

Morgan Lewis

EMPLOYEE BENEFITS IN THE AUTOMOTIVE AND MOBILITY CONTEXT

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Morgan Lewis Automotive Hour Webinar Series

Series of automotive industry focused webinars led by members of the Morgan Lewis global automotive team. The 10-part 2020 program is designed to provide a comprehensive overview on a variety of topics related to clients in the automotive industry. Upcoming sessions:

JUNE 11 | *Now. Normal. Next* | Bankruptcy and Debt Restructuring in the Automotive Industry

JULY 15 | Working with, or Operating, a Tech Startup in the Automotive and Mobility Sectors

AUGUST 5 | Electric Vehicles and Their Energy Impact

SEPTEMBER 23 | Autonomous Vehicles Regulation and State Developments

NOVEMBER 11 | Environmental Developments and Challenges in the Automotive Space

DECEMBER 9 | Capitalizing on Emerging Technology in the Automotive and Mobility Space

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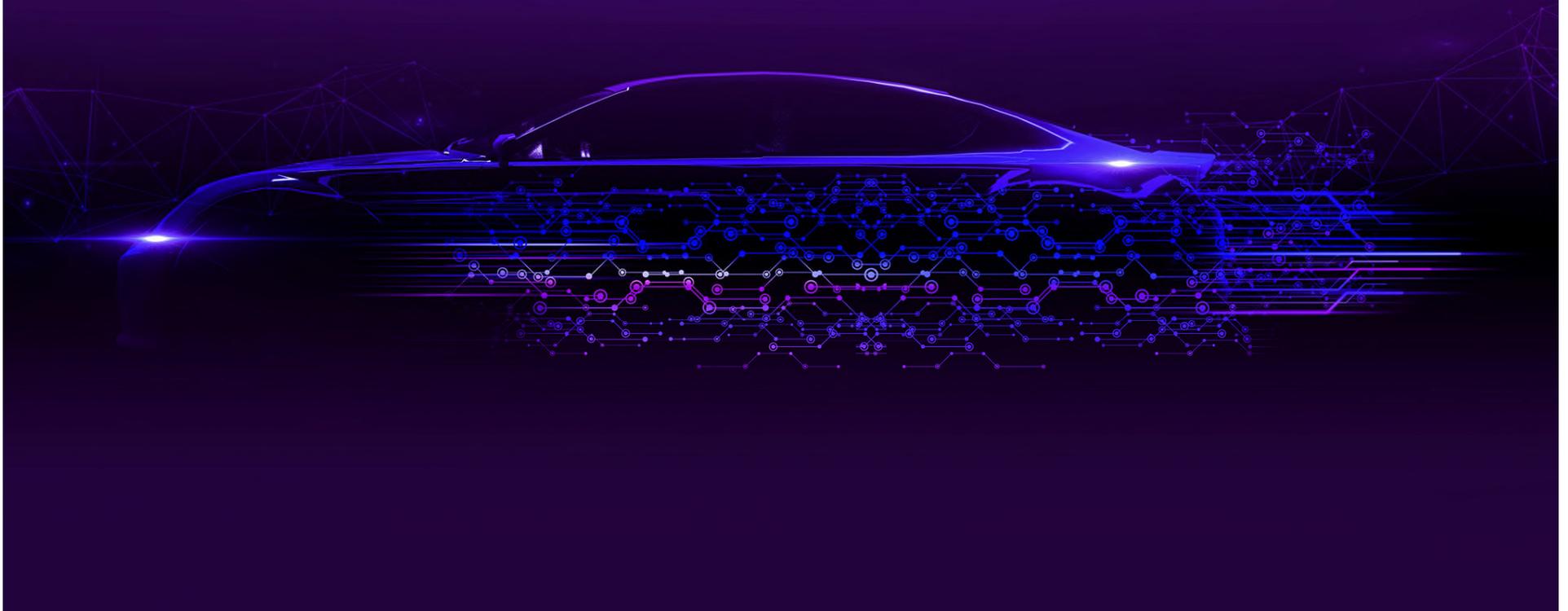
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SECTION 01

