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IHSA DEVELOPS STAGE 2 RETURN TO PLAY GUIDELINES

The Illinois High School Association ("IHSA") has developed Stage 2 guidelines for student-athletes to begin participating in athletics. These guidelines, developed by the IHSA Sports Medicine Advisory Committee, are awaiting approval by the Illinois Department of Public Health and include the specific requirements schools need to implement moving forward.

As of June 6, 2020, the IHSA's Stage 1 Return to Play Guidelines permit student-athletes to participate in voluntary strength and conditioning sessions. The Stage 1 guidelines encouraged outdoor versus indoor workouts, whenever possible, were developed to help student-athletes begin to reacclimate their bodies to athletics and are not sport-specific. As stated by IHSA Sports Medicine Advisory Committee member Dr. Cynthia R. LeBella, the Stage 1 guidelines were designed "to focus solely on strength and conditioning so that kids can gradually rebuild their

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fitness levels in small peer groups with coach guidance. This will get kids moving again with their peers in the safest way possible, which will have a huge positive impact on their physical and emotional well-being."

The IHSA-proposed Stage 2 guidelines are similar and would continue to open the sessions and permit sport-specific actions and the possibility of contests. Under the proposed Stage 2 guidelines, the following apply:

- Schools should display information regarding symptoms and transmission of COVID-19;
- Summer contact days begin when a school's region reaches Phase 4 of the Restore Illinois Plan (which is currently anticipated to be this Friday, June 26, 2020 for the entire State);
- Athletes should follow the acclimatization schedule for their sports once summer contact days begin;
- Sessions are limited to five hours per day;
- Schools must continue to track which student-athletes are

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participating and log any symptoms that are shown;
- Gatherings of up to 50 individuals are allowed, but thirty feet of space must be maintained between each group of 50 and areas for each group must be clearly delineated;
- When student-athletes are not participating in a drill, practice, or contest, they should maintain social distance;
- If locker rooms are required, capacity should be limited to ensure that all individuals can maintain social distance;
- Students must be encouraged to shower and wash all clothing used during the workouts immediately upon returning home;
- Cleaning schedules should be developed to mitigate the spread of any communicable disease;
- Prior to an individual or group using a facility, all hard surfaces should be wiped down and sanitized;
- Hand sanitizer should be plentiful and available to individuals;
- All weight equipment should be wiped down thoroughly before and after each use;
- No shared towels, clothing or shoes;

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- Shared equipment should be cleaned frequently during practice or competitions;
- Most equipment should be utilized by only one individual and not shared; any equipment that must be shared should be cleaned between uses;
- Spotters for weightlifting are permitted, but lifting requiring spotters should be done in cages with spotters located at either end of the bar;
- Student-athletes are to utilize their own water bottles, but hydration stations may be used to fill each water bottle, providing the station is cleaned after ever practice or contest;
- For any athletic contest, group sizes should be limited to 50 total participants (players, coaches, referees), with additional team members located on the sidelines at a social distance from each other;
- If spectators are permitted at a contest, there must be a specially designated area with capacity limited to 20% of the total capacity;
- Visual markers should be utilized at queuing points to help maintain social distance;
- Concession stands may be open, but must utilize restaurant

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businesses physical workspace guidelines;
- Spectators should be encouraged to bring their own seats;
- No handshakes, high-fives, etc. may occur pre- or post-match;
- No spitting or blowing of the nose without the use of a tissue;
- All participants may choose to wear a mask;
- Officials may wear a mask and use an electronic whistle;

Districts are encouraged to work with the IDPH and their local health departments prior to beginning any sessions to develop appropriate school/sport-specific guidelines.

The IHSA has indicated that, as Illinois moves through the Restore Illinois Plan, it may revisit these requirements. Our firm will continue to monitor these developments. As the IHSA sets out new guidelines and requirements, we will update you. In the meantime, if you have any questions, please do not hesitate to contact any of our attorneys regarding this matter.

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U.S. DOE ISSUES GUIDANCE REGARDING SPECIAL EDUCATION DISPUTE RESOLUTION DURING COVID-19

On June 22, 2020, the Office of Special Education Programs (OSEP) issued Frequently Asked Questions Guidance regarding timelines and procedures for State complaints, resolution meetings, mediations, and special education due process hearings.

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According to OSEP, the sixty day timeline for state complaint resolution may not be categorically extended due to COVID-19, but the State Board of Education may extend timelines on a case by case basis, if, for example, due to the pandemic, the State does not have sufficient staff available to investigate the complaint or if the State is unable to access student records or other specific information necessary to resolve the complaint.

