



To: IHLS Member Libraries  
From: Leslie Bednar, Executive Director  
Date: March 26, 2020  
Re: Questions from Member Libraries

We brought questions posed by public library directors to our attorney, Phil Lenzini. Mr. Lenzini was kind enough to provide his legal opinion, but as the wise man he is, ended the document with a caveat stating that because each library's circumstance is different, every library should contact their own local counsel for advice. We hope this document is helpful!

**1. With the Governor's Executive Order of March 20<sup>th</sup>, where do public libraries stand as far as Essential Services?**

For the context of the Governor's Executive Order #2020-10 (usually referred to as the "stay home" order of March 20, effective beginning March 21st at 5:00 pm and tentatively until April 7), libraries are NOT "essential business operations." It might be conceivable that some specific library operations or services due to their connection to K-12 education, OR healthcare and public health operations set forth in that Order could be performing "essential services" but these would be exceptional programs and not typical of public library programs or operations thus far.

Of note, as set forth in the Ill. Department of Commerce & Econ. Opportunity Essential Business & Operations guidance, non-essential businesses (like libraries) are allowed to perform "Minimum Basic Operations" at the work place even if otherwise closed so long as "social distancing" is maintained. MBO includes maintaining the value of inventory (which for a library might include collection work, weeding activity, records maintenance, etc.), payroll, security and ensuring employees can work remotely.

**2. If a public library building is closed, what do public library directors and boards need to know about managing staff?**

**a. Can the board mandate the continued work of staff within a closed building?**

- b. What are the options for someone who is asked to work in a building that is closed, but has health concerns for themselves or someone in their family?**
- c. Can the board be held liable if an employee is expected to work and contracts COVID-19 from another worker**

Under the stay home Executive Order, the library director and board cannot mandate staff (except if there was a demonstrable essential service program or activity involved, i.e. very special circumstances) work in a closed building. The penalty for attempting that isn't completely clear though #17 of the Order entitled "Enforcement" indicates generally it is to be enforced by State and local law enforcement pursuant to the Illinois Emergency Management Agency Act.

The director and board can permit some work (i.e. "Minimum Basic Operations" work, see #1 above) for those employees that want to do it so long as they take appropriate precautions (including "social distancing" hand washing, etc.). Under the EO in the library context, any person who is fragile or has a family member in the household that is such can refuse. Of course during times when an Executive Order or federal law isn't applicable, they may eventually be terminated or laid off and the employer liability for such job action isn't completely clear at this point as there no doubt will be dozens of different material circumstances (and even that will follow the various unique circumstances of things like PTO accruals (vacation days, sick leave days, comp time etc. under applicable local policies) and more importantly beginning April 1<sup>st</sup> the employee rights under the "Families First Coronavirus Response Act" [FFCRA] (more of which will be under #4 below)

So there are some mandated paid benefits for government employees that apply or soon will apply to library staff (violations of which would no doubt cause liability for the library). These clearly show the federal and state government intent to stabilize and maintain paid employment (or significantly higher unemployment benefits chargeable to the employer). Further, either adjunct or interfaced with such "non-working" mandated benefit time, many employers and libraries are indeed working remotely (whether 100% or some lesser fraction may create other variables for "hourly" employees, though for FLSA exempt salaried employees, there is no difference because any remote working would be considered 100% pay anyway, just like "normal" weeks of 150% work are considered 100%). Voluntarily coming into a closed to the public building to facilitate such remote working is permitted, as "Minimum Basic Operations" though travel should be at a minimum when it is not for essential activities or services, and all social distancing practices to the greatest extent feasible must be maintained.

While it is not clear and there is no history yet, it would appear IF it could be shown (perhaps by a process of elimination) that an employee contracts the virus from another worker or even just working doing a task for the library that it might be covered under what's properly called the Illinois' Occupational Disease Act (and which some mistakenly refer to as the Worker's Compensation Act, though they are similar). Although not absolutely clear at this point, there will likely end up being findings of some liability if a connection can be shown.

There will likely be some libraries (or other local government employers) especially depending on how long this circumstance lasts over time, who will lay off or terminate some employees notwithstanding the clear federal and state intent to perpetuate employment, and that immediate situation will no doubt lead to unemployment claim filings and the employer costs for such. The most recently adopted federal Act being signed into law shortly will impact and significantly raise employer costs of such unemployment claims, and is also designed to encourage employers to not terminate or lay off because it would start UEC immediately and also extend the length of such benefits dramatically.

**Note for Local Libraries** (i.e. city, village and townships): Substantial confusion exists under the stay home EO because municipalities will commonly have some or several elements that ARE classified as “Essential Government Functions” and thus “Essential Businesses” including “First responders, emergency personnel, law enforcement, safety and welfare” and perhaps even others where different rules (i.e. those for essential businesses) will apply. BUT it is clear under the EO that their local libraries are NOT included in that designation and very different rules, summarized above will apply.

