

Coronavirus and the Building Workplace: *Are You Prepared for Re-Opening?*

Tuesday, May 5, 2020

Proskauer»

BOMA
New York

REBNY[®]

RAB
REALTY ADVISORY BOARD
ON LABOR RELATIONS

Agenda

1. Recent Coronavirus Legislation and Orders
 - Federal and State Leave Legislation
 - New York State Workforce Reduction and Mask Orders
 - Proposed NYC Legislation
2. RAB/Union Agreements
 - New York Shared Work Program and Associated MOAs
 - Extension of Previous RAB/32BJ Agreements
 - Window Cleaning and Security Agreement Extensions
3. Common Questions: Returning to the Building Workplace
4. Additional Resources
5. Participant Questions



Recent Coronavirus Legislation and Orders

Federal Leave Legislation

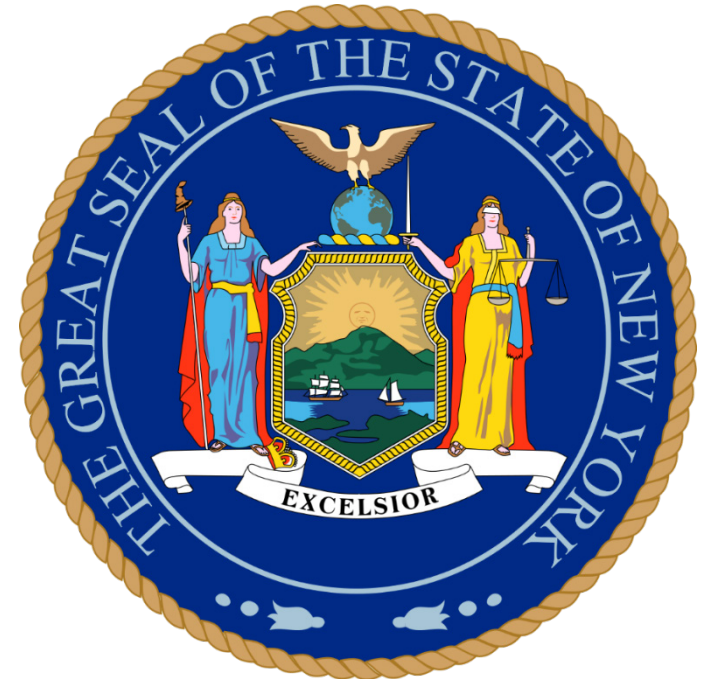
- **Families First Coronavirus Response Act.**
 - Effective April 1, 2020 through December 31, 2020.
 - Refer to previous slide decks for additional information.
- **(1) Emergency Paid Sick Leave Act.**
 - Employers with less than 500 employees must provide full-time employees with 80 hours of paid sick leave for certain purposes related to the Coronavirus outbreak.
- **(2) Emergency Family & Medical Leave Expansion Act.**
 - Employers with less than 500 employees must provide 12 weeks of leave to care for a child whose school/day care is closed due to a public health emergency.
 - First 10 days may be unpaid; after which employees must be paid 2/3 of their regular rate.
- **(3) Tax Credits for Paid Sick and Paid Family and Medical Leave.**
 - Employers will receive a tax credit to cover the cost of benefits.

New York State Leave Legislation

- Large employers (100+ employees) must provide 14 calendar days of paid leave to employees subject to a quarantine or isolation order.
 - Smaller employers must provide a shorter amount of paid leave or only unpaid leave.
 - Who must issue the order?
 - **Text of statute:** “Order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order.”
 - **Position of NY WCB:** Documentation from a licensed medical provider that has treated the employee attesting that they qualify for the order is sufficient.
- Small employers (<100 employees) must provide leave for employees to care for a child who is subject to a quarantine order by a public official.
 - Employees apply for benefits through the employer’s Paid Family Leave carrier.
- Employees cannot be fired for taking leave → Be aware of retaliation.

New York State Workforce Reduction Order

- Effective March 22, only essential businesses may utilize an in-person workforce.
 - Within essential businesses, only employees who are needed to provide the essential product or service are permitted to be present.
 - Businesses must utilize teleworking arrangements to the greatest extent possible.
 - Businesses are “strongly urged” to implement social distancing rules.
- These restrictions are in effect until May 15, after which regions can begin to conduct their own analysis.



New York State Workforce Reduction Order (cont'd)

- Policing employers' compliance with these Executive Orders is a top priority of the Attorney General's office.
- The AG has been publicly soliciting complaints from employees.
- As of April 20, the AG's office has contacted at least 400 employers.
 - The communications have ranged from “informal inquiries” concerning the safety precautions being taken by the employer to cease and desist letters.
 - The AG's office has threatened to issue civil fines and seek injunctive relief for failure to comply with the Orders.
- What you should do:
 - Ensure you are complying with the Orders and OSHA Guidance.
 - Consult legal counsel if you are contacted by the AG's office.

New York State Mask Orders

- Employers must require employees to wear face coverings when in “direct contact” with the public.
 - “Direct contact” → Routinely within six feet of the public.
 - Exception: Wearing a mask would impair the employee’s health.
 - Employers cannot require documentation.
- Masks must be provided at the employer’s expense.
 - But employees may be permitted to use their own.
- Includes cloth, surgical masks, N-95 respirators, and face shields.
- If you cannot source face coverings, consult the RAB or the local office of emergency management.
- Civil and criminal penalties for non-compliance.

New York State Mask Orders (cont'd)

- Face coverings over the mouth and nose must be worn (but are not required to be provided by the employer) when:
 - (1) In public and unable to maintain social distancing; and
 - (2) When using public and for-hire transportation.
- Children under two and those who cannot tolerate masks due to health issues are exempt.
- Will be enforced with civil but not criminal penalties.

Proposed NYC Legislation – Premium Pay

- Essential businesses with 100+ employees must provide “essential employees” with premium pay for each shift worked.
 - \$30 for shifts less than 4 hours.
 - \$60 for shifts between 4 and 8 hours.
 - \$75 for shifts longer than 8 hours.
- Exceptions for:
 - Salaried employees;
 - Those covered by a CBA or program under an order by the Governor that expressly waives this provision and provides comparable or superior benefits; and
 - Real estate industry businesses assigned a North American Industry Classification System code beginning with 531.

Proposed NYC Legislation – “Just Cause” Protection

- Following a 30-day probationary period, essential employees are protected from termination, indefinite suspension, or a work hours reduction of 15% or more without just cause:
 - “Sufficient cause for discharging an essential employee, such as the employee’s failure to satisfactorily perform job duties or employee misconduct that is demonstrably and materially harmful [to the employer].”
 - Does not include unforeseeable business circumstances or economic reasons.
- Excludes employees covered by a CBA that expressly waives the provision and provides comparable or superior benefits.
 - No exception for the real estate industry.

Proposed NYC Legislation – Presumption of ESSTA Coverage

- ESSTA currently provides up to 40 hours of paid safe/sick time to employees:
 - (1) For an employee's or their family members' illness or injury;
 - (2) Due to an office or school closure due to a public health emergency; and
 - (3) For a variety of reasons related to domestic and sexual violence.
- The proposed legislation creates a presumption that a person is an employee, unless the employer demonstrates that the person:
 - (1) Is free from the hiring entity's control and direction;
 - (2) Performs work outside the usual course of the hiring entity's business; and
 - (3) Is customarily engaged in the work performed.
- NYC also passed a resolution calling on the Governor to shift the burden to the employer to show that a worker is an independent contractor.



RAB/Union Agreements

New York Shared Work Program

- New York's Shared Work Program pays a portion of UI benefits to employees who experience a 20% to 60% reduction in hours.
 - Employees are eligible for up to 26 weeks.
- Benefits for employees:
 - Remain employed and are paid at their regular wage rate.
 - Continue to receive health coverage and other benefits.
 - Receive a portion of UI benefits depending on the reduction in hours.
 - Example: Reduction from 40 to 24 hours per week (40% reduction) → Employee receives 40% of the UI benefit they would receive if fully employed.
 - Receive the full \$600 weekly supplements under the CARES Act through July 31.

New York Shared Work Program (cont'd)

- Benefits for employers:
 - Preserves morale and saves costs of re-hiring employees when work returns.
 - Participation will not increase most employers' experience rating in the UI system.
 - According to new DOL guidance, states may choose to not require reimbursement from employers for payments subject to 100% federal reimbursement under the CARES Act.
- How to participate:
 - Employers must submit a plan to the NY DOL for approval. Can apply online.
 - The application must contain a certification by the employer that:
 - (1) The program will prevent employees from being laid off.
 - (2) The reduction is uniform among employees and in the range of 20% to 60% per week.
 - (3) Employees who remain employed continue to receive the same fringe benefits.
 - (4) The Union has agreed to the employer's plan.
 - (5) All employees in the defined "unit" covered by the plan have their hours reduced uniformly.

