

The Unthinkable – Emergency Powers and Declaring Disasters

March 5, 2020

Presented For:

Pennsylvania State Association of Boroughs

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What We're Going To Talk About

What we know presently about COVID-19, also known as, Coronavirus.

Because public services are delivered through employees and because each municipality is an employer first--how each Borough should respond in its capacity as an employer.

What emergency powers a borough has to address public safety.

Understand the Virus

- A coronavirus is a virus that primarily causes respiratory illnesses. In December of 2019, the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) emerged in the Province of Hubei in China. This virus causes people to develop a particular respiratory disease - the COVID-19.
- If a person catches this disease, he or she can experience coughing, fever, fatigue, and respiratory symptoms, such as shortness of breath and breathing difficulties. In more serious cases, the disease can result in pneumonia, kidney failure, and death.
- On January 30, 2020, the World Health Organization ("WHO") declared COVID-19 a public health emergency of international concerns. The next day, the Secretary of the Department of Health and Human Services ("HHS") declared this disease a public health emergency in the United States of America.

Understand the Virus

- The coronavirus and flu present with certain similar conditions, namely fever, cough and shortness of breath. News articles report that the new coronavirus less frequently also presents with sore throat, muscle aches, headaches, runny or stuffy nose, fatigue, vomiting or diarrhea, additional common symptoms of the flu.
- Infected employees can spread both viruses days before presenting with symptoms and both viruses spread in a similar manner (person-to-person contact through coughing and sneezing). (Hence the importance of following the recommended hygiene requirements). The cause for concern about the spread of the new coronavirus rests with the mortality rate.

Understand the Virus

- It appears to be deadlier than the flu, but because this is a new coronavirus version, much remains unknown as scientists continue their study. Other non-deadly coronaviruses exist which were first identified decades ago and which typically infect children. MERS and the prior SARS were deadly versions of coronavirus (causing mortality at higher rates), but they were more geographically contained.
- At this writing, the coronavirus has not been declared a pandemic (global virus affecting large numbers of people) as was the swine flu (H1N1) in 2009 (which infected hundreds of thousands and killed tens of thousands) and for which a vaccine was quickly developed. The concerns raised over the coronavirus have similar parallel to the concerns experienced during the early months of the spread of the swine flu.

Educate And Take Basic Precautions

- The same recommendations to prevent the spread of the flu and colds applies to the spread of the coronavirus: Hand washing for at least 20 seconds, avoid touching eyes, nose and mouth with unwashed hands, avoid close contact with sick people (using the one-meter away standard (a little over 3 feet)), stay home when you are sick, clean and disinfect frequently touched objects and surfaces.
- In offices, there are many shared surfaces such as door handles, stair rails, and copiers. Many devices are "touch" activated (i.e. credit card devices that require your finger to sign, or the holding of the same pointer device).
- Providing easy access to disinfectants and requiring employees to clean these surfaces **after each use** will have the benefit of preventing the spread of the common flu and colds as well.
- The World Health Organization (WHO) has issued the following workplace guidance. <https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf>. As more information becomes available, from the WHO and our own Center for Disease Control (CDC), employers should follow it.

What's The Difference Between A Pandemic And An Epidemic?

- An *epidemic* refers to an event in which a disease is actively spreading. Usually, this is an outbreak that has grown out of control but is often within one country or location.
- A *pandemic* is an epidemic on a far greater geographic scale that affects a much large number of people.
- So is the coronavirus a pandemic? Given that the virus has now spread to over 30 countries and across multiple continents, many experts believe the situation satisfies the WHO's definition of a pandemic.
- But the UN agency has repeatedly insisted that we are "not there yet" suggesting we are instead fighting a series of epidemics.

Who Cares If It Is A Pandemic?

- We should care because the pandemic designation can cause the rules to change.
- According to WHO's pandemic preparedness plan, a response to a pandemic would require national governments to action the "full mobilization of health systems, facilities, and workers at national and subnational levels," to "distribute personal protective equipment" and to "distribute antivirals and other medical supplies in accordance with national plans."
- The Centers for Disease Control and Prevention (CDC), the body responsible for public health in the United States, is already preparing for a pandemic.

