

Summary of Dec. 11 Friday Recap

Thank you for joining us for our Friday Recap. Below is a summary of the major topics that we covered. We look forward to recapping the week with you every Friday!

General Information:

- We are grateful for all of you!
- Happy Hanukkah!
- Dr. Scott Helton of DuPage 88 passed away this morning due to complications from COVID. Our thoughts and prayers are with his family, the district, and the entire community.
- Emails from our firm may be going to your spam folder. If so, you can right click and indicate they aren't junk so that they go straight to your inbox.

CTU Litigation:

- Recently a teacher brought suit against the Chicago Teachers Union. The teacher is seeking recovery of past dues that were assessed even after he was kicked out of union. We are seeing many similar suits across the country, and typically the plaintiffs have not won, but many are keeping the suits going.
- This stems back from the Supreme Court decision in *Janus* (2018), where the Court held that it was unconstitutional for unions to take fair share fees from non-members.
 - Since then, we have seen many claims in federal court, but the court's have typically said they will not apply retroactivity.
- Since the *Janus* decision, there have been 101 pieces of legislation (democrats and republicans in each state filed a bill) to address this. In Illinois we have a bill that comes to the edge of the *Janus* decision to make it not as easy to drop out of union dues.
- As a reminder, your CBA should not have a fair share fee.
- Be sure to contact legal counsel if you have questions about what to do when an employee asks that fees are no longer taken out of their paycheck.

Updates on COVID:

- CDC Revised Quarantine Guidance:
 - The CDC recently released revised guidance regarding the quarantine period for individuals who are a close contact. This is likely an attempt to try to balance public health and economic hardship and get people back to work and school.
 - Two tracks:
 - 10-day quarantine if there are no symptoms during 10 days.
7-day quarantine if there are no symptoms and a negative diagnostic test. This means the individual can take the test on day 5 and then come out after day 7 if the required conditions are met.
 - However, in both instances, close contacts need to continue to monitor symptoms for 14 days and continue to wear masks and engage in other good practices..

- IDPH and ISBE may adopt the CDC guidance, but as of now they haven't. IDPH does say it is an acceptable alternative except in congregate living situations. Because the local health department releases individuals from quarantine, it will be important to contact them to see how they are approaching it.
- Vaccines:
 - In Illinois, shipments will be received as early as next week. Distribution of vaccines will be divided into stages.
 - Phase 1a: healthcare providers
 - 1b: educators
 - 1c: preexisting conditions and at-risk
 - The IDPH has a great FAQ:
 - Distribution will be overseen by the Local Health Department
 - Vaccination requires 2 shots (1 shot will be less effective)
 - No federal or state mandate to see the vaccine
 - No pediatric vaccine currently available
 - We are hearing we are about 3 years out from this
 - A concern we are hearing is about medically fragile students. It will be interesting to see how this plays out.
 - The vaccine is not a cure, but part of the mitigation strategy. The vaccine will need to be widely available and we will need to see a reduction in new cases before we think about moving to Phase 5.
 - The vaccine is free, but providers may charge a fee
 - We are getting questions about whether vaccines can be required. We will work with you on this.
 - Advisory Committee on Immunization Practices: Educators in 1b category, as well as an essential workers subgroup
 - We are watching right now how they are breaking up 1a (Frontline, healthcare providers in residential or long-term care)
 - In 1a category: if the healthcare workers had COVID in preceding 90 days, whether symptomatic or not, the recommendation is that they delay vaccination until the end of the 90-day period to facilitate the vaccination of those who have not had it. This may end up applying for educators as well.
 - Pfizer and Moderna are beginning Phase 1 trials for individuals ages 12-17. There are currently no trials for individuals under 12.
 - From trials, we see greater reactogenicity following the second vaccine dose. This means districts may need to plan for individuals taking time off (sick leave) following the second dose.
- CDC Mitigation Toolkit:
 - Posted on ISBE website on Dec. 7.
 - Disclaimers: use of the toolkit is voluntary, as it is not regulatory guidance but based on best practice.
 - This may be a tool you can use to show the process and decision-making you used to defend your actions and decisions.

- The information is consistent with information released over the summer.
- What are they emphasizing?
 - Reinforces recommendations
 - Communication with stakeholders
 - Open dialogues
 - Internal checks to feel confident in decision-making
- How to plan and execute a walkthrough?
 - CDC is really into working with other decision-makers outside the school such as the LHD

Unemployment Fraud Claims:

- Many school districts are dealing with fraudulent unemployment claims. If this happens:
 - You will receive a notice a claim is filed by one of your employees.
 - Notify the employee and advise them to take actions to protect their identity.
 - Notify the Illinois Dept. of Employment Security. The website is currently not working, but there is a number to call as well. They also have a “contact us” page you can use to submit a comment.
 - File a protest to the claim (this is not a reason to protest but IDES is recommending you do this). In the protest you should write a short paragraph indicating you are in receipt of the claim, the date, relevant facts, etc.
 - IDES has established a unit to work on this and advise employees to create a spreadsheet with first name, last name, employer name, claim ID, and send to IDES at Marco.morales@il.gov or gilbert.munez@il.gov.