New York Shared Work Program (cont'd)

- Participating employers and employees must submit weekly certification forms to the NY DOL.
- Which employees can be included?
 - Must be defined by a “unit” of employees (greater than one).
 - Examples:
 - All of an employer’s employees.
 - An entire department (e.g., all cleaning employees, all security employees).
 - All employees on a particular shift (e.g., evening shift cleaners).

Employers may conduct lay-offs before implementing a reduced work schedule.

- Be aware that federal and state WARN laws may require advance notice of a mass layoff.
- Per RAB’s agreement with 32BJ, employers must use best efforts to provide advance notice to the Union of a reduction-in-force (at least 7 days, if practicable).

New York Shared Work Program (cont'd)

- The Program does not require any scheduling structure, other than:
 - Hours must be reduced between 20% to 60% each week.
 - One week on/one week off is not permitted (would result in a 0% and 100% reduction).
- Example schedules for full-time employees:

20% reduction (32 hours)	4 days on, 1 day off
40% reduction (24 hours)	3 days on, 2 days off
50% reduction (20 hours)	3 days on, 2 days off (week A) 2 days on, 3 days off (week B)
60% reduction (16 hours)	2 days on, 3 days off

RAB/Local 94 Shared Work MOA

- RAB and Local 94 have agreed that employers can participate when they would otherwise layoff or furlough employees for at least 15 days.
 - Employers must submit a Shared Work Plan to the NYDOL.
 - Employers must execute an assent form by site(s) where the Program will apply.
 - Employers must maintain benefit funds contributions as if no reduction in hours occurred.
 - Protections for employees:
 - (1) Eight-hour shifts (or the equivalent length for full-time shifts).
 - (2) Scheduled days are fixed.
 - (3) With the exception of certain bargaining unit positions that are excluded due to special skill, all bargaining unit employees in the same classification must be treated equitably.
 - Employers must notify the Union 72 hours before a plan is submitted and upon approval.
 - The Union will consent to the application and other documents submitted by the employer.
 - Employers will assist employees with Shared Work unemployment claims.

RAB/32BJ Shared Work MOA

- RAB and 32BJ have agreed that employers can participate when they would otherwise layoff or furlough employees for at least 15 days.
 - Employer will continue to pay benefit fund contributions in whole.
 - The employer must submit a Shared Work Plan to the NYDOL.
 - The employer must provide certain notice to the Union.
 - Protections for employees:
 - (1) Eight-hour shifts (or the equivalent length for full-time shifts).
 - (2) Scheduled days are fixed.
 - (3) Fringe benefits maintained in the same form and level as under previous schedule.
- The Union will consent to the Shared Work Program application and other documents submitted by the employer.

MOA Extending Previous RAB/32BJ Agreements

- The COVID-19 MOA and Tolling Agreement will remain in effect until May 18, 2020 or 14 days following the lifting or substantial modification of the PAUSE order, whichever is earlier.
- The extension is subject to the following modifications:
 - Suspension of bumping rights and termination pay shall continue through May 18.
 - If a reduction-in-force is necessary, employers must use best efforts to provide advance notice to the Union (at least 7 days, if practicable).
 - The period for recall rights for employees laid off due to COVID-19 on or after March 6 shall begin to run May 18, subject to further extension.

MOA Extending Previous RAB/32BJ Agreements (cont'd)

- Other agreements will continue in accordance with their terms for the same period:
 - Expanded Use of Part-Time Employees MOA
 - Better Terms and Conditions MOA
 - Temporary Employees MOA
 - Scheduling MOA (providing for 12-hour shifts)
 - Payout of 2020 Vacation to Laid-Off Employees Agreement
 - Shared Work MOA
 - AB Time MOA
- Note: Grievance meetings will be resuming.

RAB/32BJ Window Cleaning Extension

- The 2016 Window Cleaners Agreement expired on December 31, 2019.
 - The parties commended negotiation over a successor CBA in February.
 - However, negotiations were interrupted by the COVID-19 pandemic.
- The parties agree to extend the terms of the agreement, subject to the following modifications:
 - Effective January 1, 2020, employers shall contribute:
 - (1) To the 32BJ Health, Pension, SRSP and Legal Service Funds at the rates set forth in the 2020 Contractors Agreement; and
 - (2) To the Thomas Shortman Training Fund at a rate of \$208/employee/year.
- The parties agree to resume negotiations within 90 days of the lifting of the shelter in place orders governing NYC.

RAB/32BJ Security Extension

- The 2016 Security Officers Agreement expires on April 30, 2020.
- The parties agree to extend the terms of the agreement through December 31, 2020 subject to the following modifications:
 - Effective July 1, employee wages and minimum rates will increase by \$.45/hour for Security Officer I, II, and III classifications.
 - \$.38/hour increase for Security Officer I classifications employed less than 36 months.
 - If shelter in place orders in NYC are not lifted by July 1, employers may delay wage increases until November 1, provided that they are retroactive to July 1.
 - Vacation relief employee are not eligible for Benefits Fund coverage during the first five months of employment.
 - The Most Favored Nations clause in 24.2 is amended to only apply to contracts entered into on or after October 1, 2020 (as opposed to December 31, 2018).
- The parties agree to resume negotiations on or before October 15, 2020.



Common Questions: Returning to the Building Workplace

1. What is the Governor's Plan for Re-Opening New York?

- The President's Guidelines delegate ultimate authority on re-opening to the states.
- On April 26, Governor Cuomo announced a plan to re-open New York on a regional level.
- To reopen, regions must have:
 1. A 14-day decline in hospitalizations or fewer than 15 new hospitalizations (3 day avg.).
 2. A 14-day decline in hospital deaths or fewer than five new deaths (3 day avg.).
 3. Fewer than two new hospitalizations per 100,000 residents (3 day avg.).
 4. 30% hospital bed availability.
 5. 30% ICU bed availability.
 6. Capacity to conduct 30 diagnostic tests per 1,000 residents per month.
 7. At least 30 contact tracers per 100,000 residents.

1. What is the Governor's Plan for Re-Opening New York? (cont'd)

- Phased approach within each region:
 - Phase 1: Low-risk construction and manufacturing.
 - Phase 2: Professional services, retail, administrative support, and real estate.
 - Phase 3: Restaurants, food service, and accommodations.
 - Phase 4: Arts, entertainment, recreation, and education.
- Two-weeks between phases to monitor hospitalization and infection rates.
- The current workforce reduction order in New York expires on May 15.
 - After this date, regions can start to re-open after conducting their own analysis.
 - The Governor suggested that manufacturing and construction may resume in upstate regions shortly after this date.
 - He has not suggested that restrictions on NYC will be relaxed in the near future.

1. What is the Governor's Plan for Re-Opening New York? (cont'd)

- Before re-opening, each business and industry must have a plan in place to make the workplace safer and prevent infection.
- To re-open businesses will be required to:
 - Adjust workplace hours and shift design as necessary to reduce density in the workplace;
 - Enact social distancing protocols;
 - Restrict non-essential travel for employees;
 - Require all employees and customers to wear masks if in frequent contact with others;
 - Implement strict cleaning and sanitation standards;
 - Enact a continuous health screening process for individuals to enter the workplace;
 - Continue tracing, tracking and reporting of cases; and
 - Develop liability processes.

2. What Have Labor Organizations Said About Re-Opening?

- The AFL-CIO President has said that workers should not go back to work until the federal government puts new safety measures in place to safeguard against COVID-19.
 - "Workers should have the right to refuse to go to work if they believe it's unsafe."
 - He has also called on OSHA to issue emergency regulations.
 - OSHA has indicated that it has no plans to do so. Instead, the agency has been issuing non-binding guidance tailored to particular industries.
- The RAB/32BJ Extension Agreement also provides a 14-day window to negotiate a re-opening MOA, which will govern protocols for the industry.

3. Should I Conduct Temperature Screenings of My Employees?

- Temperature screenings of employees are currently permitted under the ADA's "direct threat" exception.
 - Temperature screenings would otherwise be prohibited by the ADA.
- No current requirement that employers conduct temperature screenings.
 - Exception: In New York, if an employee has been exposed to a person with a confirmed or suspected case of COVID-19.
- Best practices if performing temperature screening:
 - Subject all employees in the same job category to the same requirements.
 - Have them conducted by a medical professional (or someone in HR).
 - Adhere to current social distancing recommendations.
- Contact the Union before implementing testing of Union employees.

