



# MCIT BULLETIN

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## MCIT Addresses County Boards

MCIT representatives are meeting with each county board to provide a report about MCIT, highlighting key organization and program developments, trends, initiatives and services.

Representatives also discuss how the county has contributed to the success of the program.

This year's report highlights key MCIT developments: financial status of MCIT, claim trends and coverage enhancements. Services included with MCIT membership are also reviewed.

Commissioners and county staff are encouraged to engage MCIT during these sessions.

## CROWN Act Protects Against Discrimination on Basis of Hair

In January, Governor Tim Walz signed the bill referred to as Creating a Respectful and Open World for Natural Hair or the CROWN Act into law.<sup>1</sup> The Minnesota Department of Human Rights explained that the CROWN Act is intended to protect against discrimination based on race-based natural hair textures and styles under the Minnesota Human Rights Act (MHRA).

The new law adds a definition of race to the MHRA stating that "race" includes "traits associated with race, including but not limited to hair texture and hair styles such as braids, locs, and twists." A number of other states have passed similar laws.<sup>2</sup>

### More Than Hair Discrimination

It should be noted that the CROWN Act may cover more than just hair discrimination. The new definition prohibits discrimination based on "traits associated with race," which includes but is not limited to hair texture and style.

The Act does not define what "traits associated with race" in addition to hair texture and style may be covered. This is something that may be determined by the courts in the future.

The CROWN Act applies anywhere the Minnesota Human Rights Act applies, including in employment, public services and housing. Policies can still be adopted for workplace health and safety standards, such as requiring hair to be tied up or in a net, but the policies must be neutral and apply equally to all hair textures and styles.



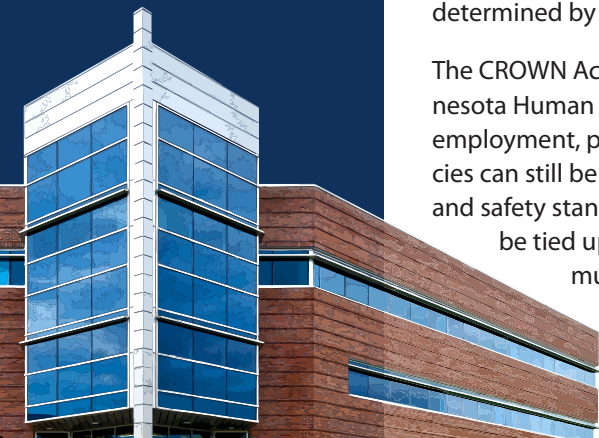
### Review Policies

MCIT recommends that members review their existing policies, including dress code and anti-discrimination policies, to ensure that they do not unduly prohibit certain hairstyles and that they are broad enough to prevent discrimination based on traits associated with race, including hair textures and styles such as braids, locs and twists.

More information about the new law can be found in the Preventing Hair Discrimination fact sheet on the Minnesota Department of Human Rights website.

<sup>1</sup>Minn. Stat. § 363A.03, subd. 36a; 2023 Minn. Sess. Laws Ch. 3.

<sup>2</sup>Including Alaska, California, Colorado, Connecticut, Delaware, Illinois, Louisiana, Maine, Maryland, Massachusetts, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Tennessee, Virginia and Washington.





## New State Holiday: Juneteenth

Juneteenth (June 19 of each year) has been designated a state holiday in Minnesota effective Aug. 1, 2023; however, as of press time, legislation is pending that would amend the effective date to require that the holiday be observed this year.<sup>1</sup> Juneteenth was established as a federal holiday in 2021.

As with other state holidays, no public business can be transacted on the Juneteenth holiday, except in cases of necessity.<sup>2</sup> Members are encouraged to review their policies and collective bargaining agreements to ensure compliance.

### Holiday Recognizes Emancipation

President Abraham Lincoln issued the Emancipation Proclamation Jan. 1, 1863. It declared “that all persons held as slaves” within states engaged in rebel-

lion against the Union “are, and henceforward shall be free.”

