

Coronavirus and the Building Workplace: *Are You Prepared? Part 3*

Tuesday, March 24, 2020

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ON LABOR RELATIONS

Agenda

- Situation Update
 - Federal and State Legislation
 - New York Executive Order
 - Union Agreements
- Common Questions Regarding Coronavirus and the Building Workplace
- Additional Resources
- Participant Questions

A stylized city skyline composed of various blue geometric shapes of different heights and widths, creating a silhouette effect against a lighter blue background.

Situation Update

Federal Legislation

- **Family First Coronavirus Response Act.**

- Effective April 2, 2020.
- Includes:
 - (1) Emergency Paid Sick Leave Act;
 - (2) Emergency Family and Medical Leave Expansion Act; and
 - (3) Tax Credits for Paid Sick and Paid Family and Medical Leave.

- **Emergency Paid Sick Leave Act.**

- Employers with less than 500 employees must provide FTEs with 80 hours of paid sick leave (less for PTEs) for certain purposes related to the Coronavirus outbreak.
 - Leave is fully paid, or paid at a rate of 2/3 of the regular rate, depending on the reason for taking leave.
 - Leave is capped at \$511 per day and \$5,110 in the aggregate, or \$200 per day and \$2,000 in the aggregate, depending on the reason for taking leave.
 - Employers may not require employees use other paid leave first.

Federal Legislation (cont'd)

- **Emergency Family & Medical Leave Expansion Act.**
 - Provides 12 weeks of leave to care for a child whose school/day care is closed due to a public health emergency.
 - Leave counts towards 12 weeks of leave available under FMLA.
 - First 10 days may be unpaid; after which employees must be paid 2/3 of their regular rate.
 - Employees can substitute other leave during this time, including Emergency Paid Sick Leave.
 - Pay is capped at \$200 per day; \$10,000 in total.
 - Employees must be employed for 30 days to be eligible.
 - Only applies to employers with fewer than 500 employees.
- **Tax Credits for Paid Sick and Paid Family and Medical Leave.**
 - Covered employers will be provided payroll tax credits to cover these benefits.

New York State Legislation

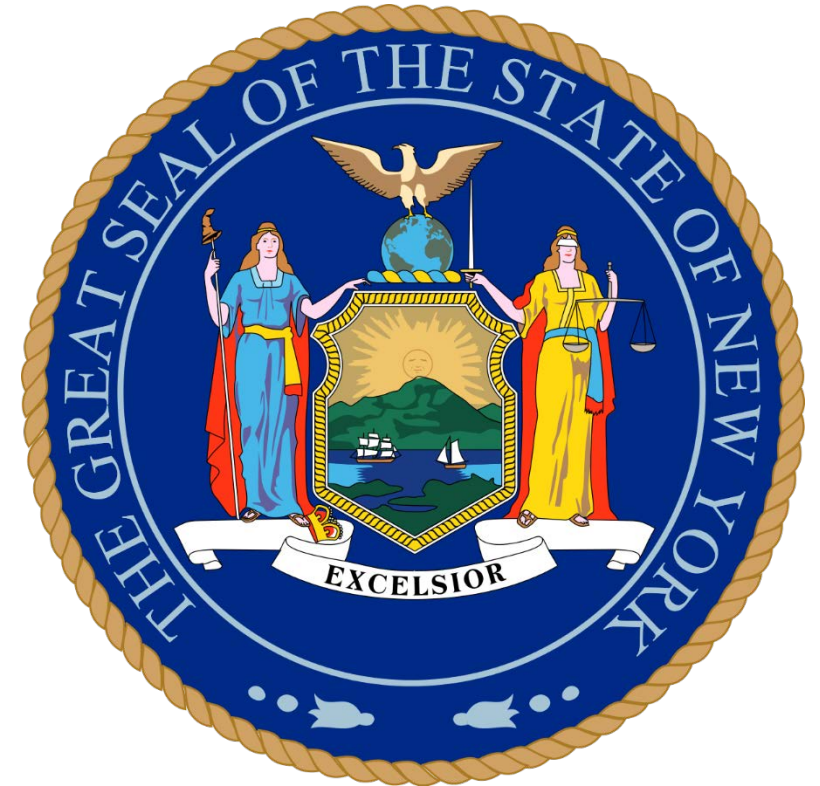
- **Effective Immediately:**

- Large employers (100+ employees) must provide at least 14 days of paid leave.
 - Smaller employers must provide a smaller amount of leave.
 - Benefits are only available to the extent they exceed what is provided under the federal law.
- Leave is available to employees subject to a mandatory or voluntary quarantine order by a public official.
 - Not available to employees under an order due to non-business travel to an affected area.
 - Not available to employees who are asymptomatic and who are capable of working (remotely or otherwise).
- Leave must be provided without loss of other accrued sick leave.

