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# **COVID-19:** **Best Practices Guide**

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# COVID-19: Best Practices Guide



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## General Overview

For the Municipality/Public Entities

### 01. Establish A Team

Establish a team from different departments to assess your organization's coronavirus needs and risks. Determine the team's command and decision-making structure. Choose one person to be the spokesperson for the public entity.

### 02. Create A Communications and Contingency Plan

It's important to agree internally about what will be communicated before any announcements are made to assure that messaging will be consistent across different audiences. Should an outbreak occur near your offices, what should happen first, second and third? Who is authorized to make prompt decisions? Who should be informed? By what communication methods? What messages should they hear? What are the protocols for providing updates?

### 03. Create A Human Resources Plan

Explore what the rules will be if your employees need to work from home. Regarding travel, see the World Health Organization's (WHO) written travel guidelines for COVID-19. Will pay continue as normal? What about non-salaried employees? What does your government require? Review telecommuting policies and accountability. Beware of bias, discrimination and exclusion at your organization, and always be protective of employee personal privacy and confidentiality as required by law. Follow up on reports of discrimination and respond to concerns.

### 04. Communicate With Your Staff

Communicate with your staff on a regular basis to prevent fear-based rumors. Prepare statements/intranet news and continue to educate the employees and regularly pass on information to them including what the company is doing to handle COVID-19.

### 05. Establish A Cleanliness Protocol

Do a SWOT (Strengths, Weaknesses, Opportunities, Threat) Analysis. What protocols for cleanliness does your organization have or need? Is your custodial staff increasing its cleaning and disinfection of touch surfaces (restrooms, doorknobs, kitchen and dining areas)? Do they have the correct personal protective equipment? They should avoid cleaning methods that might aerosolize pathogens (pressure washing, steam cleaning). What emergencies should you plan for?

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## 06. Monitor The CDC Website For Updates

Develop a protocol system for monitoring daily, hourly and emergency information. Your organization should seek advice from scientific and medical officials with experience in epidemiology, such as those in the WHO, the U.S. CDC, or similar national government health organizations in other countries.

## 07. Communicate With Your Public

Maintaining their trust and confidence during a potential coronavirus-related disruption is critical (identify concerns, steps taken to protect public from exposure to the virus, provide resources, update frequently).

## 08. Prepare For Media Inquiries

It is recommended that organizations only discuss their policies relating to the outbreak, their advice to employees on staying healthy, and their plans to keep meeting customer/public needs.

## 09. Plan For The Future

Evaluate your practices and plan to sustain them in the event the virus grows stronger or comes back. Monitor the effectiveness of communication to different audiences. Immediately address fear and prejudice against different groups of people directly and with science-based facts.



Recommended precautions to avoid exposure to the virus:

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## Hygiene and General

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01. Wash your hands often with soap and water for at least 20 seconds.
02. If soap and water aren't available, use hand sanitizer that contains at least 70% alcohol.
03. Avoid touching your eyes, nose and mouth with unwashed hands.
04. Avoid close contact with people who are sick.
05. Stay home when you are sick and do not return to work or school until you have been fever-free without the use of fever reducing medication for at least 24 hours.
06. Avoid large crowds. Put distance between yourself and other people if Covid-19 is spreading in your community.
07. Keep sugars to a minimum.
08. Keep your exercise regimen, if you feel well.
09. Get plenty of sleep. A good night's sleep boosts your immune system.



Recommended precautions to avoid exposure to the virus:

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## Your Staff

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01. Instead of meeting face-to-face, consider any form of telephonic/video chat apps/websites.
02. Allow staff to work from home, where possible. The fewer people in contact with each other, the better we can contain this virus.
03. Sick employees should be sent home immediately.
04. If employees feel sick before coming to work, require them to stay home until they are without a fever for 24 hours or more.
05. Require handwashing for at least 20 seconds for all staff and members of the public (where applicable).
06. Discourage gatherings of people in small areas (meeting rooms, kitchens, etc.).
07. Prohibit gatherings/events by large groups of people (more than 100, though that number can be much lower, if needed).



