Since March, MRSC staff have been working hard to provide resources and updated information to local governments working to keep operations moving in the shadow of the COVID-19 pandemic.

We know that, along with our residents and businesses, local government agencies in Washington State have been deeply impacted by the COVID-19 pandemic. Since March MRSC has received over 938 inquiries just on issues related to COVID-19. Add to that the “normal” questions we receive monthly on timely issues like financial reporting or flag displays, and it is clear to us that local agencies are adjusting, adapting, and aggressively working to serve their communities.

TARGETED TRAININGS
As early as March 16, we made sure to pull together trainings to help local government staff and elected officials stay on top of the issues that arose as the impact of the pandemic became more pronounced. We’ve offered four free webinars, attracting over 2,000 total attendees, including:

• Managing the Impact of COVID-19 On Your Agency
• Preparing for the Fiscal Implications of the Coronavirus Outbreak
• Managing a Public Utility During the COVID-19 Pandemic
• How Your Agency can Survive and Recover Fiscally from the COVID-19 Outbreak

Additionally, we’ve made the recordings and webinar documents available and easily accessible at our Coronavirus (COVID-19) Resources for Local Governments homepage.

We’ve also partnered up with agencies serving local government employees – the Washington City/County Management Association (WCMA) and the Washington Finance Officers Association (WFOA) – to host six additional COVID-19-related webinars for 900+ members.

HELPFUL SAMPLE DOCUMENTS
Over 130 sample documents have been added to our Sample Document Library since March, including ones related to telecommuting, child-care leave, and procedures for the collection of utility bills during an emergency. Issues we’ve received many inquiries about during this outbreak.

All of us at MRSC appreciate the support we’ve received from our partners and from all of you as we navigate this challenging time together.
The COVID-19 pandemic has created major disruptions in Washington State’s economy. Local governments are struggling with the implications of this disruption, including the impact on revenues and the likelihood of significant budget shortfalls. At the same time, while essential workers may be fully deployed, many other employees are not able to do their jobs for any number of reasons, such as Governor Inslee’s Stay Home – Stay Healthy order, personal or family health issues, lack of child care, or a lack of available work under these emergency conditions.

Recent federal legislation, such as the Families First Coronavirus Response Act (FFRCA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, has significantly expanded benefits available to employees and options available to employers in response to this pandemic. This article summarizes some of the expanded unemployment benefits and eligibility now available under the CARES Act and the choices available to local government.

UNDERSTANDING THE TERMINOLOGY

The terminology in this area can get confusing. A permanent layoff constitutes a final separation from employment and is the equivalent of a “reduction in force.” The employee’s position is being eliminated and the employer does not intend to replace it. However, the state Employment Security Department (ESD) refers to furloughs and standby as forms of temporary layoffs.

An employer will likely have quite different reasons for choosing a form of temporary layoff over a permanent layoff. While a permanent layoff is an acknowledgement by the employer that a position is no longer necessary, a temporary layoff will provide both an employer and employee with greater flexibility if, in the future, conditions warrant a return to work.

THE NEW RANGE OF OPTIONS – A LOT HAS CHANGED

ESD has summarized recent changes to unemployment benefits under the CARES Act, and here is a quick rundown of what is new:

- The definition of workers entitled to unemployment benefits has expanded and now potentially includes employees who are furloughed, on standby, or have had a reduction in hours.
- Unemployment benefits have expanded. According to ESD, an additional $600 per week will be available to nearly everyone on unemployment from March 29 through the week ending July 25, and benefits will be extended an additional 13 weeks for a maximum of 39 weeks. The federal government will fund the entirety of this additional benefit amount.
- Reimbursable employers (those who reimburse the ESD for benefit charges paid to former employees instead of paying a quarterly tax) will receive relief. The CARES Act allocates federal funds for paying reimbursable employers for 50% of the benefit amounts that employers typically pay back to ESD. The procedures have not been finalized, but it appears the ESD will pay benefits, the employer will reimburse 100% of those benefits back to ESD, and then ESD remits half of the money back to the employer using federal funds. It’s complicated, but ultimately, a reimbursable employer should receive back 50% of the amount it pays in benefit charges for the time period of March 13, 2020, through December 31, 2020.

