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DEPARTMENT OF LABOR GUIDANCE AND REGULATIONS ON THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, President Trump signed the Families First Coronavirus Response Act ("FFCRA") into law. As described in a priority briefing we issued soon after its passage (and which we recommend reviewing as a precursor to this posting), the FFCRA requires employers, including school districts and joint agreements, to provide leave under the Emergency Family and Medical Leave Expansion Act ("EFMLEA") and to provide paid sick leave in accordance with the Emergency Paid Sick Leave Act ("EPSLA"). Since the FFCRA's passage, the U.S. Department of Labor ("DOL") has issued applicable regulations and guidance. The following information provides a summary of these regulatory provisions.

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EMERGENCY PAID SICK LEAVE ACT

Benefit Provided Under the EPSLA

Employers are required to provide qualifying employees with paid sick leave under the EPSLA (“Paid Sick Leave”).

- Full-time employees are entitled to up to 80 hours of Paid Sick Leave.
- Part-time employees with normal weekly schedules are entitled to receive an amount of Paid Sick Leave equal to the number of hours the employee is normally scheduled to work over two work weeks.
- Part-time employees without a normal schedule are entitled to the following amount of Paid Sick Leave:
    - If the employee has been employed for at least six months, the employee is entitled to receive an amount equal to 14 times the average number of hours the employee was scheduled to work each calendar day

over the prior six-month period.

- If the employee has been employed for fewer than six months, the employee is entitled to an amount equal to 14 times the number of hours the employee and employer agreed at hiring that the employee would, on average, work each calendar day. Absent such agreement, the employee is entitled to an amount equal to 14 times the average number of hours per calendar day that the employee was scheduled to work during the entire period of employment, including hours for which the employee took any type of leave.

Qualifying for Paid Sick Leave Under the EPSLA

Employees may qualify for Paid Sick Leave regardless of how long they have been employed. To qualify, however, the employee must be "unable to work" for certain qualifying reasons. An employee is only considered "unable to work" if the employer has work for the employee, but the employee cannot perform this work (either in person or remotely) because of a qualifying reason. If the employer has no work for the employee, then the employee is not entitled to Paid Sick Leave.

The following are qualifying reasons for Paid Sick Leave:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19 (e.g. Illinois' stay-at-home order).
    - To qualify, the order must prevent the employee from working. If the employee cannot work at his or her normal workplace, but can still work remotely, then he or she is not prevented from working by the order and does not qualify for Paid Sick Leave.
2. The employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns.
    - To qualify, the health care provider must advise the employee to self-quarantine because: (a) the employee has COVID-19; (b) the employee may have COVID-19; or (c) the Employee is particularly vulnerable to COVID-19.

- Additionally, following this advice to self-quarantine must prevent the employee from working in-person and remotely. The employee does not qualify for paid leave if he or she can still work while following the advice to self-quarantine.

3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis from a health care provider.
   - To qualify, the employee must be experiencing fever, dry cough, shortness of breath, or any other COVID-19 symptoms identified by the CDC.
   - Paid Sick Leave for this reason is limited to the time the employee is unable to work because the employee is taking affirmative steps to get a medical diagnosis (e.g. making, waiting for, or attending a doctor’s appointment).
4. The employee is caring for an individual who is subject to a federal, state, or local quarantine/isolation order, or who has been advised to self-quarantine by a health care provider.
   - To qualify, the employee must be caring for an immediate family member, a person who resides in the employee’s home, or another person whose

relationship to the employee creates an expectation that the employee would care for him or her.

- Additionally, caring for this person must prevent the employee from working. If the employee can still perform his or her work (whether in-person or remotely), then the employee does not qualify for Paid Sick Leave.

5. The employee is caring for his or her child whose school or place of childcare has been closed for reasons related to COVID-19.
    - To qualify, there must be no other suitable person available to care for the employee's child.
    - Additionally, caring for his or her child must prevent the employee from working. If he or she can still perform his or her work (whether in-person or remotely), then the employee does not qualify for Paid Sick Leave.

Compensation for Paid Sick Leave

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If the employee is taking Paid Sick Leave because of a quarantine/isolation order, medical advice to self-quarantine, or to seek a medical diagnosis (qualifying reasons 1, 2, and 3, above), the rate of pay is the higher of: (a) the employee’s average regular rate; (b) the federal minimum wage; or (c) any applicable state or local minimum wage. The employee receives 2/3 of this rate if he or she is taking Paid Sick Leave to care for another individual, or to care for a child as a result of school or childcare closure (qualifying reasons 4 and 5, above).