Recommended precautions to avoid exposure to the virus:

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## Social Distancing

Public Safety Organizations – Fire, EMS, Law Enforcement – in consultation with their medical director and local public health officials, should consider taking any or all actions below to reduce opportunities for coronavirus transmission and increase social distancing:

01. Restrict building access with locked doors or a secured indoor lobby. Designate most areas of the station for only currently on-duty personnel.
02. Cancel station tours by youth and school groups.
03. Postpone non-essential in-person continuing education of all types - lecture, hands-on and high-fidelity simulation.
04. Deliver company training, roll call or shift briefing virtually with a conference call or web meeting.
05. If a group of personnel must gather in a meeting room, ensure that chairs, tables and all training equipment are disinfected before and after the meeting.
06. Require any face-to-face meeting attendees to spread out so they are at least six feet apart. Don't pass snacks, training materials or other items from person to person.



Recommended precautions to avoid exposure to the virus:

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## Social Distancing Cont.

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07. Postpone non-essential station visit for equipment demonstrations or checks. Ask the vendor to provide demonstrations by live or recorded web video.
08. Reduce the frequency of or cancel citizen visits to the station for questions, permits or blood pressure check. If necessary, set-up a specific room or area where these visits might continue, but don't allow the citizen (often a friendly neighbor) to linger or visit other areas of the station.





Recommended precautions to avoid exposure to the virus:

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## Travel

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The U.S. government has taken unprecedented steps with respect to travel in response to the growing public health threat posed by this new coronavirus:

- Foreign nationals who have been in China or Iran within the past 14 days cannot enter the United States.
- U.S. citizens, residents, and their immediate family members who have been in China or Iran within the past 14 days can enter the United States, but they are subject to health monitoring and possible quarantine for up to 14 days.
- On March 11, a similar policy was expanded to include 26 European countries for a period of 30 days.
- On March 8, CDC recommended that people at higher risk of serious COVID-19 illness avoid cruise travel and non-essential air travel.
- For additional travel information visit:  
[www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notice.html](http://www.cdc.gov/coronavirus/2019-ncov/travelers/map-and-travel-notice.html)



## Information Technology And Cyber Security Recommendations

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Here are some helpful tips on IT and Cyber Security during COVID-19:

01. Be very cautious with real interactive dashboards of Coronavirus infections and death rates. They are being used in malicious websites and emails to spread password-stealing malware.

*(For Example: Cyber - Criminals have started disseminating real-time, accurate information about global infection rates to the pandemic in a bid to infect computers with malicious software.)*

02. Cyber - Criminals have also started selling digital Coronavirus infection kits that use the interactive maps as part of Java-based malware deployment schemes.

*(For Example: They offer \$200 kit costs if the buyer has a Java code signing certificate and \$700 if the buyer wants to use the seller's certificate.)*

03. Cyber - Criminals have started sending email scams that prey on a person's desire to help during the Coronavirus crisis. These malicious emails inform the recipient to open an attached document that includes information about safety measures which then directs users to a page that asks for their email address and password. Please do not provide email address, passwords or personal information.

It is important you are cautious on attachments in emails. Sometimes these malicious attachments will be PDFs, MP4s and Docx files indicating they are coming from the US Centers for Disease Control and Prevention (CDC). Any grammatical errors in the address or message may be indicative of a potential cyber attack.

04. Ensure backups are adequately being completed and test restoring data from the backups. There should be one backup disconnected from the network in case of a ransomware attack.
05. Update VPNs, network infrastructure devices, wireless devices, and devices being used to remote into work environments with the latest operating systems, software patches and security configurations.



## Information Technology And Cyber Security Recommendations Cont.

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Here are some helpful tips on IT and Cyber Security during COVID-19: Cont.