SUMMARIZING THE AVAILABLE OPTIONS

Everyone is affected by the COVID-19 emergency, but the revenue impacts will be felt differently depending on revenue sources. Jurisdictions relying heavily on sales and lodging tax revenues are likely to be particularly hard hit. In addition to revenue impacts, local governments are considering how much available work there is for employees while Governor Inslee’s Stay Home – Stay Healthy Proclamation 20-25 is in effect and projecting what staffing levels will be necessary under the “new normal” that will subsequently emerge.

These issues will inform how a local government decides to address employment and staffing issues. Here are some of the major options:

Permanent Layoffs/Reductions in Force

A local government may decide, based on revenue forecasts, lack of available work, or a combination of the two, that permanent layoffs are required. MRSC’s webpage on Reductions in Force contains a helpful summary of issues to consider. Note that CARES Act regulations will include a requirement that laid-off workers be notified of their potential eligibility for unemployment benefits at the time of separation. An employer is required to pay out accrued leave in accordance with its personnel policies at the time of separation of employment, and the former employee may be eligible for health care coverage through Washington Apple Health. Washington’s paid sick leave law provides that accrued, unused paid sick leave is reinstated, and the previous period of employment is counted if the former employee is rehired within 12 months of separation.

Temporary Layoffs – Furloughs and Standby

Both furloughs and standby are forms of temporary layoff according to ESD. A temporary layoff will provide both an employer and employee with greater flexibility if, in the future, conditions warrant a return to work. SharedWork and Partial Employment

SharedWork is an optional ESD program that allows employers to reduce hours by as much as 50 percent, while their employees collect partial benefits to replace a portion of any lost wages. ESD uses the SharedWork chart to deduct the employee’s earnings from their weekly benefits. If approved for SharedWork, an employer may request relief of benefits charges. The term “partial employment” describes employees who continue to work but at reduced hours. To be considered partially employed, an employee: must (1) have originally been hired as full-time; (2) worked at least 40 percent of their regular full-time hours during the period of reduction (16 hours); and (3) expect to return to their employer full-time within four months.

Does Paying for Health Care Benefits While on Temporary Layoff Affect Employee Eligibility?

Continuing to pay for an employee’s health insurance does not affect their ability to receive unemployment benefits. Consider contacting your insurance carrier to determine who is eligible to participate in your health plan.

Union-Represented Employees

All of these decisions should be made in consultation with your agency’s legal counsel. This is especially true if your decisions will involve union-represented employees. In such an event, an agency will need to ensure that any action it takes is negotiated and complies with applicable collective bargaining agreements.

Oskar Rey, Legal Consultant, writes on a variety of local government issues including land use, zoning, code enforcement, public records, and public works. orey@mrsc.org

FURLOUGHS AND MORE

Employer Options During the COVID-19 Pandemic

BY OSKAR REY, MRSC LEGAL CONSULTANT

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In response to the pandemic, local governments may find themselves dealing with increased expenditures—such as overtime for frontline personnel, technology-related costs for working remotely, and other unanticipated costs—as well as disruptions in the receipt of certain revenues. Many local agencies have deferred certain types of payment due dates, late fees, and fines. Other revenues related to business activity could be impacted by the requirement to suspend many business operations. Sales taxes and local business taxes (B&O, business licenses, etc.) could be significantly impacted depending on the length of the crisis. Several counties have extended the due date for first-half property taxes, which will impact all jurisdictions that collect these. What are some options for addressing cashflow?