- A separate permanent sick leave program will go into effect in 180 days.

New York Executive Order

- Effective March 22 at 8:00 PM, only essential businesses may utilize an in-person workforce.
 - Businesses must utilize teleworking arrangements to the extent possible.
 - Businesses that provide essential services must implement social distancing rules.
- If a business provides both essential and non-essential services, only those necessary to support essential services are exempt.
- RAB has developed a form letter that employers can provide to employees stating that they are essential under the Executive Order.
 - The employee can then present this letter to law enforcement if need be.



New York Executive Order (cont'd)

- The following have been deemed “essential businesses” and are not subject to the in-person workforce reduction:
 - **Essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses.**
 - Including security, building cleaners or janitors, general maintenance, and disinfection.
 - Doorpersons are “essential.”
 - **Construction.**
 - Including electricians and plumbers, and other related construction firms and professionals for essential infrastructure or for emergency repair/safety purposes.
 - **Essential services.**
 - Including trash and recycling collection, mail and shipping services, and building cleaning and maintenance.

New York Executive Order (cont'd)

- Other businesses may be deemed essential by requesting an opinion from the Empire State Development Corporation.
- If you are unsure whether your business or a business function is essential, consult legal counsel.
- **Note:** Residential and commercial evictions and foreclosures are suspended for at least 90 days.



RAB/32BJ MOA and Tolling Agreement

- Employees who are laid off/ineligible for health coverage on or after March 6th will be provided with additional 30 days (for total of 60 days) from the date of their layoff/loss of eligibility.
- Employers will make reasonable efforts to allow employees to use PTO (vacation, sick, personal days, etc.) to cover absences due to pandemic-related reasons.
- There is no reduction in PTO if the employer directs the employee to stay at home and self-quarantine because of Coronavirus exposure in the workplace.

RAB/32BJ MOA and Tolling Agreement (cont'd)

- If an employee self-quarantines for any other reason, the employer may permit the employee to use his/her PTO or statutory paid leave, if available.
- For statutory paid leave, the mandatory paid leave provision applicable to the largest covered employer will apply to all employers regardless of their individual size.
- If building operations are suspended/reduced, the following are waived:
 - Advance notice of reduction in force (30 days)
 - Notice of reduction in hours (30 days)
 - Advance notice of schedule change (30 days)
 - Bumping rights suspended (30 days)
 - Termination pay (60 days)

RAB/32BJ MOA and Tolling Agreement (cont'd)

- Employer will attempt to offer displaced employees temporary assignments at other locations without regard to seniority.
- The time limit for filing a grievance arising under any RAB agreement will be tolled for at least 30 days (unless terminated by either party on 7 days' notice).
- Joint Industry Grievance Committee meetings, Step II meetings, and arbitration hearings are postponed for the duration of the tolling agreement.

Scheduling Memorandum of Agreement

- The RAB and 32BJ have entered into an agreement regarding alternative work schedules during the pandemic.
- Full-time employees who regularly work 40 hours may voluntarily modify their work schedule to 3 days/week for a total of 36 hours.
 - Such employees will be paid for 40 hours of work.
 - The Union waives the requirement of overtime pay for working more than 8 hours/day.
 - Employees receive overtime if they work more than 12 hours/day or more than 40 hours/week.
 - There must be a minimum of 12 hours between the end of the shift on one day and the start of the next work day.
- The schedule change agreement must be signed by both the employer and the employee.

Temporary Employees Memorandum of Agreement

- The RAB and 32BJ are negotiating an agreement regarding the hiring of temporary employees for residential and apartment buildings.
- The agreement will likely address:
 - Seniority rules and the rights of permanent employees.
 - The treatment of temporary employees under existing agreements.
 - Notice requirements (to the Union and RAB).