06. Ensure IT personnel are prepared to ramp up remote access log review, attack detection, and incident response/recovery.
07. Implement multifactor authentication on all VPN connections. If it's not implemented, require remote workers to use very strong passwords.
08. Ensure there's a telephone system or mobile business phone for the remote workers along with the monitors, laptops, and printers. Document any changes in personnel phone numbers for emergencies.
09. Create a Telework policy that outlines expectations, hours, duration, equipment, software, monitoring, confidentiality, removable media, security, reviews, travel expenses, performance standards, communication, accessibility, and emergency operations including dependent care and other non-employment responsibilities.
10. Having a security awareness training program implemented is very important. When discussing your security awareness training program, we encourage to steer away from in-person (large group) training due to the current COVID-19 virus threat.



## Working From Home - Cyber Security Recommendations

- Ensure Virtual Private Networks (VPN) and other remote access systems are fully updated with the latest operating systems, patches, and security configurations. Unpatched network infrastructure equipment, servers and end user equipment continue to be an attractive target for malicious actors.
- If a VPN is not implemented, require all users, especially remote, to use very strong passwords. A minimum length of 16 characters containing numbers, symbols, upper/lower case letters, and spaces is recommended. Attackers can steal a weak password using dictionary attacks and automated tools.
- Avoid using Remote Desktop Protocol (RDP), if possible. This protocol connects a user to another computer remotely over a network connection. This leaves RDP client ports open to the Internet, leaving vulnerability to attackers that scan blocks of IP addresses for open RDP ports.
- Enhance system monitoring to receive early detection and alerts on abnormal activity. Ramp up remote access log review and attack detection.
- Implement multi-factor authentication protection methods to reduce the potential for malicious activity.
- Ensure all machines and wireless devices have properly configured network firewalls as well as anti-malware and intrusion prevention software installed. Most operating systems include a built-in firewall feature to enable for added protection.
- Test the remote access solutions capacity and increase capacity, if needed.
- Ensure disaster recovery, continuity of operations plans, or business continuity plans are up to date. Update incident response plans to consider workforce changes in a distributed environment.
- Ensure backups are adequately being completed and test restoring data from the backups. There should be one backup disconnected from the network in case of a ransomware attack.
- Ensure there's a telephone system or mobile business phone for the remote workforce along with the monitors, laptops, and printers. Document any changes in personnel numbers for emergencies.
- Create a Telework policy that outlines expectations, hours, duration, equipment, software, monitoring, confidentiality, removable media, security, reviews, travel expenses, performance standards, communication, accessibility, and emergency operations including dependent care and other non-employment responsibilities.



## Working From Home - Cyber Security Recommendations

- Increase awareness of information technology support mechanisms and support phone numbers for employees who work remotely.
- Having a security awareness training program implemented is very important. When discussing your security awareness training program, we encourage to steer away from in-person (large group) training due to the current COVID-19 virus threat.
- Be aware of an increase in phishing attacks that use a combination of email and fake websites to trick users into revealing sensitive information.
- Be very suspicious of interactive dashboards COVID-19 infections and death rates being used in malicious websites and emails to spread password-stealing malware. Criminals have also started selling COVID-19 infection kits for deployment of malware.

*(For Example: Cyber - Criminals have started disseminating real-time, accurate information about global infection rates to the pandemic in a bid to infect computers with malicious software. Also, offering \$200 kit costs if the buyer has a Java code signing certificate and \$700 if the buyer wants to use the seller's certificate.)*

- Be cautious of disinformation campaigns that spread discord, manipulate public conversation, influence policy development, and disrupt markets.
- Use extreme caution. Avoid clicking on links in unsolicited emails and be wary of email attachments.
- Never reveal personal information or financial information in emails and do not respond to email solicitations requesting this information.
- Use only trusted national online medical resource websites for up-to-date and fact-based information about COVID-19 at: [www.cdc.gov/](http://www.cdc.gov/) and <https://www.who.int/>
- Verify a charity's authenticity before making donations. Review the Federal Trade Commission's blogs for current information on avoiding COVID-19 related scams at: [www.consumer.ftc.gov/blog/2020/02/coronavirus-scammers-follow-headlines](http://www.consumer.ftc.gov/blog/2020/02/coronavirus-scammers-follow-headlines)
- Visit only official state agency websites and social media accounts such as: Public Health, Governor's Office, Homeland Security and Emergency Management, Attorney General, and Department on Aging.
- Volunteer your due diligence by helping to report scams and identity theft and other cyber-related crimes.