4. Should I Implement Questionnaires for My Employees?

- Consider implementing an employee questionnaire regarding COVID-19 symptoms, diagnoses, and potential exposure.
 - Inform employees that the Company may: (1) ask follow-up questions, (2) request additional information, and/or (3) require that the employee remain out of the office.
- Additional considerations for employee medical information:
 - These inquiries are permitted under the direct threat exception.
 - Information must be kept confidential and maintained in a separate file.
- Other employment discrimination concerns.
- Consider practical issues regarding implementation and frequency.

5. Should I Conduct Other Testing for My Employees?

- **Diagnostic testing** → Indicates whether the person is currently infected.
 - The EEOC has temporarily approved diagnostic testing.
 - Employers should ensure that tests are accurate and reliable before implementing.
- **Antibody testing** → Indicates whether the person has developed immunity.
 - The EEOC has not specifically opined upon the permissibility of antibody testing if and when it becomes available.
 - If available and recommended by health officials, consult counsel and EEOC guidance before implementing.
- **Considerations for both:**
 - Subject all employees in the same job category to the same requirements.
 - Have them be conducted by a medical professional (or someone in HR).
 - Adhere to current social distancing recommendations.

6. How Is Employee Medical Information Protected?

- The ADA requires that employee medical information be kept confidential.
 - Results of temperature checks.
 - Results of diagnostic/antibody testing.
 - Medical information collected in employee questionnaires.
 - An employee's self-identification as having COVID-19.
- Don't disclose the name of an employee diagnosed with COVID-19, except to:
 - (1) Public health agencies; and
 - (2) Temporary staffing agencies/contractors.
- Employee medical information must be maintained in a separate file.
 - Employers may maintain a log of temperature check results, but must keep it confidential.

7. What Social Distancing Measures Should I Implement?

- Remember, New York is “strongly urging” essential businesses to implement social distancing measures.
 - In some business sectors (e.g., essential and emergency construction, real estate services to the extent legally necessary), social distancing is required.
- Appropriate measures will depend on:
 - (1) The nature of your business; and
 - (2) The severity of outbreak in your location at the time.
- Be prepared to implement various levels of social distancing.
- Be prepared for a resurgence in cases.

7. What Social Distancing Measures Should I Implement? (cont'd)

- Implement flexible worksites or work schedules to reduce density (e.g., staggered shifts).
 - If adjusting work schedules, be sure to provide appropriate notice.
 - If allowing telework, ensure that employees record hours in accordance with your policies.
- Increase physical space between people.
 - Place markers where residents/visitors should stand when checking-in.
 - Limit elevator density.
 - Construct physical barriers (e.g., Plexiglas).
- Continue to deliver services remotely (e.g., virtual apartment viewings).

7. What Social Distancing Measures Should I Implement? (cont'd)

- Protocols for security/doorpersons:
 - Doors may be propped open using door stoppers, weather permitting.
 - Instruct doorpersons to use automatic buttons, if available.
 - Consider having tenants open the door for themselves (if social distancing is difficult to maintain, to eliminate overnight shifts).
 - Disinfect door handles often.
- Develop protocols for package pick-up.
 - Have building staff drop deliveries at tenants' doors.
- Close common areas to avoid gatherings.
 - If these areas remain open: (1) clean and disinfect frequently, and (2) enforce social distancing.

8. What Other Steps Are Appropriate for Residential and Commercial Buildings?

- Temporary shift change is suggested for night cleaners due to subways being taken out of service from 1:00-5:00 AM.
- Require sick employees to stay home.
 - Employees with a family member should be asked to notify the company.
 - Follow CDC and state/local criteria for discontinuing home isolation.
- Consider providing personal protective equipment.
 - Consult appropriate OSHA guidance and state mask orders.
- Limit repairs in residences to emergencies only.
- Encourage residents to postpone moves, if possible.

8. What Other Steps Are Appropriate for Residential and Commercial Buildings? (cont'd)

- Other practical steps:
 - Conduct training on recognizing symptoms, best workplace practices, and policies.
 - Provide hand sanitizer, disinfectant, and no-touch trash cans.
 - Frequently clean and disinfect high-touch objects and surfaces.
 - Place signs encouraging hand washing.
 - Encourage noncontact methods of greeting.
 - Prohibit employees from using other employee's desks, offices, and equipment.
 - Encourage employees and tenants to exercise good hygiene (e.g., hand washing, avoid touching face).
- Building Service Worker Appreciation Day is today!
 - Please let your employees know in some way that you appreciate all they are doing during this pandemic.

9. How Can I Prevent Discrimination & Harassment Claims?

- Conditions are ripe for an increase in discrimination and harassment claims.
 - Special issues presented by remote work and social distancing.
- Employers should consider:
 - (1) Reminding employees that discrimination and harassment are illegal;
 - (2) Advising supervisors and managers of their role;
 - (3) Making clear that it will immediately review allegations and take appropriate action; or
 - (4) Conducting training regarding EEO issues presented by the pandemic.
- Be particularly mindful when making employment decisions.

9. How Can I Prevent Discrimination & Harassment Claims? (cont'd)

- Employees may need new or adjusted accommodations.
 - Those with asthma, HIV, and other underlying conditions may be at increased risk.
 - Examples: Job restructuring, modified work schedules, physical barriers.
 - Employers may learn that employees can perform essential functions at home.
 - Employees may be entitled to teleworking as an accommodation after the pandemic, even if they weren't before.
 - Employers may prioritize requests for accommodations that are needed while teleworking and may provide temporary accommodations during the pandemic.
- Be careful to not inadvertently take adverse action on the basis of a protected characteristic.
 - Example: Unilaterally postponing the start date of a person who is over 65 or pregnant.

10. What Should Be in My Response Plan for When Employees are Diagnosed?

- Communicate.
 - (1) Interview the affected employee to obtain information, if possible.
 - (2) If the employee was recently present in the building, communicate this to other employees/tenants.
 - (3) If the employee had close contact with others, separately inform these people of their potential exposure.
 - CDC guidance does not currently recommend quarantine for essential workers.
 - Instruct them to notify the company if symptoms appear.
- Do not disclose the employee's name in these communications.
 - The same applies even if others can ascertain the identity of the employee.
 - Instead, provide enough information to allow others to assess their level of risk.

10. What Should Be in My Response Plan for When Employees are Diagnosed? (cont'd)

- Consider whether a portion of the building should be closed and disinfected.
 - Consult guidance issued by the CDC and state/local health departments.
 - Generally, close and clean the areas in which the employee works or has visited.
 - Consider hiring an external cleaning company.
- Consider reporting and recording requirements.
 - Coronavirus is **reportable** when an employee is infected in the workplace.
 - If the employee is hospitalized, a report must be made within 24 hours.
 - If an employee dies, a report must be made within eight hours.
 - The US DOL has released guidance on **recording** COVID-19 cases.
 - Emergency response, healthcare, and correctional facilities must record as normal.
 - Other employers must record only if:
 - (1) There is objective evidence that the case is work-related; and
 - (2) The evidence is reasonably available.

10. What Should Be in My Response Plan for When Employees are Diagnosed? (cont'd)

- Consider reporting and recording requirements. (cont'd)
 - All employers must **record** only if:
 - (1) The case is confirmed;
 - (2) The case is work-related; and
 - (3) The case involves one or more of the recording criteria.
 - Consider state/local reporting obligations in the jurisdictions in which you operate.
- Consult CDC and state/local guidance on returning employees to work after they have been diagnosed positive for COVID-19.

11. When Can an Employee Return to Work After COVID-19?

- According to guidance from the NY Health Department, essential personnel **with a confirmed OR suspected case** of COVID-19 can return to work if all of the following conditions are met:
 1. Working from home would adversely impact essential services or functions.
 2. The person has:
 - Maintained isolation for at least 7 days after illness onset;
 - Not had a fever for at least 72 hours without the use of fever reducing medications; and
 - Improving symptoms.
 3. Personnel who are recovering from COVID-19, and return to work, must wear a facemask for 14 days following onset of illness.
 - Note: Facemasks may be required for a longer period in accordance with NY Executive Orders.

11. When Can an Employee Return to Work After COVID-19? (cont'd)

- According to guidance from the NY Health Department, essential personnel who have been **exposed to a confirmed or suspected case of COVID-19** can return to work if:
 1. Working from home would not be feasible;
 2. Personnel are asymptomatic;
 3. Personnel quarantine themselves when not at work;
 4. Personnel undergo temperature monitoring and symptom checks upon arrival to work and at least every 12 hours while at work, and self-monitor twice a day when at home;
 5. Personnel required to interact with individuals within 6 feet should wear a facemask while working for 14 days following the last exposure;
 6. Personnel whose job duties permit a separation of greater than 6 feet should have environmental controls in place to ensure adequate separation is maintained;
 7. If symptoms develop while working, they should immediately isolate at home; and
 8. Testing should be prioritized for essential personnel with symptoms.

