



## MEMORANDUM

March 24, 2020

TO: Local Government Clients

FROM: Collins Cockrel & Cole

RE: Issue #2, Frequently Asked Questions on Coronavirus ("COVID-19")

This is the second issue of our FAQs on the COVID-19 pandemic. As this is a constantly-evolving situation, we will continue to keep you updated with any new and changing information.

In compliance with CDC and CDPHE guidance, the majority of the Firm began working remotely last week. We remain fully operational to respond to your needs. You may continue to email and call us per usual – calling either our direct lines or the main office line will connect you to our cell phones. If you experience any difficulty reaching any member of the Firm, have questions about our operations or need to make arrangements for teleconferencing, please contact the attorney or paralegal with whom you normally work or if that fails, the office manager, Tricia Kohl (tkohl@cccfirm.com). We continue to send our well wishes to our local government clients and to each of you individually during this time of high stress.

### FAQs ON COVID-19 Issue #2

**1. Question: How do I contact the local emergency operations centers in Colorado?**

**Answer:** The contact information for local EOCs can be found at: <http://www.coemergency.com/p/local-info-sources.html>

**2. Question: Are there new Federal Emergency Paid Sick Leave Rules that apply to local governments? How do they work?**

**Answer:** Yes. Over and above the State Sick Leave Rules issued by Governor Polis and explained in last week's FAQs, HR6201, the Families First Coronavirus Response Act (passed and signed into law last week), effective on or before April 2, 2020 until December 31, 2020 expands access to emergency paid sick leave to a specific set of employees, **including those who work for local, state, or federal governments**. Eligible full-time employees are entitled to two weeks (80 hours) of fully paid time off, up to \$511 per day for the following reasons: to self-quarantine, seek a diagnosis or preventive care, receive treatment for COVID-19, or care for a child due to a school or daycare closure due to COVID-19 precautions. Eligible part time employees are entitled to two weeks of paid time off at two thirds their regular pay, up to \$200 per day, for the average number of hours worked in a two week time period for the following reasons: their own illness, to care for a family member or to care for a child whose school has closed, or if their child care provider is unavailable due to COVID-19. Employers of employees who are health care providers or emergency responders may elect to exclude the employee from the application of this new provision.

**3. Question: Are there new Emergency Paid Family Leave provisions that affect local governments? How do they work?**

**Answer:** Yes. HR6201 ensures employees, **including those who work for local, state, or federal governments**, can care for their children by expanding FMLA, **even if you have fewer than 50 employees and are not otherwise subject to FMLA**. Full-time employees and part-time employees who have been on the job for at least 30 days are entitled to 12 weeks of job-protected leave **only** to take care of their children who are under the age of 18 in the event of a school closure or if their child care provider is unavailable due to a public health emergency. A public health emergency means a state of emergency declared by a federal, state, or local authority. This takes effect on or before April 2, 2020 until December 31, 2020. The 12 weeks of job-protected leave include two weeks of unpaid leave, followed by 10 weeks of paid leave. Eligible employees may elect or be required to overlap the initial two weeks of unpaid leave with two weeks of other paid leave they have available. Eligible employees will receive a benefit from their employers that will be no less than two-thirds of the employee's usual pay. The paid family leave pay is capped at \$200 per day or \$10,000 total.

**4. Question: If we have to lay off employees during the COVID19 Disaster Emergency, will those eligible to receive unemployment insurance ("UI") payments during this time affect the rate of our unemployment insurance premiums?**

**Answer:** No. State and Federal actions have been taken by the Governor and Congress to make it so that unemployment insurance claims for employees laid off during the crisis will not be counted against your local government's UI account. However, as federal UI funds are drawn upon to pay Colorado claims, Colorado law automatically triggers surcharges on all Colorado employers to repay the additional federal funds, so it is possible premiums of all Colorado employers will go up in order to repay the advanced federal UI funds. These

increases will be applied to all Colorado employers, and not restricted to those specifically experiencing lay-offs, hopefully minimizing the impact.