On June 19, 1865, more than two years after President Lincoln declared the enslaved persons free and more than two months after the end of the Civil War, the Emancipation Proclamation was said to have been first publicly read in Texas by Union soldiers led by General Gordon Granger.

The Juneteenth holiday recognizes this historical pronouncement of the abolition of slavery.

Juneteenth and emancipation celebrations have been commonplace in Minnesota since 1889 as a result of community-based grassroots efforts.

<sup>1</sup> See Minn. Stat. §§ 10.55 and 645.44, amended by 2023 Minn. Sess. Laws Ch. 5.

<sup>2</sup> See *Kantack v. Kreuer*, 158 N.W.2d 842 (Minn. 1968) (discussing meaning of “public business”).

## Staff Counsel Hired to Round Out Team

Dawn Hinkley started as a staff counsel for risk control Feb. 27 with MCIT. She joins two other attorneys on staff and fills a vacancy created during the pandemic.

Hinkley comes to MCIT after working for the North Dakota Supreme Court as a staff attorney for 17 years. Prior to that she served as a district court law clerk to Honorable Paul Nelson in Chippewa County. She is licensed to practice law in both North Dakota and Minnesota, and holds a juris doctorate from the University of Iowa.

Hinkley’s extensive experience researching and analyzing legal issues will be used to address risk management concerns for MCIT’s members.

MCIT Executive Director Gerd Clabaugh says, “We are fortunate to have Dawn bring her skills and knowledge to MCIT and by extension its members.”

## New Member: Des Moines River Watershed Partnership

The MCIT Board of Directors approved the membership application of Des Moines River Watershed Partnership during its April 14 meeting for both the property/casualty and workers’ compensation divisions.

The newly formed joint powers entity includes the counties of Cottonwood, Jackson, Lyon, Martin, Murray and Nobles; soil and water conservation districts of Cotton-

wood, Jackson, Lyon, Murray and Nobles counties; and the Heron Lake Watershed District.

Nobles County sponsored the partnership’s application. Its mission is to cooperatively organize, implement and maintain the Des Moines River comprehensive watershed management plan.

**MCIT Board of Directors:** Ron Antony—Chair, *Yellow Medicine County Commissioner*; Don Wachal—Vice Chair, *Jackson County Commissioner*; Randy Schreifels—Secretary-treasurer, *Stearns County Auditor-treasurer*; Kurt Mortenson, *Otter Tail County Commissioner*; Todd Patzer, *Lac qui Parle County Commissioner*; Kirk Peysar, *Aitkin County Auditor*; Brett Skyles, *Itasca County Administrator*; Jack Swanson, *Roseau County Commissioner*; and Marcia Ward, *Winona County Commissioner*.

**MCIT Bulletin:** The MCIT Bulletin is published by MCIT. The articles and information contained in the Bulletin should not be construed as legal advice or coverage opinions about specific matters. The information contained should not be acted upon without professional advice.

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## TAKEAWAYS FROM MARCH 'DATA BREACHES' SEMINAR

# Take Action Now to Protect Against Cyber-incidents

MCIT hosted the seminar “Data Breaches: A Primer for County Attorneys” March 30. The topic is unfortunately timely for local Minnesota public entities, given the recent high-profile data breaches of the Minneapolis Public Schools and Rochester Public Schools, and 17 cyber claims MCIT received just since January.\*

As the expert speakers repeated, it is not if an entity will have a cyber-incident, it is when. As such, the eye-opening information and recommendations presented are important for all MCIT member entities and their employees to understand and upon which to take action.

### Understand ‘Data Breach’ Legal Definition

The Minnesota Government Data Practices Act classifies data to determine whether and how a governmental entity can share data, among other provisions. Attorney Ann Goering of Ratwik, Roszak & Maloney P.A. reminded the group that the law also includes a specific definition for what constitutes a data breach.\*\*

It is imperative that members understand this definition. If an incident meets this definition, it may trigger additional requirements, such as notifications, investigations and release of findings. Members should keep in mind that not every unauthorized acquisition of data constitutes a breach under the MGDPA.