## Families First Coronavirus Response Act

On March 18, 2020, the Families First Coronavirus Response Act was enacted by Congress and quickly signed by the President. Most of the relevant provisions go into effect April 2, 2020. It is important to note that most employers will be impacted by the Emergency Sick Leave Act and Emergency FMLA provisions put into place by the federal government in response to the COVID-19 pandemic.

### I. Emergency Paid Sick Leave Act

The law applies to all private employers with 500 employees or less and all public entities. In addition to any existing sick leave provided by an employer, the new law

requires employers to offer emergency paid sick time (EPST) for up to 10 days, provided that the employee meets one of the following conditions:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The 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.

Full time employees are entitled to 80 hours of EPST. Part-time employees must receive EPST an amount equal to the number of hours the employee works on average over a two-week period.

If the employee meets the criteria of sections 1-3 above, EPST must be paid at the employee's regular rate (unless Federal/State/Local Minimum wage rates are higher) up to a maximum of \$511 per day (and \$5,110 in the aggregate).

If the employee meets the criteria of sections 4-6 above, EPST must be paid at 2/3 of their regular rate, to a maximum of \$200 per day (and \$2,000 in the aggregate).

*Note: It is important to note that an employee who meets the criteria under Section 4 above (An employee who is caring for an individual who is subject to Section 1 and 2), will likely also be subject to those same quarantine / isolation provisions and will therefore meet the criteria under Section 1 or 2 to be paid at the higher rate.*



## Families First Coronavirus Response Act

- There is no minimum employment period for the employee to accrue EPST and is available for immediate use, if an employee meets one of the qualifying conditions above.
- EPST does not carry over from one calendar year to the next.
- Employers are not required to pay out unused EPST at an employee's termination.
- After the first workday taking EPST, employers may require employees to use reasonable notice procedures to continue using EPST.
- Employers are prohibited from discharging, disciplining, or otherwise discriminating against anyone who takes EPST, or takes action to enforce rights under the Act or who cooperates with any proceeding to enforce such rights.
- Employers must conspicuously post a notice of employee rights in a form to be prepared by Dept. of Labor and Dept. of Labor must make a model notice available by next week.
- The Act does not diminish employees' rights under any otherwise applicable federal, state, or local law; collective bargaining agreement; or existing employer policy.
- The Act also empowers the Secretary of Labor to issue regulations to exclude certain employees employed by health care providers or emergency responders from entitlement to paid sick leave and to exempt small businesses with fewer than 50 employees.

*NOTE: If the Secretary of Labor does not issue regulations to exempt small business with fewer than 50 employees by April 2, 2020 (effective date), employers should consider compliance vs. potential sanctions under the Fair Labor Standards Act.*

- EPST provisions take effect 15 days after enactment (April 2, 2020) and lasts until December 31, 2020.

### **Specific guidance for Employers who are a party to Multi-Employer CBAs**

Employers who are party to multiemployer collective bargaining agreements may meet their obligations by contributing to a multiemployer fund, plan, or program based on the hours its employees are entitled to under the Act while working under the collective bargaining agreement—as long as employees may secure pay from the fund, plan, or program for qualifying uses under the Act.



## Families First Coronavirus Response Act

Paid sick time is calculated based on the number of hours an employee would otherwise normally be scheduled to work. For part-time employees with variable schedules where employers cannot determine with certainty the number of hours the employee would have worked, employers may use the average number of hours scheduled per day over the preceding six-month period (including leaves) or, if the employee did not work during that period, the reasonable expectation at hiring of the average number of hours the employee would have normally been scheduled per day.

### II. Emergency Family and Medical Leave Act

The law extends coverage for this component to all public employers and all private employers with fewer than 500 employees (even those with fewer than 50 employees).

