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NEW ILLINOIS LAW ALTERS UNEMPLOYMENT AND WORKER'S 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

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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 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.

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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 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.

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.

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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 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.

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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.

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

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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.

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,

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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;

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;

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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 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

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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.

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

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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 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.

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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NEW FINAL TITLE IX RULES ISSUED ON SEXUAL HARASSMENT

In 2018, we reported on the United States Department of Education's Notice of Proposed Rule Making ("NPRM") relating to Title IX of the Education Amendments of 1972. The NPRM aimed to overhaul Title IX's language regarding its prohibition of sexual harassment in schools and its procedures for adjudicating sexual harassment complaints in schools.

Generally, Title IX prohibits discrimination on the basis of sex, which includes sexual harassment and acts of sexual violence. Title IX applies to all people in an educational institution that receives federal funding.

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After much anticipation, on May 6, 2020, the NPRM became a final rule that will take effect on August 14, 2020. The following is a summary of the implications of the final rule, including some notes on how the final rule differs from the NPRM. Please note that this summary is not an exhaustive list of the new changes to Title IX:

- One of the NPRM's main goals was to change the timeline for when schools must begin responding to complaints of sexual harassment. Prior to the NPRM, the timeline began when the school should have known about the harassment, which in the legal world is defined as *constructive* notice. The NPRM altered this by making the timeline begin when the school has *actual* notice of sexual harassment or allegations of sexual harassment. The final rule requires this notice to be given to any employee of an elementary and secondary school and to the school's Title IX Coordinator (a new "actor" required by the final rule), while the NPRM only required that the notice be given to a teacher.

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- You may recall that the NPRM sought to define "sexual harassment" as: (1) a school employee conditioning education benefits on participation in unwelcome sexual conduct (*i.e. quid pro quo*); (2) unwelcome conduct on the basis of sex, that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or (3) sexual assault, as that term is defined in the Clery Act (which is any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent, *i.e.* rape, fondling, incest, and statutory rape). The final rule differs slightly in its definition of "sexual harassment" in that: (1) the severe/pervasive standard must be judged according to what a reasonable person would determine as severe, pervasive, and objectively offensive; and (2) it adds "dating violence, domestic violence, or stalking as defined in the Violence Against Women Act" to what may constitute sexual harassment under Title IX. The Clery Act definition of sexual assault remains in the final rule definition.

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- The NPRM provided that a school must respond to complaints of sexual harassment when it occurs "in the school's education program or activity." The final rule now defines "education program or activity" to mean locations, events, or circumstances over which the school exercised substantial control over both the respondent (alleged harasser) and the context in which the sexual harassment occurs." This calls into question whether a school would need to respond at all if sexual harassment is alleged to have occurred, for example, in an employee's home or car.

- As stated above, the NPRM and final rule now include a requirement that schools designate a Title IX Coordinator to coordinate the school's efforts to comply with its Title IX responsibilities. Beginning August 14, 2020, the Title IX Coordinator's required contact information must be prominently displayed on school websites.

- The final rule differs greatly from the NPRM in that a

school's mandatory response to sexual harassment must include, but is not limited to: (1) offering supportive measures to the complainant; (2) the Title IX Coordinator promptly contacting the complainant to discuss the availability of supportive measures, considering the complainant's wishes with respect to supportive measures, informing the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explaining the process for filing a formal complaint to the complainant; and (3) following a grievance process that complies with the final rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent (alleged harasser).

- The final rule also differs from the NPRM in that it requires a complainant, at the time he/she files a formal complaint, to be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.

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- The final rule contains a new requirement that a complaint hearing's decision maker must weigh the relevancy of a question asked of a party or witness before the party or witness answers the question. Additionally, while the NPRM required elementary and secondary schools' grievance procedure to have a live hearing, the final rule makes the live hearing requirement optional.

- The NPRM provided that a school may choose to offer an appeal from a determination of responsibility or dismissal of a complaint; the final rule makes it mandatory to offer parties an appeal, but only on the following bases: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination was made that could affect the outcome of the matter; and/or (3) the Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias that affected the outcome of the matter.