Use of Reserves: Some governments may find that they will need to rely upon their reserves. In some cases, these reserves are part of their operating funds themselves and appropriated as part of their routine budget process. Use of these reserves may not require any additional action. In other cases, the reserve is part of the operating fund, but not appropriated as yet. That may require a budget amendment to authorize the use of these funds. Other instances involve a reserve that is held in a special fund (such as a cumulative reserve fund). In those cases, the government will need to determine if that fund has been appropriated for expenditure as yet or not.

Interfund Loans: The government may find insufficient cashflow in one fund while having sufficient idle funds in a different fund of the entity. A loan from one fund to another is permissible but requires prior approval by the legislative authority. The State Auditor’s Office provides good guidance on interfund activity, including interfund loans, in its BARS manuals (cash and GAAP). The government may be able to provide a “blanket” authority for interfund loans to staff in response to temporary cashflow concerns. However, limitations, conditions, and reporting should be included in any “blanket guidance.” You can find several good examples on the MRSC website.

Short-Term Loans: A government may find it has insufficient resources in any fund to address cashflow needs. In that case, you may need to seek a short-term loan from a lending institution. MRSC has previously published a variety of resources that may prove helpful in thinking through this issue. They include: Debt Management Policies, Types of Municipal Debt (which has a section on short-term debt), and General Obligation Debt Limits. Specialized legal support (bond counsel) and independent financial advisors can help you navigate this process and select your best debt options. Make sure to include your policy makers and in-house legal counsel in this process from the very beginning.

In light of the challenges local governments are facing in response to the COVID-19 pandemic, your agency may want to consult a primary banking partner as to the availability of credit as part of your existing banking relationship. MRSC is hearing that many in the banking community are unable to prioritize access to resources for local governments, which may complicate your efforts. Your financial advisor can provide advice to your agency in this regard as well.

How can local governments address insufficient cashflow as a result of the COVID-19 pandemic?

Can cities and counties offer grants or low-interest loans to local businesses as financial relief due to COVID-19 impacts?

Have a Question? Ask MRSC. Call us at (206) 625-1300 or (800) 933-6772 or submit your question online at mrsc.org

The Washington State Constitution prohibits Gifts of Public Funds “except for the necessary support of the poor and infirm.” There is a related prohibition in the state constitution on the lending of credit by public entities. Based on our understanding of this provision, MRSC has historically advised that financial contributions by local government entities to private businesses, either in the form of a grant or a loan, are generally prohibited. We have also previously advised that there must be a proper public purpose or public benefit resulting from such expenditures beyond providing financial support to a local business.

However, on March 17, 2020, the Washington Attorney General’s Office (AGO) issued a memo to state and local governments clarifying that public funds may be spent “for the primary purpose of protecting and promoting public health which may have an incidental benefit on private citizens and entities.” The AGO provided additional clarification in an April 6, 2020 memo, concluding that, with sufficient safeguards in place, small business “loans or grants are likely permissible if a local government can establish a clear nexus between such programs and either protecting the local economy or promoting compliance with public health guidelines.” This provides more flexibility for local governments to assist local businesses. We recommend discussing any proposal related to financial assistance with your legal counsel. In addition, both the state and federal governments have either introduced or adopted significant measures intended to provide economic relief to small businesses. For more on these new measures and what local governments can do to support local businesses, see MRSC’s webpage on COVID-19 Small Business and Tenant Assistance Programs.

The governing body meeting has been postponed and bills are due before the next meeting. Can a local agency approve payroll and accounts payable in advance of the meeting?
When attempting to procure goods and services, local governments in Washington State must comply with a variety of statutes and the procurement process can often be time consuming. Fortunately, state law also accounts for those times when a local government needs to act quickly, and there are relevant rules relating to waiving competitive bidding requirements in emergency situations.

**WHAT CONSTITUTES AN EMERGENCY?**

There are several state statutes that define “emergency” for the purposes of competitive bidding but they all state essentially the same thing. An “emergency” consists of:

(1) A situation constitutes an emergency for the purposes of waiving competitive bidding requirements for unrelated contracts simply because an emergency is happening within your jurisdiction. To state this a different way: if your jurisdiction has declared an emergency, you must still follow normal competitive bidding requirements for all contracts that are not explicitly necessary and directly related to the emergency. For instance, you cannot waive competitive bidding requirements to design or build a new building due to a broken water main or an ongoing pandemic unless the new building is somehow directly related to the emergency at hand.

