MCIT Commits to Providing Critical Member Services During COVID-19 Pandemic

MCIT is committed to providing critical services to its members and partners during this time of national concern regarding the spread of COVID-19. MCIT is also concerned about the health and safety of its employees, the ability to respond to member expectations, as well as legal and financial obligations of the organization. Like so many other organizations, MCIT has implemented a business continuity plan.

Claims Will Be Processed and Managed
Priority will be given to claims operations. Members must still submit incidents to MCIT through the member portal at MCIT.org. Work-related injuries and illnesses will be given the highest priority. Injured employees presently receiving benefits will see no disruption in payments.

MCIT will participate in hearings, mediations, trials and all other court proceedings as required by the Minnesota judicial system. The Minnesota judicial branch is coordinating closely with statewide partners regarding operations in light of COVID-19. Defense firms are also activating plans to provide services.

Training to Be Rescheduled
MCIT-sponsored training sessions previously scheduled through May ("How to Conduct an Employee Investigation" and "Data Breaches: A Primer for County Attorneys") will be rescheduled for later this year, depending on venue and speaker availability. MCIT will be contacting those who have registered and refunding registration fees as needed. Members should check MCIT.org/training-calendar/ for updates about rescheduled training dates.

MCIT has suspended its training sessions at member facilities and has worked with members to reschedule events previously planned for April and May.

As of March 27, MCIT plans to hold events scheduled in June, but that may change if social distancing recommendations are still in place at that time.

Consultants Available Remotely
MCIT has suspended meetings, trainings and ergonomic assessments conducted by risk management or loss control consultants at member locations through April to reduce the potential transfer of the virus. Loss control and risk management staff are available via e-mail and phone for consultation. Special arrangements for personal visits may be made on a case-by-case basis.

MCIT Building Use
Although MCIT takes great pride in its facility and continues to practice preventive cleaning as recommended by the Centers for Disease Control and Prevention, MCIT has temporarily suspended all meetings in the building to further minimize potential exposure of visitors and staff to the COVID-19 virus through April 17.

MCIT will reassess the status of COVID-19 the week of April 13 and determine whether meetings scheduled after April 17 will need to be canceled.

Keeping Members Informed
As circumstances change, MCIT may be making additional changes and will continue to communicate updates as they occur. Check MCIT.org for updates.
Workers’ Compensation for COVID-19 Explained

When the Minnesota Workers’ Compensation Statute was enacted, some illnesses or exposures were specifically excluded, including “ordinary diseases of life.” For more employers and employees, illnesses such as COVID-19 (coronavirus), the flu, the common cold and heart disease are not compensable under the Workers’ Compensation Statute.

Presumption for Certain Employees

Under Minnesota Statutes, section 176.011, subdivision 15(b), there is a presumption that “any individual who by nature of their position provides emergency medical care, or an employee who was employed as a licensed police officer under section 626.84, subdivision 1; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside of a hospital” may have a compensable work-related occupational illness.

Because MCIT members employ staff in many of the job categories outlined above, MCIT recommends that potential COVID-19 exposures be handled in the same manner as any other contagious or blood borne pathogen. If an employee claims exposure to COVID-19, an accident report and a First Report of Injury form should be submitted to MCIT through the online member portal. The specifics of the potential exposure should be outlined, including the source of exposure and whether a test for the disease was performed.

MCIT investigates the compensability of each claim it receives, including any exposures outside of the employee’s work activities or work environment. This practice applies to claims allegedly arising from a diagnosis of COVID-19.

There is no known treatment for the virus. Generally speaking, health professionals are instructing exposed persons to remain home sometimes up to 14 days, although medical care, including hospitalization, may be required in severe cases. When a physician verifies that the cause of an employee’s inability to work arises out of a work injury/illness, the employee is entitled to wage replacement benefits under Minnesota Statutes, section 176.101, subdivision 1. Workers’ compensation will pay for tests and any subsequent medical expenses where COVID-19 is diagnosed as a work-related injury/illness.