The Emergency FMLA (EFMLA) coverage provides up to 12 weeks of job-protected leave to employees who are unable to work (or telework) due to need to care for a minor child whose school or place of care has been closed or if the child's care provider is unavailable or due to an emergency with respect to COVID-19 declared by a federal, state or local authority.

*NOTE: EFMLA is only applicable to employees who are unable to work / telework due to childcare issues related to COVID-19. It is important to remember that an individual who is infected or quarantined due to exposure would be eligible for regular unpaid FMLA coverage. a*

Under the expansion, employees need only be employed for 30 calendar days to access this leave, with no threshold for minimum hours.

*NOTE: While the first ten days of EFMLA are technically unpaid, Employees may use EPST coverage as discussed above or any other paid leave already accrued (vacation, regular sick time, personal, etc.) After the initial ten day period, employees utilizing EFMLA are paid at a rate of at least two-thirds of the employee's regular pay rate according to the number of hours the employee is otherwise scheduled to work, up to a maximum of \$200 per day (\$10,000 in the aggregate).*

Where need to use this leave is foreseeable, employees must provide employers with notice of the need to use leave as practicable.

Generally, the FMLA requires that employees who take qualifying leave be restored to the same or an equivalent position upon returning from leave. However, employers of fewer than 25 employees are not required to provide restoration rights for EFMLA leave if:





## Families First Coronavirus Response Act

1. The position the employee held at the beginning of leave does not exist due to conditions that affect employment and are caused by a public health emergency during the leave period,
2. The employer makes reasonable efforts to restore the employee to an equivalent position,
3. Those reasonable efforts fail, and the employer makes reasonable efforts to contact the employee if an equivalent position becomes available for one year after the earlier of 12 weeks after the employee's leave commences or the date on which the qualifying need to use leave concludes.

The Secretary of Labor is empowered to issue regulations to exclude certain health care providers and emergency responders from the expanded EFMLA requirement.

The Secretary of Labor also is tasked with issuing regulations to exempt small businesses (employers with fewer than 50 employees) where the provision of leave would jeopardize the viability of the business as a going concern.

This emergency EFMLA expansion takes effect 15 days after enactment (April 2, 2020) and lasts until December 31, 2020.

### III. Tax Credits for Employers

#### A. EPST

In order to lessen the financial burden of EPST, the Act provides for a refundable payroll tax credit equal to 100 percent of qualified sick leave paid by an employer for each calendar quarter. The tax credit is allowed against the employer portion of Social Security and Medicare taxes.

The amount of the EPST credit for employees who must self-isolate, obtain a diagnosis, or comply with a self-isolation recommendation is capped at \$511 per day. For amounts paid to employees caring for a family member or for a child whose school or place of care has been closed, the amount of the credit is capped at \$200 per day.

The aggregate number of days considered per employee may not exceed the excess of 10 over the aggregate number of days considered for all preceding calendar quarters.

Self-employed individuals also are entitled to a refundable income tax credit if the taxpayer must self-isolate,



## Families First Coronavirus Response Act

obtain a diagnosis, or comply with a self-isolation recommendation with respect to coronavirus. For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the refundable income tax credit also is capped. For self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to coronavirus, the income tax credit also is capped.

The tax credits are in place starting with a date to be set by the U.S. Treasury Department and ending on December 31, 2020.

### **B. EFMLA**

The Act also provides for a refundable payroll tax credit equal to 100 percent of qualified EFMLA paid by an employer for each calendar quarter. The tax credit is allowed against the employer portion of Social Security taxes. The amount of qualified EFMLA wages considered for each employee is capped at \$200 per day and \$10,000 for all calendar quarters.

Self-employed individuals also are entitled to a refundable income tax credit. These tax credits also are in place starting with a date to be set by the U.S. Treasury Department and ending on December 31, 2020.