Resolution meetings may be held remotely, with parent agreement. The parties may agree to extend the fifteen calendar day timeline for holding a resolution meeting and the thirty day resolution period. However, the timelines for expedited due process hearings (seven calendar day timeline for a resolution meeting and fifteen calendar day resolution period) may not be extended.

Mediations may be held remotely, with parent agreement, and the parties may agree upon the timeline for mediation.

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Due process hearings may be held remotely if the parent is ensured an impartial hearing. The hearing officer may grant specific extensions of time at the request of either party if the hearing officer documents the length of, and reasons for the extension of time. However, deadlines for expedited due process hearings may not be extended.

If you have questions regarding this Guidance or special education during the COVID-19 pandemic, please call or email one of our attorneys.

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NEW LAW AMENDS SCHOOL CODE TO ADDRESS COVID-19 ISSUES

On June 18, 2020, Governor Pritzker signed Senate Bill 1569 into law as Public Act 101-643. This law makes numerous changes to the Illinois School Code and codifies many school-related provisions from Governor Pritzker's executive orders related to the COVID-19 pandemic. This Priority Briefing highlights some of the law's most impactful sections.

Remote Learning Days and Blended Remote Learning Days

Illinois school districts are familiar with remote learning days and remote learning plan days, having implemented them since March. However, the emergency rules issued by the Illinois State Board of Education authorizing remote learning were only effective for 150 days. Public Act 101-643 amended the School Code to provide for remote learning days and created a new

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hybrid category of instruction known as “blended remote learning days.”

Under this new law, any time the governor declares a disaster due to a public health emergency (a “Public Health Disaster”), the state superintendent of education is permitted to require that schools use remote learning days or blended remote learning days. During remote learning days, schools will provide instruction remotely. During blended remote learning days, schools can utilize a mix of in-person and remote instruction. The law further clarifies that both remote and blended remote learning days, along with up to five remote and blended remote learning plan days, will count as pupil attendance days for school calendar purposes.

Public Act 101-643 further provides that any district with an approved e-learning program may utilize this program for remote and blended remote instruction. Any schools without e-learning programs are required to adopt a remote and blended remote learning day plan which addresses: (1) the accessibility of

remote instruction to all enrolled students; (2) a requirement that remote learning day and blended remote learning day activities reflect applicable state learning standards; (3) a means for students to confer with educators; (4) the unique needs of students in special populations, including special education students, English learners, and homeless students; (5) how the district will take attendance and monitor student participation; and (6) transition from remote to on-site learning.

Finally, the clock-hour requirements for calculating student attendance do not apply during a Public Health Disaster. The state superintendent of education is authorized to establish minimum clock-hour requirements for remote and blended remote learning days.

Student Assessment

Public Act 101-643 provides that student assessment requirements

do not apply if the state board of education receives a waiver from the U.S. Department of Education.

Teacher Evaluations and Remediation Plans

Public Act 101-643 also created multiple changes to the teacher evaluation system during Public Health Disasters. Typically, a teacher whose evaluation is not conducted during a school year when an evaluation is required is automatically deemed "proficient." However, this rule no longer applies to all teachers during a Public Health Disaster. During a Public Health Disaster, absent an alternate rating agreed upon by a school board and union, a tenured teacher who received an "excellent" rating during his or her most recent evaluation will receive another "excellent" rating if his or her evaluation is not performed. A non-tenured teacher in the same situation would still default to "proficient," absent an alternative rating agreed to by the school board and union in writing.

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Public Act 101-643 also amends remediation plan requirements for teachers with "unsatisfactory" ratings during a Public Health Disaster. If in-person instruction is suspended during a Public Health Disaster, remediation plan timelines are waived. Absent contrary written agreement, any remediation plan in effect for more than 45 days prior to the suspension of in-person instruction will resume with in-person instruction. In contrast, a remediation plan in effect for less than 45 days before in-person instruction is suspended will be discontinued, with a new remediation period starting when in-person instruction resumes.

Finally, Public Act 101-643 also pauses the prehearing and hearing requirements for non-honorary dismissals of teachers during a Public Health Disaster, and provides that the clock does not begin to run on these requirements until after the Public Health Disaster is no longer in effect. However, the parties to such proceedings may agree in writing to proceed with prehearing and hearing requirements, and to extend any timelines related to commencing and concluding a hearing.

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Educator Licensing

Educator licensing requirements during Public Health Disasters have also been modified by Public Act 101-643. During a Public Health Disaster, an applicant seeking an educator license is not required to pass a teacher performance assessment (i.e. edTPA). Additionally, during a Public Health Disaster, an applicant may complete student teaching or a school business management internship remotely.