Workers’ Compensation for Certain Volunteers

Certain individuals, though truly volunteers in the sense of receiving no remuneration, may be entitled to workers’ compensation benefits under the Minnesota Workers’ Compensation Act (WCA) because they qualify as an “employee” under the Act.

Law enforcement volunteers and first responders: A voluntary uncompensated worker while volunteering services as a first responder or as a member of a law enforcement assistance organization while acting under the supervision and authority of a political subdivision is considered an employee under the WCA. Law enforcement volunteers must also be registered with the political subdivision.

Emergency management volunteers: A voluntary uncompensated worker engaged in emergency management as defined in section 12.03, subdivision 4, is included in the definition of employee under the WCA as long as these conditions are met:

1. registered with the state or any political subdivision of it, according to the procedures set forth in the state or political subdivision emergency operations plan; and
2. acting under the direction and control of and within the scope of duties approved by the state or political subdivision.

Public health volunteers: In addition to the coverage for some volunteers defined in the WCA, public health volunteers may be covered pursuant to the provisions of the emergency management statute that allow for individuals to assist a local political subdivision during an emergency or disaster. Minnesota Responds Medical Reserve Corps volunteers, as provided in sections 145A.04 and 145A.06, responding at the request of or engaged in training conducted by the commissioner of health are included in the definition of employee under the WCA.

Prevention

Currently there is no vaccine to prevent COVID-19. Ideally, the best prevention is to avoid the virus, but when this is not possible, follow the recommendations of the Centers for Disease Control and Prevention. Members with specific questions should direct them to MCIT at info@mcit.org.
Federal Government Provides Emergency Sick Leave

The federal government recently enacted the Families First Coronavirus Response Act, which includes paid sick leave related to COVID-19. The Act and its requirements take effect no later than 15 days after its enactment, which is April 2. Below is a synopsis of the key provisions. Members should consult with the county attorney or labor counsel regarding its specific application to their entities.

Qualified reasons: An employee is eligible for emergency sick leave if he or she is unable to work (or telework) because the employee:
1. is subject to federal, state or local quarantine or isolation order due to COVID-19,
2. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,
3. is experiencing COVID-19 symptoms,
4. is caring for an individual who qualifies under No. 1 or 2,
5. is caring for a son or daughter of such an employee if the school or place of care of the son or daughter has been closed or the child care provider is unavailable due to COVID-19.
6. is experiencing any other substantially similar condition specified by the secretary of Health and Human Services in consultation with the secretaries of the Treasury and Labor.

Eligibility: An employee is eligible immediately regardless of employment duration. After the first workday the employee receives paid sick time under the Act, an employer may require the employee to follow reasonable notice procedures to continue receiving the benefit.

Rate of pay: For reasons Nos. 1-3, amount of pay shall not exceed $511 per day and $5,110 in the aggregate. For reasons Nos. 4-6, amount of pay shall not exceed $200 per day and $2,000 in the aggregate and shall be at two-thirds the employee’s amount of regular pay.

Exclusion for health care providers/emergency responders: Employers of health care providers or emergency responders may elect to exclude such an employee from the above.

Duration of paid sick time: Full-time employees receive up to 80 hours of paid sick time. Part-time employees receive proportional hours equal to the average hours worked over a two-week period. Availability of such sick time shall not carry over from year to year.

Prohibited acts, enforcement: Employers may not discharge, discipline or otherwise discriminate against any employee who takes leave under this law or files a complaint or testifies in a proceeding regarding an alleged violation. Violations of this law will be enforced under the Fair Labor Standards Act.

It is important for members to continue to work closely with the county attorney and/or employment counsel to ensure compliance with changing federal rules.

Emergency Family and Medical Leave Expansion Act

As a response to school and day care closures due to the COVID-19 virus (coronavirus), the federal government passed the Emergency Family and Medical Leave Expansion Act. The Act and its requirements take effect no later than 15 days after its enactment, which is April 2, and provisions end Dec. 31, 2020. Below is a basic summary of the key provisions.