This is a technical aspect of the law. If a member suspects that an incident meets the definition of “data breach” under the MGDPA, the organization should report it to MCIT and not take any action without first consulting with MCIT or the assigned breach coach.

### Current Cyber-threats

Jeffrey Birnbach, senior partner, managing director of Sylint LLC, spoke about the evolving threats to public entities from ransomware, which is malicious encryption of files to deny the owner access to and use of the data; and cyber-extortion, which is a demand for payment based on a threat to expose, damage or deny access to the data.

Birnbach highlighted that ransomware as a service (RaaS) has emerged to make launching a cyber-attack relatively cheap, easy and quick. RaaS is essentially the ability of a bad actor to purchase someone else’s already developed ransomware tools to execute a ransomware attack. He also discussed attack vectors and vulnerabilities, and what makes public entities such easy and attractive targets, particularly the large amount of sensitive data they have on individuals and the historically lax or outdated security of their systems.

A key takeaway was considerations about the IT response to an attack and reasons engaging an incident response professional is essential. The immediate

impulse may be to restore the system from backups, but entities must remember that the compromised system is, in fact, a crime scene. Although well-intentioned, any efforts to return the system to service, can often lead to the obfuscation or loss of essential data as to how the attack occurred and exactly what data had been compromised.

### Business Email Remains Major Vulnerability

Antonio (Tony) Rucci, independent cyber-security consultant, led the group deeper into various types of business email compromise, and discussed systems assessments and the need for independent penetration testing of systems to determine the strength of the system against intrusion.

Perhaps the most fascinating part of the presentation occurred when Rucci took the audience through a live demonstration of the dark web, showing active dark markets that sell various criminal services. Attendees witnessed in real time where stolen critical data lands; and how it can be sold, traded, auctioned or dumped for the world to see and download. The point was to show how easy it is for anyone to access the information at nearly any price.

### Plan for Incident Response

Matthew H. Meade, a member of the Eckert, Seamans law firm, and chair of the firm’s Cybersecurity, Data Protection and Privacy group, walked through practical steps to respond to a cyber-incident. Using real-life scenarios, he presented questions to consider. The main takeaways for members are that they should all have a cyber-incident response plan and practice it, for example in a tabletop exercise, like other emergency response plans.

Meade also highlighted certain smartphone applications such as BeReal that can be used to capture images of work spaces that may contain private or confidential data, which could then be used by threat actors.

\*Cyber claims MCIT received Jan. 1-April 11, 2023.

