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Overview: Employment Considerations, Ohio Emergency Legislation and COVID-19

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Consequential to the onset of COVID-19 and Ohio Governor Mike DeWine's Executive Order 2020-01D, declaring a state of emergency as of March 9, 2020, the Ohio General Assembly has worked speedily to introduce, debate and in many instances pass legislation addressing and impacting, either directly or otherwise, the obligations of public entities whose operations have been impacted by the emergency.

To this end, the following have been made law. On March 27, 2020, Governor DeWine signed into law Amended Substitute House Bill 197. The highlights below provide merely an overview.

- **Exempting Schools as Food Processing Establishments:**

- During the period of emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, the Director of the Ohio Dept. Agriculture has been granted authority to exempt a school as a food processing establishment under R.C. § 3715.021, *provided* the school has been issued a food service operation license under Chapter 3717 *and* is transporting food only for purposes of the U.S.D.A.'s Seamless Summer Option Program or the Summer Food Service Program.
- The law also authorizes this same exemption, on otherwise similar terms, for other entities, *provided* the particular entity is transporting food only for purposes of the Summer Food Service Program.

- **Open Meetings:**

- Notwithstanding any conflicting provision of the Revised Code; for the period of emergency declared by Executive Order 2020-01D (but in no event beyond December 1, 2020), Public Entities are authorized to conduct their public meetings via teleconference, video conference and other similar technology. Any action taken by the Public Entity under such circumstances will have the same force and effect as if the governmental action had occurred during a more traditional open meeting or hearing.

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- To facilitate this alternative public meeting format, Public Entities may also make provisions for meeting attendance (excluding Executive Sessions) commensurate with the method in which the meeting is conducted (*e.g.*, livestreaming by internet, public access television, call-in information for teleconference, etc.) Specifically, the law requires that the public must be able to observe and hear the discussions and deliberations of all members of the public body, whether that member is attending in person or electronically.
- The law also requires public bodies conducting such meetings to establish, with widely-available electronic equipment, those means by which members of the public body may converse with each other, with the public, and - in the setting of any hearing - to interact with any witnesses, and to also receive documentary testimony and physical evidence.
- **Authorizing Re-Hire of Public Servants Without Forfeiture of Retirement Benefits:**
 - During the period of emergency declared by Executive Order 2020-01D (but in no case beyond December 1, 2020), a PERS or other state retirement system retirant who is employed by the Department of Rehabilitation and Correction, the Department of Youth Services, the Department of Mental Health and Addiction Services, Department of Veteran's Services, or the Department of Developmental Disabilities is not required to forfeit the retirant's retirement allowance as described in division (B)(4) of R.C. § 145.38.
- **K-12 School Testing, Accountability and Hours:**
 - The law authorizes School Dist. Boards of Edu., the governing authority of a community school (established under Chapter 3314 that is not an internet- or computer-based community school), the governing body of a STEM school (established under Chapter 3326), or the governing authority of a chartered non-public school to create and enforce permitted alternative methods of education for school days (or hours) which were forfeited when these same institutions were ordered closed due to the COVID-19 emergency.
 - The law permits any entity which adopted a plan under § 3313.482 to require students to access and complete classroom lessons posted on the entity's website, and to now further amend that plan to provide for retrieving any number of hours that the schools were ordered closed due to the COVID-19 emergency.
 - If an entity did not adopt a plan under § 3313.482, the entity may still adopt a plan.

- **Authorizing Electronic and Telehealth Delivery of Services by Certain Professionals to Students Participating in Autism Scholarship Program, Jon Peterson Special Needs Scholarship Program, or who were otherwise receiving those professional services:**
 - For the period of emergency declared by Executive Order 2020-01D (but in no case beyond December 1, 2020), the law authorizes the following licensed professionals to continue to provide licensed professional services by electronic delivery or telehealth communication to any student participating in the Autism Scholarship Program or the Jon Peterson Special Needs Scholarship Program, or to any student enrolled in a public or private school who was receiving those services before the Director of Health's Order, regardless of the method of delivery: **(a)** persons licensed by the Ohio Speech and Hearing Professionals Board; **(b)** persons licensed by the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board; **(c)** persons licensed by the State Board of Psychology; **(d)** persons licensed by the Counselor, Social Worker and Marriage and Family Therapist Board; **and (e)** persons licensed by the State Board of Education (with respect to intervention therapists).

- **Relieving Schools from Administering Assessments during 2019-2020 School Year**
 - For the 2019-2020 school year only:
 - Any city, exempted village, local, joint vocational, or municipal school districts, any community school established under R.C. Chapter 3314, any STEM school established under R.C. Chapter 3326, any chartered non-public school, the State School for the Deaf and the State School for the Blind are temporarily relieved of any obligations under R.C. §§ 3301.0710 to 331.0712, § 3313.903, § 3314.017, and are exempted from any requirement to administer assessments.
 - The law clarifies that students may not be deemed ineligible to renew scholarships for the 2020-2021 school year under the Educational Choice Scholarship Program, the Jon Peterson Special Needs Scholarship Program, or the Pilot Scholarship Program based solely upon the basis that the particular student was not administered an assessment during the 2019-2020 school year.
 - The law directs schools and districts to continue to develop and provide alternative means designed to engage students between March 17, 2020 and the end of this school year.

- For the duration of the emergency (but in no event beyond December 1, 2020), the state Superintendent of Public Instruction is authorized to waive or extend any deadlines for actions required of the State Board of Education, the Department of Education or any person licensed or regulated by them to ensure prioritization of student, family and community safety while continuing to ensure the efficient operations of schools.
- **Unemployment Compensation Changes**
 - For the duration of the emergency (but in no case after December 1, 2020), the Director of Job and Family Services is authorized to waive any requirements that a benefits recipient be actively seeking suitable work.
 - Notwithstanding R.C. § 4141.29(D)(2), the law permits unemployment compensation applications from employees who are unemployed or unable to return to work because of an isolation or quarantine order issued by the individual's employer, governor, board of health, health commissioner or Director of Health.
- **Work-from-Home Impacts on Municipal Income Taxes**
 - During the period of the emergency, and for thirty (30) days thereafter; any personal services performed during any day on which an employee was required to perform such services at a location to which the employee is required to report because of the emergency declaration, including that employee's home, shall be considered as having been performed at the employee's principal place of work.

This landscape is fluid and ever-changing, and this article is intended only to address a few of the more pertinent provisions of the new law. Other proposals are pending in the legislature, including (among others) proposals to relieve counties from competitive bidding requirements for public health-related items and communications equipment, to modify workers' compensation laws to designate COVID-19 as a scheduled occupational disease, and to create rebuttable presumptions that, in certain circumstances and for certain employees, the disease was contracted in the course and arose out of employment.

For questions or additional guidance please feel free to contact either Kathleen Minahan, Esq., or Doug Holthus, Esq.:

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