This law also amended licensing and endorsement requirements for certain subsets of teachers. Educator licenses set to expire on June 30, 2020 which are not renewed will be extended for one year and will instead expire on June 30, 2021. Additionally, student teaching and school business management internship requirements are waived for the spring 2020 semester.

Instructional Content

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Public Act 101-643 clarifies that the constitution test may be offered to students remotely.

Pre-School Programs

Pre-school education grant recipients are permitted to provide childcare to children ages 0-12 whose parents are considered “essential workers” as defined in the stay-at-home order previously issued by Governor Pritzker.

Special Education

Public Act 101-643 also makes many changes to special education requirements under the School Code. For an in-depth review of these statutory amendments, please read our separate Priority Briefing titled “P.A. 101-643: Revision of Disclosure Requirements for IEP Meetings and Related Service Logs.” https://petrarcagleason.com/priority-briefings/special-education

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-disclosures-revised-by-school-code-amendments/

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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SPECIAL EDUCATION DISCLOSURES REVISED BY SCHOOL CODE AMENDMENTS

On June 18, 2020, the Governor signed into law SB 1569, which

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includes revisions to the special education disclosure and notification provisions enacted in August 2019. The Public Act is effective immediately.

The Requirement to provide parents certain documents *at least three school days* before an eligibility or IEP meeting *is effective again beginning July 1, 2020.*

Districts must provide parents with "all written material that will be considered by the IEP team at the meeting so that the parent may participate in the meeting as a fully-informed team member."

Written material includes, but is not limited to:

- All evaluations and collected data that will be considered at an eligibility meeting.
- If the student already has an IEP, a copy of all IEP

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> components that will be discussed by the IEP team, other than the components related to the educational and related services proposed for the student and the student's educational placement.

The documents must be provided to the parent no later than three school days prior to the student's eligibility meeting or IEP meeting. However, if the IEP meeting is scheduled in three days, after parents waive the ten-day notice requirement, the documents must be provided to the parent as soon as possible.

The new Public Act mandates that districts give parents options for how these materials are provided, including, but not limited to regular mail and allowing the parent to pick the materials up at school.

P.A. 101-643 also revises and clarifies the previous Act's requirements for producing related service logs to parents and for reporting missed related services:

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Related Service Logs are no longer required to be provided at annual reviews but must be made available to parents upon request. Additionally, prior to every eligibility and IEP meeting, districts must inform parents of their right to review and copy their child's student records.

The Act clarifies that related service logs should record the delivery of related services and the minutes provided. Related service logs must be maintained for speech-language services, occupational therapy, physical therapy, social work, counseling, psychology, and nursing services.

The requirement remains that districts must inform parents within 20 school days from the start of the school year or upon the establishment of an IEP of the parent's ability to request a copy of related service logs.

The Act clarifies required reporting if related services are missed and explains that days the student is unavailable for

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service do not constitute missed days of service.

If related services required by the IEP are not provided *within ten school days after the date the service was required to be implemented,* the district, within 3 school days, must provide the parent with notice that services have not yet been provided and must inform the parent of the district's procedures for requesting compensatory services.

"School days" do not include days when the child is absent from school for reasons unrelated to a lack of IEP services and do not include days when the student is absent, or when services are available, but the child is not available.

Regarding Response to Intervention, the Act indicates that districts should use a collaborative team approach that includes regular communication with the parent. The district must provide written notice to the parent of the district's use of scientific, research based interventions or MTSS and must

provide the parent with all data collected and reviewed by the district in providing the child Response to Intervention.

If you have questions regarding P.A. 101-643 or would like recommendations on implementing these requirements, please contact one of our attorneys.

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NEW ILLINOIS LAW ALTERS UNEMPLOYMENT AND WORKER'S

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COMPENSATION CLAIMS FOR REMAINDER OF 2020

On June 5, 2020, Governor Pritzker signed Public Act 101-633 into law. This new legislation will have a significant and immediate effect on unemployment and workers' compensation claims filed by certain school district and joint agreement employees through December 31, 2020.

Amendments to the Unemployment Insurance Act

In past years, a non-professional school employee who did not work during the summer was ineligible to receive unemployment benefits between school years as long as there was a "reasonable assurance" that he or she would be employed the following school year. Public Act 101-633 modifies this rule for the remainder of

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2020. Under this new law, a school district employee who does not provide "instructional, research, or principal administrative" services (e.g. a 9 or 10 month custodian, paraprofessional, cafeteria worker, bus driver, or clerical worker) may be entitled to receive unemployment benefits for any week of unemployment from March 15, 2020 through December 31, 2020, regardless of whether the employee has a reasonable assurance of returning to work for the 2020-21 school year. Notably, an employee is considered unemployed both (a) if the employee is not working, or (b) if the employee's hours have been reduced such that his or her wages are less than the employee's weekly unemployment benefit amount. Furthermore, in addition to regular unemployment compensation, a non-professional employee may also be entitled to the federal $600 weekly unemployment benefit provided under the CARES Act for each week of unemployment through July 31, 2020.