12. What If Employees Refuse To Work?

- Generally, employers set the terms and conditions of employment, and can require employees to work, so long as the workplace is reasonably safe.
- However, there are limited circumstances where employees may refuse:
 - **ADA**: Employees with a qualifying disability may request reasonable accommodations.
 - **OSHA**: In limited 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.
 - Provide PPE, increase cleaning, implement social distancing to reduce risk of death or injury.
 - **NLRA**: Consider if group activity constitutes “protected concerted activity.”
- Consider the employee relations perspective.



Additional Resources

Proskauer's Resources

- **Coronavirus Resource Center**

- <https://www.proskauer.com/market-solutions/coronavirus-covid-19-resource-center>

- **Law and the Workplace Blog**

- <https://www.lawandtheworkplace.com/>

- Recent Coronavirus blog topics include:

- New York's Governor Outlines Plan to Re-Open Businesses
 - NYC Council Announced Proposed COVID-19 Relief Package
 - Federal Coronavirus Aid, Relief and Economic Security (CARES) Act Signed into Law
 - New York State Issues Guidance on COVID-19 Quarantine Leave Law
 - EEOC Answers Employers COVID-19 Related Questions

RAB, REBNY, and BOMA Resources

- **RAB Document Center** – <https://www.rabolr.com/documents>
 - Each of the 32BJ/Union Agreements
 - Essential Business Identification Form Letter for Employees
 - List of Janitorial Contractors
 - Other COVID-19 Guidance
- **REBNY Resource Hub** – <https://rebny.com/content/rebny/en/Coronavirus.html>
 - Federal Stimulus Resources
 - Real Estate Industry Resources
 - Other Government Resources
- **BOMA NY Website** – <http://www.bomany.org/home/>

Additional Resources

- Centers for Disease Control and Prevention

- <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.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/community/reopen-guidance.html>

- Occupational Safety and Health Administration

- https://www.osha.gov/SLTC/novel_coronavirus/standards.html
- <https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>
- <https://www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>
- <https://www.osha.gov/Publications/OSHA3990.pdf>

- Equal Employment Opportunity Commission

- https://www.eeoc.gov/facts/pandemic_flu.html
- https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

Additional Resources (cont'd)

- Department of Labor: Wage and Hour Division
 - <https://www.dol.gov/agencies/whd/pandemic>
 - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- White House Guidelines
 - <https://www.whitehouse.gov/openingamerica/>
- 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>
 - https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_eo20216employeefacecovering_041420.pdf

Additional Resources (cont'd)

- Other New York State Guidance

- <https://esd.ny.gov/guidance-executive-order-2026>
- <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>

- 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>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-face-covering-faq.pdf>

- New York City Department of Buildings

- https://www1.nyc.gov/assets/buildings/pdf/covid-19_construction_faqs.pdf
- https://www1.nyc.gov/assets/buildings/pdf/essential_vs_non-essential.pdf

Upcoming Webinars

- **Future Real Estate Industry Webinars:** Date and Time To Be Announced.
- **The Impact of COVID-19 on Workplace Safety, Whistleblower and Retaliation Claims:** Tomorrow from 1:00 to 2:00.



Questions?

Proskauer >>



Coronavirus and the Building Workplace: *Are You Prepared for Re-Opening?*

Tuesday, May 5, 2020

The information provided in this slide presentation is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the Firm, our lawyers or our clients. No client-lawyer relationship between you and the Firm is or may be created by your access to or use of this presentation or any information contained on them. Rather, the content is intended as a general overview of the subject matter covered. Proskauer Rose LLP (Proskauer) is not obligated to provide updates on the information presented herein. Those viewing this presentation are encouraged to seek direct counsel on legal questions. © Proskauer Rose LLP. All Rights Reserved.

Proskauer»

BOMA
New York

REBNY®

RAB
REALTY ADVISORY BOARD
ON LABOR RELATIONS

Coronavirus and the Building Workplace: *Are You Prepared? Part 8*

Thursday, May 28, 2020

Proskauer»

BOMA
New York

REBNY[®]

RAB
REALTY ADVISORY BOARD
ON LABOR RELATIONS

Agenda

1. Coronavirus Legislation and Orders
 - Federal and State Leave Legislation
 - New York State Eviction Moratorium and Mask Orders
 - Proposed NYC Legislation
2. RAB/Union Agreements
 - Re-Opening MOA and Extension Agreements
 - New York Shared Work Program and Associated MOAs
3. New York Forward Plan and Re-Opening Guidance
4. Additional Considerations for Returning to the Building Workplace
5. Additional Resources and Participant Questions

A low-angle, upward-looking shot of several tall, fluted classical columns. The columns are made of light-colored stone or marble and are set against a bright, cloudy sky. The perspective creates a sense of height and grandeur. The image has a slightly desaturated, blueish tint.

Coronavirus Legislation and Orders

Federal Leave Legislation

- **Families First Coronavirus Response Act.**
 - Effective April 1, 2020 through December 31, 2020.
 - Refer to previous slide decks for additional information.
- **(1) Emergency Paid Sick Leave Act.**
 - Employers with less than 500 employees must provide full-time employees with 80 hours of paid sick leave for certain purposes related to the Coronavirus outbreak.
- **(2) Emergency Family & Medical Leave Expansion Act.**
 - Employers with less than 500 employees must provide 12 weeks of leave to care for a child whose school/day care is closed due to a public health emergency.
 - First 10 days may be unpaid; after which employees must be paid 2/3 of their regular rate.
- **(3) Tax Credits for Paid Sick and Paid Family and Medical Leave.**
 - Employers will receive a tax credit to cover the cost of benefits.

New York State Leave Legislation

- Large employers (100+ employees) must provide 14 calendar days of paid leave to employees subject to a quarantine or isolation order.
 - Smaller employers must provide a shorter amount of paid leave or only unpaid leave.
 - The NYC DOH has issued a standing order that provides documentation for employees to claim leave.
 - Employees must complete the appropriate form, attach documentation showing that the isolation is necessary, and submit it to their employer.
 - These materials are available in the “Additional Resources” section.
- Small employers (<100 employees) must provide leave for employees to care for a child who is subject to a quarantine order by a public official.
 - Employees apply for benefits through the employer’s Paid Family Leave carrier.
- Employees cannot be fired for taking leave → Be aware of retaliation.

New York State Eviction Moratorium

- The State's moratorium on residential and commercial evictions is extended until August 20, 2020. This applies to anyone who is:
 1. Eligible for unemployment insurance;
 2. Eligible for benefits under state or federal law; or
 3. Otherwise facing financial hardship due to the COVID-19 pandemic.
- Landlords and tenants may agree to apply security deposits towards rent.
 - These agreements can be conducted via email.
 - Landlords must provide such relief to tenants in the three categories above.
 - Security deposits are replenished over 12 months beginning 90 days after use.
- The order prohibits fees for late rent payments between March 20, 2020 and August 20, 2020.

New York State Mask Orders

- Employers must require employees to wear face coverings when in “direct contact” with the public.
 - Masks must be provided at the employer’s expense. But employees may use their own.
 - Includes cloth, surgical masks, N-95 respirators, and face shields.
- Face coverings over the mouth and nose must be worn (but are not required to be provided by the employer) when:
 - In public and unable to maintain social distancing; and
 - When using public and for-hire transportation.
- Note: The Phase 1 Re-Opening Guidance also contains mask requirements.

Proposed NYC Legislation

- The New York City Council has proposed legislation related to:
 1. **Premium Pay** – Essential businesses with 100+ employees must provide premium pay to “essential employees” for each shift worked. Exceptions for:
 - Salaried employees;
 - Those covered by a CBA or program under an order by the Governor that expressly waives this provision and provides comparable or superior benefits; and
 - Real estate industry businesses assigned a NAICS code beginning with 531.
 2. **Just Cause Protection** – After 30 days, “essential employees” are protected from termination, indefinite suspension, or a 15% work hours reduction without just cause.
 3. **Presumption of ESSTA Coverage** – ESSTA currently provides up to 40 hours of paid safe/sick time to employees. The proposed legislation creates a presumption of coverage as an employee under this law.



RAB/Union Agreements

32BJ/RAB Re-Opening MOA

- The COVID-19 MOA and Tolling Agreement (as extended) will remain in effect until February 28, 2021, with the following modifications:
 1. The parties will recommend that benefits for employees displaced on or after March 6 be extended for 30 days (90 total) from the employee's loss of eligibility.
 2. Contains a process for recalling displaced employees that addresses topics such as:
 - Employee notification of a recall.
 - Recall rights for employees subject to various agreements.
 - Recall rights for employees who are unable to return to work while eligible for statutory leave, while on a leave of absence, or who decline to return for other reasons.
 - Discussions regarding an enhanced retirement program.
 3. The 32BJ Training Fund will provide curricula on requirements and best practices related to COVID-19. Employers shall also provide orientation on new work routines and protocols for their building.