However, the maximum amount an employer is required to pay an employee taking Paid Sick Leave is $511 per day and $5,110 in the aggregate for qualifying reasons 1, 2 and 3. If the employee is taking Paid Sick Leave for qualifying reasons 4 or 5, the maximum amount is $200 per day and $2,000 in the aggregate.

Intermittent Paid Sick Leave

If an employee works at the employer's worksite, intermittent leave is only possible if: (1) the employee and employer agree to intermittent leave; AND (2) the qualifying basis for Paid Sick Leave is to care for the employee's child as a result of school or childcare closure related to COVID-19.

If an employer directs or permits an employee to work remotely, or the employee normally works remotely, mutual agreement between the employer and employee is the only requirement for Paid Sick Leave to be taken intermittently. As described above, however, Paid Sick Leave is only available if the qualifying reason prevents the employee from working.

Interaction with Other Benefits

Paid Sick Leave, whether used or not, does not reduce or eliminate other benefits such as normal sick leave. For example, if an employee is entitled to 15 sick days under a collective bargaining agreement, the employee's right to Paid

Sick Leave is in addition to those 15 days. If the employee contracts COVID-19 and uses his or her 10 days of Paid Sick Leave under the EPSLA, he or she will still have the 15 normal sick days from the collective bargaining agreement.

Furthermore, employers may not require or influence an employee to use any other type of paid leave prior to using available Paid Sick Leave under the EPSLA.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Benefit Provided Under the EFMLEA

The EFMLEA expands the qualifying reasons for an employee to take FMLA leave. Specifically, it allows qualifying employees to take up to twelve weeks of leave to care for a child whose

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school or place of childcare has been closed as a result of COVID-19 (“EFMLEA Leave”). When an employee takes leave for this reason, the first two weeks are unpaid. For the remainder of the EFMLEA Leave, the employee is entitled to pay at 2/3 of the higher of: (a) his or her regular rate; (b) federal minimum wage; or (c) the applicable state or local minimum wage. The rate of pay is capped, however, at $200 per day and $10,000 in the aggregate.

Qualifying Reason for EFMLEA Leave

An employee qualifies for EFMLEA Leave if he or she is unable to work (whether in-person or remotely) because the employee is caring for his or her child whose school or place of childcare has been closed for reasons related to COVID-19. To qualify, there must be no other suitable person to care for the employee’s child during the period of leave.

Time Requirements to Qualify for EFMLEA Leave

To qualify for EFMLEA Leave, the employee must be on the employer's payroll for at least 30 days immediately prior to the day when the leave begins.

However, if an employee was terminated on or after March 1, 2020 and subsequently reemployed by the same employer, the employee still qualifies for leave under the EFMLEA if the employee was on the payroll for at least 30 of the 60 days prior to the termination date.

Amount of Leave

Any EFMLEA Leave taken by an employee counts against the employee's normal twelve-week allotment of FMLA leave. For example, if an employee uses five weeks of leave to take care of his or her child as a result of a school or childcare closure, he or she would only have 7 weeks of leave (whether under the FMLA or EFMLEA) remaining.

Similarly, if an employee has previously taken FMLA leave during the applicable twelve-month period, an employee may take up to the remaining portion of his or her twelve weeks in EFMLEA Leave. For example, if the employee previously took 8 weeks of leave for a serious health condition, he or she would only have 4 weeks of leave remaining which could be used to care for his or her child as a result of a school or childcare closure.

Furthermore, an employee is only entitled to a maximum of twelve weeks of EFMLEA leave from April 1, 2020 through December 31, 2020, regardless of when the employer’s new twelve-month period begins for standard FMLA leave. For example, if the employer’s twelve-month period begins on July 1, and the employee took 5 weeks of EFMLEA leave prior to July 1, the employee is still only entitled to seven more weeks of EFMLEA leave between July 1 and December 31.

Interaction with Employer-Provided Leave

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An employee taking EFMLEA Leave may elect, or the employer may require the employee, to use leave that would otherwise be available (e.g. vacation time, paid time off ("PTO"), etc.) concurrently during the EFMLEA Leave. In this event, the employer must pay the employee the full amount owed under the employer's preexisting paid leave policy.

INTERACTION BETWEEN EPSLA AND EFMLEA

If an employee needs leave to care for a child whose school or childcare has been closed, he or she may be eligible for both Paid Sick Leave and EFMLEA Leave. In this scenario, the benefits run concurrently. For example, if an employee takes 12 weeks of leave to care for his or her child, the first 2 weeks could be paid under the EPSLA while the next 10 weeks would be paid under the EFMLEA.