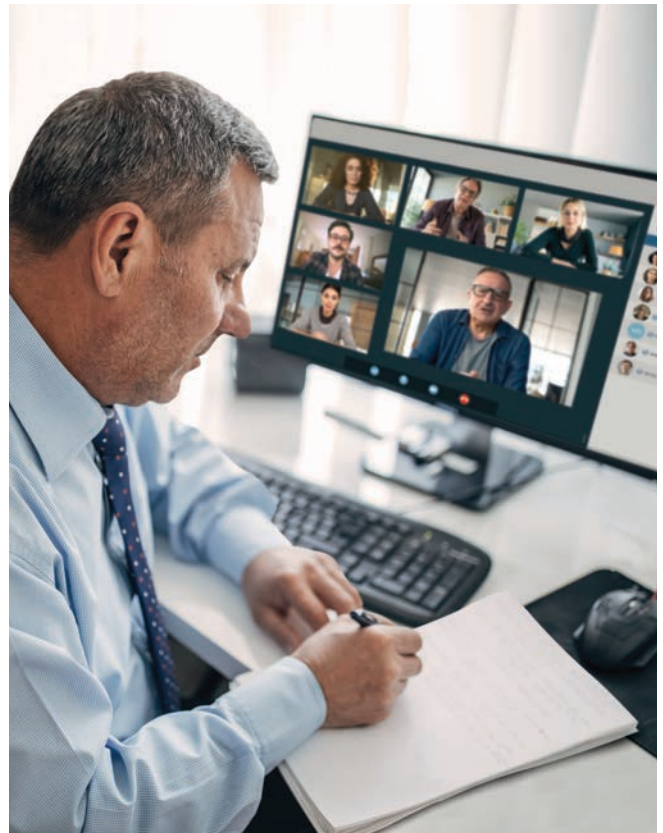
\*\*Minn. Stat. § 13.055

# Can Public Entities Hold Meetings Regularly Online?

*Editor's Note: This is an installment in an occasional series of questions MCIT receives from members regarding the Minnesota Open Meeting Law. Members can find other Open Meeting Law FAQs and articles at MCIT.org in the Resources section.*

**Q:** During the COVID-19 pandemic and while the state of emergency was ongoing, many local government boards held their meetings completely online. Can a government entity continue to do this now, with board members, staff and the public participating and attending remotely? The government entity is seeking to cut travel time and costs, and to encourage attendance and participation in its meetings.

**A:** It may be possible, but only to a limited extent under normal circumstances and when all the statutory requirements for conducting remote meetings are met.



There are two sections of the Minnesota Open Meeting Law that allow nonstate public bodies to conduct meetings remotely. Each statute has different requirements. Failure to comply with all of the requirements of the particular statute under which the board is meeting means that the remote board member is unable to be counted as part of the quorum and participate in all proceedings.

The first, Minnesota Statutes, Section 13D.02 can be used for any meeting that would be covered by the Open Meeting Law, except a closed meeting held under Minnesota Statutes, Section 13D.03 for labor negotiations strategy.

The second, Minnesota Statutes Section 13D.021 is limited to circumstances when an in-person meeting or a meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under Chapter 12.

Absent extraordinary circumstances, Section 13D.021 typically does not apply. Instead, government entities must generally look to Section 13D.02 when board members request to attend meetings remotely.

## Virtual Attendance Under Section 13D.02: Other Entity Meetings by Interactive Technology

Among the many statutory conditions for meeting remotely under Section 13D.02 are requirements that:

- At least one board member be physically present at the regular meeting location.
- Members of the public present at the regular meeting location be able to hear and see all discussion and testimony and all votes of members of the body, including those attending remotely.
- Entities give notice of the regular meeting location and any locations at which board members will be participating remotely via interactive technology.
- Remote locations must be open and accessible to the public.

Because of these requirements, it does not appear to be legally possible to move a meeting entirely online with only remote participation under this statute. At least one board member must be in attendance at the regular meeting location, and the public must be able to attend at the regular meeting location.

Furthermore, the interactive technology at the regular meeting location must be

sufficient to enable the public attending from that location to hear and see all discussion, testimony and votes of members of the body.\*

Boards considering having a majority of its board members participate remotely should keep in mind that if only one board member is designated to be present at the regular meeting location and that designated board member is unable to attend, another board member must take his or her place for the meeting to move forward.

If this is not possible, then all conditions for meeting remotely are not met, and the board members intending to join remotely may not be considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Additionally, boards should remember that entities must give notice of the regular meeting location and locations at which board members will be participating remotely. The only concession to this notice requirement is if the remote location is closed to the public under limited statutory exceptions.

As of print, the sole exception currently available to close a remote location is if the board member is serving in the military and at a required drill, deployed or on active duty. The exception for being advised by a health care professional against being in a public place for personal or family medical reasons does not apply unless a state of emergency has been declared under Minnesota Statutes, Section 12.31 or within 60 days of it ending. (Note: A bill is pending at the Minnesota Legislature that may remove this qualifier.) A board member cannot participate from a location that is not open and accessible to the public more than three times in a calendar year.