32BJ/RAB Re-Opening MOA (cont'd)

4. Employers may adjust shift times to comply with social distancing guidelines and shall endeavor to adjust shift times to accommodate employees' impacted by the NYC subway closure.
5. Office cleaners shall not be assigned unduly burdensome workloads. The square footage productivity standard set forth in the Contractors Agreement shall not apply until Jan. 15, 2021.
6. The Shared Work Agreement shall continue, and the parties shall continue efforts to develop guidance regarding Shared Work, employee recall, and restoration of hours.
7. Employers shall provide employees with appropriate PPE and training in its use, and shall comply with applicable guidelines issued by the CDC and other authorities.
8. Employees who remain on recall on September 15 will be paid out their vacation on or before October 15. Employees who are recalled before September 15 may be scheduled for vacation, and unused 2020 vacation will be paid by January 31, 2021.

32BJ/RAB Re-Opening MOA (cont'd)

9. Grievances will resume remotely 30 days after the date of this agreement. The parties will begin discussions regarding remote technology for arbitration hearings.
10. All other agreements, including those pertaining to the following, shall continue:
 - 12 Hour Shifts;
 - Seven Days Advance Notice where Practicable of an Intent to Reduce Due to COVID-19;
 - Scheduling of Part-time Employees;
 - Employment of Temporary Employees;
 - AB Time;
 - Better Terms and Conditions;
 - Payment of Vacation Pay to Laid Off Employees; and
 - Shared Work.
11. This Agreement shall continue until Feb. 28, 2021 subject to re-opening by either party, upon fourteen (14) days written notice, a) on or after July 31, 2020 or b) 60 days from the lifting of the PAUSE Order for NYC, whichever is earlier.

Other RAB/32BJ Extension Agreements

- **Window Cleaners Agreement Extension** – The parties agree to extend the agreement through December 31, 2020 subject to changes to benefit fund contribution rates effective January 1, 2020.
- **Security Agreement Extension** – The parties agree to extend the agreement through December 31, 2020 subject to the following:
 - Certain wage rate changes effective July 1, which may be delayed if shelter in place orders in NYC are not lifted by July 1.
 - Vacation relief employee are not eligible for benefits coverage during the first five months of employment.
 - The Most Favored Nations clause is amended to only apply to contracts entered into on or after October 1, 2020.

New York Shared Work Program

- Pays a portion of unemployment insurance benefits to employees who experience a reduction in hours.
 - Employees are eligible for up to 26 weeks.
- Benefits for employees:
 - Remain employed and are paid at their regular wage rate.
 - Continue to receive health coverage and other benefits.
 - Receive a portion of State UI benefits + \$600/week under the CARES Act through July 31.
- Benefits for employers:
 - Preserves morale.
 - Saves costs of re-hiring employees.
 - Participation will not increase most employers' experience rating.

New York Shared Work Program (cont'd)

- Employers must submit a plan to the NY DOL for approval.
 - The Union must agree to the plan.
 - Employees must continue to receive the same fringe benefits.
 - All employees in the “unit” covered by the plan must have their hours reduced uniformly.
 - The unit must be greater than one employee; can include all employees.
- Employers and employees must submit weekly certification forms to the DOL.
- Employers may conduct layoffs before implementing a shared work program.
- The program does not require any scheduling structure, other than:
 - Hours must be reduced between 20% to 60% each week.
 - One week on/one week off is not permitted (would result in a 0% and 100% reduction).

Shared Work MOAs

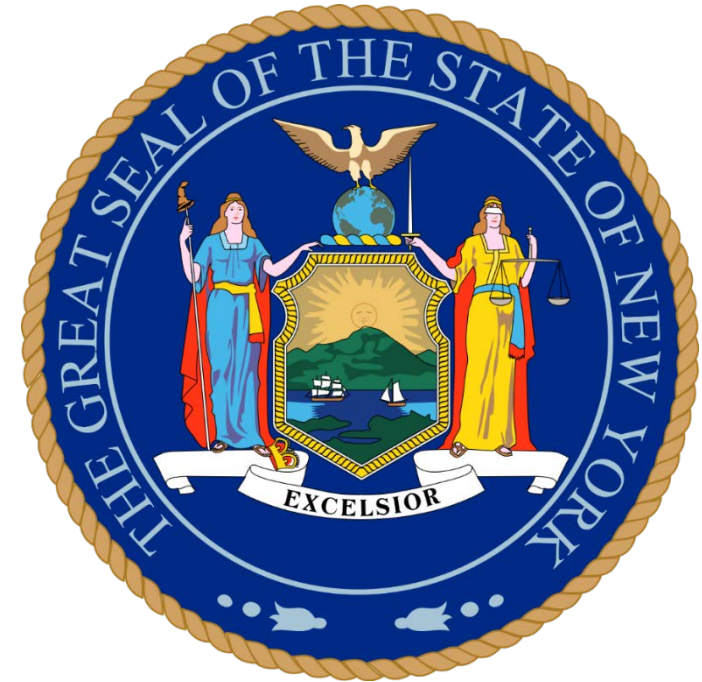
- The RAB has executed Shared Work MOAs with both Local 94 and 32BJ.
 - Both agreements allow employers to participate in the Shared Work Program when they would otherwise layoff or furlough employees for at least 15 days.
- Both agreements:
 - Require benefit fund contributions to continue as if no reduction had occurred;
 - Require certain notice to the Union;
 - Provide that the Union will consent to Shared Work Applications; and
 - Contain protections for employees:
 - Eight hour shifts;
 - Scheduled days of the week should be fixed; and
 - Bargaining unit employees should be treated equitably, except those with special skills.



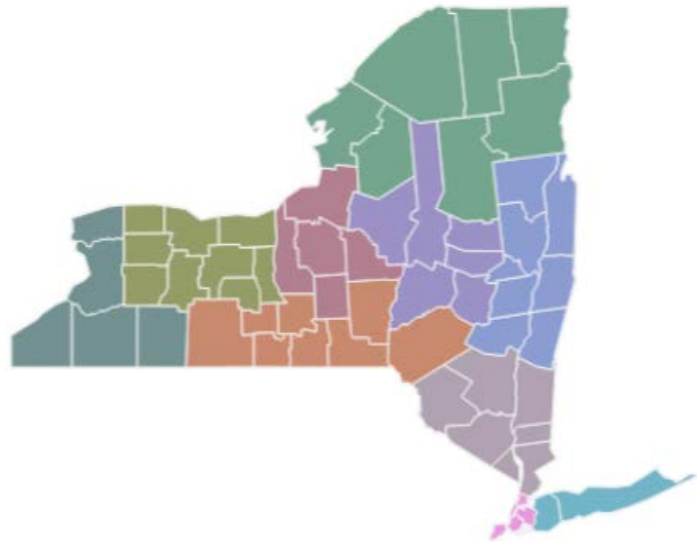
New York Forward Plan and Re-Opening Guidance

New York State Workforce Reduction (“PAUSE”) Order

- Unless permitted to re-open under the New York Forward Plan, only essential businesses may utilize an in-person workforce.
 - Within essential businesses, only employees who are needed to provide the essential product or service are permitted to be present.
 - Businesses must utilize teleworking arrangements to the greatest extent possible.
- The AG’s office has been policing compliance and publicly soliciting complaints from employees.



New York Forward/Re-Opening Plan



- The President's Guidelines delegate authority on re-opening to the states.
- Under New York's plan, businesses will re-open in phases on a regional basis.
- To reopen, regions must satisfy seven criteria.
 - Long island was permitted to begin re-opening on Wednesday, May 27.
 - New York City is now the lone region that is not able to begin re-opening.

New York Forward/Re-Opening Plan (cont'd)

- Phased approach within each region:
 - **Phase 1:** Construction, manufacturing, agriculture, wholesale trade, curbside pickup retail.
 - **Phase 2:** Professional services, retail, administrative support, and real estate.
 - **Phase 3:** Restaurants, food service, and accommodations.
 - **Phase 4:** Arts, entertainment, recreation, and education.
- At least two-weeks between phases to monitor hospitalization and infection rates.
- Before re-opening, each business must implement a health and safety plan.
 - A template is available on the State's website.
 - The plan does not need to be submitted to the state.
 - However, plans must be posted in a conspicuous location in the workplace.

New York Forward/Re-Opening Plan (cont'd)

- NYS has issued detailed guidance on safety plans for Phase 1 businesses.
 - Employers must affirm via an online form that they have read and understand their obligation to operate in accordance with the State's guidance.
- The Phase 1 guidance contains requirements related to:
 1. Physical distancing;
 2. Protective equipment;
 3. Hygiene and cleaning;
 4. Communication; and
 5. Screening of employees and visitors.
- These requirements (but not the phased re-opening) also apply to essential businesses!

