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Guidance For Illinois Employers in Response to COVID-19

On March 21, 2020, in an effort to mitigate the impact of COVID-19, Governor J.B. Pritzker issued a “Stay-at-Home” order (the “order”) for the entire state, and ordered that all Illinois residents must remain in their homes at least until April 7, 2020, unless they are:

- obtaining essential goods or services such as groceries and food, household consumer products, supplies they need to work from home, and products necessary to maintain the safety, sanitation and essential operation of residences;
- obtaining gas in vehicles;
- obtaining takeout food or beverages from restaurants or other dining establishments;
- obtaining cannabis from an authorized retailer;
- seeking emergency services, obtaining medical supplies or medication, or visiting a healthcare professional;
- reporting to, or performing their job – including minimum basic operations;
- engaging in outdoor activities such as walking, hiking, running or biking while practicing social distancing – including going to public parks and open outdoor recreation areas, except for playgrounds;
- leaving home to walk their pets;
- leaving home to care for or transport a family member, friend or pet in another household;
- leaving home to care for elderly, minors, dependents, persons with disabilities or other vulnerable persons;
- leaving home to receive materials for distance learning, meals, and any other related services from an educational institution;
- leaving home at the direction of law enforcement or court order – including to transport children pursuant to a custody agreement;
- leaving to return to a place of residence outside the State for non-residents;
- leaving to return to a place of resident from outside the State.

The order also ordered that the physical locations of schools, universities and all “non-essential businesses” must close until further notice. These businesses include, but are not limited to, dine-in restaurants, bars and nightclubs, entertainment venues, gyms, fitness studios, spas, salons, barber shops, tattoo parlors, movie theaters, bowling alleys, concert venues, music halls, libraries, museums, country clubs and social clubs. However, non-essential businesses are permitted to operate minimum basic operations, which includes activities to preserve inventory, process payroll, or facilitate working from home.

As an exception, essential businesses are permitted to remain open in accordance with the order. Those businesses include emergency city services, hospitals, healthcare and public health operations, pharmacies, clinics, dental offices, blood banks, medical cannabis facilities, reproductive health care providers, eye care centers, home health care service providers, mental health and substance use providers, vets, grocery stores, corner stores, convenience stores that sell groceries and medicine, laundry services, restaurants for consumption off-premises, gas stations, businesses needed for transportation (including bike shops), transportation for purposes of essential travel, financial institutions, day care centers for employees exempted by the order, hardware and supply stores, food/beverage/cannabis production and agriculture, organizations that provide charitable and social services, media operations, mail and delivery stores, supplies for essential business and operations, business that sell/manufacture/supply products needed for people to work from home, home-based care and services, residential facilities and shelters, professional services, businesses that manufacture and distribute critical products and industries, critical labor union functions, hotels, motels and funeral services. Grabing takeout, ordering an Uber and dropping off dry cleaning are also still permitted. The order also allows liquor stores and recreational cannabis dispensaries to open for business.

The order also permits essential infrastructure businesses to remain open, which includes working in: food production, distribution and sale; construction; building management and maintenance; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical; distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunication systems.

Further, the order also permits critical trades to remain open, which includes plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, removing and relocation services, and other service providers that maintain the safety, sanitation and essential operation of residences, essential activities, and essential business and operations.

The Impact of the Stay-at-Home order Employers

Despite whether an employer has been ordered to close its physical locations, employers must accommodate their workforce by permitting employees to telecommute or work-from-home. If an employer is an essential business and cannot operate its business through telecommuting or working-from-home arrangements, employers may reduce staff to the minimal number necessary to ensure that essential operations can continue. In the midst of the COVID-19 pandemic, below are some Illinois specific guidelines to assist employers in navigating this unprecedented societal terrain.

- **ILLINOIS EMPLOYEE SICK LEAVE ACT**

The Illinois Department of Labor has set forth various scenarios which employers should be prepared to address in the event than an employee is unable to work or telework because of COVID-19. The Illinois Employee Sick Leave Act (Public Act 99-0841) requires Illinois employers who provide personal sick leave benefits to their employees to allow employees to take leave to care for certain relatives. The Act defines "personal sick leave benefits" to include time accrued and available to be used for absences related to personal illness, injury or medical appointments. However, the employee's ability to use a paid sick leave benefit may be subject to employment status. For example, independent contractors, temporary workers and contractual employees may not be offered benefits associated with the employer.