Okay, Now What?

Workplace Policies

Can We Prohibit An Employee From Traveling On Their Personal Time?

- No, you generally cannot prohibit otherwise legal activity, such as travel abroad by an employee. This includes pregnant employees or those with medical conditions.
- However, you should educate your employees before they engage in travel to risky environments, and you can – and should – monitor those employees returning from such travel for signs of illness.

Can I Ask Employees About Their Personal Travel?

- Yes.
- Employers may also consider requesting that employees inform them if they are traveling overseas for personal reasons so the employer is aware of employees who are going to those areas and are exposed to the disease.
- Employees who travel to China need to be informed that they may be quarantined upon their return. Employees should also be informed that there may not be adequate medical services available if they travel to China and become ill.

Should I Consider Quarantining Employees, Or Having Employees Remain Off Work, Who Have Recently Returned From Overseas Travel?

- You should consider telling employees returning from China that they should remain away from work for 14 days from their return. You can also consider telling the employees to self-monitor for any symptoms of coronavirus.
- If any of these symptoms occur, employees should consider being evaluated by a health care provider. Further, even if not symptomatic, employees may also want to consult a health care provider to confirm that they are not infectious before returning to work.

What Obligations Exist To Notify Or Negotiate With A Union Regarding Coronavirus Policies, Including Leave Due To Quarantine?

- It depends on the terms of any collective bargaining agreement. There may be an obligation to negotiate with a union regarding the quarantine policies because they affect the terms and conditions of employment, which include wages and hours at work.
- Depending on the management rights clause in the contract, an employer may be able to send the employee home but may still have to pay the employee based on the union rights clause.

Okay, Now What?

HIPPA Issues

Does Coronavirus Override HIPAA Privacy Rules?

- No, all employers, especially those involved in providing healthcare, have recently been warned by the United States that they must still comply with the protections contained in the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule during the COVID-19 coronavirus outbreak.
- The Office for Civil Rights of the U.S. Department of Health and Human Services (HHS) issued a reminder after the WHO declared a global health emergency. In fact, the Rule includes provisions that are directly applicable to the current circumstances.

What Are Our Obligations If We Are Contacted By Officials Asking For Emergency Personal Health Information About One Of Our Employees?

- The privacy restrictions mandated by HIPAA only apply to "covered entities" such as medical providers or employer-sponsored group health plans, and then only in connection with individually identifiable health information. Employers are not covered entities, so if you have medical information in your employment records, it is not subject to HIPAA restrictions.
- Nevertheless, disclosures should be made only to authorized personnel, and care should be taken even in disclosures to government personnel or other groups such as the Red Cross. Further, you should be careful not to release information to someone until you have properly identified them.

How Should We Treat Medical Information?

- All medical information should be treated as confidential and given the same protections as those granted by HIPAA in connection with your group health plan.
- In certain circumstances, if you have plan information, you can share it with government officials acting in their official capacity, and with health care providers or officially chartered organizations such as the Red Cross.
- Information can be disclosed to authorized personnel without permission of the person whose records are being disclosed if disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. You should check with your solicitor before you do this.

What If The Department Of Health Or The County Contacts Us?

- When there is a legitimate need to share information with public health authorities and others responsible for ensuring public health and safety, covered entities may share PHI to enable them to carry out their public health responsibilities. This may arise with the current outbreak of COVID-19. The key, as always, is to limit disclosures to the *minimum necessary* to the purpose, strictly in accordance with these parameters.
- For example, covered entities may share information *as necessary* with the Centers for CDC, as well as health departments authorized by law to receive such information, to prevent or control disease or injury.
- Again, you should check with your solicitor before you do this.

Okay, Now What?