For most regular and special meetings, the notice of remote locations must be provided at least three days before the date of the meeting in the same manner as notifying for a special meeting. If this notice is not given, a board member could still participate in the meeting if he or she attends in person at the regular meeting location.

The minutes for a meeting conducted under Section 13D.021 must reflect the names of members appearing by interactive technology and state the reasons they are appearing remotely.

Members are also reminded that any time one or more board members are attending a meeting remotely, all votes must be conducted by roll call so that each board member's vote can be identified and recorded.

### **Remote Meetings Under Section 13D.021: Meetings During a Pandemic or Chapter 12 Emergency**

The above analysis may be different if the board is meeting under the narrow parameters of Minnesota Statutes Section 13D.021.

This section permits meeting by either telephone or interactive technology when the presiding officer, chief legal counsel or chief administrative officer for the governing body determines

*continued on page 8*



## **No-cost Risk Control Fire Protection Services from Travelers**

As part of MCIT's partnership with Travelers Indemnity Company for reinsurance, some high-level property protection review services are available to members, most notably in the area of fire protection.

Travelers offers members aid in assessing current fire protection equipment, as well as potential future equipment as part of MCIT's property coverage.

### **Assessment of Current Fire Suppression Equipment**

Fire protection assessment is done in two phases: first is to test the water supply, second is to test the water distribution system. Testing the water supply is done through inspection and testing of the fire pump, water supply and hydraulic gradients that may affect the supply of available groundwater.

Inspection of the distribution system typically involves sprinklers. The inspection helps determine if the amount and location of sprinkler heads would allow occupants to escape safely and to contain the fire. This is done through sophisticated computer modeling and can help reveal areas of concern before a fire begins.

Travelers also provides on- and off-site training that covers how to maintain and inspect sprinkler systems.

### **Assessment of New Construction Equipment**

Travelers offers reviews of fire suppression equipment on any new construction or renovation at no cost. Members can inform Travelers of construction or renovation goals, and Travelers can provide specifications for designs that would fit the member's fire suppression goals.

Alternatively, members can send sprinkler or fire suppression plans to Travelers for a review before construction begins. Travelers can then provide a second opinion and point out any potential problems with the plans prior to initiation of construction.

The review services provided to MCIT members are based upon national fire codes and past losses incurred by others in similar settings. Members can contact MCIT loss control consultants to help organize these services with Travelers or to offer insights into other areas of concern.

### **Schedule Service**

To learn more about Travelers' services available to members or to schedule fire inspections or trainings, members should contact their MCIT loss control consultant toll-free at **1.866.547.6516**.



Workers' compensation claim representatives Amanda Goiffon and Rhonda Nilssen consult with each other.

## Spotlight on MCIT Workers' Compensation Claims Division

MCIT workers' compensation claims division continues to evolve to meet new and emerging challenges in claims handling. The team is currently comprised of:

- The workers' compensation claims manager, Andrew Essling: He is responsible for developing and implementing the workers' compensation program.
- The nurse case manager, Mimi Lynn: She works with employees and claims representatives to assess, coordinate and plan medical care.
- Six indemnity claim representatives (Kim Barnes, Amanda Goiffon, Rick Henning, David Hoffman, Rhonda Nilssen and Iona Shepherd): They predominately handle claims resulting in days away from work and medical treatment.
- The medical only claims representative, Sam Hudachek: He manages claims requiring medical treatment but that do not result in time away from work for employees.

All claim representatives work the claim in partnership with the employer (member), employee and health care provider to provide swift and appropriate care to gain the optimum recovery for the employee.

### Recent Challenges for Team

**COVID claims:** Claims submitted as the result of COVID-19 infection were a challenge for the workers' compensation team during the past few years, fueled in part by the presumption of a workplace exposure for certain employees, notably law enforcement and public health workers.