The Act may be used by an employee whose employer is subject to a Federal, State, or local quarantine or isolation order related to COVID-19. The Act also applies to employees who are experiencing symptoms of COVID-19 and are seeking a medical diagnosis, as well as to employees who have tested positive for COVID-19 and are unable to work. Likewise, if an employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19, the employee may use the Act.

The Act requires employers to allow employees to use such time "for absences due to an illness, injury, or medical appointment of the employee's child, spouse, [domestic partner], sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent, for reasonable periods of time as the employee's attendance may be necessary, on the same terms upon which the employee is able to use sick leave benefits for the employee's own illness or injury." An employer may request written verification of the employee's absence from a health care professional if such verification is required under the employer's employment benefit plan or paid time off policy.

The Act only requires employers to allow employees to use personal sick leave benefits that the employees otherwise would have to care for a relative as described in the Act. (So, the Act doesn't require an employer that does not otherwise provide personal sick leave benefits to employees to provide any new benefits under the Act). An employer may limit the use of sick time to care for a relative as described in the Act "to an amount not less than the personal sick leave that would be accrued during 6 months at the employee's then current rate of entitlement." Employers may allow more than that amount of time if they so choose.

If an employee does not qualify to use paid sick leave, or has exhausted sick leave, other leave may be available. For instance, an employee may choose to take vacation or paid leave and be compensated if there is a vacation or paid time off policy. However, such use is permissible only if the vacation or paid time off policy allows for leave in this circumstance and the employer grants the use.

Employers are prohibited from denying employees the right to use personal sick leave benefits for the care of specified family members in accordance with the Act. In addition, it is unlawful for employers to discharge, threaten to discharge, demote, suspend or discriminate against employees for using sick leave benefits, attempting to exercise their rights to use sick leave benefits, filing a complaint with the Illinois Department of Labor, alleging a violation of the Act, cooperating in an investigation or prosecution of the act, or opposing any policy, practice or act that is prohibited by the Act.

In sum, the Act can be used for self-care, or for the care of a family member, including a child, grandchild, sibling, spouse, parent, grandparent, domestic partner, mother-in-law, father-in-law, or step-parents.

COOK COUNTY AND THE CITY OF CHICAGO SICK LEAVE ORDINANCES

Both Cook County and the City of Chicago have passed ordinances that require employers to provide employees with a certain amount of paid sick leave. In Cook County, the ordinance is called the Cook County Earned Sick Leave Ordinance. In the City of Chicago, the ordinance is called the City of Chicago Paid Sick Leave Ordinance.

Employers in Cook County and elsewhere in Illinois should also remember to comply with the Illinois Employee Sick Leave Act, which obligates employers who offer paid or unpaid sick time for personal illness, to also cover an employee's absences for a family member's illness. Depending on the circumstances, they may also be obligated to provide time off for coronavirus-related absences under the Family and Medical Leave Act and/or as a reasonable accommodation under local, federal and state anti-discrimination laws

Cook County's Earned Sick Leave Ordinance

The Cook County Earned Sick Leave Ordinance ("ESLO") covers any employees who work for compensation, for a minimum of two hours in any two-week period, and/or physically present within Cook County. The ordinance does provide for some exceptions that include but are not limited to certain individuals under a bona fide collective bargaining agreement, independent contractors, and individuals under the Railroad Unemployment Insurance Act.

ESLO mandates that employers in Cook County provide each employee with one hour of sick leave for every 40 hours worked, up to 40 hours of paid sick leave, at the same rate of pay, per year, for employees who have worked at least 80 hours within a 120-day period. The mandate also requires employers to allow employees to carry over to the next year half, or up to 20 hours, of their unused, accrued sick leave. ESLO provides that the employee may use earned sick leave when the employee or a family member "are ill, receiving medical, or the victim of domestic violence or stalking, or a public health emergency closes work, school or daycare." Employees may be entitled to additional benefits under ESLO if the employer is covered by the federal Family Medical Leave Act ("FMLA") and the employee is eligible for FMLA leave.

However, the employer is allowed to impose written rules for the minimum increments of time (4 hours or less) in which earned sick leave can be used, the type and timing of notice required for reasonably foreseeable absences, and/or the minimum duration of employment before initual use of earned sick leave (not to exceed 180 days). ESLO allows employers to establish a notification policy for employee abscesses but such policies must be in writing for both foreseeable and unforeseeable absences. Also, ESLO allows for employers to require documentation signed by a licensed health care professional for an employee who has used their time for more than three consecutive work days.