The foregoing memorandum was written by Stephen V. Siana, Esquire, Christopher P. Gerber, Esquire, Michael G. Crotty, Esquire and Eric M. Brown, Esquire. Should you have questions regarding the content of this document, please contact Siana Bellwoar at 610-321-5500, or at the respective attorney email addresses: [ssiana@sianalaw.com](mailto:ssiana@sianalaw.com); [cpgerber@sianalaw.com](mailto:cpgerber@sianalaw.com); [mgcrotty@sianalaw.com](mailto:mgcrotty@sianalaw.com); [embrown@sianalaw.com](mailto:embrown@sianalaw.com).



## Memorandum

**TO:** Pennsylvania Intergovernmental Risk Management Association

**FROM:** Siana Bellwoar

**RE:** COVID-19 Impact on Municipal Operations

**DATE:** March 20, 2020

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The COVID-19 virus has thrust a range of novel, unanticipated issues on municipalities throughout Pennsylvania: how local agencies conduct meetings; the extent to which they remain open and operational; and how they manage their employees during the emergency. The practical and legal landscape is changing day-to-day, if not hour-by-hour. In light of these matters, allow this memorandum to serve as a framework for addressing with your governing body, staff, emergency management coordinators and Solicitor in handling these matters.

### **Public Meetings and the Sunshine Act**

The social distancing and quarantine mandates render compliance with the Sunshine Act challenging. There has been conflicting advice issued to municipalities. Some advise that meetings must be held in public; others that virtual meetings are acceptable; while others suggest that action can be taken at emergency meetings or executive sessions. While answering these questions might be an avoidable inconvenience in the short term, they will be inevitable to address them as the emergency measures stretch into April and beyond. Ultimately, the answer to these questions is not clear cut, and is subject to varied interpretation.

The foregoing memorandum was written by Stephen V. Siana, Esquire, Christopher P. Gerber, Esquire, Michael G. Crotty, Esquire and Eric M. Brown, Esquire. Should you have questions regarding the content of this document, please contact Siana Bellwoar at 610-321-5500, or at the respective attorney email addresses: [ssiana@sianalaw.com](mailto:ssiana@sianalaw.com); [cpgerber@sianalaw.com](mailto:cpgerber@sianalaw.com); [mgcrotty@sianalaw.com](mailto:mgcrotty@sianalaw.com); [embrown@sianalaw.com](mailto:embrown@sianalaw.com).

# Open Meetings Memo

## Municipal Operations



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The Pennsylvania Sunshine Act requires that “official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless” subject to one of the limited statutory exceptions. 65 Pa.C.S. § 704. The date, time and “place” of the public meeting must be advertised, 65 Pa.C.S. § 705, and a “reasonable opportunity” must be made for public comment before action by the governing body. 65 Pa.C.S. § 710.1.

**Are virtual meetings permissible?** Any pre-COVID19 assessment would have likely reached the conclusion that all-virtual meetings are not permitted under the Sunshine Act. The references to the quorum being “present” and the “place” of the meeting advertised strongly suggest that a physical location and physical presence for both are required. Section 703 of the Act also requires that the Notice be posted prominently at the principal office of the agency holding the meeting – another nod to meetings being held in a physical location.

Alternatively, a question is raised as to whether the “emergency meeting” provisions provide an avenue. An “emergency meeting,” however is defined “a meeting called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.” 65 Pa.C.S. § 703. However, relying on this provision could be challenged as we are forced to expand Board action to traditional, regular business – beyond action relating directly to the emergency response.

Note, however, is that there has been no explicit appellate court holding that a virtual meeting, which allows for public participation and public comment and which allows for members and the public to observe, hear and participate in deliberations, could not satisfy test. There is some precedent for remote/virtual participation in meetings, but it is questionable as to whether it would extend to a full body. The Pennsylvania Commonwealth Court and Supreme Court decisions in Mazur v. Trinity Area Sch. Dist., 926 A.2d 1260, 1270 (Pa. Cmwlth. 2007) and Babac v. Pa. Milk Mktg. Bd., 613 A.2d 551, 553 (Pa. 1992) supported (really did not invalidate) a singular member of a board participating remotely (speaker phone, with teleconference participation).