Leave Issues

Employment Issues

- The Americans with Disabilities Act (ADA) places restrictions on the inquiries that an employer can make into an employee's medical status. The ADA prohibits employers from making disability-related inquiries and requiring medical examinations, unless (1) the employer can show that the inquiry or exam is job-related and consistent with business necessity, or (2) where the employer has a reasonable belief that the employee poses a direct threat to the health or safety of the individual or others that cannot otherwise be eliminated or reduced by reasonable accommodation.
- According to the Equal Employment Opportunity Commission (EEOC), whether a particular outbreak rises to the level of a "direct threat" depends on the severity of the illness. The EEOC instructs employers that the assessment by the CDC or public health authorities provides the objective evidence needed for a disability-related inquiry or medical examination. To date, the CDC has not classified the COVID-19 coronavirus as a pandemic.

Employment Issues

- **Do Not Violate the Americans with Disabilities Act.** Prior to a declaration of a pandemic (the current situation as of the date of this Alert), the Equal Opportunity Commission (EEOC) maintains stricter guidelines on what it deems to be appropriate inquiries into employee symptoms. After a pandemic declaration, the EEOC allows more directed questions.
- Therefore, before a declaration of a pandemic, the EEOC's guidelines may conflict with the health advice from the CDC. For example, the EEOC's Guidelines on "Pandemic Preparedness in the Workplace" https://eoc.gov/facts/pandemic_flu.html indicates that employers should not send employees home with virus-like symptoms until *after* the declaration of a pandemic.

Employment Issues

- The ADA protects applicants and employees from disability discrimination, including *regarding* employees as disabled.
- The ADA governs the types of medical-related questions employers may ask, prohibits employers from keeping employees from the workplace unless they pose a direct threat, and requires reasonable accommodations for those infected during a pandemic.
- Therefore, before a pandemic declaration, the EEOC might view sending someone home from work with "virus-like" symptoms as discriminatory.
- After such declaration, the EEOC states that the employer is protected under a direct threat analysis.

Employment Issues

- Once a pandemic is pronounced, the nature of the questions are allowed to change. For example, prior to the declaration of a pandemic, employers may ask about the employee's ability to come to work if schools close.
- After the pronouncement of a pandemic, employers may send employees home if they present as symptomatic of the virus. Once the employee exhibits virus-like symptoms, or has the virus, then the employer is required to consider reasonable accommodations such as liberal leave and teleworking.
- As the disease spreads, or not, it will be important for employers to stay informed about the governmental directives to determine the proper nature of inquiries and personnel actions.

Does The Americans With Disabilities Act (ADA) Restrict How I Interact With My Employees Due To The Coronavirus?

- The Equal Employment Opportunity Commission has issued guidance to distribute to the workforce in the event of global health emergency.
- In the guidance, it states, "if the CDC or state or local public health authorities determine that the illness is like seasonal influenza or the 2009 spring/summer H1N1 influenza, it would not pose a direct threat or justify disability-related inquiries and medical examinations."
- "By contrast, if the CDC or state or local health authorities determine that pandemic influenza is significantly more severe, it could pose a direct threat. The assessment by the CDC or public health authorities would provide the objective evidence needed for a disability-related inquiry or medical examination."

Does The Americans With Disabilities Act (ADA) Restrict How I Interact With My Employees Due To The Coronavirus?

- Nonetheless, the CDC would not require a health care provider's note even for employees who are sick with acute respiratory illness to validate their illness or to return to work. Health care provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way, the CDC states.
- The ADA protects qualified employees with disabilities from discrimination. A disability may be a chronic physical condition, such as difficulty breathing.
- Employees may be entitled to an "accommodation" such as leave or be allowed to work remotely for a limited period.
- Employees who have contracted the virus must be treated the same as noninfected employees, as long as the infected employees can perform their essential job functions. If the employee poses a direct health or safety threat to the workforce, the employer may place the employee on leave.

What About FMLA Leave?

- Does Family and Medical Leave Act (FMLA) leave apply for employees or immediate family members who may contract coronavirus?
- Yes, assuming that the FMLA applies to the employer, coronavirus would qualify as a "serious health condition" under FMLA, allowing an employee to take FMLA leave if either the employee or an immediate family member contracts the disease. The employee would be entitled to job reinstatement as well.

What About FMLA Leave?

