

In Brief

March 23, 2020

COVID-19: GUIDANCE FOLLOWING THE “STAY AT HOME” ORDER

On March 20, 2020, Governor Pritzker issued an [Executive Order 2020-10](#) regarding Stay at Home, Social Distancing Requirements and Essential Businesses and Operations, in an effort to slow and stop the spread of COVID-19 (Coronavirus). This publication is intended to provide general guidance regarding the conditions of the Stay at Home Order and how it may impact your organization, as well as updated guidance generally, and also specific updated guidance to K-12 institutions about students and special education services through March 30th. You can access all of our firm’s COVID-19 publications [here](#).

Information surrounding COVID-19 continues to evolve at a rapid pace. We will continue to provide relevant updates for our clients. We plan to issue further guidance for K-12 institutions relevant to the period of closure from March 31 until at least April 7, 2020, after ISBE’s advisory committee completes its work.

Key Conditions of the Stay at Home Order

1. What are the effective dates of the Governor’s Stay at Home Order?

March 21, 2020 at 5:00 PM through at least April 7, 2020. The April 7 date is significant as it is the date through which the Gubernatorial Disaster Proclamation currently extends.

2. As an individual, what can I leave my house to do?

You can leave your house to perform “essential activities” including: health and safety (personal, family or household member, pet); necessary supplies and services; outdoor activity; certain types of work (discussed below); and to take care of others.

3. Do all businesses in Illinois have to cease operations?

No. Businesses and operations deemed as “essential” are encouraged to remain open. Also, any business is permitted to continue operations if its employees/contractors are exclusively working remotely. Otherwise, all other business operations must cease except the minimum necessary activities to:

- ❖ Maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
- ❖ Facilitate employees of the business being able to continue to work remotely from their residences.

4. What businesses relevant to our clients are deemed Essential Businesses or Operations?

- ❖ **Educational institutions** (includes public and private pre-K-12 schools, colleges and universities for purposes of facilitating distance learning, performing critical research, or performing essential functions).
- ❖ **Essential Government Functions** (e.g., first responders, law enforcement/corrections, military, governmental employees, and all services provided by the State or any municipal, township, county, subdivision or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, etc.)
 - *Note:* Each government agency is allowed to determine its essential functions and the employees or contractors necessary to carry out those functions.
- ❖ **Critical trades** (e.g., cleaning and janitorial staff for governmental properties, etc.).
- ❖ **Essential Infrastructure** (e.g., building management and maintenance, construction, airport operations, utilities, roads food-related etc.).
- ❖ **Healthcare and Public Health Operations** (e.g., hospitals, doctor's office, clinic, pharmacies, blood donation, home healthcare, mental health and substance abuse providers, veterinary care, makers/distributors of medical equipment, etc.).
- ❖ **Human Services Operations** (e.g., providers funded by Illinois Department of Human Services, DCFS or Medicaid; businesses that provide food, shelter and social services for disadvantaged individuals, etc.).
- ❖ **Organizations that provide charitable and social services.**
- ❖ **Critical labor union functions.**

5. If I qualify as an Essential Business or Operation are there any new requirements for my workplace?

Yes, you will need ensure compliance with Social Distancing Requirements (SDR), as set forth in the Order, including maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands. Your business must also take proactive measures to ensure compliance with SDR *where possible*, including:

- ❖ Designate six-foot distances. Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance.
- ❖ Hand sanitizer and sanitizing products. Having hand sanitizer and sanitizing products readily available for employees and customers.
- ❖ Separate operating hours for vulnerable populations. Implementing separate operating hours for elderly and vulnerable customers.
- ❖ Online and remote access. Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

6. If my employees are reporting to the workplace, do they need special written permission or an ID?

While the Executive Order does not require this, you may want to consider providing these employees with a “safe passage” letter that they can show to appropriate authorities, if necessary. Suggested content for the letter includes: name and address of your business, type of business, employee name and job title, a statement that the employee is performing an essential function for an essential business or operation and/or that they are performing minimum basic operations for your business, the hours the employee may need to be at the workplace and a number where a main contact at your business can be reached.

7. How does the order impact the number of attendees for public or private gatherings?

Any gathering of more than 10 people is prohibited, unless expressly exempted under the Order (generally, see above questions and answers).

