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MEMORANDUM

TO: ALL CLIENTS

FROM: MICHAEL J. LONG, LONG & DiPIETRO, LLP *ML*

RE: COLLECTIVE BARGAINING IMPLICATIONS OF CORONA VIRUS/COVID 19

DATE: 3/12/20

The Corona virus/Covid 19 presents a number of labor relations issues Superintendents need to think about:

1. Districts should involve their local unions in ongoing discussions about the impact the virus has had in the community and questions about how the work place will be affected. Employees need facts and information, not rumors.
2. Among other things these questions affect employee sick leave and attendance practices. In the parlance of labor relations, these issues affect wages, hours, terms and conditions of employment. As such, the customary rules and practices requiring negotiation over mandatory subjects of bargaining are generally applicable. See, e.g., Town of Hull, 19 MLC 1780 (1993) (Practices around access to paid leave if sick leave exhausted are mandatory subjects of bargaining). Impact bargaining rules may also apply to the extent there are core governmental policy decisions involving public health. Alternative means of providing educational services, such as distance learning/web based instruction may trigger decisional or impact bargaining obligations. These rules may even apply if decisions are made by third parties such as, for example, the Governor/DESE, or the local Board of Health, rather than the School Committee. See, e.g., Lowell School committee, 26 MLC 111 (2000) (Policy decisions over which the employer has no control do not relieve employer of duty to bargain impact). If you have specific questions about how these general rules apply to your district, or whether the circumstances permit implementation of management decisions in the absence of agreement, please consult local counsel.
2. Discussion with labor representatives should involve questions about district operations, particularly plans for cleaning, potential school closings (and for how long), access to sick leave, sick leave banks, and what leave provisions should be made for employees who have no

contractual sick leave bank or no accumulated sick leave. Similarly, the parties should discuss the employment implications if the district determines to encourage voluntary, or impose mandatory, quarantines.

The local, state, and national consensus seems to be that employees should have access to paid leave during periods of closure. To facilitate this, some districts may consider a combined utilization of sick leave and sick bank access for closings. For example, a district and local union may agree that granting 5 days from the bank and 5 days from the employee's accumulated leave is a reasonable means to mitigate the impact of a decision to close. There is no consensus on how these leaves will be paid for, particularly this late in the fiscal year. A freeze on discretionary expenditures should be considered, as a ten day closure could impact personnel costs by about 5% over anticipated budget expenses for salaries. Some very public discussion with Town or City leadership will be needed on financial questions. Review with counsel and municipal officials the rules on Town Meeting/City Council transfers of funds from one municipal account to another.

3. Rescheduling school days will also require negotiation with unions. It has been suggested that some or all of these days be treated like "snow days" and re-scheduled at the end of the year in June. DESE has issued some guidance, indicating that at this point, there will not be a waiver of the 180 day requirement. Whether facts on the ground will sustain that position or require reconsideration remains to be seen. If you are considering utilization of time during the traditional April vacation, you should weigh the demonstrably long arc of the Pandemic's spread, and the likely effect on attendance of late notice of cancellation due to pre-existing family/staff plans.