Relying on this decision for the proposition that a virtual meeting is acceptable *might* be a bridge too far. The Commonwealth Court did not say that the holding would extend to full virtual participation. The prospect of all-virtual meetings also raises the issue of accessibility by all members of the public and their ability to reasonably comment. Even more, the recent revisions to the Borough Code provide for remote participation by individual members of Council, but only in a limited capacity. These provisions require that a quorum be physically present.

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# Open Meetings Memo

## Municipal Operations



The downside. The penalties for violating the Sunshine Act are two-fold. First, any business transacted in violation of the Act can be deemed void if challenged within 30 days of an open meeting or otherwise 30 days of discovering the action (if not taken at an open meeting. 65 Pa.C.S. § 713. This, of course, is subject to cure by the municipality pursuant to the subsequent ratification doctrine.

Second (and more concerning), is that any member of an agency who participates in a meeting with the intent and purpose of violating the Act commits a summary offense, subject to criminal prosecution. 65 Pa.C.S. § 714. While uncommon in the pre-COVID19 world (and practically unlikely to be pursued post-COVID19), the statutory language still exists and elected officials should be advised of the same as they determine their approach for continuing municipal operations.

The ancillary question is whether the Pennsylvania Emergency Management Code authorizes a deviation from the Sunshine Act. Again, the law is not clear, but suggests otherwise. Under the Emergency Management Code, Section 7501, political subdivisions can declare a disaster emergency without a public meeting, effective for a seven (7) day period. The declaration has the effect of allowing the municipality more flexibility in taking actions during the emergency – entering into contracts and incurring obligations necessary for disaster emergency management, response and recovery. However, “[t]he declaration shall not be continued or renewed for a period in excess of seven days except by or with the consent of the governing body of the political subdivision.” See Section 7501(b). The scope of a declaration’s temporary suspension of the formal statutory requirements would also not appear to support business beyond direct responses to the emergency – “the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds.”

PSATS, for its part, appears to have taken the position that public meetings must still be held:

### *Should we cancel our board of supervisors’ meeting?*

PSATS recommends that the board of supervisors continue to hold their meetings, but that social distancing be adopted and changes be made to meetings, such as reducing agenda items to only those that are critically important. Here are some suggestions:

Practice social distancing, such as no longer shaking hands and staying six feet apart. Clean and disinfect the meeting room before

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# Open Meetings Memo

## Municipal Operations



and after the meeting. Clean frequently touched surfaces daily, ensure that bathrooms have adequate soap and drying materials, and make hand sanitizer available throughout your facilities.

Township officials and employees who are sick or in an at-risk health category should participate in the meeting via remote means. Township supervisors are permitted to participate in meetings via a telephone or computer-based service provided that they can hear everything said at the public meeting and everyone at the public meeting can hear what they say.

To encourage less in-person attendance, provide alternative means for public comment, such as posting the agenda on websites and social media before the meeting and providing an email address where comments may be submitted in advance. Another option could be a call-in number to provide comments during the meeting.

PSATS is working with the General Assembly and the Governor's office on issues that need to be addressed now, such as authorization to do fully remote meetings, and a waiver of mandatory timeframes for approving land use plans, performing UCC reviews, and responding to RTKL requests. As such, PSATS strongly encourages you to share your concerns with your state legislators as well.

### **Recommendations**

In light of the above, there are a range of recommendations for each municipality to consider in consulting with your Solicitor:

1. Cancellation of Planning Commission, Historical Commission and Other Advisory Bodies: Many municipalities have cancelled advisory commission meetings in order to limit the potential further spread of the virus.
2. Governing Bodies - Holding a Public Meeting: As noted by PSATS, the most conservative approach from the perspective of the statutory framework is to continue to hold public meetings. Doing so, however, would call for social distancing measures (limiting the number and spacing of audience chairs) and the posting of notices to discourage residents from attending if they have any symptoms or have travelled to any affected areas. In addition,

The foregoing memorandum was written by Stephen V. Siana, Esquire, Christopher P. Gerber, Esquire, Michael G. Crotty, Esquire and Eric M. Brown, Esquire. Should you have questions regarding the content of this document, please contact Siana Bellwoar at 610-321-5500, or at the respective attorney email addresses: [ssiana@sianalaw.com](mailto:ssiana@sianalaw.com); [cpgerber@sianalaw.com](mailto:cpgerber@sianalaw.com); [mgcrotty@sianalaw.com](mailto:mgcrotty@sianalaw.com); [embrown@sianalaw.com](mailto:embrown@sianalaw.com).