While a non-professional employee is not barred from receiving benefits for the rest of the year by virtue of a reasonable assurance of future employment, it is unclear what, if any, other steps an individual must take to be entitled to

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unemployment benefits. Public Act 101-633 provides that unemployment benefits shall be payable to an employee who does not work in an "instructional, research, or principal administrative capacity…as long as the individual is otherwise eligible for benefits." This language suggests that non-professional school employees may not be automatically entitled to unemployment benefits without meeting the other requirements imposed by the Unemployment Insurance Act. For example, a non-professional school employee might still be required to actively seek employment to obtain unemployment benefits. Moreover, Public Act 101-633 also, and somewhat cryptically, qualifies the availability of unemployment benefits by saying that they are only payable to the extent permitted by Section 3304(a)(6) of the Federal Unemployment Tax Act (a federal law covering the approval of state unemployment laws for purposes of FICA tax credits). Accordingly, school districts and joint agreements who wish to oppose unemployment claims filed by non-professional staff members may take the position that these individuals are not entitled to receive unemployment benefits unless they comply with the Unemployment Insurance Act's other eligibility requirements.

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To date, the Illinois Department of Employment Security ("IDES") has not issued any regulations or guidance interpreting this provision or providing clarification on whether non-professional staff are required to meet the standard eligibility criteria. It is therefore unclear whether IDES will be receptive to arguments that non-professional school employees are required to meet the Unemployment Insurance Act's eligibility requirements. Unless contrary guidance is provided in the future, however, school districts and joint agreements can object to unemployment claims on this basis.

In addition to permitting non-professional staff to seek unemployment benefits despite reasonable assurances of future employment, Public Act 101-633 also modified how employers are charged for unemployment benefits paid out as a result of COVID-19. For unemployment weeks beginning March 15, 2020 through December 31, 2020, most employers who contribute to the state's unemployment insurance program will not be charged for benefits paid when the applicable unemployment is "directly or indirectly attributable to COVID-19." In contrast, however, non-profit and state and local government employers, such as public

school entities, who make direct unemployment payments, instead of state fund contributions, will be charged for 50% of the benefits paid for unemployment that is directly or indirectly attributable to COVID-19.

Amendments to the Workers' Compensation Act

Public Act 101-633 also amended the Workers' Compensation Act as it pertains to claims filed by individuals who have been infected with COVID-19 between March 9, 2020 and December 31, 2020. This law creates a rebuttable presumption that certain employees who contract COVID-19 did so in the course of their employment and are entitled to workers' compensation benefits. Specifically, this presumption applies to "COVID-19 first responders or front-line workers" who are defined to include, among others, "any individuals employed by essential businesses and operations as defined in Executive Order 2020-10" as long as those individuals "are required by their employment to encounter

members of the general public or to work in employment locations of more than 15 employees."

Educational institutions were declared an essential business in Executive Order 2020-10. Consequently, if a school employee works on-site (as opposed to at home) with 15 or more employees, or encounters the general public through his or her job, and suffers an injury or disease resulting from COVID-19, it is presumed that the employee's disease or injury arose out of his or her employment.

Although Public Act 101-633 creates a presumption that a COVID-19 first responder contracted COVID-19 in the course of his or her employment, an employer can rebut this presumption by presenting evidence that the employee contracted the disease outside of work. A non-exhaustive list of sufficient evidence includes: (1) evidence that the employee worked from home and/or was on leave for at least 14 consecutive days immediately prior to the employee's injury/disease resulting from COVID-19; (2) evidence that the employer was actively following COVID-19

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public-health guidelines for at least 14 consecutive days immediately prior to the employee's disease/injury arising out of COVID-19; and (3) evidence that the employee was exposed to COVID-19 from a different source.

The statute further clarifies that, although this rebuttable presumption applies to all workers' compensation cases tried after June 5, 2020, "under no circumstances shall any COVID-19 case increase or affect any employer's workers' compensation insurance experience rating or modification[.]"

Because the burden is on employers to rebut this presumption, employers should take certain preventative steps to reduce their potential workers' compensation liability. First, employers should encourage employees to work from home, if possible. Second, employers should follow federal, state, and local public health guidance, and document these efforts. Third, employers should document any information they have regarding employees' exposure to COVID-19 outside of work.