If an employee has already used some or all of his or her Paid Sick Leave prior to taking EFMLEA Leave, then some or all of the first two weeks of EFMLEA Leave may be unpaid. To counteract this, the employee is permitted to use preexisting paid leave provided by the employer (e.g. vacation time, paid time off ("PTO"), etc.) during the portion of EFMLEA leave which would otherwise be unpaid. In this scenario, the employee must be compensated for this employer-provided leave in accordance with the employer's paid leave policy. If the employee does not elect to substitute employer-provided leave in this manner, the employee will remain entitled to any earned or accrued leave under the terms of the employer's plan/policies.

NOTICE AND DOCUMENTATION REQUIREMENTS

Timing of Notice

An employer may not require an employee to provide advance notice of Paid Sick Leave or EFMLEA Leave. Notice may only be required after the first workday for which an Employee takes leave under either the EPSLA or EFMLEA.

Documentation Requirements

Employees are required to provide the following documentation prior to taking Paid Sick Leave or EFMLEA Leave:

- Employee’s name;
- Date(s) for which leave is requested;
- Qualifying reason for the leave; and
- Oral or written statement that the employee is unable to work because of the qualified reason for leave.

To take Paid Sick Leave based on a federal, state, or local quarantine or isolation order, the Employee must also provide the name of the government entity that issued the applicable order.

To take Paid Sick Leave based on a health care provider’s advice to self-quarantine, the employee must also provide the name of the health care provider.

To take Paid Sick Leave to care for an individual subject to a quarantine/isolation order or health care provider's advice to self-quarantine, the employee also must provide the name of the applicable government entity or health care provider.

To take Paid Sick Leave or EFMLEA Leave to care for a child as a result of school or childcare closures, the employee must also provide:

- The name of the son or daughter being cared for;
- The name of the school, place of care, or childcare provider that has closed or become unavailable;
- A representation that no other suitable person will be caring for the son or daughter during the period for which the employee takes Paid Sick Leave or EFMLEA Leave.

Recordkeeping

Employers are required to retain all of the above documentation for at least four years, regardless of whether the employee's leave request is granted or denied. If an employee provides oral statements to support his or her request for Paid Sick Leave or EFMLEA Leave, the employer is further required to document and maintain this information in its records for at least four years.

Our office will continue to provide updates as more information becomes available. If you have any questions, please do not hesitate to contact one of our attorneys.

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ISBE ISSUES FREQUENTLY ASKED QUESTIONS FOR SPECIAL EDUCATION DURING REMOTE LEARNING

The Illinois State Board of Education has issued Frequently Asked Questions for Special Education During Remote Learning at https://www.isbe.net/Documents/SPED-FAQ-04-20-20.pdf

Highlights of the Guidance include:

There is no waiver of IDEA or Section 504 timelines.

- Remote learning days count as "school

days" for purposes of special education timelines that are based on school days.
However, remote learning planning days do not count as school days because students are not in attendance on planning days.

- Timelines based on calendar and business days remain in effect.
- Annual reviews must still be held if parents agree to hold the meeting remotely by telephone or video conference.
- Evaluation timelines remain in place, but face to face assessments are suspended until school resumes. Rating scales, transition assessments that can be done remotely, interviews, and any other assessments that do not require face to face testing, should be completed.
- Early Intervention transition timelines remain in effect, such that an eligible child must have an IEP or continued IFSP in place, and receive early childhood services, by age 3. Review of records and other assessments that are not face to face, should be completed.

- Due Process and mediation timelines remain in effect, but the school and parent may agree to extend timelines and a hearing officer may extend timelines. State Complaint timelines also remain in effect, but federal guidance allows an extension of time for exceptional circumstances.
- If a student turns 22 years of age during remote learning, that student ages out of IDEA services.
- Schools should hold Manifestation Determination Reviews remotely as warranted.

There is no waiver of FAPE during Remote Learning.

- Schools should provide remote learning to students with disabilities that aligns as much as possible with IEP goals. Instruction and related services required by the IEP may

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be completed through technology platforms and telehealth services. There is flexibility in how services are provided and schools should find creative ways to provide occupational therapy, physical therapy, orientation and mobility services, nursing services, transition services, and all IEP services remotely. Schools should refer to ISBE Recommendations for Remote Learning.