(2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures.

(1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

\[\text{(2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures.}\]

**EMERGENCY PUBLIC WORKS AND PURCHASES**

The statute RCW 39.04.280(1)(c) and (e) provide a general exemption from competitive bidding requirements for all Washington local governments when awarding contracts for public works projects or for purchases of supplies, materials, and equipment in the event of an emergency.

Once it is determined that an emergency exists, then the person or persons designated by the governing body to act in the event of an emergency (e.g., mayor, executive, city/county manager, general manager, etc.) may declare that an emergency situation exists, waive competitive bidding requirements, and award all contracts necessary to address the emergency. However, the governing body (council or board of commissioners) or the designee must adopt “a written finding of the existence of an emergency” within two weeks of the award of any such contracts.

It should be noted that in the case of a public works project, only the bidding process would be excused during an emergency situation. Once a contractor is engaged for the work all other contracting requirements – such as retainage, prevailing wages, and performance and payment bonds – need to be followed as part of the project.

**EMERGENCY A&E CONTRACTS**

In addition to the uniform exemption for public works and purchases, RCW 39.80.060 provides an exemption for the normal qualifications-based selection process in chapter 39.80 RCW for architecture and engineering (A&E) contracts (which also includes land surveying and landscape architecture). The statute does not specifically define “emergency,” but it states:

(1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

(1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

**NON A&E EMERGENCY SERVICE CONTRACTS**

There are no statutory bidding requirements for any agency for purchased services, which are provided for routine, necessary, and continuing functions of a local government agency, mostly relating to physical activities. These services are usually repetitive, routine, or mechanical in nature, support day-to-day agency operations, involve the completion of specific tasks or projects, and require minimal decision-making, such as solid waste pickup or herbicide application. For these contracts, agencies should follow their own internal policies and procedures, which would ideally include provisions for emergency contracts.

Similarly, most agencies have no statutory bidding requirements for personal services, which involve technical expertise provided by a consultant that is mostly intellectual in nature – such as planning studies or legal services (but not including architecture and engineering, which has its own requirements). Again, you should follow your own internal policies and procedures.

However, for personal service contracts there are two exemptions: public facilities districts (PFDs) and port districts.

**PERSONAL SERVICE CONTRACTS FOR PORT DISTRICTS**

Port districts must follow the provisions of chapter 53.19 RCW for personal service contracts and RCW 53.19.020 provides an exemption for emergency contracts. The definition of “emergency” in RCW 53.19.020(4) is essentially identical to the definition in RCW 39.04.280 for public works and purchases. RCW 53.19.030 requires that:

Emergency contracts shall be filed with the [port] commission and made available for public inspection within seven working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the commission when the contract is filed.

**ADDITIONAL RESOURCES**

Listed below are some online resources MRSC offers for local government procurement and contracting:

- Contracting and Competitive Bidding webpage – Provides a basic overview of contracting requirements.
- Procurement Policy Guidelines webpage – Gives guidelines and examples to help local agencies adopt and update their procurement policies.
- Competitive Bidding Exemptions webpage – Offers information about situations when competitive bidding may be waived.

However, subsection 3(a) provides an exemption “[w]hen the contracting authority makes a finding that an emergency requires the immediate execution of the work involved.”

**PERSONAL SERVICE CONTRACTS FOR PUBLIC FACILITIES DISTRICTS**

Public facilities districts created by cities have very basic requirements in RCW 39.57.070, which essentially requires the PFD to adopt an internal policy but does not establish specific procedures or mention emergency contracts. PFDs created by counties have somewhat more stringent requirements in RCW 36.100.180.

\[\text{(1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.}\]

\[\text{(2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures.}\]
USE OF ELECTRONIC SIGNATURES
Let’s start with formal electronic signatures. State and local agencies are authorized to use and accept electronic signatures, making them a good option for those agencies that can invest in the technology needed to use them. Beginning in 2016, local agencies were specifically authorized to use electronic signatures by Chapter 19.960 RCW, and effective June 11, 2020, Chapter 19.960 RCW is repealed and replaced by the Uniform Electronic Transactions Act (UETA).