General Q&A

1. Should individuals returning from a location designated with a Travel Warning of Level 3 not attend school or work for 14 days after they returned?

Any individual returning from a location designated with a Travel Warning of Level 3 should not attend school (when reopened) or work for 14 days after returning according to Illinois Department of Public Health (IDPH) and the Centers for Disease Control (CDC) Guidance. Absences for this purpose should be excused. As of March 23, 2020, China, Iran, most European countries, the United Kingdom and Ireland, South Korea, Australia, Brazil, Canada, Israel, Chile, Pakistan, Japan, Malaysia, Thailand and Turkey are at Level 3.

2. If my business is open, should sick individuals stay home?

Yes. For sick individuals with known diagnosis or exposure to COVID-19, contact and consult CDC guidance (<https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>) and immediately contact and consult local health departments and IDPH in connection with any possible quarantine, student/employee/participant symptoms of fever, cough and difficulty breathing, or known or potential exposure/diagnosed case of COVID-19 in your organization.

3. Will requirements for meetings held pursuant to the Open Meetings Act (OMA) be relaxed during the COVID-19 pandemic?

To the extent possible, Governor Pritzker encourages public bodies to postpone meetings for the duration of his disaster proclamation, which was issued on March 9, 2020. **By operation of statute, the Governor's current disaster proclamation is effective through April 7, 2020.**

Recognizing that some meetings are necessary during the period of his disaster proclamation, the Governor has suspended the requirement that a quorum of the members of a public body be physically present at a board meeting and the conditions which limit when remote participation is permitted. This means that:

- ❖ A public body may convene a properly noticed meeting with any number of members physically present, or no members physically present, as long as the total participating members constitutes a quorum; and
- ❖ No specific reason or vote to allow for remote participation is required.

When a meeting must occur, Governor Pritzker encourages public bodies to “provide video, audio and/or telephonic access to meetings to ensure that the public may monitor the meeting. Public bodies are further urged to “update their websites and social media

feeds” to keep the public informed of changes to meeting schedules or format due to the COVID-19 emergency.

For meeting dates after April 7th that need to be held, we recommend that public bodies plan accordingly to meet the physical presence requirements for meetings held under the OMA and to abide by the limitations on remote participation in the event that the Governor’s disaster proclamation is not extended. Public bodies should also have a separate plan for a remote meeting and public access in the event that the suspension of the physical presence requirements for meetings continues to be suspended.

For additional information about a public body’s obligation under the OMA, please [click here](#) to access our March 16, 2020 *In Brief* on this subject.

The Illinois Attorney General’s Public Access Counselor has also issued a guidance document on the OMA and FOIA during the COVID-19 pandemic, which can be found at: http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf.

Labor and Employment Q&A

1. Are there any special considerations regarding workdays during the COVID-19 pandemic?

If it is a regular workday for an employee (on-site or remotely), there should be no change. If your organization is closed, how the closure is categorized will likely matter. Check policies and CBAs for treatment of days for partial or complete closure. Notably, essential business and operations personnel may still be required to report to work.

Some special considerations for school employees will depend on how the “day” is categorized. If a day is designated as an Emergency Day, teachers should not be docked pay as these days are built into the school calendar and will be made up. For other employees, it will be necessary to consult applicable contracts, CBAs and policies.

On March 17, 2020, a Joint Statement was issued by the Office of Governor JB Pritzker, the Illinois Education Association (IEA), the Illinois Federation of Teachers (IFT), the Illinois Association of School Administrators (IASA), the Illinois Principals Association (IPA) and the Illinois State Board of Education (ISBE) concerning the designated Act of God days for the period from March 17 through March 30, 2020. See Joint Statement at: <https://www.isbe.net/Documents/Joint-Statement-20200317.pdf>. This Joint Statement provides that “from March 17 through March 30, all school district employees on the district’s payroll will get paid as if the schools were functioning normally, regardless of the district plans developed during this time.” This expressly includes all salary, hourly and stipend pay and benefits. Employees will receive full and normal service credit in their respective service pensions during this time. These days will not be made up at the end of the school year.