- Schools may temporarily bill Medicaid for telehealth services and may use outside contractors to provide services as long as those service providers satisfy Illinois licensure requirements.
- Students at nonpublic special education facilities remain the responsibility of the school district and the district should collaborate with the private facility to ensure that students in private facilities are receiving appropriate remote learning and

IEP services.

- School Districts should also collaborate with their Special Education Cooperatives to ensure that IEP services and remote learning are provided.
- School districts may make placements at nonpublic facilities during school closure, as well as make other IEP decisions.
- FAPE remote learning requirements apply to students at private schools who have Individual Service Plans. The requirements also apply to charter schools.
- The IEP team should continue to make Extended School Year determinations, and these decisions are separate from later determining if a student with a disability should receive “compensatory” or modified services as a result of school closure.

Documentation by School Districts is critical.

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- Teachers and related service providers should carefully document services being provided to students with disabilities, communications with parents, and attempts to contact parents.
- Teachers and related service providers should continue to progress monitor on IEP goals and objectives. These professionals should maintain their notes to determine progress on annual goals and objectives.
- Document delivery of FAPE, compliance with timelines, accommodations provided, and methods of parental participation.
- Continue to provide Notices, IEPs and other documents to parents through email or mail.
- Informed written consent remains required. Schools should gain parental consent for evaluations, release of records, initial placement in special education, and other required consents, whether through email, electronic signatures or mail.

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- Document if a parent does not agree to hold an IEP meeting remotely.
- Document if a parent declines remote learning for their child. This does not constitute revocation of IEP services in general.
- Continue to document Early childhood outcomes and Indicator 13 transition requirements.

Please contact one of our attorneys if you have questions regarding special education during school closure.

LAST CHANCE FOR MANY FUND

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TRANSFERS: STATUTORY AUTHORITY DUE TO EXPIRE AT END OF FISCAL YEAR

An important tool for school districts in fund management is due to expire on June 30, 2020. Districts would be wise to employ that tool before then in order to maintain flexibility in the use of scarce resources and, even more important, to avoid costly tax objection refunds in the future.

Section 17-2A of the School Code has long provided a useful mechanism for moving money between any of a school district's three principal operating funds: Educational, Operations & Maintenance, and Transportation. Since 2017, transfers from the Tort Immunity Fund to the Operations & Maintenance Fund have also been permitted. Limits on the amount of the transfer were removed long ago. The procedural requirements of notice and a public hearing remain. But the statute has also contained an ill-defined usage limitation: a transfer may be “***made solely for the purpose of meeting one-time, non-recurring expenses***.” The statute does not define “one-time, non-recurring expenses,” nor are there court cases or administrative rules clarifying the meaning of this use limitation.

However, since 2003, the meaning of the use limitation has been irrelevant because Section 17-2A has also included a sunset provision temporarily waiving application of the use limitation to a specific date. And, as the sunset date has approached on each occasion in the last several years, the General Assembly has seen fit to push the date further out. Until this year, that is. No bill has even been introduced in the 2020 session to extend the sunset provision of the use limitation in Section 17-2A beyond June 30, 2020.

What was different this year? Presumably, the recent removal of the specific rate limitation for the Educational Fund for those districts subject to the Property Tax Extension Limitation Law (PTELL or the "tax cap") may have, for some, lessened the urgency for flexibility in school district fund transfers. But even that well-received reform still does not address districts in non-PTELL counties or existing balances in any district throughout the State.

So right now, every district should be closely examining

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the projected year-end balances in their Educational, Operation & Maintenance, Transportation, and Tort Immunity Funds. If there will be insufficient money in one of those funds in the coming year, a transfer now, rather than after June 30, should be made. Further, if there is much more than enough money in one of those funds, it is critical to move the excess out now. An allegation of excessive balances in school district funds is one of the most common types of taxpayer rate objections and can lead to severe revenue losses due to tax refunds.

Going forward, unless there is another change in the law, Section 17-2A transfers should still be available after June 30, but only for more limited purposes, and arguably not for routine fund balance management. Because of this, more extensive use of the

Educational Fund in PTELL counties is strongly advised.

If you have any questions or would like assistance in accomplishing timely fund transfers, please do not hesitate to contact one of
our attorneys.

TRANSPORTATION REIMBURSEMENTS: ADDITION TO EMERGENCY RULE AND NEED TO AMEND CONTRACTS

On April 9, 2020, the
Illinois State Board of Education issued additional new language (highlighted

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below) as part of its emergency rule regarding State reimbursements for payments to transportation contractors. This action is designed to cover payments for the contractors' employee costs and is not tied exclusively to the provision of alternative services.