INTRODUCTIONS



Today's Presenters



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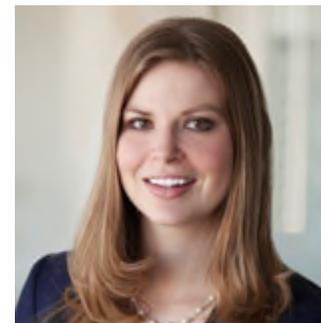


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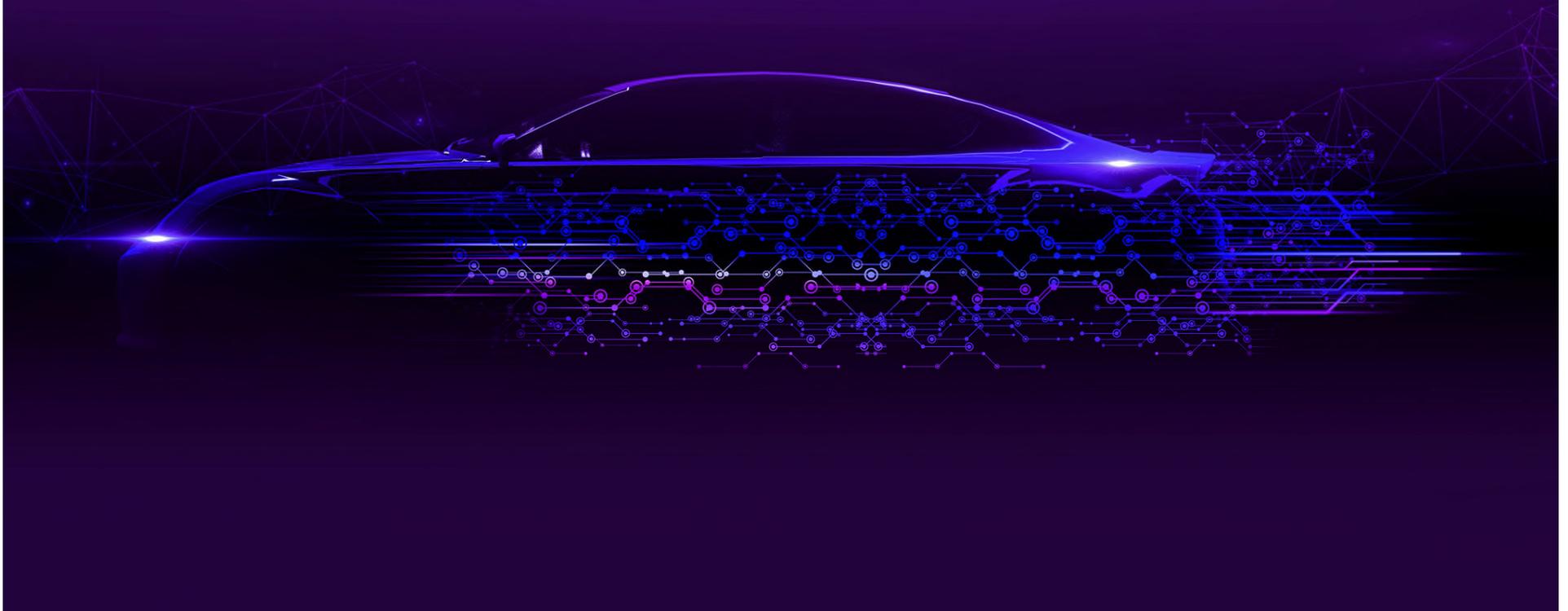
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SECTION 02

OVERVIEW



Overview

Benefits and tax considerations for:

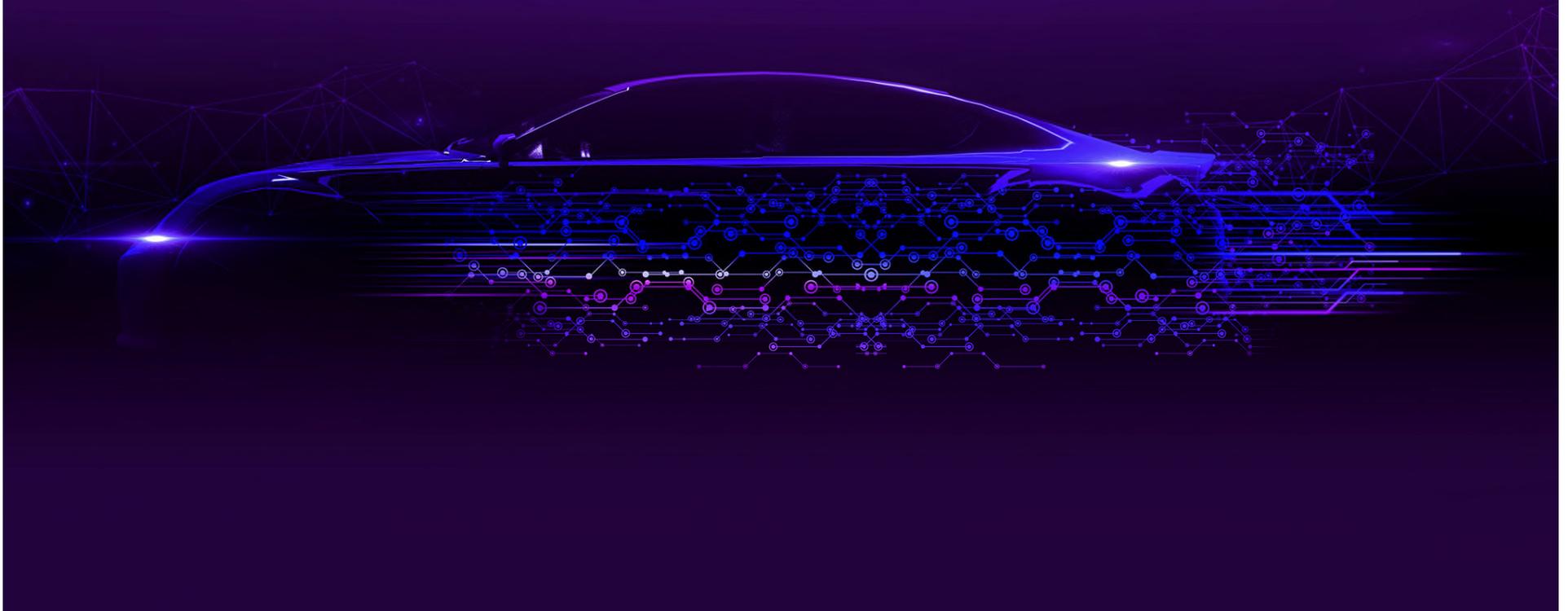
- Furloughed workers
- Remote workers
- Returning on-site workers



Issues spanning retirement plans, welfare plans, tax situs, fringe benefits, and testing/treatment

SECTION 03

FURLOUGHS



Retirement Plans: Right to Distribution?

- CARES Act distributions
 - Up to \$100,000
 - From eligible retirement plans
 - To qualified individuals
 - Special rollover rules
- Hardship withdrawals
 - Expenses and losses caused by federally declared disaster
 - Cover medical expenses
 - Prevent foreclosure or eviction
 - Funeral expenses
- Caution for treating temporary furlough as retirement – must be bona fide termination

Retirement Plans: Repayment of Plan Loans?

