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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

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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.

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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

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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

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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

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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.

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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.

CDC AND U.S. DOE GUIDANCE

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REGARDING NOTIFYING SCHOOL COMMUNITIES ABOUT STAFF AND STUDENT EXPOSURE TO COVID-19

Although Illinois schools and joint agreements have been closed for educational purposes since March 17, 2020, students and employees may have been exposed to the novel coronavirus, or contracted COVID-19, through school-based interactions. This novel coronavirus is thought to have an incubation period of up to 14 days. Therefore, any school community member who has developed symptoms of, or tested positive for, COVID-19 since schools closed on March 17 may have been infected prior to the statewide school closures and, consequently, exposed other students and staff

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to the virus. Moreover, many school employees may have reported to work in-person since schools closed to facilitate distance learning or to perform essential functions.

If a school district or joint agreement learns that students or staff have developed symptoms related to, or tested positive for, COVID-19 since March 17, they should consider notifying their school community about their possible exposure to the virus. The Centers for Disease Control and Prevention ("CDC") and the U.S. Department of Education ("U.S. DOE") have issued guidance to employers and schools regarding how school communities may be notified about a possible exposure to COVID-19 without violating applicable privacy laws.

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If an employee has tested positive for COVID-19, the CDC recommends that the employer inform fellow employees about their possible exposure to the virus in the workplace. This notification should also be sent to students and parents. The CDC warns, however, that employers are required to maintain confidentiality as required by the Americans with Disabilities Act. Therefore, any notice that is sent to, students, and parents about a possible exposure should not reveal the infected staff member's name, or other information which could be used to identify him or her. A similar notice may also be sent if an employee has developed symptoms of COVID-19, but not yet tested positive. Once again, this notice should not identify the employee.

Similarly, the U.S. DOE recommends that educational institutions, including school districts and joint agreements, notify the school community if a student developed symptoms or tested positive for COVID-19 within a time frame that creates a possibility that he or she may have exposed others while attending school. To avoid violating the Family Educational Rights and Privacy Act ("FERPA"), the DOE cautions that such

notification should not include any personally identifiable information by which the student may reasonably be identified.

There may be instances when a school district or joint agreement determines that a subset of staff or students had an increased risk of exposure to an infected individual and requires a more-detailed notification in order to take appropriate protective action. If a district or joint agreement makes this determination, it should contact its attorney to review how such notification should be presented, and to prevent any privacy violations.

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.

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U.S. DOE PROVIDES GUIDANCE REGARDING FERPA AND VIRTUAL LEARNING DURING COVID-19 SCHOOL CLOSURE

On March 30, 2020, the Student Privacy Policy Office of the U.S. Department of Education held a webinar to address privacy concerns regarding remote learning. A copy of the Power Point can be accessed here: https://studentprivacy.ed.gov/resources/ferpa-and-virtual-learning-during-covid-19

During the webinar, the U.S. DOE noted that:

- Teachers and related service providers may take home student records, and personally identifiable information

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from those records, as long as the teachers and related service providers have a legitimate educational interest in the education records, do not redisclose the information without parent consent, and use reasonable methods to protect the information from further disclosure.

- Under the "school official" exception, which also applies to the Illinois School Student Records Act, Districts may disclose students' education records to a virtual or online provider of services who is contracting with the District as long as the contracted provider (a) performs a service or function for which the District would otherwise use its own employees; (b) has been determined by the District to have a legitimate educational interest in the student records; (c) is under the direct control of the District regarding the use and maintenance of the education records; (d) uses the education records only for purposes authorized by the District; and (e) does not redisclose the education records.

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- The District may use a variety of technological platforms to provide services and, although HIPAA does not generally apply to educational records, HIPAA enforcement for telehealth services has been waived during COVID-19. HIPAA applies to health information, but schools are currently utilizing platforms used for telehealth services to provide remote IEP meetings and virtual learning.

- FERPA does not protect observations of students if personally identifiable information from student records is not disclosed. However, Districts should advise parents that, when group services are provided, an adult in another student's home could view their child, and instruct parents not to record or share any personally identifiable information about other students.

- Teachers and related service providers may record a lesson for students as long as the video does not include student record information, or consent is provided to disclose student record information.

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- There is no exception to providing access to, or a copy of student records, upon parent request, during the COVID- 19 school closure.