UETA provides for essentially the same authority as Chapter 19.960 RCW with respect to a local agency’s use of electronic signatures: Unless state or federal law requires a wet signature, an electronic signature can be used and must be given the same legal effect as a wet signature. Therefore, typical local government records requiring a signature – contracts, meeting minutes, claim vouchers – can utilize electronic signatures in lieu of wet signatures.

To use electronic signatures, the agency must first adopt a local policy. UETA provides some guidance on what to address in an agency policy:

• The manner and format in which electronic records must be created, generated, sent, communicated, received, and stored, and the systems established for those purposes;
• The type of electronic signature required, the manner and format in which the electronic signature must be affected, and the identity of/or criteria that must be met by any third party responsible for creating the signature;
• The control processes that will be used to ensure the preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

The City of Vancouver has a recently modified policy example that identifies DocuSign as the city’s electronic signature platform (or “third party”) and recognizes electronic signatures as “legally binding and equivalent in force and effect as a wet signature.”

COMMON QUESTIONS ABOUT ELECTRONIC SIGNATURES
Here are some questions regarding use of electronic signatures in general as well as during the COVID-19 pandemic.

If an agency doesn’t want to formally adopt an electronic signature policy, can it rely on scanned versions of the wet signature?
While I am not aware of legal prohibitions with this approach (again, unless a wet signature is required by another law), there are some practical issues that arise, such as whether the employee has the equipment required to turn a hard copy document into a PDF, as well as the quality and readability of home-scanned records.

What are the low-tech options available to local governments?
One low-tech option is when the individual authorized to sign on behalf of the agency (for example, the mayor) provides phone or email authorization for a different individual (for example, the city clerk) to sign on their behalf. To accomplish this, the mayor would ask the clerk to sign a particular document on their behalf, and the clerk would document both how the mayor authorized the clerk (for example, via email or phone) and the date on which this request took place. The clerk would then write the following in the signature line:

[City’s signature] for [printed name of mayor] by [email or phone] authorization on [date authorized].

This may be a good option when the clerk wants to maintain the records in a central location and the mayor cannot scan the record with his or her signature.

Can’t we just sign the documents in person as we normally would?
An individual with signature authority could constitute “essential” personnel for the purpose of signing documents that are necessary during the emergency. Therefore, if no alternatives are available an individual could go to the agency’s offices to sign necessary documents.

CONCLUSION
During these strange times caused by the COVID-19 pandemic, whichever approach an agency chooses to take, it’s clear that business-as-usual is suspended for some period of time. Agencies should take steps to ensure that the processing of its contracts, claims, vouchers, and other critical documents are not delayed due to the inability to secure a wet signature. While adopting a formal electronic signature policy is a good option, other low-tech options provide an alternative for those agencies that do not have the technology required to use formal electronic signatures under UETA.
MRSC TRAINING

Learning For Local Government Professionals and Elected Officials

MRSC offers convenient, online and in-person training across a variety of broad topics including finance and budgeting, government performance, management, public works and contracting, public records act compliance, and land use case law.

UPCOMING WEBINARS

How to Develop a Housing Action Plan
Wednesday, July 8, 1:30–3:00pm  |  Credits: None

Land Use Case Law Update – COVID-19 Edition
Friday, July 17, 11:00am–12:00pm  |  Credits: Legal CM, CLE, CML

PRA Deep Dive – Personnel and Employment Records
Wednesday, July 29, 10:00–11:00am  |  Credits: CLE, WAPRO, CML

Learn more and register at mrsc.org/training