



MEMORANDUM

March 17, 2020

TO: [Local Government Clients](#)

FROM: Collins Cockrel & Cole

RE: [Frequently Asked Questions on Coronavirus \("COVID-19"\)](#)

We have prepared these FAQs to answer some of the questions that we are receiving surrounding the Coronavirus (COVID-19). Look for future updates to these FAQs as new questions arise and information is updated in this very dynamic situation we are in. We also want to update you on what the Firm is doing internally to ensure continued availability to our Clients.

As of this week, our office remains open as necessary to conduct business and, if a mandate requires a more complete physical office shut down, we will remain fully operational with all attorneys and staff equipped to operate remotely so that our team will be able to continue to serve your legal needs without interruption. No member of the Firm has tested positive for COVID-19; however, please be aware that as a precaution, for the foreseeable future (at least through March 30), we have encouraged all Firm members to request that meetings occur by phone, email, or in a virtual setting where practicable and there will be no in-office meetings held in our Lakewood office. Our attorneys and paralegals remain available to respond to client questions. We expect this emergency situation to improve before the May elections are in full swing, and will provide additional information to all clients holding May elections as soon as possible after we are able to assess current conditions starting in April.

We are sending our well wishes to our local government clients and their constituents during this time of high stress. 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 office manager Tricia Kohl (tkohl@cccfirm.com) or the paralegal and attorney you normally work with.

1. Question: What are the Colorado Emergency Paid Sick Leave Requirements?

Answer: The Colorado Department of Labor and Employment adopted special rules on March 11th that require employers in certain industries, and employers with employees in certain jobs, to provide up to 4 days of paid sick leave for an employee with flu-like symptoms and who is being tested for COVID-19. The following industries and jobs are covered by the Rules: *leisure and hospitality, food services, child care, education at all levels (including related services like cafeterias and transportation to and from campuses), home health care (working with elderly, disabled, ill, or otherwise high-risk individuals), operating a nursing home, or operating a community living facility.* This includes employees working in recreation activities. The paid sick leave ends if an employee receives a negative COVID-19 test result. Employers are not required to offer additional days of paid sick leave if an employer already offers sufficient sick leave to comply with the Rule. However, if an employee has exhausted all employer-provided sick leave and then has flu-like symptoms and is being tested for COVID-19, the employee is entitled to up to 4 additional days of sick leave.

This Rule is in effect for 30 days beginning March 1st, but will be extended if the state of emergency declared by the Governor continues.

More information about the Colorado Health Emergency Leave with Pay (“Colorado HELP”) Rules, and the text of the Rules, is available online: <https://www.colorado.gov/pacific/cdle/colorado-health-emergency-leave-pay-“colorado-help”-rules>

2. Question: Is there a source for information on referring a staff member for COVID-19 testing?

Answer: Yes. The Colorado Department of Public Health and Environment has updates on testing availability, procedures, requirements, etc., online: <https://www.colorado.gov/pacific/cdphe/covid-19-testing?fbclid=IwAR2afjnIUkxXA5yiQAcS-vZS7GC4MHZm79QyljG9r-wYRV86heCe0Kbjl7s>

3. Question: If an employee comes into work with a fever, can we send the employee home and require him/her not to return without a doctor’s note?

Answer: Yes. Centers for Disease Control (“CDC”) advice is to send home any employee who has symptoms of “*acute respiratory illness*” or a fever of 100.4° F or greater, and to require that employee to stay home for 24-48 hours after symptom free without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants). Doctor’s notes may be hard to come by as offices are starting to be very busy, and the CDC recommends not requiring a doctor’s note to validate the illness or return to work.

4. Question: Can my entity declare a local disaster? What is the procedure for this?

Answer: Yes. A local government can declare a local disaster pursuant to §24-33.5-709, C.R.S. An emergency disaster declaration makes available access

to state and federal funding emergency response and recovery funds. Typically, no federal reimbursement is allowed for costs incurred prior to the date and time of a local disaster declaration. Costs subject to reimbursement after you declare a disaster typically include: costs of overtime for absent employees, direct personnel and equipment costs, additional decontamination supplies, medical supplies, among others. The declaration also activates participation in the local (County and municipal) and state emergency response plans, gives legal justification for accessing the TABOR emergency fund monies, and can also give the CEO/Manager/Fire Chief greater delegated authority to develop and implement policies, authority to suspend or alter existing policies and procedures, greater financial and contracting authority, etc., necessary to deal with the disaster.