If you have questions, please contact one of our attorneys.

PREVENTING COVID-19 IN THE WORKPLACE: WHAT QUESTIONS CAN YOU ASK?

As the COVID-19 pandemic progresses,
employers, including school districts and joint agreements, will be (or already
have been) faced with employees who request sick days or leave

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related to
COVID-19. In these ever-changing times, it is important for employers to
protect their workplace and employees from COVID-19 to the best of their
ability, while also avoiding taking actions or asking improper questions which
violate relevant state and federal employment laws. Below is a summary of (1) recent
guidance issued by the federal Equal Employment Opportunity Commission (“EEOC”)
on what actions employers can take to help prevent transmission of COVID-19 in
the workplace, and (2) FMLA certification requirements in light of the Emergency
Family and Medical Leave Expansion Act (“EFMLEA”) which passed last week as
part of the Families First Coronavirus Response Act.

EEOC Guidance

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Based on guidance of the CDC and other public health authorities, the EEOC has determined that COVID-19 causes a direct threat to workplaces, meaning that it poses "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." Accordingly, the EEOC has issued instructive guidance on the types of measures employers can take, including what questions they can lawfully ask their employees, to mitigate the chance of COVID-19 transmission in the workplace without violating the Americans with Disabilities Act ("ADA") or the Rehabilitation Act. Pursuant to this guidance, employers may take the following actions to prevent the spread of COVID-19:

- Employers
  can send home any employees who have COVID-19 or associated symptoms.
- If
  employees feel ill at work, or call in sick, employers may ask the employees
  questions about their symptoms to determine if they may

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have COVID-19;

- Employers are permitted to measure employees' body temperatures. However, the results of any such examination are subject to ADA confidentiality requirements.
- If employees return from travel, employers do not have to wait for the employees to show symptoms before they are permitted to question the employees about their potential exposure to COVID-19. Similarly, employers are permitted to follow the advice of the CDC and state/local public health authorities regarding what information is needed by employers to permit employees to return to the workplace after visiting specified locations.
- Employers can encourage employees to telework. Additionally, employers should note that employees with a high risk of infection or harm from

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COVID-19 can ask to telework as a reasonable accommodation under the ADA.

- Employers can require employees to adopt infection-control practices such as regular hand-washing, coughing and sneezing etiquette, tissue disposal, etc.
- If employees have not been reporting to work, employers are permitted to ask why the employees have been absent.
- Employers can screen job-applicants for COVID-19 symptoms after making a conditional job offer to the applicant, so long as employers do this for all entering employees in the same type of job.
- Employers can require applicants to have a medical examination (including, for example, having the applicant's temperature taken) after making a conditional job offer

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to the applicant, so long as employers do this for all entering employees in the same type of job.

- Employers can delay the start date for new employees who have COVID-19 or associated symptoms.
- Employers may withdraw job offers to applicants who have COVID-19 or associated symptoms when employers need the applicant to begin immediately.

FMLA Certification

The EFMLEA, which was passed last week, provides for a limited and temporary expansion of the Family and Medical Leave Act ("FMLA") for issues related to COVID-19. For a comprehensive overview of the EFMLEA's provisions, please see last week's priority briefing on the Families First Coronavirus Response Act, which can be found here. The below summary is limited to

describing how employers' right to certification under the FMLA has, or has not, been affected by the EFMLEA.

Under the FMLA,
eligible employees are entitled to up to 12 weeks of leave for the following
reasons:

1. Because
   of the birth of the employee's child and in order to care for that child;
2. Because
   of the placement of a child with the employee for adoption or foster care;
3. To
   care for the employee's spouse, child, or parent if that spouse, child, or
   parent has a serious health condition;
4. Because
   of the employee's own serious health condition which makes

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the employee unable to perform the functions of his or her position;

5. Because of any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

The EFMLEA added a sixth reason for which employees can seek leave – to care for his or her child under age 18 if the child's school or place of care has been closed, or if the childcare provider is unavailable, due to COVID-19.

Under the FMLA, an employer may require an employee to provide it with a certification, issued by

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a health care provider, to obtain leave under reasons C and D, above. Although the EFMLEA added a new basis for seeking leave under the FMLA, it did not alter or amend any provisions relating to certification. Therefore, an employer can still only require certification from a health care provider if the employee is seeking leave because of his or her own serious health condition, or to care for his or her spouse, child, or parent who has a serious health condition.