What Types of Leave Does It Allow?
The law provides for special leave provisions with respect to the coronavirus. Although the law expands who is a qualified employee, it applies to only leaves “because of a qualifying need related to a public health emergency.” This is when a qualified employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years old of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable because of an emergency with respect to COVID-19 declared by a federal, state or local authority.

Qualified employer: For MCIT members, the Act generally applies to all public entities that employ one or more employees.

Eligibility: An employee is eligible if he or she is unable to work (or telework) because the employee:
1. is subject to federal, state or local quarantine or isolation order due to COVID-19,
2. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19,
3. is experiencing COVID-19 symptoms,
4. is caring for an individual who qualifies under No. 1 or 2,
5. is caring for a son or daughter of such an employee if the school or place of care of the son or daughter has been closed or the child care provider is unavailable due to COVID-19.
6. is experiencing any other substantially similar condition specified by the Secretary of Labor within seven days of enactment. Employers must post.

Eligible employees are those who have been employed for at least 30 days. All other typical FMLA requirements to determine if someone is a qualified employee, such as work at a location with 50 employees in a 75 mile radius, do not apply.

Who Is a Qualified Employer?
Qualified employers are generally those private companies with less than 500 employees and all government employers.

The law allows certain exemptions for employers of health providers and emergency responders. It also allows the secretary of Labor to issue regulations:
- to exclude certain health care providers and emergency responders from the definition of eligible employees.

Application: Eligible employees may choose whether to use this leave before any other leave to which they may be entitled. Employers violate this law if they require employees to use other types of paid leave first. Nothing in this Act shall be construed to diminish the rights or benefits an employee is entitled to under any other law, collective bargaining agreement or existing employer policy.

Posting: A model notice is to be drafted by the Secretary of Labor within seven days of enactment. Employers must post.

Nor does the Act require financial or other reimbursement to an employee upon the employee’s separation from employment for paid sick time under this Act that has not been used by the employee.

Prohibited acts, enforcement: Employers may not discharge, discipline or otherwise discriminate against any employee who takes leave under this law or files a complaint or testifies in a proceeding regarding an alleged violation. Violations of this law will be enforced under the Fair Labor Standards Act.

It is important for members to continue to work closely with the county attorney and/or employment counsel to ensure compliance with changing federal rules.

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Telecommuting: Address Safety, Liability of Home-based Workers

Working from home, also known as telecommuting, is one solution to maintain work flow during the COVID-19 pandemic. Employers should consider potential exposures arising out of telecommuting and how to mitigate them when developing a policy allowing employees to work from home.

This article does not identify all of the issues of telecommuting, but it is a starting point.

Safety of Employees

Regardless of where employees perform services for the employer, the employer is responsible for their safety and compliance with occupational safety and health law.

One of the risks of working from home is the employer’s lack of control of the work environment. There may be items in walkways and on stairs between the home office and areas accessed during the work day, electrical wiring may not be up to code, or the smoke alarm or carbon monoxide detector may be disabled or nonexistent.

Workers’ compensation law tends to look at the injuries incurred while working at home as an extension of the workplace. Several questions are asked when an employee is injured while working off site to determine whether workers’ compensation benefits apply:

- Did the injury take place in a location the employer authorized and would expect the individual to be working?
- Can it be proven that the individual was performing employer-authorized work duties when he or she sustained the injury or illness?
- Did the injury take place during appointed work hours?
- Was the employee acting in a negligent manner or performing unexpected job tasks?
- Was the employee attending to work matters that were approved, or was he or she injured while engaging in personal, nonwork approved activities?

One of the issues to be aware of is the Fair Labor Standards Act (FLSA) and its application to nonexempt employees. FLSA provides that nonexempt employees (as defined in the FLSA) may be entitled to time and one half pay for hours worked over 40 per week. When nonexempt employees work from home, overtime hours may be worked and not properly reported for payroll purposes.

The employer should think about how hours worked will be reported or verified for nonexempt employees who work off site. The employer must comply with record keeping requirements of the FLSA. Employers could use software to track when employees sign on to their computers or how long the computer is idle, or put certain parameters in the working agreement or the telecommuting policy that are dependent on the employee’s compliance.