Employers are prohibited from retaliating against employees for exercising their rights under ESLO or requiring the employee to search for or find a replacement to cover the employee's work hours while on leave.

Note, in Cook County, several municipalities have opted out of ESLO. Of the approximately 130 municipalities in Cook County, over 80 of them have opted out of ESLO. The following are the municipalities that did not opt out of ESLO: Barrington Hills, Berwyn,

Countryside, Deerfield, Dolton, Evanston, Glencoe, Glenview, Kenilworth, McCook, Oak Park, Oak Brook, Phoenix, Skokie, University Park, Western Springs, Wilmette and Winnetka.

The City of Chicago's Paid Sick Leave Ordinance

The City of Chicago Paid Sick Leave Ordinance ("PSLO") requires an employer who maintains a business facility within the City of Chicago and/or is required to obtain a business license to operate in the city to provide its employees with paid sick leave. Any employee who works at least 80 hours within any 120-day period is eligible for the required paid sick leave. PSLO provides that an employee earns 1 hour of sick leave for every 40 hours worked up to a maximum of 40 hours of paid sick leave earned in one year. Alternatively, the employer can provide 40 hours of paid sick leave at the beginning of a 12-month period to employees.

PSLO allows for employees to use their time for several different reasons that includes but not limited to: the employee is physically or mentally ill, employee is a victim of domestic violence, employee's family member is sick or ill, and an employee's child's school or place of care has been closed by a government official due to a public health emergency (e.g., COVID-19).

PSLO allows employers to establish a notification policy for employee absences and allows for employers to require documentation signed by a licensed health care professional for an employee who has used their time for more than three consecutive work days.

Employers are required to allow the employees to carry over up to ½ of the sick leave earned or 20 hours of paid sick leave per 12-month period. However, employees are not able to use more than 40 hours of paid sick leave per 12-month period. Employers subject to the Family Medical Leave Act (i.e., 50 employers are more) have additional requirements regarding employee time carry over. PSLO requires that employers allow an employee to use their paid sick leave no later than 180 days after the employee began working for an employer.

Employers are prohibited from retaliating against employees for exercising their rights under PSLO or requiring the employee to search for or find a replacement to cover the employee's work hours while on leave.

- FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act ("FFCRA"), which will go into effect on April 2, 2020. Once the FFCRA is implemented, it will supersede the Illinois Employee Sick Leave Act. Consequently, employers should be prepared to implement the guidelines set forth below.

Under the FFCRA, the following leave and pay structure applies when an employee is unable to work or telework because an employer is subject to a Federal, State, or local quarantine or isolation order related to COVID-19:

- Full-time employees: are entitled to 2 weeks (80 hours) of pay at their regular rate of pay up to a maximum of $511 per day.
    - Employers receive a tax credit for any amount paid for such leave.

- Part-time employees: are entitled to 2 weeks of pay based on their average amount of hours worked at their regular rate of pay up to a maximum of $511 per day.
    - Employers receive a tax credit for any amount paid for such leave.

- Employers cannot require an employee to use other paid leave before this leave.

Likewise, if an employee is unable to work or telework because they have been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19, or if they are experiencing symptoms of COVID-19 and are seeking a medical diagnosis, an employer is required to implement the same leave and pay structure as set forth above.

The FFCRA also provides coverage for caretakers. For example, if an employee is unable to work or telework because the employee is caring for an individual who is subject to a Federal, State, or local quarantine order related to COVID-19 or has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19, employers must implement the following leave and pay structure:

- Full-time employees: are entitled to 2 weeks (80 hours) of pay at 2/3 their regular rate of pay up to a maximum of $200 per day.
    - Employers receive a tax credit for any amount paid for such leave.

- Part-time employees: are entitled to 2 weeks of pay based on their average amount of hours worked at 2/3 their regular rate of pay up to a maximum of $200 per day.
    - Employers receive a tax credit for any amount paid for such leave.

- Employer cannot require an employee to use other paid leave before this leave.