Common Questions Regarding Coronavirus and the Building Workplace

How Do I Determine If I Have 500 Employees for the Purposes of the New Federal Law?

- We are awaiting guidance on this from the Secretary of Labor.
 - We anticipate that it will be issued before the law goes into effect in Early April.
- In the meantime, many employers are consulting FLSA/FMLA standards.
 - Under the FMLA, a corporation with an ownership interest in another corporation is a separate employer unless it meets (i) the integrated employer test or (ii) the joint employer test.
 - Under the FLSA, employers must consider (i) whether their business is a single enterprise, and (ii) whether they are liable as joint employers.
- If you have questions regarding counting employees, consult legal counsel.

Does a Closure Due to the Executive Order Qualify Employees for Leave under Federal/State Emergency Leave Laws?

- We believe the Order does not trigger leave under the federal or state law.
 - Neither the federal nor New York law define the terms “quarantine” or “isolation” orders, which are the events that trigger leave.
 - However, other guidelines define these terms in relation to an individual being diagnosed with, exposed to, or at a heightened risk of contracting Coronavirus.
 - The Executive Order focused on increasing social distancing by reducing in-person workforces, not whether employees have been exposed to, diagnosed with, or are at a higher risk of contracting Coronavirus.
- Be aware that paid sick leave laws in NYC and Westchester County include closure of the employee’s place of business by order of a public official due to a public health emergency.
 - NYC and Westchester County employees whose employers are required to close pursuant to the Order would be entitled to use paid sick leave upon request.

Can I Screen Employees and Others Entering My Building?

- Residents should always be allowed to enter the building.
- Taking an employee's body temperature is usually prohibited by the ADA.
 - However, the EEOC has stated that **employers may measure an employee's body temperature** during the pandemic.
- Taking the temperature of non-employees is also generally permissible.
 - There is minimal risk from an ADA and privacy perspective, but consult best practices below.
 - According to the NYC Health Department, building owners may:
 - Exclude visitors who appear to be ill or report Coronavirus symptoms, and (1) Travel from an affected area in the past 14 days; or (2) Close contact with a person with confirmed Coronavirus within the past 14 days.
 - The CDC's Community Mitigation Strategies suggest regular health checks – including temperature taking – as an appropriate mitigation measure.
- Best practices when taking temperatures:
 - Temperatures should be taken by a healthcare professional in accordance with standard medical principles and in a manner that protects privacy.
 - Consider health risks associated with people standing in line to have their temperature taken.
 - Be aware that some people with COVID-19 do not have a fever (consider checking for other symptoms).
 - Consult legal counsel to discuss best practices for your particular business.

What Can I Ask Employees About Coronavirus Exposure?

- The ADA generally prohibits disability-related inquiries.
 - However, employers can make disability-related inquiries during the pandemic, but may wish to consult legal counsel before doing so.
 - **Example:** Do you have a condition that puts you at higher risk of exposure?
- The following questions **are not disability-related** and may be asked:
 - Have you or someone that you live with been to an affected area in the last 14 days?
 - Have you had close contact with someone who is infected with Coronavirus?
 - Are you experiencing Coronavirus symptoms?
- **Employers should never:**
 - Direct questions to employees on the basis of a protected characteristic.
 - Ask employees if they have had contact with a person of a particular national origin.

What Rules Are In Place for the Hiring Process?

- Employers may screen applicants for symptoms of COVID-19 after making a conditional job offer, if they do so for all applicants in the same type of job.
 - This permits employers to perform medical exams, such as taking an applicant's temperature.
- Employers may delay the start date of an applicant who has COVID-19 or symptoms associated with it.
- Employers may withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms associated with it.
 - Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

When Can I Send An Employee Home?

- If symptomatic → Employers should send the employee home, even if contrary to the employee's wishes.
 - If an employee reports contact with an affected person → Employers can require the employee to stay at home for 14 days.
- Otherwise → Consult legal counsel.
- Be aware of practical (and potential legal) issues regarding obtaining doctor's notes during the pandemic.
 - Consider modifying your policies accordingly.
- Also consult legal counsel regarding applicability of:
 - Federal, state, and local law; and
 - Sick and other leave provisions in the relevant collective bargaining agreement.

Are My Employees Eligible for Unemployment?