Public entities are also responsible for compliance with the Minnesota Government Data Practices Act (MGDPA) regardless of where their employees perform services or where the data is located. Obligations under the MGDPA relate to data security, records retention and destruction.

The employer should consider whether there is more liability by allowing the data to be created or received at a location other than the workplace. Government data may be more difficult to keep secure when it is located off site. The potential for a data breach may be increased if care is not taken in providing expectations of security in the telecommuting arrangement.

All of the policies that apply at the office apply to the employee who works from home, including acceptable use of member-owned equipment policies, password and e-mail policies, improper use of Internet policies, etc. Both encrypted e-mail and access to a secure website when dealing with nonpublic data are highly recommended.

If the government data the telecommuter is handling is part of a state agency system, it is important that the state’s rules regarding access are followed by the employee at the home office.

Many other considerations relate to data privacy and records retention and de-
stuction. The MCIT Resource “Employee-owned Technology in the Workplace” (MCIT.org/resource/) provides a more complete understanding of this risk.

Employee Performance

Employees who work from home should not be treated any differently than others who perform the same services for the employer. Therefore, it is important to have a process for reviewing the effectiveness of telecommuting:

- Are the employer’s priorities and time deadlines being met?
- Is the employee able to work with minimal supervision?
- Is the employee communicating with internal and external clients as expected?

The employer’s performance management system may need to have additional considerations for those employees who work off site.

Telecommuting Policy

A telecommuting policy is recommended and should include certain requirements of a home office, such as space set apart from the regular pathways of the home, up to code electrical wiring, employer-provided equipment (e.g., computer, printer, cell phone) work hours and check-in requirements.

Some employers choose to have a written agreement, in addition to the policy, to allow employees to work from home. Regardless of whether the employer uses an agreement and policy, there should be clear guidelines indicating the expectations from the employee and the responsibilities of both parties in the telecommuting arrangement.

There may be more recommendations for risk management and loss control that could apply to a specific telecommuting situation. Members who have questions should contact their MCIT consultant toll-free at 1.866.547.6516 or contact their county attorney or other legal advisor for any legal advice.  


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Safety Self-audit for Telecommuting

This checklist is to evaluate and take corrective actions in the home work space. Note: additional hazards may be present in any given situation.

General

- Floors are clear and free of hazards.
- Work area is reasonably quiet and free of distractions.
- Electrical cords are secured under desk, along the wall, away from feet and heat sources.
- Temperature, ventilation and lighting are adequate.
- First-aid supplies are readily available.
- Where appropriate, the home has been tested for radon.
- Carbon monoxide detector is in an appropriate location.

Fire Safety

- Walkways, aisles and doorways are unobstructed.
- Exits are accessible and kept unobstructed.
- Working smoke detector is located near designated work space.
- Charged fire extinguisher is accessible from designated work space.
- Work space is kept free of trash clutter and flammable liquids.
- Radiators and portable heaters are located at least three feet away from combustible items.

Electrical Safety

- Computer equipment is connected to a surge protector.
- Electrical system is adequate for office equipment and circuits not overloaded.
- Electrical panels are readily accessible in the event a breaker needs to be reached.
- All electrical plugs, cords, outlets and panels are in good condition, no exposed/damaged wiring.
- Extension cords and powers strips are not daisy chained and no permanent extension cords are in use.
- Electrical cords run in nontraffic areas, do not run under rugs and are not nailed or stapled in place.
- Equipment is turned off when not in use.

Workstation Ergonomics

- Office furniture and equipment is set up to fit employee ergonomically.
- Chair is sturdy and adjustable with backrest and casters appropriate for floor surface.
- Monitor is at arm’s length or comfortable distance from eyes, and top of screen is slightly below eye level.
- Forearms are parallel to the floor and wrists are straight.
- Feet reach the floor when seated or fully supported by a foot rest.
- Back is adequately supported by backrest.
- Computer screen is free from noticeable glare and positioned to a height where neck and head are neutral.