In the event an employee is unable to work or telework because he or she is caring for their child and the school or place of care for that child has been closed, or the child care provider of the employee's child is unavailable due to COVID-19, the above leave and pay structure applies. Likewise, the above leave and pay structure also applies when an employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Similarly, if an employee is unable to work or telework to care for a child under 18 years old whose elementary or secondary school or place of care has been closed, or the childcare provider is unavailable due to COVID-19, an employee is entitled to the following pursuant to the FFCRA:

- 12 weeks of FMLA/FLSA job protections apply.
- First 10 days are unpaid then subsequent days are paid at no less than 2/3 of the regular rate of pay up to a max of $200 per day and $10,000 in the aggregate.
- Employee can choose to use vacation/sick/PTO time during the first 10 days.
- The Secretary of Labor can exempt employers with fewer than 50 employees if paid leave jeopardizes the vitality of the business.

- Employers with 25 or less employees are exempt if the position no longer exists due to the economic condition or other changes in operation.

- FURLOUGH

A furlough is an alternative to layoff. When an employer furloughs its employees, it requires them to work fewer hours or to take a certain amount of unpaid time off.

Exempt Employees

Employers must be careful when furloughing exempt employees so that they continue to pay them on a salary basis and do not jeopardize their exempt status under the Fair Labor Standards Act ("FLSA") and the Illinois Wage and Hour laws. An exempt employee is entitled to pay for any workweek in which they perform any work. Employers should therefore inform employees that work is not authorized during the furlough period without advance written approval.

Non-exempt Employees

Employers also should notify non-exempt employees about the same issue as non-exempt employees generally are entitled to compensation for performing work when not in the office. A signed policy indicating the types of activities that require supervisor approval and the company's expectation for recording any time spent on such activities is something employers should seriously consider.

Fair Labor Standards Act-Wages for Exempt Employees

Under the FSLA, reductions in the predetermined salary of an exempt employee will ordinarily cause a loss of the exemption. Such employees must then be paid at least $684 per week on a salary basis and overtime pay required by the FLSA.

Many employers would like to have employees work fewer hours each week and pay them less. The FLSA does not permit employers to reduce the pay of exempt employees in exchange for working fewer hours. An employer who elects to have exempt employees work four days instead of five per week cannot simply pay them 80 percent of their salaries for these weeks. Any change in exempt employees' salaries must be "permanent." Short-term changes can endanger the employees' exempt status. For example, reducing hours (and salaries) over the summer is not acceptable because the salary change is not permanent.

Without running afoul of the salary test, employers may reduce salaries in response to a COVID-19 slowdown without affecting an employees' exempt status. The overtime exemption will be safe if the reduction in salary and work schedule is implemented prospectively based on a policy designed to address a legitimate business need.

A furlough that encompasses a full workweek is one way to accomplish this, since the FLSA states that exempt employees do not have to be paid for any week in which they perform no work.

Courts have approved furlough policies that achieve a salary reduction when done prospectively and for a fixed period. In addition, employers may allow exempt employees the autonomy to decide which days they work.

An employer may require all employees to go on furlough, or it may exclude some employees who provide essential services. Generally, the theory is to have the majority of employees share some hardship as opposed to a few employees losing their jobs completely.

If the employer seeks volunteers to take time off due to insufficient work, and the exempt employee volunteers to take the day(s) off for personal reasons, other than sickness or disability, salary deductions may be made for one or more full days of missed work. The employee's decision must be completely voluntary.

An exempt employee must be paid for partial-day absences but may have his or her salary reduced for full-day absences due to sickness if the employer offers a paid sick leave benefit and the employee has exhausted that leave or is not yet eligible for the leave.

- LAYOFFS AND REDUCTIONS IN FORCE

  Layoffs and/or Reductions in Force

A layoff is a temporary separation from payroll because there is not enough work for the employee to perform. For example: an employer may consider initiating layoffs related to the COVID-19 crisis. Employers should advise an employee of the following: "While difficult to predict given the COVID-19 crisis, we expect the layoff to last until at least [date]; however, we may need to extend this time frame. We will recall laid-off employees as business needs dictate." Employees are typically able to collect unemployment benefits while on an unpaid layoff, and frequently an employer may allow employees to maintain benefit coverage as an incentive to remain available for recall.

A reduction in force (RIF) occurs when a position is eliminated without the intention of replacing it and involves a permanent cut in headcount. A layoff may turn into a RIF or the employer may choose to immediately reduce their workforce. A RIF can be accomplished by terminating employees or by means of attrition.

