all time keeping policies and procedures to the extent possible.



# FLSA and Covid-19

- For **exempt, salaried employees**, generally speaking, an exempt employee must be paid an entire week's salary if he or she performs **any work** during the workweek.
  - This includes work at the office or work from home.
  - If the employee performs **no work** during the workweek, you are not required to pay the employee's salary
- **Question:** If a salaried, exempt employee does not work an entire workweek, can we require him or her to use accrued, paid time off?
- **Answer:** Recent DOL guidance states when an employer offers bona fide paid vacation time to its employees, an employer is not prohibited from requiring the employee to take such paid leave on a specific day.



# FLSA and Covid-19

- As long as the employee is paid for a full week when he or she does any work, accrued vacation can be used. If the employee is out of accrued vacation or has none, he or she must still be paid for the entire week if any work is done.



# Workers Compensation

- Workers' Compensation applies when an employee is injured in an accident in the course and scope of his employment or contracts an occupational disease in the course and scope of his employment.
- An occupational disease “means only that disease or illness which is due to causes and conditions **characteristic and peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such diseases.**” La. R.S. 1031.1 (B).



# Workers Compensation

- So what if an employee submits a workers' comp claim stating he or she contracted COVID-19 while working, or within the course and scope of employment?
  - Based on Louisiana law and caselaw, unless the employee's position made him or her more likely to contract COVID-19 than other jobs, it is unlikely contraction of COVID-19 would be covered by workers' compensation.
  - For example, those in the medical field providing care to COVID-19 patients may have valid claims for workers' compensation.

Of course this does not mean employees will not try to submit workers' compensation claims, but they will face an uphill battle



# Health Benefits for Layoffs and Furloughs

- **Employees Who Continue Working:** For employees who continue to work, either at the worksite/facility or from home, those employees should see no disruption to benefits.
- **Employees on Leave/Furlough:** Continued Eligibility will depend on plan documents, and may differ by plan, carrier or funding structure.



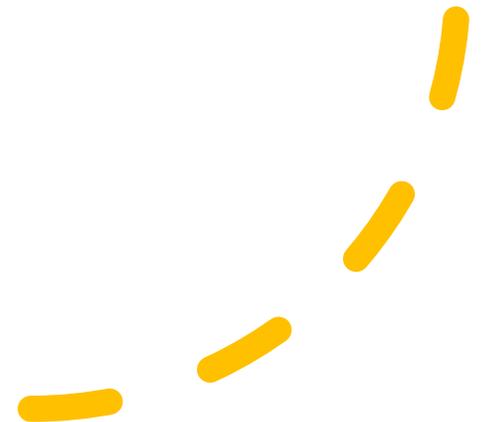
# Health Benefits for Layoffs and Furloughs

- **Fully Funded**: Eligibility will generally depend on the plan documents and the employer's leave policies. If the employer is the plan sponsor, it should review these documents carefully.
- **Insurance Carriers**: Insurance carriers may allow employers to change their hourly requirements for employees to be eligible, but this is not yet clear.



# Health Benefits for Layoffs and Furloughs

- BCBS: For example, BCBS has informed us that it will “continue to allow coverage of employees through this crisis as long as the group considers them employees.”
- United Healthcare: UHC has informed us that if groups want to be proactive about protecting benefits, groups can submit hourly changes (for eligibility) on company letterhead.
- Humana: Humana also recommends submitting, on company letterhead, any request to change a company’s hourly eligibility requirements.



# Health Benefits for Layoffs and Furloughs

- Of course it is possible that legislation will be passed to provide some kind of temporary reprieve for employees to stay on the plan when on leave or furloughed, but nothing to date has been passed.
- Otherwise, if employees are terminated, COBRA (for 20 or more employees) or state continuation (for under 20 employees) requirements are still in place.
- No matter what, payment requirements are still in place, meaning an employee must pay his or her share while on leave, or must pay premiums under COBRA or state continuation, or it is expected coverage will be cancelled for non-payment.



# Health Benefits for Layoffs and Furloughs

- **Self Funded**: If your benefits plan is self-funded, you have some additional flexibility with waiving or amending plan eligibility requirements. However, this should still be run by reinsurance carriers, as they may have their own eligibility requirements.