Security Measures

- Paper and electronic data are secure. WiFi should be password protected.
- Private data and nonpublic data are destroyed in a secure manner, e.g., shredding appropriately.
- Materials and equipment are in a secure place that can be protected from damage or misuse.
- There is an inventory of all equipment in the office, including serial numbers when possible.
- Firewalls and virus protection are up to date on computer equipment.
- Use encryption where appropriate and always communicate with the member supplied e-mail system.
- Ensure there is coverage for member equipment at the employee’s home, especially confirming that electronic data processing (EDP) equipment (e.g., computer, printer, monitor) is included on the EDP inventory.
Land Use Decisions, Public Hearings During Health Emergency

By Scott T. Anderson, Shareholder, Rupp, Anderson, Squires, Waldspurger, P.A.

Minnesota Statutes, Section 15.99 requires a local government unit to approve or deny a written application related to zoning, septic systems, watershed district review, soil and water conservation district review, or the expansion of the metropolitan urban service area for a permit, license or other governmental approval of an action within 60 days. Although there are nuances to this law and an ability to extend the deadline for another 60 days, generally failure to approve or deny within 60 days results in automatic approval of the application. As is, the law does not allow for a suspension of the deadlines under the current health emergency.

Public Hearing Requirements

A question has arisen regarding a local government’s ability to hold required public hearings on land use applications while still complying with the recommendations of limited public gatherings and social distancing. In certain cases, following such recommendations may require the exclusion of all or a vast majority of the public from the meeting room.

In pertinent part, Minnesota Statutes, Section 13D.021, subdivision 1(3) (emphasis added) states: “… members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration.”

The government entity needs to decide whether attendance is feasible. It also must be mindful of subdivision 3 (emphasis added) that states: “If telephone or another electronic means is used to conduct a meeting, to the extent practical, the body shall allow a person to monitor the meeting electronically from a remote location. The body may require the person making a connection to pay for the documented additional cost that the body incurs as a result of the additional connection.”

Therefore if the local government finds that attendance of the public is not feasible, it needs to decide the procedure it will follow and its capability to provide for people attending remotely. This may vary from entity to entity. Additionally, because it is a question of practicality, the procedure that is followed depends on the capabilities of the governmental entity together with the time and ability to make alternative arrangements.

Remote Hearing Example

Below is an example of how one county handled the issue for conducting a public hearing for a land use application:

- All members of the board of adjustment/planning commission and assistant county attorney called in via conference call. The environmental service director was on site in the government building.
- The applicants called in via conference call.
- A notice was put on the radio and doors to the government building for the public to contact the environmental services director to obtain the phone number for the conference call. That information was also posted on the county’s website and social media.
- All votes were handled via a roll call.
- The board chair conducted the hearing as usual.

This is one way of handling the issue. There are many others, some of which may involve teleconferencing services available for purchase that could be tailored to a county’s specific needs. The keys are feasibility and practicality while attempting to allow public input into the hearing process.

As this area is highly nuanced and there may be other statutes and legal considerations, MCIT recommends working with the county attorney and/or private counsel regarding these matters.

OSHA Resources Regarding COVID-19

The federal Occupational Safety and Health Administration (OSHA) has released a series of resources regarding the COVID-19 virus that can be referenced as members protect their employees.

These resources cover many topics of concern including:
- hazard recognition
- medical information
- control and prevention
- record keeping and recording of COVID-19 illness.

In addition, OSHA details specific standards and directives related to the virus including:
- respirator use and the recent directive regarding the short supply of N-95 respirators.
- other personal protective equipment information.
- hazard communication in light of the increased usage of cleaning and sanitizing chemical products.
- standard precautions, sanitation and blood borne pathogens.

General topic resources can be found at OSHA.gov/SLTC/covid-19/index.html. Specific information related to safety and health standards and directives can be found at OSHA.gov/SLTC/covid-19/standards.html.

