

Coronavirus (COVID-19)

Municipal Authority During Public Health Emergencies

March 16, 2020

Presented By: von Briesen & Roper, s.c.

Agenda

- Town Hall Style
- Initial topics and questions posed for the following issues:
 - Labor & Employment
 - HIPAA
 - Local Health Department and Local Health Official authority
 - Municipal government operations and day-to-day duties
 - Municipal emergency management powers
 - Municipal Board meetings and duties
- Submit additional questions throughout the presentation

Labor & Employment Issues

- The implications of COVID-19 significantly affects the ability of public employers to continue day to day operations and has disrupted the procurement, production and distribution chains.
- From an operations perspective, municipalities are challenged with addressing questions concerning employee safety, absenteeism, handling the “working sick” and planning for the potential of mandatory or self-determined quarantine.
- How should municipalities communicate with their employees?
- Should municipalities implement policies and procedures in response to COVID-19?
- Our suggestion: Yes. Municipalities should establish a procedure to address anticipated operational vulnerability and develop a protocol to protect employees, calm fears and facilitate the operation of the business.

Labor & Employment Issues

- Issues to Considering Addressing in a policy:
 - Best practices to avoid transmission
 - Duty to report travel, exposure, or symptoms
 - Asking/requiring patients to stay home
 - Offering alternative work environment
 - Deviations to Attendance Policy
 - Deviations to Leave (paid and unpaid) policies

FMLA Expansion and Paid Leave (HR 6201)

- Passed by the House of Representatives, pending in the Senate
- The current version of the bill includes:
 - Expands FMLA to cover all government employers and private sector companies with less than 500 employees. Employee must have been employed for 30 days to be eligible
 - 12 weeks of job protected leave for (1) employee treatment or quarantine, (2) to care for at-risk family member, and (3) to provide child care due to school or day care closing
 - First two weeks are unpaid, next ten paid at two-thirds regular rate
 - 2 weeks of paid sick leave for (1) employee treatment or quarantine, (2) to care for at-risk family member, and (3) to provide child care due to school or day care closing

Labor & Employment Issues

- Can the municipality ban nonessential travel?
 - Can the municipality force testing/quarantine for employees engaging in nonessential travel?
- Can the municipality ban travel that is not work-related?
- Is an employee that is required to stay home to care for a child because of a school closure/family exposure, etc. eligible for unemployment compensation/FMLA?
- Who are “essential personnel” in a SNF?
- Is an employee that contracts COVID-19 at work eligible for worker’s comp?
- Can a municipality keep employees in pay status if not working?

HIPAA

- What restrictions are there on disclosing employee information with respect to a COVID-19 diagnosis?
- May municipalities disclose to other employees when an employee tests positive for COVID-19?
- May municipalities disclose to federal and state government officials when an employee tests positive for COVID-19?
- May municipalities disclose to medical professionals when an employee tests positive for COVID-19?

Local Health Department and Local Health Official Authority

- What may a local health department and local health official do in response to COVID-19?
- May a local health official limit or forbid public gatherings?
- What is a “public gathering”?

See Wis. Stat. ch. 252

Municipal Government Operations and Day-to-Day Duties

- What should municipal governments do to ensure continued operations and administration of municipal governments day-to-day and ongoing duties?
- May municipal governments suspend any typical duties or programs?

Municipal Emergency Management Powers

- The Governor declared a public health emergency, what does that mean?
- May municipal governments declare a local state of emergency?
- What are the differences between an emergency declared by the Governor and a municipality?
- Who has authority to act on behalf of the municipality during a declared emergency?

See Wis. Stat. ch. 323

Municipal Board and Committee Meetings and Duties

- How should municipal boards and committees proceed with meetings during the COVID-19 outbreak?
- May a municipal board hold special meetings?
- May a municipal board hold meetings remotely (*e.g.*, via conference call, WebEx, etc.)