- Suspensions pre-CARES Act
 - Available for unpaid leave of absence for up to 1 year
 - But cannot extend loan term beyond 5 (10 for home purchase loans) year max term
- Optional CARES Act relief
 - Repayments due before December 31, 2020 may be delayed by 1 year
 - Must adjust subsequent loan payments to reflect the delay and interest accrued during delay
 - May extend loan term beyond 5 (10 for home purchase loans) year max term

Welfare Plans

Payment of premiums for continued benefits, if any

- Can be tax-free
- Consider state wage payment laws if planning to require repayment of amounts upon return

COBRA rights

- Entitled to COBRA if experience a loss of coverage due to furlough
- Recent DOL deadline relief allows election beyond usual 60-day period
- Can require payment of premiums back to loss of coverage date before providing coverage

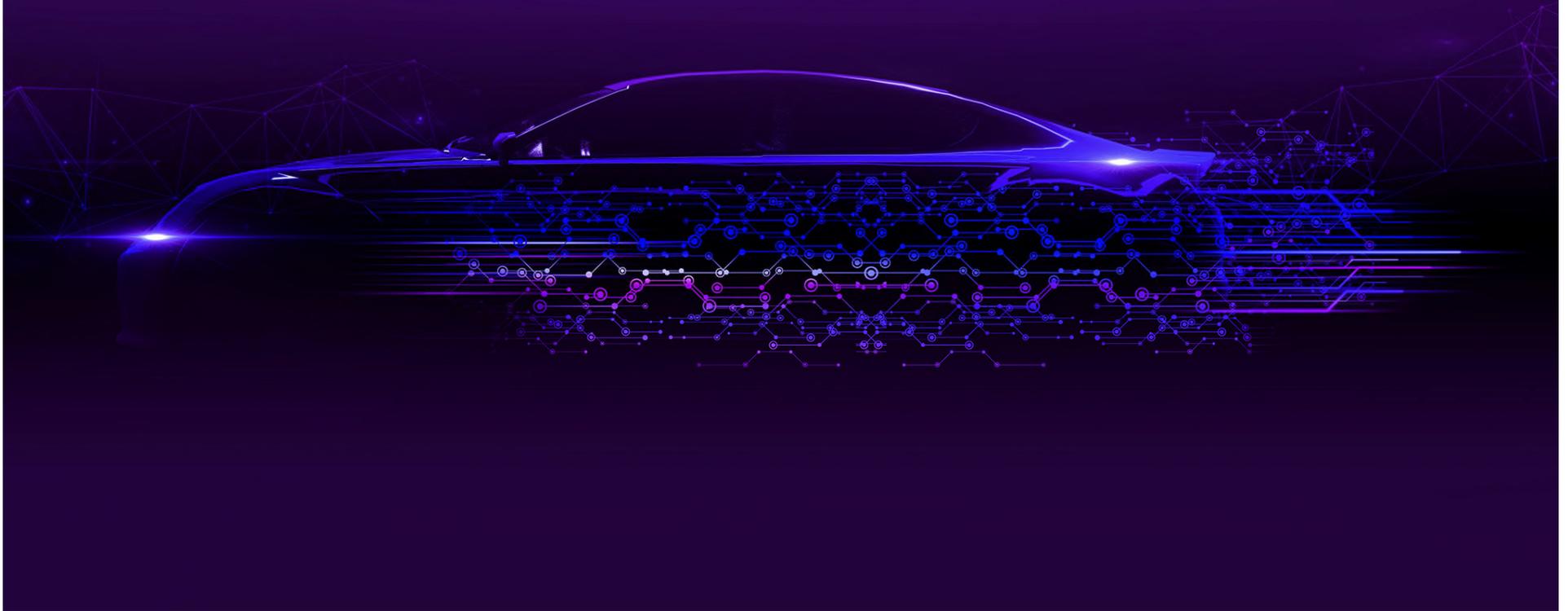
Welfare Plans continued

Change in status

- If furloughed employees lose eligibility for plans or changes cost sharing, then can change elections
 - Mere change in pay or hours, in itself, not sufficient – must be coupled with change in eligibility
 - Example: if you are full-time, you are eligible for different benefits or have to pay lower premiums than if you are part-time
- Recent IRS section 125/cafeteria plan relief
 - Optional
 - Expands opportunity to change elections mid-year prospectively
 - But no ability to get refund of prior contributions