# Practical Concerns For Employers

- Act does create issues for certain employers who will have economic difficulties, cannot seek exemption under the Act, but also cannot afford to cover the paid leave mandated?
- The international emergency raises questions regarding the continued enforceability of contracts that contain “force majeure” clauses covering such emergencies based on Covid-19 and Workers Compensation and OSHA claims brought by employees who allege they contracted Covid-19 during their employment?
- How to handle employees and cash flow until business operations return to normal?
- How to communicate to employees until model notice is released by the Secretary of Labor with 7 days or 3.25.2020?
- How to handle employees who are not sick, caring for a family member, or child but the business was forced to close due to a local/state mandate?
- How to handle State Law and Federal Law?



Items we did  
not cover

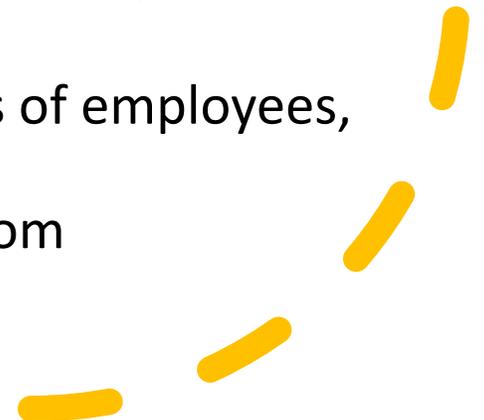
- **Unemployment Insurance**—Every state is removing restrictions for fast filing. Law mandates employers inform employees at the time of separation. More to come from Secretary of Labor.
- Remote Employees Policy / Agreements
- COBRA



# Questions and Answers

- Q: If the law is not effective until 4.2.2020 what do I do with my employees until then?
- Q: What if the employee is not sick but we were mandated to close the doors for a month?
- Q: Should I lay off or furlough?
- Q: Can my employee refuse to come to/travel work?
- Q: Can we send employees home if they are symptomatic?
- Q: If an employee is out due to sickness, can we ask about their symptoms?
- Q: What if my employee discloses that their family member or roommate has Covid-19?
- Q: What if I have a fearful employee who refuses to come to work?
- Q: Can we require or allow certain groups of employees, but not others, to work from home?

Send questions to [hello@highflyerpayroll.com](mailto:hello@highflyerpayroll.com)



# Resource Guides

## **Employer Guides/Samples**

- <https://www.highflyerhr.com/covid-19-updates/>

## **EEOC/ADA**

- [https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

## **Technical Explanation of Tax Credit**

- <https://www.jct.gov/publications.html?func=startdown&id=5251>

## **H.R. 6201**

- <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>



# Legal Disclaimer



- The information provided on this webinar does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available on this site are for general informational purposes only. Information on this webinar may not constitute the most up-to-date legal or other information. This webinar contains links to other third-party websites. Such links are only for the convenience of the reader, user; Highflyer Payroll and its members do not recommend or endorse the contents of the third-party sites.
- Readers of this content should contact their attorney to obtain advice with respect to any particular legal matter. No reader, user, or browser of this information should act or refrain from acting on the basis of information on this site without first seeking legal advice from counsel in the relevant jurisdiction. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Use of, and access to, this website or any of the links or resources contained within the site do not create an attorney-client relationship between the reader, user, or browser and website authors, contributors, contributing law firms, or committee members and their respective employers.
- The views expressed at, or through, this content are those of the individual authors writing in their individual capacities only – not those of their respective employers, or committee/task force as a whole. All liability with respect to actions taken or not taken based on the contents of this site are hereby expressly disclaimed. The content on this posting is provided "as is;" no representations are made that the content is error-free.

March 20, 2020



# Presenters



- Craig Broome, Highflyer Payroll President  
(O) 225-933-8330 | (M) 225-266-5915 | [craigb@highflyerpayroll.com](mailto:craigb@highflyerpayroll.com)



- David Theard, Licensed Attorney (previously specialized in labor and employment law for eleven years) and Employee Benefits Consultant with BXS  
(O) 504-875-3036 | (M) 504-583-6555 | [david.theard@bxsi.com](mailto:david.theard@bxsi.com)