- Generally, employees are not entitled to take FMLA to stay at home to avoid the possibility of getting sick.
- One word of caution, the worst thing an employer (or as is often the case, an untrained supervisor) can do at times like this is to reject immediately an unorthodox leave request before the facts are in.
- When in doubt, the wisest approach is to work with counsel to ensure legal compliance, thereby minimizing exposure to costly litigation.

Should I Ask For A Doctor's Note For An Employee Returning From A Quarantine Period Who Otherwise Reports Being Asymptomatic?

- While we would recommend obtaining a doctor's note, sometimes it is difficult for certain individuals to have access to medical providers. We would recommend the employee go to an urgent care facility if one is available to at least be screened for infection.
- Nonetheless, the CDC would not require a health care provider's note even for employees who are sick with acute respiratory illness to validate their illness or to return to work. Health care provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way, the CDC states. Before refusing to allow an employee to return to work if a physician's note is not forthcoming check with your solicitor.

Is There An Obligation To Accommodate Employees Who Do Not Want To Work Due To Fears of the Risk Of Infection?

- Generally, employees are only entitled to refuse to work if they believe they are in imminent danger. Most work conditions, however, do not meet the elements required for an employee to refuse to work. Once again, this guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work.
- If the employer can establish that there is no basis for any exposure to the disease, the employee does not have to be paid during the time period the employee refuses to work.

Is There An Obligation To Accommodate Employees Who Do Not Want To Work Due To Fears of the Risk Of Infection?

- There may be an obligation to accommodate such employees if there is some objective evidence that they could potentially be directly exposed to individuals who may have returned from a category 4 country like China.
- Even though they have an obligation to come to work, employees should not be disciplined automatically for refusing to work if they legitimately believe that there is a risk of infection because making such a complaint may be a protected activity under the PLRA (The PLRA protects "concerted activity for mutual aid or protection." Such activity has been defined to include circumstances in which two or more employees act together to improve their employment terms and conditions).
- If, however, the employer can demonstrate that the fear is unreasonable, there may be a basis to discipline the employee for failing to come to work. The key will be communication.

Special Consideration For Paid Police And Fire Personnel

- The Heart and Lung Act provides that:
- Any policeman, fireman or park guard of any county, city, borough, town or township, [and as of 2006, county sheriffs and deputy sheriffs] who is **injured in the performance of his duties**, including in the case of firemen, duty or special fire policy, and by reason thereof is **temporarily incapacitated** from performing his duties, shall be paid by the county, township, or municipality by which he is employed, his **full rate of salary**, as fixed by ordinance or resolution, until the disability arising therefrom has ceased. **All medical and hospital bills** incurred in connection with any such injury shall be paid by the county, township or municipality. During the time that salary for temporary incapacity shall be paid by the county, city, borough, town, or township, any workers' compensation received or collected by any such employee for such period shall be turned over to the county, city, borough, town or township, paid into the treasury thereof, and if such payment shall not be so made by the employee, the amount so due the county, city, borough, town or township shall be deducted from any salary then or thereafter becoming due and owing.

Okay, Now What?

Compensation Issues

Would I Need To Pay Employees Who Go On Leave During A Quarantine Period Or Because They Have Contracted Coronavirus?

- Under the Fair Labor Standards Act (FLSA), for the most part the answer is "no." FLSA minimum-wage and overtime requirements attach to hours worked in a workweek, so employees who are not working are typically not entitled to the wages the FLSA requires.
- This does not cover paid leave which is governed by an employer's policies or by the terms of a collective bargaining agreement.

Would I Need To Pay Employees Who Go On Leave During A Quarantine Period Or Because They Have Contracted Coronavirus?

- One possible difference relates to employees treated as exempt FLSA "white collar" employees whose exempt status requires that they be paid on a salary basis.
- Generally speaking, if such an employee performs at least some work in the employee's designated seven-day workweek, the salary basis rules require that they be paid the entire salary for that particular workweek.
- There can be exceptions, such as might be the case when the employer is open for business but the employee decides to stay home for the day and performs no work.

Would I Need To Pay Employees Who Go On Leave During A Quarantine Period Or Because They Have Contracted Coronavirus?