Data Practices, Open Meeting Requirements During Emergency

Provided by Minnesota Department of Administration, Data Practices Office

The Data Practices Office has developed the following guidance for government entities on how best to meet the requirements of the Minnesota Government Data Practices Act and Open Meeting Law during an emergency. The Data Practices Office is available to assist members as they navigate these challenges and continue to meet their obligations under the law. Please do not hesitate to contact the office by e-mail at info.dpo@state.mn.us or by phone at 651.296.6733 or 800.657.3721.

Data Practices Requirements

Government entities continue to have an obligation to respond to data requests during the emergency. For public data requests, entity responses must be prompt and appropriate, and within a reasonable amount of time. The reasonable and appropriate standards are flexible enough to accommodate changes in circumstances due to the current emergency. However, data request response times for data subjects remain 10 business days.

Entities should make contingency plans. Consider preparing for the possibility that the responsible authority and/or designees might not easily be able to receive or quickly respond to data requests. Government entities may need to prepare additional staff to carry out data practices functions.

If an entity has a central e-mail account or portal to administer the entity’s data practices program, it should ensure staff can access the account remotely and know where to route requests while people are working in different locations. If data requests are e-mailed directly to one person, confirm that other staff members will have access to this account if the primary recipient is no longer able to respond.

If entities cannot fulfill requests remotely, they can have employees use staggered or off-hours scheduling to go into offices to collect data and make copies as necessary.

When adhering to social distancing requirements, government entities’ abilities to receive requests in person and to accommodate in-person inspection may be limited. We encourage entities to work with data requesters to ensure that entities are following the Minnesota Department of Health and Centers for Disease Control and Prevention guidelines to keep employees and members of the public safe. Entities might also consider waiving copy fees at this time when they deem appropriate.

Open Meeting Requirements

Public bodies required to comply with the Open Meeting Law must still do so during a state of emergency. However, the Minnesota Legislature has considered the challenges of such public meetings, and we want to highlight Minnesota Statutes, section 13D.021. Section 13D.021, subdivision 1 permits public bodies to hold meetings via telephone or other electronic means if the conditions of this section are met.

Section 13D.021 requires a public body to make a determination that an in-person meeting is “not practical or prudent because of a health pandemic or an emergency declared under chapter 12.” The governor has declared an emergency under Chapter 12.

Requirements for holding a meeting via telephone or other electronic means include:

1. all participating members can hear one another;
2. members of the public at the physical meeting location can hear all discussion “unless attendance at the regular meeting location is not feasible due to the health pandemic;”
3. At least one member of the public body is present at the meeting location, “unless unfeasible due to the health pandemic;” and
4. all votes are taken by roll call.

To the extent practical, public bodies should allow the public to monitor the meeting remotely, pursuant to subdivision 3 of this section. However, the public body may charge for the costs incurred as a result of those additional monitoring connections.

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Minnesota Safety and Health Conference Rescheduled

Emergency Family and Medical Leave Act Expansion ... continued from page 3

potentially to exempt businesses with fewer than 50 employees.

How Long Is the Leave and Is It Paid?

As under the regular FMLA leave, the employee is entitled to 12 weeks for leave. The first 10 days are unpaid; however, the employee may elect to substitute accrued vacation, personal medical or sick leave.

Generally the remaining leave shall be paid at a rate of not less than two-thirds the employee's salary but not to exceed $200 per day and $10,000 in the aggregate.

As with any new regulations, there will be questions upon implementation. Members will want to work with their human resources professionals and county attorney or other legal counsel when implementing this new provision.

Train Employees While Working from Home

Streaming videos available through the Minnesota Safety Council in partnership with Aurora Pictures is a good way to provide training for employees working from home.

All MCIT member organizations have a membership with the Minnesota Safety Council, so they can take advantage of this benefit at no charge. Videos are available through a portal at MinnesotaSafetyCouncil.org. Once logged in to the Members Only section, members need to sign up for streaming videos access, which gives them a special log in to the Aurora Pictures online videos site.

Members can contact Steve Rauh at the Minnesota Safety Council with questions about the streaming videos service. Reach him at 1.800.444.9150, ext. 326 or steve.rauh@minnesotasafetycouncil.org.

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