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- The NPRM allowed schools to choose to offer informal resolution options (such as formal or informal mediation), but only with the voluntary, informed, written consent of both parties. The final rule states that a school may not require that the parties participate in informal resolution, or offer informal resolution, unless a formal complaint is filed. However, the final rule provides that schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

- The NPRM did not include anti-retaliation provisions, but the final rule does.

As a result of the final rule, schools will need to review their policies and procedures to ensure their compliance with the new Title IX rules. This will largely involve revising your Uniform Grievance Procedure to ensure compliance and, potentially, bestow “Title IX Coordinator status” on the Uniform Grievance Procedure’s already-existing Complaint Manager.

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If you have any questions or concerns about the final rule, provisions not discussed in this priority briefing, or the many potential interpretations of the final rule, please do not hesitate to contact one of your attorneys at Hauser, Izzo, Petrarca, Gleason & Stillman, LLC.

REASSESSMENTS AND PROPERTY TAX COLLECTIONS DURING COVID CRISIS

Like so much else during the crisis caused by the ongoing pandemic, property values can be affected. That, in turn, can impact property tax assessments and taxpayer appeals in the Property Tax Appeal Board and in the courts. This is especially true for commercial and industrial properties whose businesses

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have seen reductions in volume as a result of the stay-at-home orders issued by the Governor.

It is important to note that a decrease in property values is not always a detriment to taxing bodies. To the extent that the Assessor can automate these changes and encourage taxpayers to not file actions with the Property Tax Appeals Board or the courts, it means that taxing bodies should face fewer refunds and less revenue loss than they might otherwise.

In Cook County, the Assessor has made it clear that his office will reconsider the value of every property in the County based on the impact of the novel coronavirus. Typically, properties in Cook County are reassessed on a triennial basis. In 2020, the Assessor is scheduled to reassess townships located in the south and west suburbs – some of which have already been completed.

Moreover, according to the Cook County Assessor's office, any township that has not already been reassessed will have any

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change in property value due to the coronavirus automatically taken into account. Those townships set for reassessment in 2020 will receive notice of an adjustment or may have a reassessment performed automatically. The Assessor has indicated that north suburban and Chicago properties will automatically receive notices about adjustments to assessed values based on the coronavirus regardless of whether an appeal is filed. Commercial property owners have been encouraged to use the Assessor's online portal to provide information on changes in rent and expenses to assist with valuation.

All assessment officials outside of Cook County whom we contacted have indicated that they are examining the data, just as they have from changes after other major events that impacted the real estate market. It is unknown exactly how they plan on quantifying changes in value, but it appears likely that the majority of properties will see their assessed value decrease.

Of more concern, we have also found that some counties have started a process to either delay collection of property taxes

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or waive penalties for late payments. In DuPage County, the county board passed an ordinance that waives penalties when a property owner meets certain requirements (including a loss of job, significant loss of income, inability to collect rent, or a business that was closed for being “non-essential”). The Will County Treasurer has also indicated that its office has received requests from taxpayers for similar assistance. At this time, the Will County Board has not passed a similar ordinance, but there are calls by some for that to happen. News stories suggest that certain legislators may also seek legislation to delay property tax payment dates; however, no bills to that effect have advanced at this time.

Any change in property tax due dates could lead to concerns for taxing bodies. School districts are at the mercy of the county treasurers to receive local property tax revenue and any delay could mean that districts would run into cashflow issues.

We will continue to follow these matters in the coming weeks. If you have any questions, please do not hesitate to contact any of

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our attorneys.

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

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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.

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

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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

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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

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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

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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

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Paid Sick Leave.

Compensation for Paid Sick Leave

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

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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

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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

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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 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.

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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.

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Interaction with Employer-Provided Leave

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.

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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.

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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.

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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

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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.

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- 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

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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

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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

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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

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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.

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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

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.