The Joint Statement affirms that schools can expect school district employees to participate in work activities in some form. However, the specific details of the work during the period from March 17 through 30, is subject to bargaining and mutual agreement between the school and the applicable labor organization. The focus of negotiations should be ensuring: (1) continuity of education; (2) provision of meals; (3) other student support measures as appropriate for each district. Public health and safety of students and staff is “paramount” during this time, CDC and IDPH recommendations on social distancing and group gatherings should be followed, and “to the extent work can be done remotely, it should be.”

Per Executive Order 2020-10, Illinois schools will remain closed through at least April 7, 2020. The Joint Statement referenced above is limited to the period from March 17 through March 30. ISBE has indicated that it will be issuing guidance during the week of March 23rd regarding closure dates of March 31 and beyond. ISBE has stated, “[w]hile some parameters may shift from what has applied during the designated Act of God days”, two pillars will remain the same: all state funding will continue uninterrupted and no schools will experience negative consequences to the extent possible.” We anticipate that ISBE’s further guidance will trigger new bargaining obligations.

Other than the days noted above, compensation and staffing for other closure days will need to be evaluated in accordance with contracts, CBAs and policies, and in consultation with union leadership. Again, any agreement to deviate from current CBA provisions, policies or practices should be reduced to a written agreement which is limited in time and scope.

2. If an employee is absent as a result of the COVID-19 pandemic, should I stop paying them?

Compensation will depend on how a day is designated by the employer, whether and to what extent the employee is continuing to perform services, whether the employee is absent and the reason the absence. There are obviously bargaining and policy considerations embedded in these scenarios.

If an employee is absent or not able to work, the reason for the employee’s absence will dictate which leave rules apply. Refer to Joint Statement addressing pay for school district employees for designated Act of God days from March 17 through March 30, 2020.

In addition to possible application of your organization’s existing leave rules, effective April 2, 2020 and through December 31, 2020, private employers with less than 500 employees and all public sector employers, need to be cognizant of an employee’s eligibility and right to emergency paid sick leave and expanded FMLA leave rights in connection with the COVID-19 pandemic. For more information, please [click here](#) for our firm’s March 19, 2020 publication on the Families First Coronavirus Response Act. Otherwise, employers will need to consider CBA obligations and consult legal counsel.

If an employer intends to change or provide paid leave or time off beyond what is already provided by statute, contract or CBA, this is a bargainable subject and the employer must have that decision approved by the board or other governing authority. The employer should create clear documentation of the public purpose for the decision and the limits on the amount of additional leave being granted.

3. Should absences related to the COVID-19 pandemic be designated as leave under the *Family and Medical Leave Act (FMLA)*?

Normally, the FMLA does not cover absences due to non-serious health conditions such as colds and flu. The varying range and degree of absences (personal or for a family member) that could result from the COVID-19 pandemic likely trigger employee and employer rights and responsibilities under the FMLA.

Notably, effective April 2, 2020 and through December 31, 2020, private employers with less than 500 employees and all public sector employers need to be aware that the FMLA was expanded to provide leave (with partial pay) to eligible employees, if the employee is unable to work (or telework) due to a need for leave to care for the employee's son or daughter under 18 years of age if the child's school or place of care has been closed, or the child-care provider is unavailable due to an emergency with respect to COVID-19 declared by federal, state or local authority. Refer to our March 19, 2020, Families First Coronavirus Response Act publication for more information.

Employers should issue an FMLA eligibility notice and send notice of rights and responsibilities to employees who are absent for a COVID-19 related reason. In an effort not to further burden the medical community, employers should consider waiving the requirement for an employee to have a health care provider complete an FMLA certification form for absences for a COVID-19 related reason. Also, employers should treat eligible COVID-19 related absences as "job protected" leave.

4. In the interest of the health and safety of my organization, can I ask sick employees who report to work about their symptoms and take an employee's temperature?

In response to the COVID-19 pandemic, the Equal Employment Opportunity Commission (EEOC) has updated its Pandemic Preparedness in the Workplace and the Americans with Disabilities Act (ADA): https://www.eeoc.gov/facts/pandemic_flu.html. Notably, the EEOC indicates that a significant risk of substantial harm would be posed by having someone with COVID-19, or symptoms of it, present in the workplace at this time.