Federal and Illinois WARN Act

If an Illinois employer needs to lay off employees, are there any notification requirements?

There may be. When an employer conducts a layoff, Federal WARN and Illinois WARN statutes may require employers to provide advance notification (90 days) to employees and government officials in certain situations. Not all layoffs trigger these requirements, however, and exceptions may apply.

What level of layoffs will trigger notice under Federal WARN?

Generally, 60 days' specific written notice must be provided for a plant closing or a mass layoff. A plant closing is defined as 50 or more countable employment losses at a single site of employment in a 90-day period that results from ceasing operations in one or more operating units. A mass layoff is defined as 50 or more countable employment losses at a single site of employment in a 90-day period that also involves 33% of the active workforce at the site. Employees with less than 6 months of service in the prior 12 months, or who work less than 20 hours per week, are not countable. Notably, temporary layoffs of less than 6 months are not counted as an employment loss under Federal WARN.

What level of layoffs will trigger notice under the Illinois WARN Act?

The Illinois WARN Act requires employers with 75 or more full-time employees to give workers and state and local government officials 60 days advance notice of a plant closing or mass layoff. A mass layoff notice requirement is triggered when 25 or more full-time employees are laid off and they constitute one-third or more of the full-time employees at the site or 250 or more full-time employees are laid off at a single site. A 'plant closure" notice requirement is triggered when an employer closes a site that employs 50 or more employees. An employer that fails to provide notice as required by law is liable to each affected employee for back pay and benefits for the period of the violation, up to a maximum of 60 days. The employer may also be subject to a civil penalty of up to $500 for each day of the notice violation.

If Federal WARN or Illinois WARN is triggered, are there any exceptions that apply?

Yes. Federal WARN permits shortened notice if terminations result from circumstances that were not reasonably anticipated 60 days before employees are terminated. However, shortened notice requires giving actual written notice, with as much advance notice as can be given and an explanation for the shortened notice. The State of Illinois WARN statute also includes exceptions for shortened notice, which includes an unforeseeable business circumstance defense and if the Department of Labor determines at the time that notice would have been required the employer was actively seeking capital or business.

Is there an exception to Federal WARN or Illinois WARN for the COVID-19 pandemic?

That is not clear. The Federal WARN statute has provisions addressing terminations due to natural disasters. Those provisions have not been interpreted yet as to whether they apply to cover an epidemic. It is unclear whether a court would consider pandemics to be "similar effects of nature" to "floods, earthquakes, droughts, storms, tidal waves or tsunamis…" as referenced in the Federal WARN regulation relating to natural disasters. Illinois WARN does not include any similar exception.

- **HEALTHCARE COVERAGE**

Healthcare Insurance

A group health plan must provide coverage without any cost-sharing requirements, such as deductibles, co-payments and co-insurance, or prior authorization or other medical management requirements, for:

- **The costs of a test to detect or diagnose the virus that causes COVID-19; or**
- **Healthcare provider visits, including telehealth visits, urgent care and emergency room visits, that result in an order for or administration of a test to detect or diagnose the virus that causes COVID-19.**

Healthcare Coverage After Termination or Reduction in Hours

Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") requires employers that employ at least 20 employees to temporarily extend their group health coverage in certain instances where coverage under the plan would otherwise end. No amendments or modifications have been made to COBRA in response to the COVID-19 pandemic. The law remains the same for continued healthcare coverage after an employee separates from its employer as a result of certain qualifying events. For example, if

an employee is terminated (other than for gross misconduct), has a reduction of hours, or leave of absence, the employee, their spouse, and dependent children are entitled to 18 months of health coverage. For loss of coverage due to the death of the employee, the continuation term for dependents is 36 months.

The Illinois Health Insurance Continuation Law

The State of Illinois has enacted Illinois Health Insurance Continuation Rights Law ("IHCL"), also referred to as Illinois' "mini-COBRA" law, which applies to an employer group of any size. IHCL protects individuals, their spouses, and eligible dependents who lose their group health insurance coverage due to termination of employment or reduction in hours below the minimum required by the group plan for a period of twelve months. Dependents, on the other hand, can qualify for benefits for up to two years under IHCL. However, IHCL does not apply to self-insured employers, self-insured health and welfare benefits plans such as union plans, or insurance policies or trusts written in other states.