- It's also possible in one other circumstance. An employee may be required to be paid if the employee is subject to a contract or collective bargaining agreement that requires pay when employees go on work-required leave. In the absence of a contract, hourly employees work at-will and are not guaranteed wages or hours.
- Employers should consider the internal and external public relations aspect of not paying employees who may not be working if they have contracted or are avoiding the COVID-19 coronavirus. Paying people or liberalizing leave policies may help you in avoiding missed time or addressing employee morale or fears.

Would I Need To Pay Workers' Compensation For Employees Who Contract Coronavirus?

- Perhaps, if the employees contracted the disease in the course of their employment. Does the employees' work require them to be exposed to persons who are infected? Typically, health care workers or first responders may fall into this category.
- If an employee incidentally contracts the disease from a coworker, there likely will be no workers' compensation liability.
- If there is workers' compensation liability, employers are responsible for covering the costs of reasonable and necessary medical care, temporary total disability benefits, and permanent disability (if any).
- Employers should work with legal counsel (and potentially engage a competent medical professional on infectious diseases) for advice to determine whether the disease is work-related.

Would I Need To Pay My Employees Disability Benefits If They Contract The Coronavirus?

- Yes, if such payments are provided in an employer's benefit plan.
- Employers should review the limits of coverage in the benefit plan to ensure they have competent medical resources to administer the program.
- Do not simply reject any such claims and consider the benefit of working with employees to deal with any application for benefits issues.

Okay, Now What?

Benefits Issues

If An Employee Cannot Work, Are They Covered Under Our Health Care Plan?

- It depends. You need to check your group health plan document to determine how long employees who are not actively working may remain covered by your group health plan.
- Once this period expires, active employee coverage may have to be terminated (unless the insurance carrier or self-funded plan sponsor otherwise agrees to temporarily waive applicable eligibility provisions), and a COBRA notice must be sent.
- If your plan is self-funded and you wish to seek a waiver applicable plan eligibility provisions, you should first make sure that any stop-loss coverage insurance carriers agree to cover claims relating to participants who would otherwise be ineligible for coverage.

If An Employee Cannot Work, Are They Covered Under Our Health Care Plan?

- What if an employee is not working, is sick and cannot pay his or her premium contributions? Normally, coverage will cease when an employee's share of premiums is not timely paid. However, in a pandemic or time of emergency, the term "normal" is redefined daily.
- Employers should assume nothing regarding coverage when there is a long-term absence and check with their carrier and their legal counsel.

Okay, Now What?

Other Employee-Employer Questions

What If An Employee Appears Sick?

- If any employee presents themselves at work with a fever or difficulty in breathing, this indicates that they should seek medical evaluation. While these symptoms are not always associated with influenza and the likelihood of an employee having the COVID-19 coronavirus is extremely low, it pays to err on the side of caution.
- An employer may send an employee home (with pay) to get medical evaluation or treatment if there are objective facts to demonstrate that the employee is sick. However, if the employee is cleared to return to work by a physician an employer cannot simply refuse to return the employee to work without other medical evidence.

What If An Employee Appears Sick?

- Also, employers cannot select employees for disparate treatment based on national origin. The CDC recently warned: "Do not show prejudice to people of Asian descent, because of fear of this new virus. Do not assume that someone of Asian descent is more likely to have COVID-19."
- To avoid legal claims, each employer should train supervisors on the importance of not overreacting to situations in the workplace potentially related to COVID-19 in order to prevent panic among the workforce.

Is It Legal For Employers To Take Workers' Temperatures?

- If the Centers for Disease Control and Prevention (CDC) or a state or local health authority proclaims a pandemic has spread in an area, then yes, it is; otherwise, it is not, according to Equal Employment Opportunity Commission (EEOC) guidance.
- Employers that are taking workers' temperatures are using one medical characteristic to make a big assumption. Not everyone who has a fever is contagious. So, if someone is sneezing or coughing, you can send them home but taking someone's temperature is overreaching.

What If My Employee Wants To Wear A Mask At Work?