SECTION 04

REMOTE WORK



Tax "Situs"

Employees working in different state than usual work state may yield additional tax reporting obligations

- Employer may be obligated to withhold and remit income taxes to multiple states for one employee
- States have different rules about when income taxes must be withheld

May impact deductions for other business expenses

- Example: Change of "tax home" for travel reimbursements

Business Expenses

- Some states' labor laws (e.g. CA, IL, MA, MT, NH) require employers to reimburse for reasonable and necessary expenses, and may also have obligations under FLSA
 - See *Remote Working in a Time of Pandemic* at <https://www.morganlewis.com/events/remote-working-in-a-time-of-pandemic> for more info
- But even if not required, may want to reimburse employees
 - Under Tax Cut and Jobs Act, employees generally cannot write off expenses
- Expenses must have a business connection
- Substantiation requirements apply if want to provide/reimburse tax-free

Examples of Business Expenses

Costs of
utilities

Printing at
home

Other home
office
expenses

Qualified Disaster Relief Payments

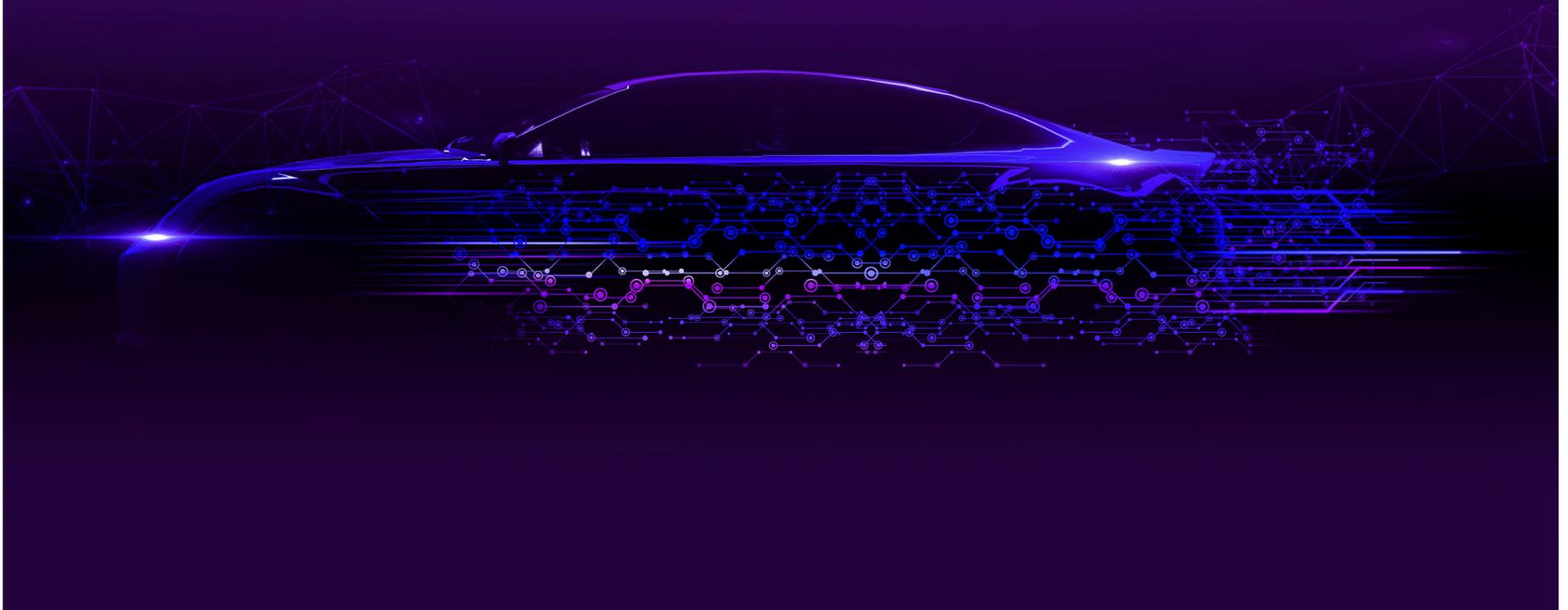
- Code section 139, aka Stafford Act
 - Allows reimbursements or payments for “reasonable and necessary personal, family, living or funeral expenses” due to an eligible disaster
 - Tax-free to employees, deductible to employer
- Little guidance, so use caution
- No substantiation requirements
 - Likely to be IRS attention later, however, so consider setting up a policy
- No double-dipping
 - Example: Childcare expenses