DACA:

- The Eastern District of New York invalidated Homeland Security’s attempt to stop taking applications for the DACA program, based on a technicality that the secretary did not have the authority to write a memo to this effect.
- The court ruled that new applications can come forward.
- If you have DACA students and are working with their families, remember that they are likely in need of services. If they are afraid or hesitant you can give them comfort that new applications can still come in and DACA does not appear to be in trouble.

Important Dates:

- Dec. 29: annual tax levy must be certified by school board and filed with county clerk
- Dec 14-Dec 21: members seeking election or reelection must file nominating papers in this window
- Dec 21: statement of economic interest is due
- Dec 29: deadline for objecting to petitions

Litigation Updates:

- Foxfire Saloon case was out of the 2nd Circuit and affirmed the Governor’s authority to issue successive executive orders (EO). While this is related to Indoor dining, it is relevant to schools because it addresses the Governor’s authority to issue successive

EO. The plaintiff is pursuing the case up to the Illinois Supreme Court, and we anticipate the court will likely hear the case.

- A lawsuit was recently filed in Cook County against the University of Illinois system. It was filed putatively as a class action on behalf of parents and students and seeking refunds for student fees and room and board fees for the time students were sent off campus due to COVID-19. There are both state and federal claims at issue, mainly around a taking claims, meaning the government took property from them without providing compensation). There are also allegations about violations of due process, but this doesn't really fit because everyone is impacted equally so the due process requirement is much lower.
 - Some of the lawsuit might get some traction but likely not all of it.
 - How will it impact K-12 school?
 - Not directly.
 - We do have student fees issues. We have seen districts make good rational decisions about how to refund fees, but we could still see parents file a lawsuit for reimbursement of fees. We are confident the decisions you make will be defensible. The U of I case might give us a roadmap of what to expect.
- As a reminder, continue to do your best and document your decisions.

Darcy discussed and opened the call with. . .

- Deep breaths.
- If you are not getting our emails that go to individuals on our distribution list, be sure to check your spam folder and fix your settings so that they go directly to your inbox.

Shane discussed CTU litigation. . .

- In the *Janus* case (2018), the Supreme Court held that unions could not collect fair share fees from non-members.
- Across the nation plaintiffs have filed suit to be reimbursed from unions for past fair share fees, although most courts have held in favor of the union.
- In Illinois, the 7th Circuit recently rejected an appeal from a teacher who filed suit against the Chicago Teachers Union, allowing the plaintiff to appeal to the U.S. Supreme Court.

Cassie discussed updates to the CDC recommendation for quarantine timelines. . .

- The CDC has adjusted quarantine timeline recommendations likely in an effort to balance health and safety with economic and other needs.
- These recommendations allow individuals to quarantine for 7 or 10 days rather than 14 days when certain requirements are met.
- IDPH has not adopted these recommendations but indicates they are acceptable and decisions are left up to local health departments.

Mohammed discussed unemployment fraud claims, DACA, and important dates. . .

- Be aware of upcoming dates related to school board elections and tax levies

- As fraudulent unemployment insurance claims become more common, districts should know the steps to follow in the event they receive one of these claims.
- A federal judge recently held the Department of Homeland Security did not have the authority to stop accepting new applications to the DACA program.

Laura discussed updates on vaccines. . .

- As the Pfizer vaccine has been approved, Illinois has begun a rollout for distribution and vaccines could begin as early as next week.
- Educators have been identified as a high priority, falling in the 1b group.
- IDPH has released a helpful FAQ that addresses many questions related to the rollout.

Rob discussed litigation updates . . .

- The Illinois Supreme Court will likely hear a case regarding the Governor's authority to issue successive executive orders related to COVID-19.
- A lawsuit filed against the University of Illinois regarding reimbursement of student fees during COVID19 may provide school districts with a road map of what to expect if similar lawsuits are filed against K-12 schools.

Elizabeth discussed the CDC mitigation toolkit. . .

- The mitigation toolkit is not required, but is based on best practices and reinforces previously-issued guidance and considerations.
- The toolkit may be helpful in documenting planning decisions and outlining the district's approach to addressing COVID-19.

Darcy discussed more vaccine updates. . .

- Pfizer and Moderna are beginning Phase 1 trials for individuals who are 12-17, but it does not appear trials have started for individuals under the age of 12.
- From the vaccine trials, we know that individuals may have a greater reactogenicity following the second dose, which means districts may need to plan for individuals taking sick days following the second dose.