That presumption sunset in January 2023, but during the course of the pandemic, MCIT's claims team handled 1,374 COVID indemnity claims and 105 COVID medical-only claims.\*

**Post-traumatic stress disorder claims increase:** Effective Jan. 1, 2019, the Minnesota Legislature expanded the workers' compensation law to include a presumption of compensability for PTSD claims for certain first responders.

From 2003 through 2018, MCIT had a total of six PTSD claims reported (by date of injury). Since the presumption was enacted, the number has steadily risen: eight claims in 2020, 14 in 2021 and 19 in 2022.

### Continued Stewardship of Funds

**New medical bill review partner:** Beginning Aug. 1, 2022, MCIT has partnered with Rising Medical Solutions to ensure charges are appropriate under Minnesota's fee schedule and to realize additional savings based on pricing available through preferred provider organizations. Rising Medical Solutions' work has led to improved claims representative efficiencies, more clearly understandable explanations for changes to charges (for both health care providers and employees) and a more seamless, expedited process.

Since the partnership launched, MCIT has seen an average reduction per bill of 56.3 percent.

**MCIT's pharmacy benefit manager ensures accuracy in medication pricing:** MCIT partners with AWPRx for accurate pricing of medications prescribed for injured employees. In 2021, MCIT paid \$224,142 on pharmacy benefits, a total of 1,601 transactions, roughly \$140 paid per transaction. In 2022, the total paid was \$205,174 for 1,470 transactions, an average of \$138 per transaction. The average savings over the previous provider resulted in a 25% reduction in pharmacy costs.

\* Claims through Dec. 31, 2022

## Tap into New Newsletter, Website to Improve Driving Safety

As driving or riding in a motor vehicle can be the most dangerous activity for everyone day in, day out, employers should have an ongoing goal of keeping employees safe. The Minnesota Network of Employers for Traffic Safety (NETS) has developed a new newsletter and website to assist employers in meeting this goal.

The new electronic Drive Safe MN newsletter includes monthly updates

and resources. Appropriate for all members of an organization, the newsletter contains short articles and reminders about topical and common driving safety issues.

Between issues, the new *DriveSafeMN.org* website is a treasure trove of resources employers can use to support their traffic safety objectives. The website includes:

- Fact sheets

- Five Minutes for Safety talks
- Videos
- Policies
- Coaching cards
- More

Minnesota NETS is a partnership with the Minnesota Safety Council, funded by the Minnesota Department of Public Safety/Office of Traffic Safety. MCIT provides each of its members a membership with the Minnesota Safety Council.

# PUBLIC SECTOR HR BASICS

FOR THOSE  
NEW TO PUBLIC  
SECTOR HR

## SEMINAR

MAY 17-18, ST. CLOUD

Public sector employers have specific issues and requirements that affect their management of employees that are different from private employers. “Public Sector HR Basics” May 17-18 in St. Cloud explores these differences, provides best practices for sidestepping common pitfalls and offers tips to ensure compliance with the law.

The seminar is **designed specifically for those new to the role of human resources management in the public sector.** This is not intended for general managers or supervisors. Registration is open at [MCIT.org](http://MCIT.org) and is \$110 per person for members.\*

Ann Goering and Erin Benson, attorneys with Ratwik, Roszak and Maloney, lead this seminar. They focus on labor and employment law, as well as civil litigation. They have extensive experience representing MCIT members and other local government entities in employment-related suits.

\*Cancellation Policy: Registered individuals will not be billed for cancellations received by May 2, 2023. Cancellations received after this deadline will be billed for the entire registration fee. Send cancellation notices to [registration@mcit.org](mailto:registration@mcit.org).



## SESSIONS

### HIRING IN THE PUBLIC SECTOR

What Is the Same; What Is Different?

In this session, participants delve into public sector hiring, including a discussion of the application of the Minnesota Veterans Preference Act and conducting background checks. Also examined are the special considerations for hiring law enforcement and social services positions.