According to the EEOC, during a pandemic, employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19. Current COVID-19 symptoms may include fever, chills, cough, shortness of breath, or sore throat. Also, an employer may take an employee's

temperature. Keep in mind that whether an employee has a fever or symptoms is confidential medical information.

Students and Special Education Q&A

This section is relevant to K-12 school districts and was updated on March 23, 2020. This guidance related to student and special education issues addresses the Mandatory Statewide School Closure per Executive Order 2020-05 period and is based in part on the ISBE Guidance issued on March 18, 2020 addressing closure period from March 17 through March 30, 2020. Guidance is likely to change depending on how the closure dates beginning on March 31 and through at least April 7 are officially categorized. We will issue updates as issues and guidance changes, which we expect will occur later this week.

1. What obligations does a school district have to provide educational services to its students during Act of God days?

As outlined above, the Governor's March 13, 2020 Executive Order requires all public and private schools to be closed from March 17, 2020 through March 30, 2020 and declared such school closure days as Act of God days. While the Governor has extended the school closure days until April 7, 2020, there has not yet been an indication as to how the days after March 30, 2020 will be classified. Act of God days are not instructional days and do not need to be made up during or at the conclusion of the school year. Therefore, school districts are not obligated to provide educational services during Act of God days, however, ISBE is encouraging school districts to provide continuity of educational opportunities through whatever means possible during these Act of God days.

2. What are the District's obligations to provide specialized instruction and related services during Act of God days?

Since Act of God days are not instructional days, there is no obligation to provide specialized instruction and/or related services to students during these Act of God days. However, consistent with the ISBE guidance that continuity of educational opportunities should continue, school districts should be creative and resourceful in providing educational opportunities to students with disabilities during Act of God days. School districts should plan with their teachers on how educational opportunities will be provided to students depending on the nature of each student's disability, and what form of communication the teacher will have with the student to deliver support and services. This support may come in the form of phone calls, emails, and/or video chats with the student and/or parent.

Similarly, school districts should also work with their related service providers to review student needs and determine creative options for providing related service support. For example, the social worker may provide a student a learning opportunity (i.e. story to read, video to watch) that involves a social emotional topic that the student would

complete during a school closure day. Related service providers should also communicate with their students and/or the students' parents each week during times of school closure to follow-up on the assignments or lessons given, and check-in with the student on how they are functioning. These contacts may be in the form of phone calls, emails and/or video chats or conferences. We recommend that providers document all consult and direct services including contacts with parents and students.

3. Do special education timelines apply during the Act of God Days?

Per the March 18, 2020 ISBE Guidance, there continues to be no flexibility from complying with federal and state special education laws; schools should continue to observe all relevant federal and state timelines during the statewide school closure.

In determining compliance with timelines, school teams must carefully note the timeline requirement and whether the timeline requirement is set forth in terms of school days, business days or calendar days.

In calculating timelines, a school day is any day that students are in attendance for instructional purposes (34 C.F.R. 300.311). Per Executive Order 2020-05, students are not to be in attendance for educational purposes during the current Mandatory Statewide School Closure, through March 30. The Statewide School Closure days are not, therefore, considered "school days" for special education purposes. Because statewide school closure days are considered to be Act of God days, some special education timelines are tolled (frozen) during the pendency of the Mandatory Statewide School Closure.

On the other hand, schools are bound to comply with timeline requirements in federal and state law that apply to calendar or business days during the period of school closure.

School districts should consult their attorneys and closely review federal and state laws and regulations connected to special education obligations with timelines connected to business days and calendar days, which continue to apply during the statewide school closure caused by Executive Order 2020-05. ISBE will work with school districts as much as possible to provide any flexibility regarding potential indicator findings connected to compliance with timelines.

4. Do Act of God days count toward the required special education timelines for annual IEP meetings and three year eligibility meetings?

With regard to annual review IEP meetings and three year eligibility meetings, which must be held by a date certain, these meetings should be held on time whenever possible. In its guidance issued on March 18, 2020, ISBE stated that they expect that all school districts will comply with requirements to timely convene IEP meetings for students. ISBE suggests that schools avail themselves of the opportunity to ensure parent participation at meetings, via alternate means, including telephone or videoconference, which are allowable under the *Individuals with Disabilities Education Act*. In the March 18, 2020

Guidance, ISBE has opined that school teams must obtain parent permission to convene an IEP meeting via one of these alternative means. If a parent refuses to consent to meet via an alternative means, it may not be held during this Mandatory Statewide School Closure or until March 30.