# Open Meetings Memo

## Municipal Operations



municipalities should consider the extent to which the public comment/questions could be received beforehand and meetings could be recorded and posted, for those who are unable to attend.

3. Governing Bodies – Holding a Virtual Meeting: The alternative approach would be to consider a virtual meeting, with full recognition by the officials as to the potential ramifications. Several no-cost or low-cost online web-conferencing platforms are available for consideration. Whatever the means, the municipality should ensure that:
  - The service provides a variety of ways for the public to access. (Most allow both video and audio/phone access).
  - Notice of the virtual meeting, with access instructions, must be advertised in a newspaper of local circulation.
  - Consider alternative access arrangements for residents who so request.
  - To the greatest extent possible, agendas and documents under consideration should be posted prior to the meeting on the municipal website. (Some web-conferencing platforms allow the administrator to visually share their screens, including the agendas and associated documents).
  - Record the meetings so that they can be viewed by residents unable to participate (another common feature of web-conferencing platforms).

#### Resources:

- Pennsylvania State Association of Township Supervisors: [www.psats.org](http://www.psats.org)
- Pennsylvania State Association of Boroughs: [www.boroughs.org](http://www.boroughs.org)
- Equal Employment Opportunity website (employees' rights and the coronavirus): [www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](http://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)
- Federal government's official website relating to the recent passage of the Families First Coronavirus Response Act, which extends FMLA leave and provides for mandatory paid leave in certain circumstances: [www.congress.gov/bill/116th-congress/house-bill/6201](http://www.congress.gov/bill/116th-congress/house-bill/6201)

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## Additional Information and Resources

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### FEMA's Public Assistance Program

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FEMA's Public Assistance Program provides supplemental grants to state, tribal, territorial, and local governments, and certain types of private non-profits so that communities can quickly respond to and recover from major disasters or emergencies. FEMA also encourages protection of these damaged facilities from future events by aiding for hazard mitigation measures during the recovery process.

More detailed information can be in the **FEMA Public Assistance Program and Policy Guide**.

**[Click Here for FEMA Public Assistance Program and Policy Guide \(Pg: 71-74\)](#)**

[www.fema.gov/public-assistance-local-state-tribal-and-non-profit](http://www.fema.gov/public-assistance-local-state-tribal-and-non-profit)

### Resources and Links:

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**Centers for Disease Control and Prevention:**

**Coronavirus Plan and Prepare Now - Situation Summary:**

[www.icma.org/coronavirus-resources-plan-and-prepare-now-it-hits-your-community](http://www.icma.org/coronavirus-resources-plan-and-prepare-now-it-hits-your-community)

**Centers for Disease Control and Prevention:**

**Managing Anxiety and Stress - Responders:**

[www.emergency.cdc.gov/coping/responders.asp](http://www.emergency.cdc.gov/coping/responders.asp)

**Centers for Disease Control and Prevention:**

**Mass Gatherings or Large Community Events:**

[www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html](http://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html)

**National Conference of State Legislatures:**

**State Fiscal Responses to COVID-19:**

[www.ncsl.org/research/fiscal-policy/state-fiscal-responses-to-covid-19.aspx](http://www.ncsl.org/research/fiscal-policy/state-fiscal-responses-to-covid-19.aspx)

**Legislative Sessions and the Coronavirus:**

[www.ncsl.org/research/about-state-legislatures/legislative-sessions-and-the-coronavirus.aspx](http://www.ncsl.org/research/about-state-legislatures/legislative-sessions-and-the-coronavirus.aspx)