Employers offering fully insured group health plans, and HMO coverage, regardless of group size are subject to IHCL. For HMOs, the Illinois law applies to contracts written outside of Illinois if the HMO member is a resident of Illinois and the HMO has established a provider network in Illinois. To be eligible for IHCL, the employee and his or her eligible dependents must have been continuously covered for at least three months immediately before the termination of employment or reduction in hours below the minimum required by the group plan.

IHCL does not apply in certain scenarios, which includes if the employee was terminated for committing a work-related felony and has admitted to or been convicted of such felony, the employee was terminated for a work-related theft for which the employer was in no way responsible and has admitted to or been convicted of such theft, the employee is covered by Medicare, or the employee is covered by any other insured or self-insured plan of group hospital, surgical or medical coverage.

In general, the maximum period of coverage under IHCL is twelve months after the date the insurance stopped due to the employee's termination or reduction in hours below the minimum required by the group plan. IHCL may terminate earlier than the maximum period in certain scenarios, which includes if the employee becomes eligible for Medicare, the employee is covered by any other insured or self-insured group medical, hospital or surgical plan, the employee's failure to make timely premium payments for coverage, or the employer's group policy is terminated in its entirety and not replaced with another group policy.

Employer and Employee Notice Requirements

The employer must notify the employee in writing of his or her rights to the continuation coverage within 10 days after the employees' termination of employment or reduction in hours. The notification must be given in person or by mail. The employee must request continuation under the Illinois law within the 30-day period following the later of the date of employment termination or reduction in hours, or the date written notice of the right to continuation is presented or mailed to the employee. In no event may the employee elected continuation under the Illinois law more than 60 days after the date of employment termination or reduction in hours below the minimum required by the group plan.

The Illinois Spousal Continuation Law

The Illinois Spousal Continuation Law ("ISCL") protects a covered spouse and dependent children who lose group health insurance coverage due to death or retirement of the employee or divorce from the employee. Employers offering fully insured group health plans, and HMO coverage, regardless of group size are subject to ISCL. However, ISCL does not apply to self-insured employers, self-insured health and welfare benefit plans such as union plans, or insurance policies or trusts written in other states. For HMOs, the Illinois law applies to contracts written outside of Illinois if the HMO member is a resident of Illinois and the HMO has established a provider network in Illinois

ISCL may be triggered when certain qualifying events occur, which includes divorce from the employee, death of the employee or retirement of the employee as follows: (1) the divorced or widowed spouse (any age) and dependent children of the employee who were covered under the group plan on the day before the qualifying event; or (2) The spouse and dependent children of a retired employee, if the spouse is age 55 or older, who were covered under the group plan on the day before the qualifying event.

ISCL offers greater protection than federal to spouses aged 55 or older and their dependents upon divorce or death of the employee. Note that if an employer is subject to both ISCL and COBRA, the employer must offer both options when applicable, and the individual(s) eligible for both options are only able to choose one of the options.

Continuation resulting from an employee's death or divorce must be offered for a maximum period of two years if the spouse is under the age 55 at the time of the qualifying event. If the spouse is age 55 or older at the time of the qualifying event, the maximum period of coverage extends until the spouse is eligible for Medicare. Continuation resulting from an employee's retirement is only available to spouses who are age 55 or older at the time of retirement. The maximum period of coverage extends until the spouse is eligible for Medicare.

Spousal continuation may terminate earlier than the maximum period of cover in certain circumstances, which includes the spouse's failure to make timely premium payments, the group coverage would terminate even though the spouse was still married to the employee (unless the employee retired during the election period), the spouse becomes an insured employee under any other group health plan, or the spouse remarries.

Spouse, Employer and Insurance Notification Requirements

The eligible spouse must notify the employer and insurance company in writing of the dissolution of marriage or death or retirement of the employee within 30 days of the qualifying event. The employer must notify the insurance company within 15 days after receiving the spouse's request for spousal continuation. The insurance company must notify the eligible spouse of the right to continuation by certified mail, return receipt requested, within 30 days after receipt of the notice from the employer.

In this challenging and unprecedented time, the Kaufman, Dolowich & Voluck attorneys look forward to assisting employers who are grappling with complex issues in an effort to mitigate the impact of the COVID-19 pandemic on their employees and businesses. KD's Labor and Employment Law Group is continuing to monitor Illinois directives and will provide updates accordingly. For guidance and/or more information, please contact an experienced member of KD's Labor & Employment Law Practice Group at (312) 759-1400.