Due to the outbreak of the Coronavirus Disease 2019 (COVID-19), beginning on March 17, 2020, and through the end of the 2019-2020 school year, to ensure the continuity of education, including the provision of any direct or related service for the health and well-being of all public school students in pre-kindergarten through grade 12, all transportation ***costs incurred that are beyond transporting students, such as costs paid by a local education agency for all employees related to the provision of transportation or*** *a transportation provider under a written agreement, regardless of any service that may be provided, or costs related to the distribution of food, distribution and pick-up of student assignments and work, and use of vehicles to provide wi-fi and other similar costs, shall be allowable and reimbursed by the formula under Section 29-5 of*

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the School Code.

23 Ill. Admin. Code
Section 120.30(e).

School districts and
joint agreements need to amend their transportation contracts if they which
wish to seek reimbursements from the State to offset payments to transportation
contractors for the period of mandatory school closure.

If you have any questions or would like assistance in drafting the terms of the contract amendments, please do not hesitate to contact one of our attorneys.

THE OPEN MEETINGS ACT IN THE AGE OF CORONAVIRUS

Pursuant to Governor Pritzker's emergency declaration and subsequent executive orders, certain requirements of the Illinois Open Meetings Act (OMA) were suspended. As part of Executive Order 2020-7, Governor Pritzker suspended the OMA's requirements that: (1) members of a public body must be physically present (Section 2.01); and (2) the conditions in Section 7 that limit members' remote participation in meetings. Executive Order 2020-7 also encouraged public bodies to provide members of the public with video, audio, and/or telephonic access to meetings. These portions of Executive Order 2020-07 have since been extended by Executive Order 2020-18. Along with the

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Executive Orders came various questions and concerns. The Public Access Counselor ("PAC") at the Illinois Attorney General's office provided additional [non-regulatory guidance]() in the days that followed.

Since that time, a complaint was filed with the PAC claiming that the McHenry County Board of Health violated the OMA. On March 23, 2020, the Board of Health held a virtual meeting and required that any public comment be sent via email to a specific address two hours prior to the meeting. The complaint alleged that this was a violation of Section 2.06(g) of the OMA, which provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

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In a non-binding letter to the complainant dated April 6, 2020, the PAC concluded that the OMA was not violated and that no further action was warranted. The PAC noted that pursuant to his authority under the Illinois Emergency Management Agency Act, Governor Pritzker issued a series of executive orders. The PAC then analyzed the complaint and found that the actions of the Board of Health were appropriate. It noted that Section 2.06(g) of the OMA specifically permits the public to address the body in accordance with the body’s rules. It further noted that the OMA does not provide specific mechanisms for how a public body should handle public comment during those times where the body cannot meet physically. The PAC stated that it felt that it would be illogical to construe the Open Meetings Act as barring a public body from conducting virtual meetings during public health emergencies.

This non-binding letter is important as it provides some indication of how the PAC will review OMA complaints during the current public health emergency. However, it is equally important

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to note how limited the scope of this letter is – it does not address any aspect of Governor Pritzker's suspension of the requirement that a quorum of the public body be physically present to conduct a meeting, or the suspension of the OMA's limitations on remote participation.

Given the guidance from the Attorney General and the recent PAC letter, districts and joint agreements should consider the following with respect to any meeting:

- Avoid meeting when possible;
- If meeting is necessary, consider whether a completely virtual meeting will suffice;
- If meeting in person, social distancing requirements (six-foot separation between individuals) should be observed, and

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no more than 10 people may be in a given room (this may require opening more space to the public);

- Provide real-time video, audio, and/or telephonic access to any meeting that is conducted;
- Posting a notice of the meeting and agenda is still required;
- There should be a specific mechanism for public comment that is widely disseminated prior to the meeting; and
- Any public comment received should be read as part of the meeting.

We will be following these matters in the coming weeks. If you have any questions, please do not hesitate to contact any of our attorneys.

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TRANSPORTATION REIMBURSEMENTS: NEW INFORMATION

Since our April 1, 2020, Priority Briefing on this subject, the Illinois State Board of Education has issued this new informal guidance which indicated that ISBE will reimburse districts for transportation costs under the formula of Section 29-5 of the School Code:

74. Is ISBE reimbursing expenditures for school bus transportation during the mandatory suspension of in-person instruction if school buses are not running regular routes? (Updated 4/1/20)

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Contractual Payments for Transportation are eligible for State Transportation Reimbursement in accordance with the Part 120 Administrative Code Rules provided that the costs paid by a school district are within an executed contractual agreement. The amount of payments made by a school district during the mandatory closure dates of March 17-30 as well as the Remote Learning Days that begin March 31 are subject to negotiation by the school district and transportation contractor. If negotiated and within the written agreement, all the paid expenditures will be allowable for State Transportation Reimbursement in accordance with the formula prescribed in Section 29-5 of the School Code.