Employee Assistance Program (EAP) for Mental Health

- But caution if more than referral – must comply with group health plan requirements
 - ERISA
 - COBRA
 - But may be an “excepted benefit” for HIPAA and ACA purposes

SECTION 05

RETURN TO WORK



Childcare Issues

- Dependent Care Assistance Programs (DCAPs)
 - Mid-year changes may be allowed if had a change in status or cost/coverage change
 - Examples: due to school or daycare closures, switching to in-home nanny
 - Recent IRS section 125/cafeteria plan relief
 - Optional
 - Expands opportunity to change elections mid-year prospectively
 - But no ability to get refund of prior contributions
- Consider Qualified Disaster Relief Payments
 - For expenses not reimbursed by DCAP

Transportation Issues

- Less likely to have mass transit available – consider Qualified Disaster Relief Payments
- Transit and parking benefit programs
 - Can't use for ride hailing unless pooled (e.g., uberPool and Lyft shared rides)
 - Can't use for bikeshare programs, but consider other bicycle commuter tax benefit programs
 - Deduction available for employers (Tax Cut and Jobs Act) but not pre-tax to employees

Temperature Checks

Not subject to HIPAA unless covered entity (e.g., health plan) involved

May be state privacy laws to consider

General ADA and privacy considerations – treat as sensitive, personal information

Onsite Testing

- Must provide free testing in group health plan, but only for plan participants
 - If offered through plan, will not affect HSA-eligibility
- For non-health plan participants, can be an excepted benefit if offered through EAP per IRS guidance
- May be done at onsite clinics, but use caution, as may have other health plan implications
 - Potential multiple employer welfare arrangement (MEWA) issues