- New Yorkers are eligible for unemployment insurance if they:
 - (1) Demonstrate recent substantial attachment to the labor market;
 - (2) Have received sufficient wages from a covered employer for a sufficient period of time;
 - (3) Are out of work through no fault of their own;
 - (4) Are ready, willing, and able to work; and
 - (5) Are actively seeking employment.
- Qualifying individuals are eligible for benefits for 26 weeks.
- NYS is waiving the 7-day waiting period for those out of work for Coronavirus-related reasons.

Are My Employees Eligible for Unemployment? (cont'd)

- Employees on PTO are generally ineligible for benefits.
- Employees with reduced work hours may be eligible for benefits.
 - Employees must work no more than 3 days (regardless of the number of hours) and earn no more than the maximum benefit amount (\$504).
 - Employees receive a smaller amount of benefits, but are eligible for a longer period than 26 weeks.
 - Employers can also avail themselves of NY's Shared Work Program, which allows employers to reduce work hours, and then employees recoup the hours reduction in the form of partial unemployment benefits.
 - Requires state approval of the employer's plan.

What Should I Do If an Employee Reports Contact with Someone with a Confirmed Case?

- The proper course of action may depend on the level of contact.
 - Out of an abundance of caution, many employers are requiring these employees to stay at home for 14 days and to return only if symptom free.
 - Consult the CDC's risk assessment guidance, available in the Additional Resources section.
- Reach out to and cooperate with the local health department.
- Additional cleaning may be advisable in areas in which the employee works and common areas that the employee has visited.
- Employers should communicate this information to employees:
 - Those with direct contact with the employee should be informed of their ***potential*** exposure.
 - A broader communication may be sent to all employees notifying them of a suspected case.
 - If you wish to reveal the employee's name, they should be asked to sign an authorization form. Without a signed waiver, the employee's name should not be disclosed.

Can Employees Refuse to Come to Work or Demand Personal Protective Equipment be Provided?

- Answer to both questions may depend on the risk of potential exposure.
 - ADA: Employees with a qualifying disability may request reasonable accommodations.
 - OSHA: In certain situations, employees may refuse work if they believe that they will be exposed to an imminent risk of death or serious injury, and the employer failed to eliminate the danger.
 - NLRA: Consider if group activity constitutes “protected concerted activity.”
- With respect to PPE:
 - OSHA requires protective equipment, clothing, and barriers be provided when necessary to prevent exposure to environmental hazards.
 - Employers must select & train employees on appropriate use of PPE.
 - Employers can generally refuse requests of employees to wear PPE such as facemasks.
 - However, from a practical and employee relations perspective, it may be best to allow this, at least for employees who come into frequent contact with the public.
- Consult legal counsel regarding applicability of federal, state and local law; and relevant CBA.

What Else Should Employers Be Doing?

- Under OSHA, employers must maintain reasonably safe workspaces:
 - Provide hand sanitizer and disinfectant.
 - Consult CDC and state/local guidance for additional measures.
- Increase social distancing between employees:
 - Consider allowing flexible worksites, if possible.
 - Consider alternatives to in-person meetings (e.g., conference calls).
 - Allow flexible work hours.
 - Consult legal counsel to determine the implications of CBA and predictive scheduling laws.
 - Stagger shifts, mealtimes, and restroom breaks.
- Designate a point of contact for communications, questions, and concerns.

What Should Employers Be Doing to Reduce Contacts While Employees Clock In?

- Consider eliminating hand or thumbprint readers, and use a different system (e.g., pen and paper) for the duration of the outbreak.
 - Consider alternative ways to conduct monitoring and enforcement.
- Do not allow employees to congregate after clocking in.
 - Be prepared to distribute work assignments as employees arrive.
 - Consider staggering arrival times to avoid this issue.

Should I Suspend Move-Outs and Move-Ins?

- Building owners and managers may wish to delay this to the extent possible.
 - Consider lease agreements, the needs of tenants (*i.e.*, would they have somewhere else to go in the interim).
- If moving is required, consider ways to prevent Coronavirus transmission.
 - Encourage social distancing during the move:
 - Limit the number of people who can participate in the move.
 - If possible, schedule the move at a time that people are unlikely to be using hallways, etc.
 - Disinfect objects that movers are likely to contact (*e.g.*, railings, doors, elevator buttons).
 - Consider who should bear the cost of these precautions.
- We have received word that moving companies have been deemed essential under the Executive Order.
- Consider the impact of the 90-day eviction suspension in New York State.