Forthcoming Guidance on Re-Entering Commercial Buildings

- **Systems and maintenance** – Make safe systems that have been used infrequently during the emergency (e.g., heating and cooling, elevators).
- **Prepare buildings for social distancing:**
 - Develop policies to ensure social distancing at security/check-in.
 - Consider protocols for elevators, deliveries, loading docks, public spaces, and restrooms.
- **Signage** – Post appropriate signs describing new protocols, physical designations, and health guidelines.
- **Ensure adequate supplies and equipment** – Such as: cleaning supplies, touch free items, PPE, hand sanitizer, and soap.
- **Communication** – Maintain communication with tenants regarding re-entry.
 - Coordinate with tenants regarding required daily health screenings.

Forthcoming Guidance on Re-Entering Commercial Buildings

- **Hygiene** – Increase cleaning/disinfection, in particular high-touch surfaces.
- **Personal Protective Equipment** – Require face coverings in common areas.
 - Provide PPE, including face coverings, to building workers.
- **Temperature taking of non-employees and visitors:**
 - No guidance has been issued on temperature taking of a visitor or a non-employee.
 - Consider legal issues (e.g., discrimination concerns, confidentiality).
 - Consider practical issues (e.g., location, who who will conduct the screening).
- **Construction work in occupied buildings** – Each project must: (1) have a safety plan, and (2) certify that they have read and understand the State guidance.



Additional Considerations for Returning to the Building Workplace

1. What If Employees Refuse To Work?

- Generally, employers set the terms and conditions of employment, and can require employees to work, so long as the workplace is reasonably safe.
- However, there are limited circumstances where employees may refuse:
 - **ADA:** Employees with a qualifying disability may request reasonable accommodations.
 - **OSHA:** In limited 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.
 - Provide PPE, increase cleaning, implement social distancing to reduce risk of death or injury.
 - **NLRA:** Consider if group activity constitutes “protected concerted activity.”
- Consider the employee relations perspective.

2. What Should Be in My Response Plan for When Employees are Diagnosed?

- Communicate.
 - Interview the affected employee to obtain information, if possible.
 - Immediately notify the state and local health department (per Phase 1 guidance).
 - If the employee was recently in the building, communicate this to employees/tenants.
 - If the employee had close contact with others, separately inform them of their potential exposure in accordance with State contact tracing requirements.
- Do not disclose the employee's name in these communications.
- Consider whether a portion of the building should be closed and disinfected.
 - Consult guidance issued by the CDC and state/local health departments.
 - Generally, close and clean the areas in which the employee works or has visited.
 - Consider hiring an external cleaning company.

2. What Should Be in My Response Plan for When Employees are Diagnosed? (cont'd)

- Consider **reporting** requirements.
 - Coronavirus may be reportable to OSHA if an employee is infected in the workplace.
 - Phase 1 Guidance requires employers notify the DOH and the local health department of:
 - Any positive COVID-19 test result by a worker at their site; and
 - If an employee screens positive for COVID-19 symptoms.
- Consider **recording** requirements.
 - **Note**: OSHA rescinded guidance that narrowed recording obligations for most employers.
 - Under the new guidance, employers must record if:
 1. The case is confirmed;
 2. The case is work-related; and
 3. The case involves one or more of the general recording criteria.
 - To determine work-relatedness:
 - Ask the employee how they think they contracted the illness.
 - Discuss (within reason) the employee's out-of-work activities.
 - Review the employee's work environment.

3. When Can an Employee Return to Work After COVID-19?

- Phase 1 Guidance:
 - Symptomatic + no test → 14-day self quarantine (unless essential).
 - Positive test → 14-day self quarantine (unless essential).
 - Close contact with a person with COVID-19, but no symptoms → The employee may work with restrictions:
 1. Regularly monitor temperature and symptoms.
 2. Wear a face covering at all times while in the workplace for 14 days.
 3. Continue social distancing.
 4. Continue to clean and disinfect workspaces.
- Consult NYDOH guidance for returning essential employees to work following:
 - A confirmed or suspected case; or
 - Exposure to someone with a confirmed or suspected case.

4. Should I Implement Questionnaires for Employees?

- Consider implementing a questionnaire regarding COVID-19 symptoms, diagnoses, and potential exposure.
 - This is a requirement for phase 1 businesses in New York State.
 - Responses must be reviewed every day, and the review must be documented.
 - Require employees to immediately disclose if their responses change.
- Consider a separate questionnaire prior to re-opening regarding concerns that employees have returning to work.
- Employee medical information:
 - Keep it confidential.
 - Maintain it in a separate file.
- Consider practical issues regarding implementation.

5. Should I Conduct Temperature Screenings of Employees?

- Temperature screenings of employees are currently permitted under the ADA's "direct threat" exception.
 - Temperature screenings would otherwise be prohibited by the ADA.
- No current requirement that employers conduct temperature screenings.
 - Exception: In NY, employees who have been exposed to COVID-19.
- Best practices if performing temperature screening:
 - Subject all employees in the same job category to the same requirements.
 - Have them conducted by an outside vendor (or someone in HR).
 - Adhere to current social distancing and PPE requirements.
 - Pursuant to CDC guidance, consider physical barriers in screening areas.
 - Have employees take their own temperatures to reduce contact, if possible.
- Contact the Union before implementing testing of Union employees.

6. Should I Conduct Other Testing for My Employees?

- **Diagnostic testing** → Indicates whether the person is currently infected.
 - The EEOC has temporarily approved diagnostic testing.
 - Employers should ensure that tests are accurate and reliable before implementing.
- **Antibody testing** → Indicates whether the person has developed immunity
 - CDC guidance recommends **against** using antibody test results to make decisions about returning employees to the workplace.
- **Considerations for both:**
 - Subject all employees in the same job category to the same requirements.
 - Have them be conducted by a medical professional (or someone in HR).
 - Adhere to current social distancing and PPE requirements.

7. How Can I Prevent Discrimination & Harassment Claims?

- Employers should:
 - Remind employees that discrimination and harassment are illegal;
 - Advise supervisors and managers of their role; and/or
 - Conduct training regarding EEO issues presented by the pandemic.
- Be particularly mindful when making employment decisions.
- Employees may need new or adjusted accommodations upon reopening.
 - Those with certain underlying conditions may be at increased risk.
 - Employers may learn that employees can perform essential functions at home.
 - Employees may be entitled to teleworking as an accommodation after the pandemic, even if they weren't before.
- Employers may prioritize requests for accommodations that are needed while teleworking and may provide temporary accommodations.

7. How Can I Prevent Discrimination & Harassment Claims? (cont'd)

- Employees do not need to use the term “reasonable accommodation.”
 - Pay attention to requests for telework or for leave.
- Be careful to not inadvertently take adverse action on the basis of a protected characteristic.
 - Do not unilaterally postpone the start date of a person who is over 65 or pregnant.
 - Employers may only exclude a person at higher risk for COVID-19 due to a disability if:
 - The employee’s disability poses a “direct threat” to his health; and
 - The threat cannot be eliminated or reduced by reasonable accommodation.



Additional Resources

Proskauer's Resources

- **Coronavirus Resource Center**

- <https://www.proskauer.com/market-solutions/coronavirus-covid-19-resource-center>

- **Proskauer Coronavirus Insights**

- <https://coronavirus.proskauer.com/>

- **Law and the Workplace Blog**

- <https://www.lawandtheworkplace.com/>

- Recent Coronavirus blog topics include:

- New York State's Plan to Re-Open Businesses
 - OSHA Guidance Regarding COVID-19 Recordkeeping Requirements
 - EEOC Guidance on COVID-19
 - Federal and State Coronavirus Leave Legislation

RAB, REBNY, and BOMA Resources

- **RAB Document Center** – <https://www.rabolr.com/documents>
 - Each of the 32BJ/Union Agreements
 - Essential Business Identification Form Letter for Employees
 - List of Janitorial Contractors
 - Other COVID-19 Guidance
- **REBNY Resource Hub** – <https://rebny.com/content/rebny/en/Coronavirus.html>
 - Federal Stimulus Resources
 - Real Estate Industry Resources
 - Other Government Resources
- **BOMA NY Website** – <http://www.bomany.org/home/>

Additional Resources

- Centers for Disease Control and Prevention
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>
- Occupational Safety and Health Administration
 - https://www.osha.gov/SLTC/novel_coronavirus/standards.html
 - <https://www.osha.gov/Publications/OSHA3990.pdf>
- Equal Employment Opportunity Commission
 - https://www.eeoc.gov/facts/pandemic_flu.html
 - https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm
- Department of Labor: Wage and Hour Division
 - <https://www.dol.gov/agencies/whd/pandemic>
 - <https://www.dol.gov/agencies/whd/ffcra>
 - <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
 - https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Additional Resources (cont'd)

- New York State Department of Health

- https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_eo20216employeefacecovering_041420.pdf
- https://coronavirus.health.ny.gov/system/files/documents/2020/04/doh_covid19_essentialpersonnelreturntowork_rev2_033120.pdf

- Other New York State Guidance

- <https://esd.ny.gov/guidance-executive-order-2026>
- <https://esd.ny.gov/novel-coronavirus-faq-businesses>
- <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>
- <https://forward.ny.gov/industries-reopening-phase>

- New York City Health Department

- <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>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-face-covering-faq.pdf>
- <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-paid-sick-leave-order.pdf>

Questions?