Consequently, if an employee seeks leave because he or she has contracted COVID-19, or to take care of the employee's spouse, child, or parent who has contracted COVID-19, the employer can still require the employee to provide a certification issued by a health care provider. However, if an employee seeks leave to

care for his or
her child because the child's school has closed, the employer cannot require
any form of certification.

If you have any questions, please do not hesitate to contact us. We will provide updated with additional guidance as it becomes available. Attorneys in our Flossmoor (708-799-6766) and Oak Brook (630-928-1200) offices can assist with any questions you may have about these and related matters during these ever-changing times.

U.S. DOE ISSUES SUPPLEMENTAL

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GUIDANCE REGARDING SPECIAL EDUCATION DURING COVID-19 SCHOOL CLOSURE

On March 21, 2020, the Office for Civil Rights and Office for Special Education and Rehabilitative Services issued a Supplemental Fact Sheet regarding the provision of services to students with disabilities while addressing COVID-19 risks. The fact sheet addresses concerns about using distance education and addresses special education timelines under the Individuals with Disabilities Education Act ("IDEA").

IDEA
and Section 504 do not prevent special education programming via online
services, video conferencing or telephone conferences.

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The U.S. Department of Education encourages schools to use flexibility in providing special education during school closure. FAPE may include providing special education and related services virtually through online services, videoconferencing or telephone conference. Services may also include low tech alternatives such as instructional packets. When determining how to provide services, individual circumstances of students should be considered. When school resumes, IEP teams will need to make individualized determinations as to whether and to what extent a student with a disability will need compensatory services.

IEP
timelines are not extended, but state complaint, mediation and due process
timelines may be extended.

Timelines for developing initial IEPs and for annual reviews are not extended, but meetings may be held by video conferencing or telephone conference with parent agreement. IEP revisions that

are not annual reviews may be done through IEP amendment, if appropriate and with parent agreement.

Timelines for processing state complaints may be extended, as an "exceptional circumstance," if a large number of State employees are unavailable or absent for an extended period of time. Mediation and due process timelines may be extended with agreement of the parties and hearing officers may grant specific extensions of time.

If you have questions regarding special education during the closure, please call one of our attorneys in Flossmoor at 708-799-6766 or in Oak Brook at 630-928-1200 or email one of our attorneys.

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STATEMENTS OF ECONOMIC INTEREST STILL DUE BY MAY 1, 2020 (FOR NOW)

While many court appearances and deadlines have been postponed or delayed as a result of the Coronavirus, many government-imposed deadlines applicable to school districts and joint agreements remain in effect, including the deadline for filing statements of economic interest. As of right now, this deadline has not been changed, and statements of economic interest must be filed with the county clerk on or before May 1, 2020.

If

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you have any questions, please do not hesitate to contact us. We will continue
to provide updates with additional guidance on this, and any other issues
affected by Coronavirus, as it becomes available. Attorneys in our Flossmoor
(708-799-6766) and Oak Brook (630-928-1200) offices can assist with any
questions you may have about these and related matters during these
ever-changing times.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

President

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Trump signed into law the Families First Coronavirus Response Act on March 18, 2020. The Act includes paid emergency sick leave and FMLA leave in response to the COVID-19 pandemic. The Act applies to all public sector employers, including school districts and joint agreements, and any private employer with 500 or fewer employees; however, employers with less than 50 employees may be exempted from the Act by subsequently enacted regulations. The Act is effective April 2, 2020 and will last until December 31, 2020.

Of immediate importance to employers, including school districts and joint agreements, are the Act's provisions that temporarily expand the use of FMLA, the provision of emergency sick leave for COVID-19 related purposes, and

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insurance coverage of COVID-19 testing.
An overview of these areas of the Act follow.

Emergency Family and Medical Leave Expansion Act (EFMLEA)

The EFMLEA provides a limited and temporary expansion of the FMLA. An employer may require that an employee follow its "standard" FMLA requirements in all other respects. That said, EFMLEA does not increase the amount of leave available to an employee during a 12-month period. An EFMLEA leave would count towards an employee's 12-week allotment of FMLA, and the total amount of FMLA leave available to an employee is still 12 weeks during a 12-month period.