We recommend that all emergency service providers (fire, ambulance, hospital districts) and those with essential services (water, sewer, dispatch centers) immediately adopt a disaster declaration so any costs of responding to this ongoing and developing emergency, such as overtime for absent employees, additional decontamination supplies, medical supplies, etc., are subject to reimbursement, if funding becomes available. Others should also consider immediately adopting a disaster declaration to preserve the potential for these reimbursements. If you have questions about whether or not to adopt a disaster declaration, please call us.

The disaster may be declared by your CEO-level employee, but must be continued or renewed by action of the Board within 7 days. You may need to call a special meeting to occur via phone/email/video conference for the Board to continue the disaster declaration. The declaration or order must be released to the public (we recommend website or local press if the District does not have a website), and filed with the County Clerk and Recorder, City Clerk, and the Office of Emergency Management (Michael J. Willis, Director, Office of Emergency Management, mike.willis@state.co.us – (720) 852-6694).

A Sample Disaster Declaration is attached.

5. Question: Can my entity conduct virtual Board meetings?

Answer: Yes, provided proper notice and the opportunity for public participation is provided. Options for virtual meetings could include attendance of everyone by telephone (conference call-in) or video conferencing through programs like Skype or Zoom. Notice of the meeting with Agenda must be posted on your website at least 24 hours in advance as required by the Colorado Open Meetings Law. The public must still have the opportunity to participate either by being on the conference call or logging into the web-based meeting application. If everyone will be attending the meeting virtually, we recommend that the Agenda identify the place of a virtual meeting by listing the call-in information or other instructions for “joining” the online meeting.

Alternatively, you could have at least one person (staff or a board member) present at the regular meeting place, with all other Board Members and staff participating electronically or by phone. By having one person present at the regular meeting place, the public can still attend the meeting in-person. However, the District may want to limit attendance so as to comply with the CDC’s recommendations against gatherings of more than 10 people and allowing 6 feet of space between individuals for social distancing.

6. Question: Can my entity hold an emergency meeting?

Answer: Probably. Whether or not a special district can hold an emergency meeting is usually governed by the district's bylaws. Other forms of local government may have requirements set forth by charter, ordinance, or bylaws. If you adopted our firm's template Bylaws, they include the specific language allowing emergency meetings.

7. Question: With kids' schools/day care/after school program/colleges shut down, do we need to provide additional paid leave time to stay home/pick up children, etc.?

Answer: No, you are not legally required to provide additional paid leave time for an employee who is taking care of a well family member. If an employee is not ill, having flu-like symptoms, or being tested for COVID-19, you may follow your usual personnel policies with respect to leave time. You may want to consider options for allowing employees to work from home, if that option is available to your organization.

8. Question: Are we liable for COVID-19 transmission at an event we host/sponsor?

Answer: It's very unlikely. The Colorado Governmental Immunity Act should protect a governmental entity against liability for this type of chance occurrence.

9. Question: Do we need to shut down our public activities?

Answer: Maybe. Currently, the CDC is advising people, whenever possible, to keep 6 to 10 feet away from other people and discouraging large gatherings of people (10 or more) where there is a risk of people being right up against each other, like in crowded bars, concerts, sporting events, amusement parks, etc. For organizations offering park and recreation services, child care, etc., if regular patrons are advised to practice appropriate "social distancing," appropriate hand washing, regular cleaning of common surfaces, and so forth, current guidelines do not require closure.

The guidelines from CDC and the State are subject to change as the circumstances evolve and we will keep you updated on any pertinent changes. We also recommend that you keep abreast of any local public health orders that may affect you. For example, Eagle County issued a Public Health Order prohibiting indoor and outdoor events of more than 50 people, and requiring events of 50 people or fewer to take certain actions to mitigate risks, including daily screening of employees for symptoms.