### THE MINNESOTA GOVERNMENT DATA PRACTICES ACT

What Every HR Professional Needs to Know

Human resources professionals are often looked to as the experts in personnel data under the Minnesota Government Data Practices Act. This session reviews the basics of personnel data and explores the nuances of complying with the MGDPA as a human resources professional. Best practices for responding to data requests and keeping data secure are also discussed.

### PELRA

Dealing with Unions in Negotiations and Everyday Life in the Public Sector

The Public Employment Labor Relations Act (PELRA) governs labor relations for most public employers and employees in Minnesota. The basics of union negotiations under PELRA are reviewed and tips offered for working with union representation away from the bargaining table.

### WHAT IS DUE PROCESS?

Investigations, Loudermill and More

Providing due process in relation to employee conduct issues is unique to the public sector. Participants learn about the legal basis behind the due process requirements and how human resource professionals are key in ensuring that employee due process rights are granted.

### INCOMPETENCE

You Can Discipline a Public Sector Employee; It Is Just Harder

This session discusses the basics of discipline and termination in the public sector and how human resources professionals assist in imposing and supporting an employee's discipline for incompetence or misconduct. This session also discusses unique considerations for the discipline or discharge of a veteran.

## SEMINAR AT A GLANCE

- May 17, 9 a.m.-4:30 p.m.;  
May 18, 9 a.m.-2:30 p.m.
- Holiday Inn & Suites, St. Cloud  
(75 S. 37th Ave.)
- \$110 per person for MCIT members; \$150  
per person for nonmembers\*: Fee includes  
materials, lunch and refreshments
- Register at [MCIT.org](http://MCIT.org): Limited seating available
- Intended audience: Human resources professionals and those tasked with the human resources role at their employer who are new to this role in the public sector

## Can Public Entities Hold Meetings Regularly Online? ... continued from page 5

that an in-person meeting or a meeting conducted under Section 13D.02 is not practical or prudent because of a health pandemic or an emergency declared under Chapter 12.

Although Section 13D.021 has similar requirements for physical presence at the regular meeting location, it provides an exception where in-person attendance is not feasible due to a health pandemic or emergency declaration. It also allows the chief legal counsel or chief administrative officer to be physically present at the regular meeting location in lieu of a board member.

The notice requirements are slightly different when meeting under Section 13D.021. If telephone or interactive technology is used to conduct a regular, special or emergency meeting, the public body shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or interactive technol-

ogy and instructions for how the public may monitor the meeting electronically from a remote location to the extent practical. The timing of this notice is as described above.

Members should also keep in mind that if attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration and the public body's practice is to offer a public comment period at in-person meetings, members of the public must be permitted to comment from a remote location during the public comment period of the meeting to the extent practical.

All votes must be conducted by roll call to identify and record each board member's vote.

### Further Information


Not every condition for conducting a remote meeting has been discussed in this article. MCIT members continuing

to hold meetings with remote participation are encouraged to review the statutory section under which they are meeting and comply with all requirements. Members are encouraged to consult with their own legal counsel regarding how the statutes apply to a specific situation.

Members may find these other resources on the Open Meeting Law instructive:

- The Minnesota Department of Administration, Data Practices Office ([MN.gov/admin/data-practices/](http://MN.gov/admin/data-practices/)), has a wealth of resources. Staff are available to answer Open Meeting Law questions, as well as questions about the Minnesota Government Data Practices Act.
- [MCIT.org](http://MCIT.org) has a variety of resources about the Open Meeting Law, including "Meeting Remotely Under the Open Meeting Law."
- The MCIT risk management staff is available to provide general risk management information about this law.

\* Section 13D.02 does not require that the public attending from a remote location be able to hear and see all discussion and testimony and all votes of members of the body.



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**COMING MEETINGS**  
May 12, MCIT Building, St. Paul: 9 a.m., Board of Directors  
1 p.m., Claims Committee  
June 9, MCIT Building, St. Paul: 9 a.m., Board of Directors  
1 p.m., Claims Committee