- For purposes of eligibility for an EFMLEA leave only, the "qualifying service time" requirement is at least 30

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calendar days with the employer (instead of FMLA's general 12-month service
requirement).

- A "qualifying need" for EFMLEA leave means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if their school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to a "public health emergency" related to COVID-19 (declared by Federal, State, or local authority). **NOTE:** for EFMLEA purposes, "School" means an elementary or secondary school, and "Child care provider" means a provider who receives compensation for providing child care on a regular basis.

- EFMLEA leave is not available for
use by an employee due to their contracting COVID-19. Keep in mind, however, that such an employee could
use available leave under the Emergency Paid Sick Leave

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Act, and may also be
able to qualify for a “standard” (though possibly unpaid) FMLA leave based on
the “serious health condition” of the employee or a member of his/her family.

- The first 10 days of an EFMLEA leave is unpaid. The employee may choose to substitute paid leave that would cover the reason for the EFMLEA leave (which should be determined based on the employer’s bargaining agreements, employment contracts, policies, etc.) for the unpaid leave for these 10 days; however, it is our current interpretation of the Act that an employer may not require the employee to do so.
  After the first 10 days, the leave is paid. The amount of pay is generally an amount equal to at least 2/3 of the employee’s regular pay rate multiplied by the number of hours that would’ve been worked. An employee’s regular rate of pay would not include stipends or any days for which no work was performed (e.g. any unpaid breaks in the school calendar). A more comprehensive calculation would

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be used for employees whose hours are undetermined (i.e. have a schedule that varies from week-to-week).

The Act provides that this paid leave benefit shall not exceed $200 per day and $10,000 in the aggregate. Please note that these caps are not consistent with the caps that are applicable to emergency paid sick leave. It is unclear whether the differences between these caps are due to an employee's ability to substitute applicable paid leave during the first 10 days of an EFMLEA leave, or any ability the employee may have to substitute additional leave during the period covered by the paid benefit.

Emergency Paid Sick Leave Act

All
employees of a covered employer (regardless of probationary status or tenure) are
eligible for this benefit, which is available regardless of and in addition to

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leave provided under a covered employer's current policies. However, this emergency paid sick leave
benefit does not carryover to next year.
Notable features of this leave benefit are as follows:

- Full time are eligible for up to 80 hours of paid leave
- Part-time employees are eligible for paid leave up to the average number of hours worked over the prior 2-week period
- If a part-time employee's hours vary so much that the employer cannot accurately determine a 2-week average, then the average number of hours the employee was scheduled to work per day over the prior 6-month period are used, including any hours for which the employee took any type of leave
    - If a part-time employee did not work over the prior 6-month period, then the reasonable number of hours the employee would expect, at the time of hiring, to work in a 2-week period would be used
- Leave does not carryover to next year
- Use of this leave occurs before use of leave provided by

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employer generally
- After the first day of such leave, an employer can ask employee to provide reasonable notice of his or her status to continue receiving leave benefits; until regulations are enacted or further guidance is adopted, we do not believe that an employee can be required to provide a note from his or her health care provider.

An employee may use his or her emergency sick leave benefit for the following reasons:

- The employee is subject to a COVID-19 related isolation or quarantine order
- The employee's health care provider has advised the employee to self-quarantine based on COVID-19 related concerns
- Obtaining a medical diagnosis or care if the employee is experiencing COVID-19 symptoms
- Care for or assist an individual who is:
    - Subject to a COVID-19 related isolation or

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quarantine order
- Advised to self-quarantine based on COVID-19 related concerns
- Experiencing symptoms of COVID-19 and seeking diagnosis or care

- To care for a child of the employee whose school or place of care has been closed due to COVID-19 related concerns

The rate of pay an employee is entitled to receive for use of this sick leave benefit depends on the reason for which the leave is used:

- If leave is taken for the employee's own purposes:
  - The employee receives the greater of his/her regular rate of pay or minimum wage
  - The amount payable is capped at $511 per day, $5,110 in the aggregate
- If leave is taken to care for the employee's child(ren) or others:

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- The employee receives the greater of 2/3 his/her regular rate of pay or minimum wage
- The amount payable to the employee is capped at $200 per day, $2,000 in the aggregate