- Under most circumstances, absent a legally recognized disability, unique physical condition, or an occupation where employees work directly with those impacted by a condition such as the COVID-19 coronavirus or flu, you are generally not required to allow workers to wear masks at work.
- This is a request that should be addressed with your legal and medical advisors before being answered.

Working From Home

Considerations: morale, security of information accessed remotely, workers compensation issues if injured at home, ability to monitor if work actually performed, FLSA concerns

Other considerations: limits the spread of infection, may help with morale, gets work out of otherwise "stranded" employees.

Rules should be uniform and, where necessary, bargained.

Some jobs just cannot be performed from home and that is especially true in the public sector.

Okay, Now What?

Emergency Powers of Government

Title 35 Health and Safety - Part V - Emergency Management Services

What's An Emergency?

"Local emergency." The condition declared by the local governing body when in their judgment the threat or actual occurrence of a disaster is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby.

A local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of a disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby.

What's A Disaster Emergency?

"Disaster emergency." Those conditions which may by investigation made, be found, actually or likely, to:

(1) affect seriously the safety, health or welfare of a substantial number of citizens of this Commonwealth or preclude the operation or use of essential public facilities;

(2) be of such magnitude or severity as to render essential State supplementation of county and local efforts or resources exerted or utilized in alleviating the danger, damage, suffering or hardship faced; and

(3) have been caused by forces beyond the control of man, by reason of civil disorder, riot or disturbance, or by factors not foreseen and not known to exist when appropriation bills were enacted.

What's A Disaster?

"Man-made disaster." Any industrial, nuclear or transportation accident, explosion, conflagration, power failure, natural resource shortage or other condition, except enemy action, resulting from man-made causes, such as oil spills and other injurious environmental contamination, which threatens or causes substantial damage to property, human suffering, hardship or loss of life.

"Natural disaster." Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, landslide, mudslide, snowstorm, drought, fire, explosion or other catastrophe which results in substantial damage to property, hardship, suffering or possible loss of life.

Local Government Power to Declare A Disaster Emergency

Declaration of disaster emergency. A local disaster emergency may be declared by the governing body of a political subdivision upon finding a disaster has occurred or is imminent. The governing body of a political subdivision may authorize the mayor or other chief executive officer to declare a local disaster emergency subject to ratification by the governing body.

The 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. Any order or proclamation declaring, continuing or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the agency. The effect of a declaration of a local disaster emergency is to activate the response and recovery aspects of any and all applicable local emergency management plans and to authorize the furnishing of aid and assistance thereunder.

Affect On Power To Contract

(c) Contracts and obligations. In carrying out the provisions of this part, each political subdivision shall have the power to enter into contracts and incur obligations necessary to disaster emergency management, response and recovery.

(d) Temporary suspension of formal requirements. Each political subdivision included in a declaration of disaster emergency declared by either the Governor or the governing body of the political subdivision affected by the disaster emergency is authorized to exercise the powers vested under this section in the light of the exigencies of the emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements) pertaining to 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.

Pennsylvania Counterterrorism Planning, Preparedness And Response Act

Section 301. Temporary isolation and quarantine without notice.

(a) Temporary isolation or quarantine. In the case of an actual or suspected outbreak of a contagious disease or epidemic due to an actual or suspected bioterrorist or biohazardous event, the Governor, in consultation with the Secretary of Health, may temporarily isolate or quarantine an individual or groups of individuals through a written order if delay in imposing the isolation or quarantine through judicial proceedings currently available to the department and local health departments would significantly jeopardize the department's ability to prevent or limit the transmission of a contagious or potentially contagious disease to others. This subsection shall not require a declaration of disaster emergency by the Governor in order to be effective.

Pennsylvania Counterterrorism Planning, Preparedness And Response Act

(b) Judicial review.

(1) After issuing the written order, the department or local health department shall promptly file a petition with the court within 24 hours or the next court business day after the issuance of the order for a hearing to authorize the continued isolation or quarantine.

(2) The court shall hold a hearing on the petition not more than 72 hours after the filing of the petition to determine whether continued isolation or quarantine is warranted.