In order to more fully understand ISBE's position on this matter, two of our partners engaged in a telephone conference on April 3 with ISBE's General Counsel and Chief Financial Officer. Per that conversation, we want to emphasize these aspects of ISBE's position:

- Districts which wish to obtain reimbursements for the period during mandatory school closure must amend current transportation contracts. Voluntary payments under old contracts which do not require payments during the cessation of services will not be reimbursed.
- Districts should specifically include such costs as distribution of food, distribution and pick- up of student assignments and work, use of vehicles to provide wi-fi and similar costs necessary to insure the continuity of education, including the provision of any direct or related service for the health and well-being of students, and all transportation costs incurred that are beyond transporting students. These are the types of service costs which only became reimbursable via the emergency rule issued on March 31, 2020.

In addition, however, we observe the following:

- Districts are under no legal obligation to amend their transportation contracts. However, as stated above, transportation contracts must be amended in order for districts to receive reimbursement for any payments Districts choose to make during the mandatory closure period.
- Districts are under no legal obligation to make payments to transportation carriers when no services are being provided unless the transportation contract provides otherwise.
- Given the uncertainty about the authority and scope for reimbursements for the mandatory school closure period, districts that choose to amend their

> transportation contracts and make payments to transportation carriers should
> consider including language both to include specific reference to those
> additional types of services being provided and to protect themselves in case
> reimbursements are ultimately denied.

If you have any questions or would like assistance in drafting the terms of the contract amendments, please do not hesitate to contact one of our attorneys.

ISBE Emergency Rule on

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Transportation Reimbursement Highlights Limitations

On March 31, 2020, the Illinois State Board of Education issued an emergency rule on transportation expenses. That new rule, 23 Ill Admin. Code 120.30(e), is expressly limited to allowing State reimbursement for transportation services other than the transporting of students, such as food distribution:

"Due to the outbreak of the Coronavirus Disease 2019 (COVID-19), beginning on March 17, 2020, and through the end of the 2019-2020 school year, to ensure the continuity of education, including the provision of any direct or related service for the health and well-being of all public school students in pre-kindergarten through grade 12, all transportation costs incurred that are beyond transporting students, such as costs related to the distribution of food, distribution and pick-up of student assignments and work, and use of vehicles to provide wi-fi and other similar costs, shall be allowable and reimbursed by the

formula under Section 29-5 of the School Code."

Note that, on March 17, 2020, the State Superintendent's "Dear Colleagues" letter stated this about transportation expense reimburse during the school closure period:

"One question we received many times today was regarding reimbursement for school bus transportation during the closure, when school buses may not be running regular routes. The answer is that:

ISBE will base transportation reimbursement on expenditures. All allowable transportation expenditures incurred during the closure will be claimable for Transportation Reimbursement. School districts should work with their bus contractors to make payments to ensure that all personnel, including bus monitors and bus drivers, can continue to be paid during the closure. If school districts choose to negotiate and execute a contract amendment with their bus contractors to make payments during the *closure to ensure transportation personnel will be paid in full, those expenditures will be reimbursed for state Transportation Reimbursement. Consultation with the district's legal representation is advised."*

Many reasonably interpreted this earlier statement to mean that payments to transportation service providers would still be reimbursable from the State even for the closure period when no student transportation services are being provided. However, it now appears that the State will not be doing that.

The emergency rule does not modify the reimbursement structure to permit reimbursement for services not performed. Further, absent an amendment to the School Code and additional rule change, ISBE does not have the legal authority to make reimbursement payments in such a manner.

It should also be considered the State transportation grants are subject to limitations due to limited State appropriations.

At this point, school districts would be well-advised to assume that funding for any payments to transportation vendors for services not actually rendered due to the mandatory school closures will have to come exclusively from local revenues. While statutory revisions for ISBE funding authority or financial assistance from the federal government through the CARES Act or otherwise is certainly possible, none of that can be certain right now.

If you have any questions, please do not hesitate to contact one of our attorneys. We will provide updated and additional guidance as it becomes available.