Finally, keep in
mind that a violation of this Act will be treated as a violation of the FLSA/FMLA/minimum
wage laws

Division F – Health Provisions

SEC. 6001 Coverage of Testing
for COVID-19

- Insurance shall provide coverage,
  and shall not impose any costs sharing (including deductibles, copayments, and

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coinsurance) requirements or prior authorization or other medical management
requirements, for the following items and services furnished during any portion
of the emergency period:

- In vitro diagnostic products (i.e. coronavirus testing)
- Items/services furnished that result in an order for or administration of in vitro diagnostic product (i.e. services provided which result in coronavirus testing)

Entities that are self-insured
should confirm that their benefits are being appropriately handled and that any
COVID-19 testing is performed without cost to the employee.

Please
note that neither the Families First Coronavirus Response Act,

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Illinois
Executive Order 2020-05 (the order closing schools), nor the March 17 joint
statement issued by the Office of the Governor, the IEA, the IFT, the IASA, the
IPA, and ISBE modifies or alters how school districts or joint agreements should
treat an employee's leave of absence unrelated to COVID-19, including any
leaves which were ongoing prior to these enactments. For example, if an employee was already taking
leave under the FMLA for a family health issue unrelated to COVID-19 when the
Act was signed into law, the Act's new provisions for leave related to COVID-19
do not apply to that employee's already existing, and unrelated, leave.

If you
have any questions, please do not hesitate to contact us. We will provide

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updates with additional guidance as it becomes available. Attorneys in our
Flossmoor (708-799-6766) and Oak Brook (630-928-1200) offices can assist with
any questions you may have about these and related matter during these very
fluid and unsettling times.

GUIDANCE: SPECIAL EDUCATION TIMELINES AND SERVICES DURING CLOSURE

The Illinois State Board of Education has issued guidance on complying with special education mandates during school closure due to the coronavirus. Below is a summary of the March 17, 2020

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Guidance.

Special education timelines remain in place, but days the school is closed do not count as "school days."

- ISBE indicates that "Act of God" days *do not* constitute "school days" under State or federal law. Therefore, special education timelines that are based on school days are extended until school resumes. For example, the school has 60 school days to complete an evaluation. The Act of God days do not count as part of the 60 school days. A school has 14 school days to respond to a request for an evaluation. The closure days do not count towards these 14 school days.

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- However, the Act of God days *do* count towards special education timelines that utilize calendar days or business days. For example, the ten calendar day notice of conference requirement remains in effect and the Act of God days are counted as calendar days.

- Annual review dates are *not* extended. Annual review meetings may be held by video conference or telephone conference, utilizing platforms such as Google or Zoom, or by telephone if the parent consents to having the meeting by remote means. IEP teams are not required to meet in person during closure days.

- There

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is no extension of the Early Intervention transition process. However, Early Childhood screenings and in person assessments must wait until school resumes.

- There is no extension of mediation, due process or complaint timelines.

Providing FAPE during the school closure

- If a school provides educational opportunities to general education students during the closure, it must provide educational opportunities to special education students during the closure. How services are provided are within the District's discretion; but

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should be designed to allow the student to make progress on his or her IEP goals.

- Districts may provide related services to students during the closure by teletherapy or by providing activity packets to students. ISBE is unable to determine if Medicaid will reimburse for related services provided in this manner.

- Because of the break in services and instruction during the closure, some students may require compensatory services when school resumes. Whether the student requires compensatory services should be determined by the IEP team, on a case by case basis, considering regression and recoupment and the student's

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individual needs.

- The educational opportunities and services provided to students during the closure should be documented by the school, and this will assist in determining whether a student requires compensatory services.

- If an evaluation is in process during school closure, the school may complete components of the evaluation that do not require face to face assessment, such as completion of rating scales, during the school closure.

If you have questions regarding special education during the closure, please call

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one of our attorneys in Flossmoor at 708-799-6766 or in Oak Brook at
630-928-1200 or email one of our attorneys.

ISBE SUBMITS REVISED TIME OUT AND PHYSICAL RESTRAINT REGULATIONS TO THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

The Illinois State Board of Education made a few significant revisions to its proposed regulations regarding isolated time-out, time-out and physical restraint (the "Proposed Rules"), in response to 310 letters of public comments. *The Proposed Rules*

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are not yet effective, but will be submitted for a Second Hearing and publication in the Illinois Register after the ISBE's February 18 meeting.