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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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PROPERTY TAX LATE FEES AND ASSESSMENT CHANGES

The Illinois legislature has passed Senate Bill 685, which is waiting signature by the Governor. This law would allow county boards (other than Cook County) to waive interest penalties for property tax installments. Cook County previously exercised its own authority to waive interest penalties.

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However, while SB 685 attempts to create some structure for how other counties may act, it is unclear how effective it will be. The bill only applies to interest penalties on first installments – it specifically excludes final installment payments. It also permits counties to waive interest penalties for a period of up to 120 days after the bill comes into effect, or the end of the statewide COVID-19 public health emergency.

Ultimately, we believe that SB 685 will serve as the means for county officials to waive interest payments, but that there will continue to be a variety of different deadlines. At this point, we have identified the following deadlines:

Cook County – no interest will accrue on second installment of 2019 taxes provided they are paid on or before October 1, 2020;

DuPage County – taxpayers can apply for a waiver of penalties on first installment payments (normally due June 1, 2020) so long as payment is made by September 1, 2020;

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Grundy County – first installment due dates have been delayed until late-July or early-August, but no additional information or programs have been announced as of this date;

Kane County – no interest will accrue on payments due June 1, 2020 until July 1, 2020;

Lake County – no programs have been announced as of this date;

LaSalle County – interest on late payments will be waived provided the full payment is made prior to the second installment being due;

Will County – 50% of the first installment payment is due June 3, 2020 with the remaining 50% due August 3, 2020; and 50% of the second installment is due September 3, 2020 wit the remaining 50% due November 3, 2020. No interest will accrue so long as the full payments are made by August 3, 2020, and

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November 3, 2020;

Winnebago County – is accepting partial payments but requires that the full amount of taxes be paid prior to the autumn tax sale date.

In addition to the interest penalty changes, Cook County has announced how it is updating its assessments for this triennial. Full details can be found in its May 28, 2020 white paper, but generally speaking, Cook County residents in the south and west suburbs can expect to see lower reassessments based on the underlying public health emergency. The average single-family home and condo in the south and west suburbs is estimated to have a reduced value of 10.3%, while multi-family buildings can expect to see a reduced value of 13.1%. The Cook County Assessor has also indicated that it will be adjusting its cap rate for commercial properties in the south and west suburbs. That will likely result in many commercial properties seeing a reduced valuation as well.

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Although no taxing body wants to see a decrease in its total EAV, the timing is to a district's benefit. Because these changes are being made at the Assessor's level, it means that fewer taxpayers will file for reductions at the Board of Review and Property Tax Appeals Board. Ultimately, while these changes may lead to an increase in the taxing rate, it should lower the number of appeals that would otherwise come out of such a major change in the real estate market.

We will continue to monitor these changes. If you would like further information or to discuss how these changes may impact your finances, please contact our attorneys for further assistance.

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LEGISLATIVE CHANGES TO THE OPEN MEETINGS ACT

During the early days of the public health emergency, Governor Pritzker issued Executive Order 2020-7. That order, which has since been extended, suspended requirements under the Open Meetings Act that required members be physically present at meetings and altered the conditions of remote participation in meetings. On May 23, the General Assembly passed Senate Bill 2135, which amends the Open Meetings Act and formalizes a structure to permit similar meetings in the future.

Pending the Governor's expected approval, Senate Bill 2135 permits meetings through audio-video conference under the following conditions:

1. A disaster declaration related to public health concerns by the Governor or Director of the Illinois Department of

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Public Health for the area covered by the body;
2. A determination by the head of the public body that an in-person meeting is not practical or prudent due to the disaster;
3. Verification that all members of the body can fully participate and hear each other and the discussion;
4. Means for the public to hear all discussions and votes of the body, as well as means for public participation;
5. Presence at the regular meeting location by at least one member of the body, its chief legal officer, or chief administrative officer, unless not feasible because of the disaster;
6. All votes must be conducted by roll call;
7. Notice of the meeting, and any changes to how the meeting is conducted, must be provided at least 48 hours prior to the meeting;
8. The public body must prepare and maintain a verbatim record of the meeting;
9. The public body must bear all costs associated with conducting the meeting.

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These changes are not designed to permit public bodies to use these alternative means indefinitely. Rather, these changes were designed to permit public bodies to continue meeting during extraordinary times.

We will continue to monitor similar changes. Any client with questions regarding these changes or interested in developing a detailed plan based on these changes should not hesitate to contact any of our attorneys.

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