Proskauer >>



Coronavirus and the Building Workplace: *Are You Prepared? Part 8*

Thursday, May 28, 2020

The information provided in this slide presentation is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the Firm, our lawyers or our clients. No client-lawyer relationship between you and the Firm is or may be created by your access to or use of this presentation or any information contained on them. Rather, the content is intended as a general overview of the subject matter covered. Proskauer Rose LLP (Proskauer) is not obligated to provide updates on the information presented herein. Those viewing this presentation are encouraged to seek direct counsel on legal questions. © Proskauer Rose LLP. All Rights Reserved.

Proskauer»

BOMA
New York

REBNY®

RAB
REALTY ADVISORY BOARD
ON LABOR RELATIONS

MEMORANDUM OF AGREEMENT

Whereas, IUOE Local 94 ("Union") and the Realty Advisory Board on Labor Relations Inc. ("RAB"), acting on behalf of various owners of office and commercial buildings in the City of New York and authorized agents of such owners who become signatory ("Employers") are parties to the 2019 RAB Engineers Agreement (the "Agreement");

Whereas, the COVID-19 pandemic is impacting the building operations and building service workers throughout the City of New York;

Whereas, the parties desire to maintain stable labor relations during the COVID-19 pandemic, ensure an effective response to the public health crisis and the provision of essential services, minimize dislocation and mitigate the impacts on its employees who are members of Local 94 ("Employees");

Whereas, certain buildings and Employers are experiencing difficulties in continued operations as a result of COVID-19 and these buildings may wish to reduce labor cost while retaining trained employees and maintaining benefits for employees; and

Whereas, under New York State Labor Law, Art. 18, Title 7-A, §§ 602-612, the New York State Department of Labor ("NYSDOL") administers a program known as "Shared Work" which allows employers to keep trained staff and avoid layoffs and provides partial unemployment insurance benefits to employees while working reduced hours;

Now therefore, the RAB, on behalf of its members who assent in writing to this Memorandum of Agreement ("signatory employers"), and the Union agree to the following:

1. A signatory employer, who would otherwise layoff or furlough employees for a period of fifteen (15) days or more, may opt to retain Employees and avoid layoffs by designing and obtaining approval from the NYSDOL of a Shared Work Program under which it is allowed to reduce the hours of Employees in an amount not less than 20% and not greater than 60% of the hours those employees previously worked; provided:
 - a. Each signatory employer who wishes to reduce hours as described herein shall submit a "Shared Work Plan" to the NYSDOL, consistent with the rules, regulations, and procedures applicable to such plans, and obtain approval by the NYSDOL of that signatory employer's Shared Work Plan;
 - b. The signatory employer shall execute an individual assent to this Memorandum of Agreement by site or sites where the Shared Work Program will apply.
 - c. Notwithstanding any reduction in hours, there shall be no reduction in the benefit funds contributions by signatory employers and they will continue to pay all benefits funds contributions to the Health and Benefit Fund, Central Pension Fund, Training, Annuity and Sick Pay Funds applicable to any affected employee's benefits as were paid prior to commencement of the signatory employer's Shared Work Program and prior to any reduction of hours by an employer made due to COVID-19 as if no reduction of hours occurred. That

means that an employee who was a regular full-time employee working 40 hours prior to COVID-19, the employer will pay 40 hours to the benefit funds.

- d. The Employer will establish reduced work schedules under their approved Shared Work Plan consistent with the following terms: (1) employees shall be scheduled for a minimum eight (8) hours per scheduled shift, or the employer's equivalent duration for the shift of similar full-time employees; (2) scheduled days of the week should be fixed; and (3) with the exception of certain existing bargaining unit positions that may be excluded from a Shared Work Plan due to special skills and responsibilities, all bargaining unit employees under a Plan and within their classifications shall be treated comparably and equitably;
- e. The Employer shall provide the Union with a copy of the Shared Work Plan at least 72 hours prior to submission to NYSDOL, notice when the Plan is approved by NYSDOL and its effective date.

2. It is understood and agreed by the parties and the signatory employers that this Memorandum of Agreement is based upon the participating affected employees' eligibility and receipt of the additional \$600 per week emergency Pandemic Unemployment Compensation.

3. The parties agree that on the condition that a signatory employer complies with the terms of this Memorandum of Agreement, the Union consents to the submission of a Shared Work Program Application; Shared Work Plan Participant Listing, and/or Shared Work Continued Claim Form, and any other and/or further documents as may be necessary to ensure the signatory employer may participate in the NYSDOL Shared Work Program.

4. All other terms of the Agreement, including both the relevant collective bargaining agreement and any other recent interim agreements, not modified by the terms of this Memorandum of Agreement remain in effect. Disputes arising under this Memorandum of Agreement shall be addressed under the Agreement's respective grievance procedure.

5. Employers agree that they will process claims for unemployment insurance benefits in a manner consistent with this Memorandum of Agreement, provided, that nothing in this Agreement shall be construed to prevent any Employer from responding truthfully to any inquiry concerning an employee's application for unemployment insurance benefits. The employer will assist the employees with their Shared Work unemployment claims.

6. The parties further agree that they will direct the Trustees of the Local 94 Benefits Funds to continue to accept benefit fund contributions to the Health and Benefit Fund, Central Pension Fund, Training, Annuity and Sick Pay Funds submitted for employees whose schedules are reduced pursuant to this Memorandum of Agreement and to continue to provide those benefits to such employees in the same amount and on the same terms as were provided prior to commencement of the signatory employer's Shared Work Program as if no reduction of hours occurred

7. The parties further acknowledge that this Agreement is subject to guidance and regulation issued by the NYDOL and may need modification to comply with such guidance and

regulation. The parties will meet and confer regarding any guidance and regulation issued by NYDOL that affects the terms of this Agreement.

8. This Memorandum of Agreement will remain in full force and effect for sixty (60) days after the date of full execution by all parties, unless earlier terminated by any party on seven (7) days' written notice to the other party. This Memorandum of Agreement may be extended by mutual consent of all parties.

LOCAL 94, IUOE

REALTY ADVISORY BOARD ON LABOR
RELATIONS, INC.

By: _____

Kuba Brown, Business Manager

By: _____

Howard Rothschild, President

Date: _____

4/24/20

Date: _____

April 24, 2020

ASSENT

Whereas, IUOE Local 94 ("Union") and the Realty Advisory Board on Labor Relations Inc. ("RAB") are parties to the 2019 RAB Engineers Agreement (the "Agreement"); and

Whereas, the Union and the RAB have entered into a Memorandum of Agreement effective April __, 2020 ("MOA") regarding adoption of an NYS Department of Labor (NYSDOL) authorized Shared Work Program to maintain stable labor relations during the COVID-19 pandemic, ensure an effective response to the public health crisis and the provision of essential services, minimize dislocation and mitigate the impacts on its employees who are members of Local 94; and

Whereas, RAB members who assent in writing become signatories to the MOA and may participate in the MOA's terms for the Employer's site or sites where the Shared Work Program will used.

It is therefore agreed by the undersigned employer that it has adopted the MOA and the MOA and Shared Work Program approved by the NYSDOL will be applicable to the site or sites identified herein.

EMPLOYER

By: _____
Signature

Name of Authorized Representative

Dated: _____

Building locations or sites where Shared Work Program will be used:

ASSENT

Whereas, IUOE Local 94 (“Union”) and the Realty Advisory Board on Labor Relations Inc. (“RAB”) are parties to the 2019 RAB Engineers Agreement (the “Agreement”); and

Whereas, the Union and the RAB have entered into a Memorandum of Agreement on April 24, 2020 (“MOA”) regarding adoption of an NYS Department of Labor (NYSDOL) authorized Shared Work Program to maintain stable labor relations during the COVID-19 pandemic, ensure an effective response to the public health crisis and the provision of essential services, minimize dislocation and mitigate the impacts on its employees who are members of Local 94; and

Whereas, RAB members who assent in writing become signatories to the MOA and may participate in the MOA’s terms for the Employer’s site or sites where the Shared Work Program will used.