ISOLATED TIME-OUT ALLOWED IN LIMITED CIRCUMSTANCES.

In response to comments, the Proposed Rules now allow for isolated time-out, when all other requirements for time-out are satisfied, but only when the adult in the time-out area with the student is in imminent danger of serious physical harm because the student is unable to cease actively engaging in extreme physical aggression.

In an isolated time-out, the supervising adult must remain within two feet of the enclosure and must always be able to see, hear and communicate with the student. Supervision may not be through a camera, audio recording or other electronic monitoring device. Any door must be steel or wood and of solid-core

construction and cannot be fitted with a locking mechanism or be physically blocked by furniture or any other object. If the door contains a viewing panel, the panel must be unbreakable.

As noted in ISBE's December 2019, guidance, isolated time-out and time-out do not include a student initiated or student requested break, a student or teacher initiated sensory break, an in-school detention or suspension, or a student's brief removal to the hallway or similar environment.

NO PRONE RESTRAINT ALLOWED

Despite numerous commenters requesting that ISBE reconsider its ban on prone restraint, ISBE indicated that best practice is to prohibit prone restraint completely and to only narrowly allow supine physical restraint, under the circumstances set forth in the Amendment to ISBE's Emergency Rules. (See our previous Priority Briefing, *ISBE Issues Amendment to Emergency Rules on Physical Restraint)* The Proposed Rules define prone restraint

as the student being held face down on the floor and supine restraint as the student held face up on the floor.

PARENT NOTIFICATION EXTENDED TO ONE BUSINESS DAY

ISBE has recognized that the requirement to send the parent the ISBE Time-out and Physical Restraint Form within 24 hours of the incident is a difficult timeline to meet and has changed the requirement to one business day. The school district or facility is required to make a reasonable attempt to notify the student's parent of the intervention on the same day that it occurs, but may deliver the required form to the parent by mail, email or in person within one business day of the incident.

REVIEW MEETING AFTER THREE INCIDENTS CLARIFIED

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In response to concerns about the frequency of meeting after every three time-outs or physical restraints, ISBE has revised its rules such that the team must meet to review interventions, the need for a case study evaluation, or the need for a placement change after a student experiences time-out or physical restraint on *three days within a thirty day period.*

OTHER REVISIONS TO
PHYSICAL RESTRAINT REQUIREMENTS

According to the Proposed Rules, physical restraint must end immediately when the threat of imminent danger of serious physical harm ends, and, without exception, when the student indicates that he or she cannot breathe or staff supervising the student recognize that the student may be in respiratory distress. Physical restraint may not be used in response to a student's verbal threat unless the student also demonstrates a means of, or intent to *immediately* carry out the threat.

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REVISIONS TO ISBE
TIME-OUT AND PHYSICAL RESTRAINT FORM

ISBE will be revising its required reporting form to require a description of the *specific imminent danger of serious physical harm to the student or others* that required the use of time-out or physical restraint, and for isolated time-out, a description of the reason why the student's needs could not be met by a lesser restrictive intervention and why an adult could not be present in the time-out room. ISBE will also include on the form information for the parent about how to file an ISBE complaint.

OTHER REVISIONS TO
THE PROPOSED REGULATIONS

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In response to
public comment, ISBE also made the following revisions:

- A
  requirement that none of the student's clothing be removed during time-out,
  including, but not limited to shoes, boots, shoelaces, and belts
- Clarification
  that, except for training on physical restraint, online training may be utilized
  (*e.g.*, for restorative practices, trauma informed practices, behavior
  management practices) and that trained staff members must receive a copy of the
  district's policies on isolated time-out, time -out and physical restraint
- Clarification
  that upon receipt of a complaint, the district or facility will prepare a
  written response to the complaint and that ISBE may do an

on-site investigation.

ISBE plans to issue additional guidance that explains various key terms in the Proposed Rules, such as “imminent danger” and “restorative practices,” and will be providing instructions about how to complete the ISBE Time-Out and Physical Restraint form.

For further information on the Isolated Time-Out, Time-Out and Physical Restraint Rules, please call one of our attorneys at 708-700-6766 (Flossmoor Office) or 630-928-1200 (Oak Brook office).