- 3. If a building is closed and staff are not allowed in the building and are not working remotely, what are the best practices for employee compensation? One would assume it is best practice to pay those who are missing scheduled work. For how long? Would there be a consequence for the board if staff were not paid? Is it true that per the governor’s March 20<sup>th</sup> Executive order, municipal employees were to be paid through April 7<sup>th</sup>. If that is the case for out municipal libraries, what about districts?**

The situations will vary with so many differences it is difficult to provide general, correct answers. There are differences between full and part timers, and there is a difference (alluded to above) between salaried, FLSA exempt (which will include most directors if not all) and hourly employees, etc. One difference that won't likely matter is the size of the library and number of employees they have since state and federal laws so far apply to all sizes under 500 employees. Also, since they are so far mostly applying to any employee who has worked 30 days for the employers (i.e. on the payroll record March 2, 2020) there aren't many who won't be eligible as new hires.

The "best practice" is continuing "normal" payroll for all or almost all employees, merging both the use of accrued PTO (either previously earned under local policy or post April 1 federally mandated) and working either remotely on productive projects for the library operations or at “minimum basic operations” though under strict “social distancing” practices. The remote working will no doubt vary with the position and skills of the employees, but in general they are only limited to the imagination and range widely. Though most libraries are not directly circulating to the public yet, there is of course e-circulation some libraries are using and in some select areas “reference” work. It may be almost a week to week question or status, but actually these circumstances are probably "easier" for libraries that almost all other employers (that’s because 95% of all revenue is property taxes paid last year or this next summer and almost no money comes from day to day operations like a retail store, bar or restaurant needs)

and on the cost side most employees are paid relatively low sums. So, actually the calculus for payroll in libraries is far different than most employers.

The biggest consequence for boards if staff are not paid (besides any violations of specific laws or PTO laws or policies) will be unemployment compensation claims which are soon to be far more expensive than they once were. For unemployment compensation claims, if libraries use the "reimbursement method" (where they have not continually prepaid premiums) they will eventually get significant (i.e. high) bills from IDES for amounts paid out. If they have used the prepaid insurance premium method, they will most likely see a significant increase in those charges going forward.

In the municipal context, as noted above, there certainly are first responders, healthcare operations personnel, and many others which may well be seen in respect of the stay home EO and the DCEO guidelines as municipal employees which are "essential government functions" and as such are not to be laid off, but that doesn't include any libraries unless there are very special essential activities going on at that library (but these are so unlikely or special that thus far there haven't been any shown). Therefore the same "stay home" EO rules apply to both local libraries and library districts.

#### **4. Can you share any interpretation of the Protected Families First Coronavirus Response Act? Will there be a financial benefit to libraries?**

First off, it is important to understand that an "employer" is all governmental units and any employer that has fewer than 500 employees. "Eligible employees" are those employees who have worked at least 30 days for the library, either full or part time (i.e. were on the payroll record March 2, 2020). Before April 1, 2020 every employer and therefore every library must post in a conspicuous place in the library the Notice below. That Notice does a good job laying out the benefits and employee rights effective April 1, 2020, but in brief there will be at least 2 weeks of paid sick leave (10 days or 80 hours and for part timers their proportionate share) required to be given to every governmental employee. Whatever has been given to employees prior to April 1 either gratuitously, as required by local policies, or remote work, is completely immaterial to these days and rights which can not be reduced by such.

There is possibly up to 12 weeks (i.e. 10 additional weeks as these do not run consecutively with the paid sick leave time off) of somewhat partial pay for an extension of Family and Medical Leave (but these weeks are only required to be paid for the situation where they are caring for a child whose school or place of care is closed due to the virus). The other provisions of unpaid leave for FMLA or the provisions under local adopted leave policies (and whether paid or unpaid) continue independently.

As of this time, it is not clear if there is any financial benefit to libraries. Eventually it is likely dependent on how the state and federal government decide to "reimburse" or benefit employers (for instance in the current federal bill debate they are considering loans to employers that IF employees are kept on staff those loans would eventually be forgiven and changed to grants - another example of the preference benefits of maintaining employment). "Tax credits" which are of no real use to libraries that pay no direct income taxes are also often discussed as the

method to be used here. And though they are not being discussed as much now as before a reduction of "pay roll" taxes (which of course has the long term effect of under-funding social security and medicare) though not benefiting libraries would at least benefit their employees with higher take home pay. Presently that appears to be dropped in favor of checks or direct deposits. In any event, most likely there will be minimal financial benefits coming from state or federal governments to libraries, though there might be some grant programs to assist recovery, and there may be some available low cost loans if a library has particular cash flow needs.

**This brief summary is provided as a service to our System Members and in an attempt to answer common questions public libraries have in light of the COVID-19 Pandemic, particularly relating to the Stay Home Executive Order of the Governor and the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act of the Federal government. Due to the numerous variable material circumstances of Illinois public libraries including whether they are Local Libraries or District Libraries, whether it is full or part time employees involved, whether employees are exempt or not under FLSA provisions, and of course the vast differences in local adopted personnel policies in place especially in regards to paid time off leaves, remote work, personnel scheduling, general answers can not be specific enough to apply or substitute for legal advice as to your specific facts and circumstances. Therefore all public libraries should consult with their own legal counsel regarding their specific situation and questions, and their employment policies and practices and also as to any necessary updates or amendments to state and federal law.**