

**CLIENT ALERT**  
**CORONAVIRUS LOCAL GOVERNMENT IMPACTS**  
**ACTION ITEMS AND ANALYSIS**

The COVID-19 coronavirus is at the forefront of public concern. Information and guidance at the federal and state levels continues to evolve quickly. The attorneys at Elrod Friedman have received numerous questions from our clients concerned about the potential impact of COVID-19 on municipal operations. We recognize the complexity of preparing for and responding to this highly unusual event. To assist in that response, we offer the following information regarding sources of municipal authority to address public health emergencies, best practices for employers responding to COVID-19, and preparatory steps that we recommend all local governments take.

**Sources of government authority to address public health emergencies**

- **Emergency Service Disaster Agencies and Emergency Operations Plans.** The Illinois Emergency Management Agency (IEMA) is designated as the lead agency for emergency response and infectious disease management. IEMA coordinates emergency responses with the federal government and other states pursuant to the Illinois Emergency Management Agency Act, 20 ILCS 3305/1 et seq. (“EMA Act”). Under Section 10(c) of the EMA Act, municipalities with populations under 500,000 may establish by ordinance an agency or department responsible for emergency management (“ESDA”) within the municipality’s corporate limits. In addition to voluntarily established ESDAs, the Governor is authorized to determine that a municipality must establish an ESDA based on the municipality’s disaster vulnerability and response capability. Pursuant to State regulations administering the EMA Act, ESDAs must prepare and submit for approval by IEMA an Emergency Operations Plan (EOP), which should be reviewed and updated by the ESDA at least annually. *Municipalities not required to have ESDAs and EOPs must appoint a liaison officer to facilitate cooperation between the municipality and the applicable county ESDA.*
- **Succession Plans.** The Illinois Emergency Interim Executive Succession Act (“Emergency Succession Act”) authorizes municipal officers to designate emergency successors and specify their order of succession. In the event an officer, and any deputy provided pursuant to law, is unavailable to fulfill their duties, the designated emergency successor may assume that officer’s powers and duties. Designating emergency successors is a step that can be taken immediately rather than in the midst of an emergency situation.
- **Emergency Contracting Authority.** The EMA Act authorizes political subdivisions carrying out the provisions of the EMA Act to enter into contracts for the purpose of addressing emergencies, protecting life and property, and providing emergency assistance without following the procedures normally required by law pertaining to the performance of public works or entering into contracts. Additionally, Section 8-10-5 of the Illinois Municipal Code authorizes municipalities to let contracts without public

advertisement in the event of an emergency affecting public health and safety, as declared by the majority vote of the corporate authorities at a meeting. Many municipalities have incorporated this emergency contracting authority into their municipal codes or purchasing policies.

- **Emergency Local Authority.** There are two sources of emergency authority available to mayors and village presidents. Section 11 of the EMA Act authorizes the “principal executive officer of a political subdivision” to declare a local disaster, which activates the community’s EOP and authorizes furnishing of aid and assistance thereunder. This authority appears specific to those municipalities required by the EMA Act to maintain an EOP. Additional local authority exists in section 11-1-6 of the Illinois Municipal Code, which authorizes the corporate authorities of each municipality to adopt an ordinance granting the mayor extraordinary power and authority during an emergency including the issuance of executive orders. The ordinance must establish the nature and extent of the extraordinary authority, the standards by which the mayor determines an emergency exists, and require a declaration of emergency, signed under oath, to be issued prior to the execution of the extraordinary authority.

### **Local government quarantine authority**

Only the Illinois Department of Public Health, and local health departments certified by the state, have express statutory authority to declare and impose quarantines. The IDPH reserves to itself the “supreme authority in matters of quarantine and isolation,” and may declare and enforce quarantine requirements, including ordering a person or group of persons to be quarantined or isolated. 20 ILCS 2305/2(a)(d); 77 IAC 690.1305. However, the IDPH also delegates concurrent quarantine authority to state-certified local health departments, which are typically county agencies, including the Cook, Lake and DuPage County health departments. 77 IAC 690.1310. A few municipalities, including Chicago, Evanston, and Peoria also have state-certified local health departments and, therefore, have authority to impose quarantines.

While municipalities without state-certified local health departments do not have independent quarantine authority, these municipalities do have the power to enforce quarantines imposed by IDPH or a certified local health agency. Municipalities may also likely rely on their police powers to impose quarantines within their corporate limits, but likely cannot supersede the authority of IDPH or local health departments.

### **Best practices for employers responding to the coronavirus threat**

While many employment issues are fact-specific and require unique analysis to ensure compliance with state and federal employment laws, there are numerous general best practices for the workplace that we recommend to our local government clients.

- **Provide Reassurance.** Employers should reassure employees that management is closely monitoring the COVID-19 outbreak and provide employees with reputable resources explaining COVID-19, including information concerning transmission and methods to prevent exposure. This can include references to federal, state, and local guidance and recommendations at the websites provided at the end of this alert.
- **Encourage the Use of Sick Leave.** Employers should take care to provide all leave time required under federal and Illinois law, and a good guiding principle is to be flexible in encouraging employees who are sick or who have been exposed to persons determined to be sick to remain at home. Municipal employers should ensure employees are fully aware of existing leave policies and be flexible in

identifying means of providing leave for employees that are exposed to or diagnosed with COVID-19 or are caring for stricken family members. Employers should remain mindful that a COVID-19 diagnosis likely will qualify as a “serious health condition” under the FMLA or Illinois law. Providing additional time off over and beyond these types of leave may be considered a reasonable accommodation to affected employees, but any such determination will require a fact-specific analysis.