5. Are there other special education timeline requirements that are in effect during the Act of God Days?

Yes, there are other timeline requirements included in the IDEA and the School Code which require compliance in terms of calendar or business days. While these events may seem unlikely during these Act of God statewide closure days, they could occur. For example, any school district receives a request for an Individualized Education Program (IEP) meeting from a parent or teacher must comply with the requirement to decide whether or not to convene a meeting and provide written notice to a parent within 10 calendar days even during the statewide school closure. Similarly, a district must provide notice of an IEP meeting to consider a private evaluation within ten calendar days of receipt of the private evaluation. If a school receives other requests from parents related to special education matters during this time, you should seek legal guidance.

6. Does the sixty school day timeline for completing evaluations apply during the Act of God Closure days?

During the Act of God statewide school closure days, the timeline for completing an initial evaluation or reevaluation is tolled as the Act of God days are not considered school days for purposes of the IDEA and Article 14 of the School Code.

7. Are there any other special education timelines which are tolled during the Act of God statewide closure days?

Yes, any other timeline calculated in terms of school days is tolled during this time. For example, if a school district receives a referral from a parent for an evaluation, the 14 school day timeline for responding to the request for an evaluation is tolled through March 30, 2020.

8. Do the Act of God days impact the timeline calculations for due process, mediation or state complaint procedures?

Per the March 18, 2020 ISBE Guidance, there is currently no flexibility for the requirement to comply with federal and state special education timelines connected to due process, complaint investigations, and mediation timelines. ISBE is working to try to complete Complaint investigations consistent with these timelines. ISBE is directing school districts to work with hearing officers and mediators as to compliance with timelines. ISBE specifically noted that a hearing officer may conduct a hearing entirely via telephone or videoconferencing. The hearing officer, however, should consult the parties and/or their representatives before deciding to proceed in this manner.

9. How does a District support its students in private therapeutic day schools and residential facilities during the Act of God Closure Days?

School districts should reach out directly to each private therapeutic day school and residential facility that services a resident student to determine what continuity of educational opportunities the private day school or residential facilities will provide during the Act of God days.

Per the March 18, 2020 ISBE Guidance, schools operated by the Department of Juvenile Justice, State Board of Education or Department of Human Services are exempted from school closure including: School District #428 (Department of Juvenile Justice); Philip Rock Center and School; Illinois School for the Deaf; Illinois School for the Visually Impaired; and Illinois Center for Rehabilitation & Education – Roosevelt.

Additionally, Illinois residential facilities that include educational settings or schools should provide continuity of educational opportunities to the students during these Act of God Days. School attendance is not permitted for any Illinois school during the Mandatory Statewide School Closure or through March 30, 2020, including those schools which are part of a residential facility. If a student is placed in a residential facility located outside of Illinois, and in person classes are continuing per that State's guidance and orders, then the Illinois student should participate. To the extent that other states have also issued orders or guidance for school closures, Districts should encourage the facility to provide a continuity of educational opportunities to Illinois students.

10. What options does a District have if students do not have access to technology or who, by reason of their disabilities, are unable to utilize technology-based learning programs during these Act of God days?

School districts should provide alternative methods of delivering a continuity of educational opportunities for students who do not have access to Wi-Fi or technology or who cannot access technology-based learning due to their disabilities. ISBE recommends that school districts utilizing e-Learning should also make available hard copy packets of educational materials and activities for students who are unable to access the material/activities electronically.

Additionally, on March 21, 2020, the Department of Education Office of Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) issued supplemental guidance indicating that federal disability laws do not present insurmountable barriers to the provision of remote education for students with disabilities. However, they also recognize that COVID-19 presents exceptional circumstances which will impact how educational and related services and supports are provided. While OCR and OSERS note they will offer flexibility where possible in this regard, they also remind school districts that the provision of FAPE may include special education and related services provided through distance instruction virtually, online or telephonically.

11. For students whose placement is currently homebound, are we obligated to continue the homebound services during Act of God days?