10. Question: Would property insurance coverage cover losses caused by cancelling events due to COVID-19?

Answer: The Special District Association Property and Liability Pool has advised that revenue losses and so forth from having to cancel events due to COVID-19 would not trigger coverage under the Pool's property coverage, unless a District is prohibited by civil or military authority from access to its

facilities or so limited as to make the facilities unavailable because of some type of physical loss. If you have coverage from a different insurer, you should contact that insurer as coverage conditions may differ.

11. Question: Are employees eligible for workers' compensation benefits if they contract COVID-19 while at work?

Answer: Possibly. If it can be proven that it is more likely than not that an employee contracted COVID-19 at work while engaged in their occupational duties, it is possible the employee may be eligible for workers' compensation benefits. However, because COVID-19 is easily contracted from many sources, it could be difficult for an employee to prove this. We recommend that all injuries of COVID-19 contraction at work be reported to insurance so that workers' compensation can pay for the initial doctor visit and COVID-19 testing. Depending on results of the COVID-19 testing and investigation of the circumstances of COVID-19 contraction, insurance will determine compensability of the claim under workers' compensation.

12. Question: Can an entity that is a covered entity under HIPAA (i.e. ambulance, fire, hospitals) provide patient health information to Colorado Department of Public Health and Environment ("CDPHE") if requested?

Answer: Yes. A covered entity is permitted to provide PHI to a "public health authority" that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability.

13. Question: What does social distancing mean, and how should we implement it at our public facilities?

Answer: Because the CDC is advising people to keep 6 to 10 feet away from other people, and to limit gatherings to no more than 10 people, you should adopt this type of culture in your facility. Explain to patrons that you are doing everything you can to ensure the safety of patrons and employees from COVID-19. In doing that you are following CDC guidelines. You will be cleaning common surfaces, and you advise patrons to do the same. In addition, you ask that they practice appropriate social distancing during this period of time including not crowding each other during activities (6 to 10 feet). You can even request patrons to evaluate their times of facility use to minimize crowding in the facility at any given time. Closing facilities to the public is becoming commonplace as the week progresses and CDC recommendations become more restrictive.

14. Question: What about the upcoming election?

Answer: If you are scheduled for a polling place election, consider a public outreach effort to urge voters to request an absentee ballot. This could be done on your website; by paid newspaper advertisement; a news article/op ed piece; sending out postcards; or, if you bill customers, including a notice in a utility or similar billing. The form to request an absentee ballot could be put on your website, with an easy and preferred option to return it electronically. Mailing out an absent voter ballot request form to all electors is also an option, but certainly more expensive. Consider identifying a place for the ballot box where staff can keep an eye on it, but minimizes person-to-person interactions.

Protection of the persons opening and counting ballots is also a consideration. We expect more information on best practices (such as wearing of rubber gloves and a facemask while opening and counting ballots) to develop over the next couple of weeks. We will share more info as this issue develops.

Disaster Declaration

WHEREAS, _____ District ("District") is a quasi-municipal corporation and political subdivision of the state of Colorado and;

WHEREAS, pursuant to C.R.S. § 24-33.5-709(1) "A local disaster may be declared by the principal executive officer of a political subdivision for up to seven days, and then must have consent by the Board of Directors; and

WHEREAS, the effect of a declaration of local disaster emergency is to activate the response and recovery aspects of any and all applicable local and interjurisdictional disaster and emergency plans and to authorize the furnishing of aid and assistance under such plans, pursuant to C.R.S. § 24-33.5-709(2); and

WHEREAS, the Coronavirus, a/k/a COVID-19, constitutes a public health emergency of International concern and has been determined to be present in _____ County and can be anticipated to spread significantly, requiring emergency preparation and execution of procedures to minimize its impact and protect the health safety and welfare of District Constituents; and

WHEREAS, the Board of Directors of the District have determined that pursuant to the above a Local Disaster Emergency should be declared and funds made available to prepare for and deal with its consequences.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the _____ District that the presence of the Coronavirus within _____ County constitutes a local disaster emergency that warrants preparation for and execution of procedures to deal with the emergency and that \$_____ is allocated from District reserves toward preparation and execution of a response plan.

APPROVED this _____ day of _____, 2020.

_____,
[CEO, Executive Director]

_____ District

By: _____

Filed with:

_____ County Clerk and Recorder
Colorado Office of Emergency Management