- **Be Mindful of the Americans with Disabilities Act.** Employers should act cautiously and refrain from making inquiries about an employee’s health without a reasonable belief that the employee’s medical condition presents a “direct threat” as contemplated under the Americans with Disabilities Act (that threat being a significant risk of substantial harm to the health or safety of the employee or others, that a reasonable accommodation less severe than sending the worker home cannot reduce or eliminate). Caution is particularly important in identifying “direct threats” given that many symptoms of COVID-19 are similar to those of the common cold. Employers should also note, however, that guidance from the EEOC concerning the ADA provides for exceptions during a declared pandemic that allow for Employers to inquire about whether an employee is potentially infected.
- **Promote Healthy Habits.** Clear communication regarding how COVID-19 can be transmitted in the workplace is also key, as common-sense hygienic measures – frequent handwashing and respiratory etiquette (such as using a tissue to cover coughs and sneezes) – are identified by the CDC as effective mitigation measures. Reminding employees to be vigilant in maintaining clean environments and providing the supplies to do so are examples of common-sense actions that will have a beneficial impact.
- **Determine Work-From-Home Policies and Protocols.** Employers should familiarize themselves with existing telecommuting policies or consider adopting a policy if one does not exist in order to facilitate working remotely when necessary.
- **Consider Temporary Travel Policies.** Employees who travel to or plan to travel to impacted geographical areas or interact with affected or at-risk populations should be advised to take preventive measures and encouraged to remain in contact with their employer about when they plan to return to the workplace. It may be helpful to consider a temporary travel policy requiring employees who travel to affected areas to stay at home during the suspected incubation period of 14 days. Employers should also consider creating an employment-specific infectious disease outbreak response plan.
- **Avoid Discriminatory Assessments.** Employers should remain mindful to avoid making any determinations or assessments of risk based on an employee’s race, national origin, or other protected characteristic in order to avoid violations of anti-discrimination policies and related federal and local protections.

### **Important Action Items for Immediate Implementation**

Below are practical steps local governments can begin to implement immediately:

- **Prepare for Open Meetings Act (OMA) issues, by reviewing the following provisions.**
  - Notice of Emergency Meetings
    - The OMA provides an exception from the 48-hour advance posting requirement for “bona fide” emergencies.

- Notice of the emergency meeting should be provided “as soon as practicable” prior to the meeting to any media outlet that has filed an annual request for notice.
  - Remote telephonic/electronic attendance
    - If a quorum is physically present, the OMA allows other members to attend the meeting remotely by video or audio conference due to an emergency. Remote attendance is only permitted if the public body has adopted a policy allowing for such means of attendance.
    - Government officials should review local policies governing electronic attendance at public meetings, and if no policy exists, consider adopting a policy to allow for remote attendance.
    - Local officials should also consider planning for extraordinary events that necessitate a meeting of the corporate authorities entirely by phone when a legally imposed quarantine or some similar circumstance prevents a quorum from being able to physically gather in one place as the OMA would otherwise require.
- Review Obligations Under HIPAA. In conveying information to the public regarding the spread of the coronavirus, municipal officers and employees should be careful not to reveal information that could reasonably be used to identify individuals who have been treated and/or transported by local first responders.
- Review Local Emergency Plans and Provisions.
  - Review local emergency management agency code provisions and determine if they are up-to-date and able to be implemented.
  - Review local emergency operation plans to ensure that all applicable personnel are familiar with the plan and their respective duties.
  - Review any local code provisions granting extraordinary power and authority to the mayor or village president to issue a disaster declaration and issue executive orders.
- Review and update local emergency interim succession plans.
  - Verify that all officers have designated emergency interim successors and evaluate whether the designations are current and appropriate.
  - Ensure that all designated emergency interim successors have been duly sworn in advance so that they are ready and able to perform their duties in the event an emergency successor is required.
- Review Contracts Concerning Force Majeure Provisions. Review contractual agreements for “force majeure” provisions – determine whether additional consultation with key contractors and vendors is necessary to assure provision of essential municipal services and supplies if contractors assert that force majeure applies.
- Stay informed via official news sources to avoid spreading misinformation. The federal government has provided the following resources and information about COVID-19:

- The CDC has posted “Pandemic Preparedness Resources” for use by local health departments at <https://www.cdc.gov/coronavirus/2019-ncov/php/pandemic-preparedness-resources.html>
- The CDC regularly updates its Situation Summary at <https://www.cdc.gov/coronavirus/2019-nCoV/summary.html>
- ICMA has assembled a useful and comprehensive coronavirus resource page at <https://icma.org/coronavirus-resources-plan-and-prepare-now-it-hits-your-community>
- State and Local Resource Pages:
  - [IL Dept of Public Health](#)
  - [Cook County](#)
  - [DuPage County](#)
  - [Lake County](#)
  - [Chicago](#)

Elrod Friedman LLP will continue to monitor the local government impacts of COVID-19 developments. Please reach out to any of our attorneys with any questions or concerns regarding your community’s response to and preparations for the COVID-19 outbreak.