How Should I Handle Package Delivery?

- Recent research suggests that the virus can survive on cardboard for 24 hours and plastic surfaces for 72 hours.
- To maintain the safety of employees and tenants:
 - Consider wiping the packages with disinfectant upon arrival.
 - Encourage tenants to maintain social distancing when retrieving packages.
 - If staffing permits, building staff may consider delivering packages to the tenant's door.

What Else Should Building Owners and Managers Be Doing?

- Ensure that common areas are frequently cleaned and disinfected.
 - Pay particular attention to door handles, stairway railings, elevator buttons, and laundry room equipment.
- Increase social distancing within the building:
 - Limit the number of people getting into each elevator car.
 - Consider limiting access to non-essential common areas.
 - If a person with a confirmed case has used these facilities, consult cleaning and disinfecting guidance provided by the CDC and NYC Health Department.
 - Consider posting (or distributing) social distancing recommendations (from the CDC, health department, etc.) within the building.

What Else Should Building Owners / Managers Be Doing? (cont'd)

- If you provide other services to your tenants, consider how to provide these while maintaining social distancing during the pandemic.
- Encourage residents to stay home and only go out if necessary.
- Temporarily suspend evictions in accordance with the NY Executive Order.
- There is no evidence that adjusting the temperature or humidity of the building is an effective way to reduce transmission.

Should Property Owners and Managers Notify Others in the Building If a Person Has Coronavirus?

- We are not aware of an official requirement to notify the City or others.
 - According to the City, “property managers and residents do not need to notify the City or others in a building if someone in the building is sick. “
- However, you may wish to consider notifying:
 - Your employees;
 - Tenants who likely had contact with the affected individual; and
 - The local health department, who may be able to help coordinate a response.
- If an employee is affected, consult legal counsel regarding ADA confidentiality requirements.

What If I Need to Conduct a Temporary or Permanent Layoff?

- Consider whether notice is required under federal/state WARN law.
 - Under federal law, employers must give 60 days' notice of a mass layoff or plant closure.
 - New York requires 90 days' notice.
 - Not every layoff triggers the WARN notice requirement.
 - Both federal and NY law have an exception for unforeseeable business circumstances.
 - Both federal and NY law do not apply to temporary layoffs for a period of less than 6 months.
- If you are considering a shutdown, consult legal counsel and applicable CBA and lease provisions.



Additional Resources

Additional Resources

- Centers for Disease Control and Prevention (CDC)
 - <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
 - https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fguidance-business-response.html
 - <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>
 - <https://www.cdc.gov/coronavirus/2019-ncov/communication/index.html>
 - <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>
- Occupational Safety and Health Administration (OSHA)
 - https://www.osha.gov/SLTC/novel_coronavirus/standards.html
 - <https://www.osha.gov/Publications/OSHA3990.pdf>

Additional Resources (cont'd)

- New York State Department of Health

- <https://www.health.ny.gov/diseases/communicable/coronavirus/>
- https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_eoguidancegatheringspacesbusiness_031920.pdf
- <https://esd.ny.gov/novel-coronavirus-faq-businesses>
- <https://coronavirus.health.ny.gov/new-york-state-pause>

- Executive Orders and Related Guidance

- <https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>
- <https://esd.ny.gov/guidance-executive-order-2026>

- New York City Health Department

- <https://www1.nyc.gov/site/doh/health/health-topics/coronavirus.page>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/novel-coronavirus-faq-for-businesses.pdf>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/disinfection-guidance-for-businesses-covid19.pdf>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-residential-buildings-faq.pdf>

Coronavirus Resource Center

Coronavirus (COVID-19)

[Meet the Team](#)[Related Practices](#)[Related Industries](#)

Businesses globally are being impacted by the spread of Coronavirus (COVID-19). Our Resource Center provides guidance on risk management measures, practical steps businesses can be taking and resources to help manage ongoing operations.

Each issue requires a detailed understanding of the operational and legal implications affecting customers, suppliers, employers, and investors, and our dedicated team is ready to help clients navigate through the unique and complex challenges.

This situation is dynamic and continuing to change daily, and we will be updating and providing timely information to support our clients.

Future Webinars

- Part 4: Tuesday, March 31 @ 1:30 PM.



Questions?

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