Treatment

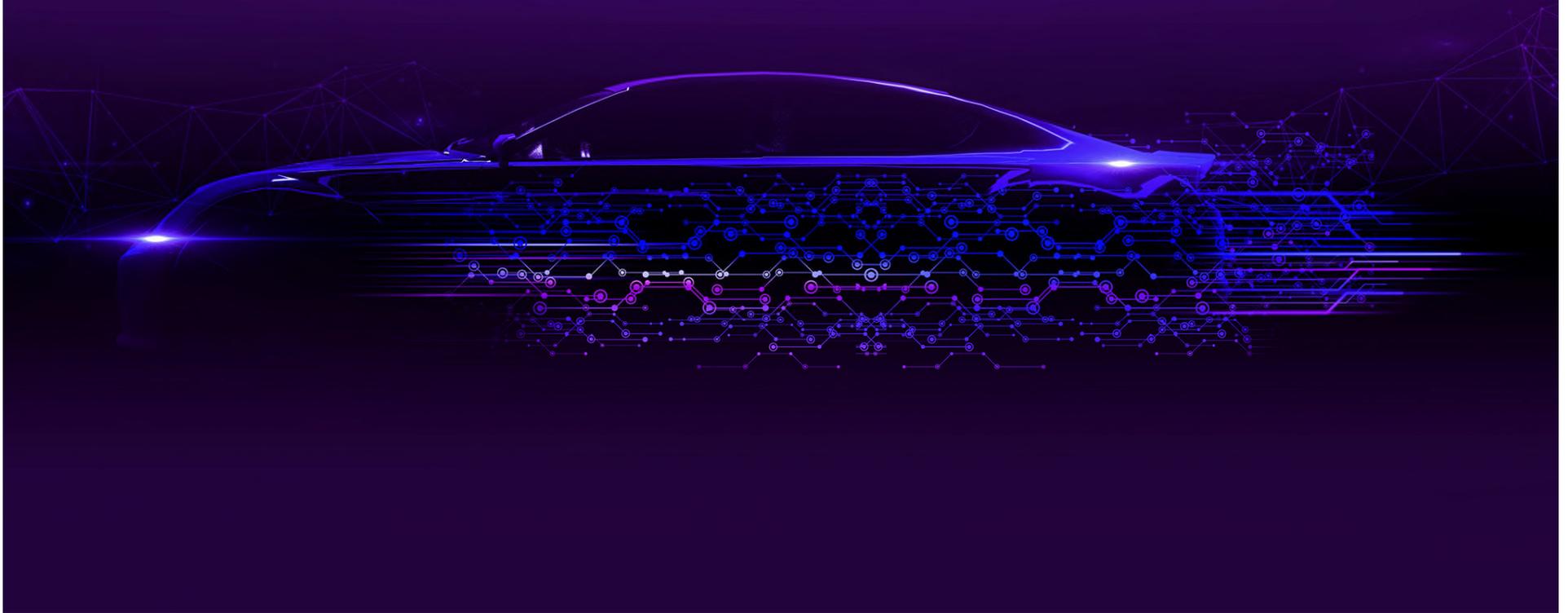
At onsite clinics

- Practical limitations, but triaging likely to fall under emergency exception from group health plan designation

Via telehealth

- If covered, will not affect HSA-eligibility

QUESTIONS?



THANK YOU

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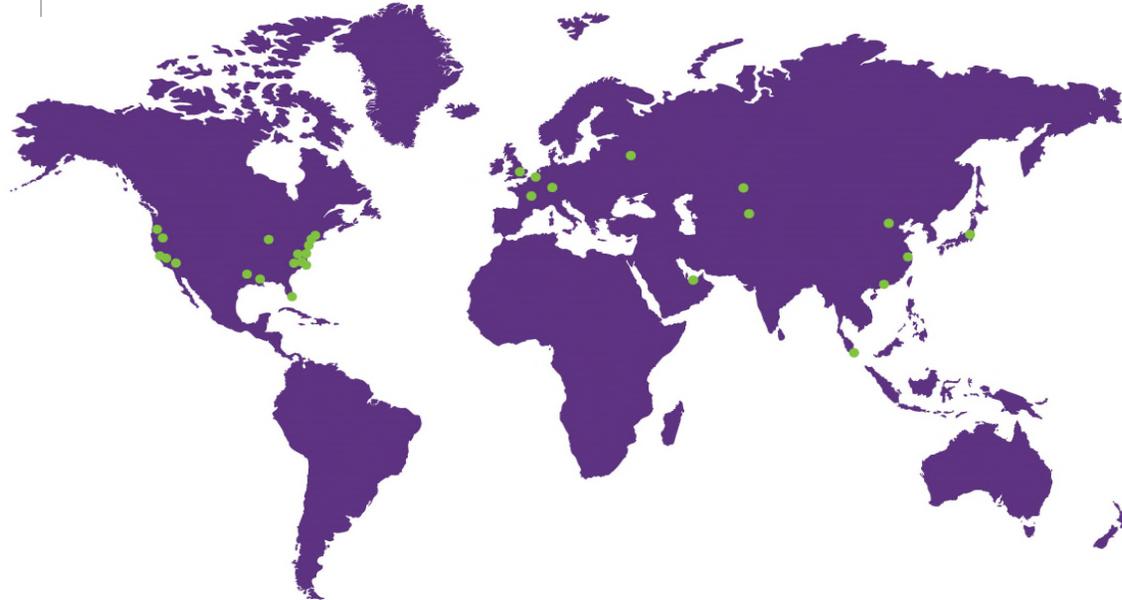
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