**5. Question: Can water utilities shut off water service during the COVID-19 Disaster Emergency?**

**Answer:** No. By executive order the Governor has barred all utility shut-offs for delayed or missed payments by residential and small business consumers, including water utilities, for the next thirty (30) days, except for life safety situations. The Governor's order does not specifically include sanitary sewer service; however, the best practice during this Disaster Emergency is probably not to discontinue water or sewer service during the crisis, except for situations requiring shut-off for life safety reasons. The order also requires waiving reconnecting fees and suspending accrual of late payment fees for all residential customers and small businesses. The PUC is also directed to work with utilities to develop and provide payment assistance programs to aid customers, particularly customers qualifying for the Low Income Energy Assistance Program. If you do not already have a payment assistance program in place, we suggest waiting to see if the PUC provides any further direction on this issue.

**6. Question: Are special district and authority board meetings exempt from the restrictions prohibiting gatherings of groups of ten (10) or more people?**

**Answer:** No. The CDPHE restriction has been revised to exempt the state legislature, legislative bodies of municipal governments (cities and towns), and state and municipal courts from the restriction, but not special districts and other types of governmental bodies. Also, be aware that some county health departments have further restricted gatherings of fewer than ten (10) persons and the ages of persons permitted to gather (e.g. restrictions for people over sixty (60) years of age). The stricter regulations would apply if they are in place in your county. As discussed in **FAQs Issue #1** last week, the Colorado Open Meetings Law permits Colorado local governments to meet electronically. This method should allow local governments to handle essential meetings during this period of time.

**7. Question: How do you run a Board Meeting using online video conferencing platforms, such as Zoom?**

**Answer:** Each video conferencing platform is a little different, so you will need to choose one and check their website for online tutorials. While we do not recommend one platform or application over another, we have received several questions about Zoom, as it is widely used (especially now!). Zoom has several features that may be useful when hosting an online public meeting, including a webinar option that allows the meeting host to designate "panelists" as the official attendees (directors, consultants) and "attendees" (members of the public), open and close the video conference session; mute or unmute panelists and attendees, and remove any participant from the meeting.

Executive sessions present unique issues in a video conferencing format. One option is to have two separate online meetings, one of which is the public meeting and the other is the executive session. Only the Board and other key staff get the meeting link for the executive session. You can either do the executive session last or keep the public meeting open while the Board leaves that meeting and enters the executive session meeting; the Board can then rejoin the public meeting when the executive session is completed.

If you decide to give online video conferencing a try, we suggest practicing multiple times before you have a public meeting. It takes practice to become familiar with the numerous options. As always, we are here for you if you need assistance.

**8. Question: How do the State Orders to reduce in-person workforces by 50% apply to local governments?**

**Answer:** The Governor and CDPHE have ordered certain non-critical businesses and non-critical government entities to reduce their in-person workforces by 50% during the COVID-19 crisis. The CDPHE Health Order can be viewed here:

[https://drive.google.com/file/d/117fpbthi9Vq\\_KHmpX2icFczgbxRiboK/view](https://drive.google.com/file/d/117fpbthi9Vq_KHmpX2icFczgbxRiboK/view)

Critical government functions which are exempt from these Orders include hospitals, law enforcement, emergency management, fire, ambulance, and public utilities. Generally, non-critical government functions need to reduce in-person work by at least 50%. Achieving a 50% reduction can be done through strategies such as telecommuting, rotating shifts, and staggering work schedules.

**9. Question: What do we do about our elections?**

**Answer:** Good question. We are aware of one municipality using its home-rule powers to cancel its April municipal polling place election. We believe that special districts at this point have to continue forward with their elections. Certainly, candidates can withdraw, and if you do not have more candidates than open positions, the election can be cancelled. Know that we have ordered additional absentee voter supplies for our clients that we assist with their elections. Please continue to encourage your voters to request absentee ballots in order to minimize the number of voters turning up at polling places on Election Day. We are working on suggested protocols for Election Day and ballot counting, such as election tables for appropriate social distancing and stationing a person at the entry door to only allow 3-4 people in at a time. The CDC has some guidelines for elections, which can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

**10. Question: Have any local jurisdictions issued stay at home orders?**

**Answer:** Yes. The Governor of the State of Colorado issued a Stay-at-Home Order effective Thursday, March 26, 2020, at 6 a.m. Prior to the Governor's

Order, several counties and health department jurisdictions issued similar orders. The Governor's Order contains many exceptions for essential functions and businesses, and the local orders might be more restrictive in some respects. Please contact us if you have any questions about how these orders impact you, your employees, or your District, agency, or business.

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