No, since Act of God days are not instructional days, there is no obligation to provide homebound instruction to students through March 30, 2020. Students who were placed on homebound prior to the Act of God days should be provided a continuity of educational opportunities in a similar manner as is being provided to students in the school district.

12. What procedure should the school implement if a student shows up at school when the school is closed during Act of God days?

The onsite school administrator should contact the student's parent/guardian to inform them the school is closed and the student needs to be picked up immediately. If the school is unable to reach the student's parent/guardian, the emergency contacts for the student should be called to pick the student up. If, after an appropriate period of time, emergency contacts cannot be reached the school should contact local law enforcement for assistance.

13. How will District obligations regarding student grades, standing, and administration of Spring 2020 State-mandated assessments and accountability be impacted during Act of God days?

Districts are not required to grade student work during Act of God days because these are non-instructional days. For schools that elect to grade student work completed during this timeframe, the graded student work must not negatively impact a student's grades or academic standing, but may be counted to increase a student's academic standing.

Per the March 18, 2020 ISBE Guidance, ISBE will work in partnership with stakeholders to determine next steps for Illinois based on the U.S. Department of Education's position that it will make waivers available for assessments and accountability. This closure will not impact school year 2019-20 summative designations.

14. Can District staff use educational activities completed during the Act of God Days to evaluate student progress towards goals and objectives?

Yes, to the extent that an educational activity or opportunity relates to a student's goals and/or objectives, the staff member may evaluate the student's performance related to the activity or opportunity and use the data to monitor a student's progress towards his or her goals and objectives.

15. Can Districts utilize tele-supports including applications with video conferencing for services, including counseling services, during the statewide school closure?

The March 18, 2020 ISBE guidance states that “schools may consider using teletherapy or video therapy during the statewide school closure as an aspect of continuity of education afforded to students.” Although confidentiality requirements for student information and for school staff delivering counseling or social work supports are governed by FERPA, ISSRA and the Mental Health and Developmental Disabilities Confidentiality Act (rather than HIPAA), we believe that the following recent notice issued by the U.S. Department of Health and Human Services (HHS) and Office for Civil Rights (OCR) regarding the use of non-HIPAA compliant videoconferencing services during the COVID-19 outbreak serves as helpful/instructive guidance for schools.

The notice provides, in relevant part: “Under this Notice, covered health care providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype, to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.” HHS specifically notes that authorized telehealth services may include services unrelated to COVID-19 and may include “psychological evaluations.”

In light of ISBE’s most recent guidance and HHS’s authorization allowing covered health care providers to proceed with telehealth services, we believe that school providers including school counseling/social work staff may similarly proceed with providing supports, via virtual platforms, such as Google meets/hangouts, Zoom, facetime or other accessible platforms during this time. We also believe that videoconferencing can also be used for other group instruction such as speech and language services. In line with the HHS guidance, for the provision of school counseling or social work supports or group speech and language services, we recommend that schools notify parents of the potential privacy risks related to virtual tele-support practices and of some basic rules for the student participants to promote confidentiality. We also recommend that students and parents be advised that they may not record the tele-supports sessions.

Institutions of Higher Education Q&A

- 1. If we will be providing online instruction during at least the duration of the Stay at Home Order, may we require our instructors and other employees to be available to the administration and students during that time?**

Yes. Higher education institutions may consider work expectations in connection with online instruction and temporary assignments (remote or otherwise). In addition, during the Stay at Home Order, institutions may require essential personnel to report to work. These changes and expectations will likely produce an obligation to bargain the “impact” on affected contract employees.

- 2. What impact does the Governor’s mandated K-12 school closure have on dual enrollment programs?**

Executive Order 2020-10 extends the mandatory K-12 school closure period through at least April 7, 2020. Per ISBE, school districts that provide dual credit coursework as a component of serving pre-kindergarten through 12th grade students must close their dual credit educational programs during the statewide school closure.

ISBE has directed that all days through March 30, 2020 are considered non-instructional “Act of God” days. ISBE has instructed that, while school districts are strongly encouraged to provide instruction to students during Act of God days, student work completed during Act of God days must not negatively impact a student’s grades or otherwise impact a student’s academic standing. In light of this guidance, we recommend that higher education institutions that offer dual credit courses consult with their partnering school districts regarding whether, and the extent to which, students enrolled in dual credit courses will receive instruction during the designated Act of God days, and the additional closure dates through at least April 7, 2020. Colleges should also ensure that dual credit students will not be penalized in connection with the mandatory statewide K-12 school closure.