(3) Reasonable notice, either oral or written, stating the time, place and purpose of the hearing shall be given to the isolated or quarantined individual. The court may determine the manner in which the hearing shall occur, including through the use of closed-circuit television.

Pennsylvania Counterterrorism Planning, Preparedness And Response Act

(4) An isolated or quarantined individual is entitled to representation by legal counsel at all stages of any proceedings under this section and, if the individual is without financial resources or otherwise unable to employ counsel, the court shall provide counsel for him.

(5) If the court determines continued isolation or quarantine is warranted, the court shall so order the continued isolation or quarantine and shall fix the time and duration of the isolation or quarantine, which in no case shall exceed 30 days except as set forth in paragraph (6).

(6) Where an individual has been isolated or quarantined for a period of 30 days, the department shall ask the court to review the order to determine if further isolation or quarantine is warranted.

(7) The department or local health department shall provide the court with ongoing reports on the isolated or quarantined individual during the period of isolation or quarantine.

Pennsylvania Counterterrorism Planning, Preparedness And Response Act

(c) Relation to other laws. Nothing in this section shall be construed to limit the existing authority of the Secretary of Health or the department or a local health department.

Section 302. Immunity from liability. The provisions of 42 Pa.C.S. § 8331 (relating to medical good Samaritan civil immunity), 8332 (relating to nonmedical good Samaritan civil immunity) or 8332.4 (relating to volunteer-in public-service negligence standard) shall apply to any person who provides assistance in carrying out the provisions of this chapter.

A Mayor's Powers Under the Borough Code

(4) If the mayor considers that a state of emergency exists, the mayor may issue a proclamation, which shall be in writing and posted in one or more conspicuous places and the contents of which shall be made available to all news media, declaring a state of emergency for a period not to exceed seven days unless sooner rescinded, modified or ratified or extended by resolution of council.

8 Pa.C.S. Section 10A06(b)(4)

A Mayor's Powers Under the Borough Code

- (5) The mayor may prohibit in the proclamation for all or part of the borough:
- (i) Any person being on the public streets or in the public parks or at any other public place during the hours declared by the mayor to be a period of curfew.
 - (ii) The entry or departure of persons into or from any restricted area.
 - (iii) The sale, purchase or dispensing of any commodities or goods as designated by the mayor.
 - (iv) The transportation, possession or use of gasoline, kerosene or other combustible, flammable or explosive liquids or materials except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use.
 - (v) Any other activities as the mayor reasonably believes should be prohibited to help preserve life, health, property or the public peace.
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- 8 Pa.C.S. Section 10A06(b)(5)

A Mayor's Powers Under the Borough Code

(6) The proclamation shall describe the specific restricted area with particularity and shall specify the hours when restrictions are to be in effect.

(7) A person violating the proclamation of emergency commits a summary offense and shall, upon conviction, be sentenced to pay a fine not to exceed \$300 and costs or to a term of imprisonment not to exceed 30 days.

8 Pa.C.S. Section 10A06(b)(6)-(7)

Council's Powers Under The Borough Code

(33) To provide against all hazards of war, terrorism and other disasters and their consequences, and for those purposes to have the power of eminent domain, to cooperate with any other unit and agency of government, Federal, State or local in every lawful way for purposes of defense against the hazards of war and terrorism and to further provide against the hazards of manmade or natural disasters in conjunction with the powers applicable to boroughs in 35 Pa.C.S. Pt. V (relating to emergency management services).

Potential Amendments To Emergency Powers Act—NOT YET LAW

- **1123.1. Other Emergencies.** In the event of an emergency other than an enemy attack rendering the conduct of the affairs of local government imprudent, inexpedient or impossible, the provisions of this subchapter shall apply. Should meetings at a physical alternative site or place for any emergency under this subchapter be impossible in the sole discretion of the governing body, without jeopardizing the health or safety of the participants, the governing body of the political subdivision may, by resolution, authorize and conduct business through electronic participation in a meeting. The political subdivision shall provide, to the extent possible, for public participation in the meeting.

Thank you!