ISBE will issue new guidance regarding the designation of days beginning March 31, 2020 and beyond later this week. We also understand that ISBE and ICCB are developing additional coordinated guidance regarding dual credit programs and we will update this section with any new information that is issued.

Operations, Facilities and Commercial Contracts Q&A

The Governor's Stay at Home Order provides an exception for "Essential Businesses and Operations," including "Essential Governmental Functions" and "Essential Infrastructure." Thus, as noted above, construction, building management, and maintenance services may continue. In view of the Order, the necessity of its projects, and most importantly the health and safety of its employees and contractors, each public body and private entity can and should use its own judgment in determining whether to commence, continue, suspend, or terminate each of its existing and future projects.

More information about Executive Order 2020-10 and its impact on construction, as well as recommendations and legal considerations for public and private projects, can be found in our [March 21, 2020 Law Alert](#).

1. What are best practices for public bid opening under the Stay at Home Order?

Our recommended best practices are as follows:

- ❖ In cases where there is no statutory "public opening and announcement" requirement (*i.e.* RFPs which are not subject to public bidding requirement) consider modifying the bid opening procedure to eliminate any physical meeting. Ideally this change will be made by bid addendum and notice posted on the public body's procurement webpage.
- ❖ At the discretion of the public body, pre-bid meetings may still occur either in person or electronically with separately scheduled facilities inspections as needed. If the pre-bid meeting is held in person, proper social distancing practices must be observed, and electronic attendance must be an allowed option for vendors.
- ❖ Where the law requires a public bid opening and reading aloud of bids, during the COVID-19 crisis, this can be accomplished completely virtually with a live stream video function. The entire bid opening process should be fully viewable by the public and notice of the live stream in lieu of a physical bid opening should be made publicly available, and in advance of the bid opening, ideally through bid addendum and through a notice posted on the public body's procurement webpage.
- ❖ For those public bodies that decide to proceed with a bid opening at which members of the public may be physically present, the location for the opening should be at a public building or other public location, indoors or outdoors, as

practical. At least one employee of the public body must attend the bid opening. The public body must verify that any mailed in or previously delivered bids are included in the bid opening, and that there is a location where bidders can deliver a bid in person prior to the opening.

- ❖ In cases where the public body permits physical attendance at the bid opening, bidders, architects, construction managers, other personnel of the public body and any other interested persons should be permitted to attend the bid opening in person or electronically. However, public bodies have discretion in determining whether to allow physical attendance and should strongly encourage virtual attendance by all interested persons.
- ❖ Any person attending the bid opening in person must follow social distancing requirements as provided in Section 1, Paragraph 15 of the Stay at Home Order, along with any other rules or safety procedures required by the public body.
- ❖ As far in advance of the bid opening as practicable, the public body should send an addendum to all potential bidders of the bid opening procedures you have selected.

Key Resources

We continue to monitor COVID-19 and will provide updated guidance as appropriate on our website ([click here](#)). Below are additional links for the most-up-to-date resources for schools:

Governor's Executive Orders

<https://www2.illinois.gov/government/executive-orders>

Illinois Department of Public Health

<http://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus>

List of Local Health Departments in Illinois

<http://www.idph.state.il.us/local/alpha.htm>

Centers for Disease Control and Prevention

<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

The President's Coronavirus Guidelines for America

https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf

Illinois State Board of Education

<https://www.isbe.net/Pages/School-Health-Issues.aspx>

U.S. Department of Education

<https://www.ed.gov/Schools/safeschools/emergencyplanning/COVID-19/Pages/default.aspx>

Occupational Health and Safety Information

<https://www.osha.gov/SLTC/covid-19/>

Student Privacy Policy Office

<https://studentprivacy.ed.gov/resources/ferpa-and-coronavirus-disease-2019-covid-19>

Office of Special Programs

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>

OCR and OSERS Supplemental Fact Sheets for Serving Students with Disabilities During the COVID-19 Crisis

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>