It is therefore agreed by the undersigned employer that it has adopted the MOA and the MOA and Shared Work Program approved by the NYSDOL will be applicable to the site or sites identified herein.

EMPLOYER

By: _____
Signature

Name of Authorized Representative

Dated: _____

Building locations or sites where Shared Work Program will be used:

MEMORANDUM OF AGREEMENT

Whereas, SEIU Local 32BJ ("Union") and the Realty Advisory Board on Labor Relations Inc. ("RAB") on behalf of its members ("Employers") are parties to the 2020 RAB Commercial Building Agreement, the 2020 RAB Contractors Agreement, the 2018 Apartment Building Agreement, the 2018 Resident Managers and Superintendents Agreement, the 2018 Long Island Apartment Building Agreement, the 2016 RAB Security Officers Agreement, and the 2016 RAB Window Cleaners Agreement (collectively the "Agreements");

Whereas, the COVID-19 pandemic is impacting the building operations and building service workers throughout the City of New York;

Whereas, the parties desire to maintain stable labor relations during the COVID-19 pandemic, ensure an effective response to the public health crisis and the provision of essential services, minimize dislocation and mitigate the impacts on employees;

Whereas, certain buildings and Employers are experiencing difficulties in continued operations as a result of COVID-19 and these buildings may wish to reduce labor cost while retaining trained employees and maintaining benefits for employees; and

Whereas, under New York State Labor Law, the New York Department of Labor ("NYDOL") administers a program known as "Shared Work" (Art. 18, Title 7-A (§§ 602-612)) which provides certain financial benefits to the employees of employers who participate in Shared Work by avoiding lay-offs through reduced work schedules for employees; and

Now therefore, the RAB, on behalf of its members, and the Union agree to the following:

1. Where Employers would otherwise layoff or furlough employees for a period of fifteen (15) days or more, those Employers may opt to retain and reduce the hours of such employees in an amount not less than 20% and not greater than 60% less than the number of hours those employee previously worked to achieve reasonably comparable labor cost savings; provided:
 - a. Notwithstanding any reduction in hours, the Employer will continue to pay benefits funds contributions for any affected employee's benefits as if no reduction of hours occurred; and
 - b. The Employer submits a "Shared Work Plan" to the NYDOL, consistent with the rules, regulations, and procedures applicable to such plans and the Employer's Shared Work Plan is approved.
 - c. Employers shall establish reduced work schedules under their approved Shared Work Plan consistent with the following terms: (1) employees shall be scheduled for a minimum eight (8) hours per scheduled shift, or the employer's equivalent duration for the shift of full-time employees; (2) scheduled days of the week should be fixed; and (3) with the exception of certain existing bargaining unit positions that may be excluded from a Shared Work Plan due to special skills and

responsibilities, all bargaining unit employees under a Plan and within their classifications shall be treated comparably and equitably.

- d. The Employer shall provide the Union with a copy of its Shared Work Plan submitted to NYDOL, notice when the Plan is approved by NYDOL and its effective date. In addition, the Employer shall provide the Union with a list of its employees employed under the Shared Work Plan and their new work schedules.

2. The parties agree that if an Employer reduces hours in accordance with this Memorandum of Agreement, the Union will consent to the submission of a Shared Work Program Application, Shared Work Plan Participant Listing, and/or Shared Work Continued Claim Form, and any other and/or further documents as may be necessary to ensure the Employer is covered by the New York State Shared Work Program.

3. All other terms of the underlying Agreements, including both the relevant collective bargaining agreements and recent interim agreements, not modified by the terms of this Memorandum of Agreement remain in effect. Disputes arising under this Memorandum of Agreement shall be addressed under the Agreements' respective grievance procedures.

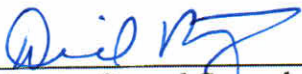
4. Employers agree that they will process claims for unemployment insurance benefits in a manner consistent with this Memorandum of Agreement, provided, that nothing in this Agreement shall be construed to prevent any Employer from responding truthfully to any inquiry concerning an employee's application for unemployment insurance benefits.

5. The parties further agree that they will direct the Trustees of the Building Service Local 32BJ Benefits Funds to continue to accept benefits contributions submitted for employees whose schedules are reduced pursuant to this Memorandum of Agreement and to continue to provide all benefits to such employees in the same amount and on the same terms as if no reduction in an employee's hours or days of work occurred.

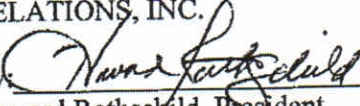
6. The parties further acknowledge that this Agreement is subject to guidance and regulation issued by the NYDOL, and may need modification to comply with such guidance and regulation. The parties will meet and confer regarding any guidance and regulation issued by NYDOL that affects the terms of this Agreement.

7. This Memorandum of Agreement will remain in full force and effect for sixty (60) days, unless earlier terminated by any party on seven (7) days' written notice to the other party. This Memorandum of Agreement may be extended by mutual consent of all parties.

LOCAL 32BJ, SEIU

By: 
David Prouty, General Counsel

REALTY ADVISORY BOARD ON LABOR
RELATIONS, INC.

By: 
Howard Rothschild, President

Date: 4-11-2020

Date: April 11, 2020

NEW YORK SHARED WORK PROGRAM
JOINT GUIDANCE PROVIDED BY
REALTY ADVISORY BOARD ON LABOR RELATIONS
AND SEIU LOCAL 32BJ

April 24, 2020

Due to the COVID-19 public health crisis, many buildings throughout New York City have been closed for their usual business operations, severely impacting the many thousands of building service employees working in these buildings in the form of lay-offs of indeterminate duration. As a result, SEIU 32BJ and the RAB reached an agreement to implement a Shared Work Program (NY Labor Law, Art. 18, Title 7-A (§§ 602-612)) for cooperating employers within our industry.

The goal of Shared Work is keeping more employees working and covered by health care benefits, but on a reduced schedule of between 20-60% below previous work hours. The program is incentivized by providing certain state and federal unemployment insurance benefits to supplement employee's reduced earnings. This memorandum was jointly prepared by staff from SEIU 32BJ and the RAB to provide guidance for both union and management representatives as they implement Shared Work at various job sites in our industry.

What are the advantages of Shared Work for employees?

Under an approved Shared Work plan, covered employees receive the following benefits during the duration of the plan (for up to 26 weeks):

1. Avoid possible lay-off with continued part-time employment and income at regular wage rate;
2. Continued fringe benefits while on a reduced schedule, including health coverage;
3. New York unemployment insurance benefits ("UIB") in an amount that reflects lost hours as a percentage of their weekly UIB had they been fully unemployed (e.g., an employee who previously worked 40 hours and was reduced to 24 hours (40% reduction of hours) receives 40% of the UIB amount he/she would have received if fully unemployed; and
4. The \$600 weekly federal supplement under the CARES Act, in effect through July 31, 2020, is not pro-rated by hours worked.

What are the advantages of Shared Work for employers?

Cooperating employers want to prevent the economic hardship on their employees that come from layoffs. While there are some continued costs for employers to maintain fringe benefits that are not applicable to layoff or furlough, there are corresponding business-related benefits to employers that favor Shared Work:

1. Maintaining the employment relationship preserves the morale and job security of skilled employees who may otherwise find another job if laid off. Preserving employment saves the significant time and costs of applications, hiring and training new employees when work returns.
2. Under the CARES Act, reductions in employees' work hours through Shared Work will not increase most employers' experience rating in the unemployment insurance system (which would otherwise increase future premium costs of unemployment insurance coverage) because the federal government reimburses the state for all benefits paid out under Shared Work.
3. Not-for-profit institutions that self-insure for unemployment coverage may be eligible for additional cost benefits through Shared Work under the CARES Act due to the 100% federal reimbursement of benefits paid by states through Shared Work programs.

What is required for an employer to participate in Shared Work?

Shared Work requires participating employer to submit a plan application to the NY DOL that must be approved. Applying electronically through to NY DOL website is highly recommended and applications are usually approved quickly. The application must include certification by the employer that:

- a. The employer's Shared Work plan will prevent an identified number of employees from being laid off;
- b. The employees that remain employed will work under a new reduced work schedule that reflects a uniform reduction of some specific percentage of the employees' previous work schedule which must be equal among all the employees and in the range of 20-60% below previous work hours each week. This requirement prevents a Shared Work plan that is structured as one week on, one week off.
- c. The employees that remain employed shall continue to be provided the same fringe benefits they received under their previous schedules.
- d. The Union has agreed to the employer's proposed plan.

- e. All employees working in the defined “unit” covered by the plan have their hours reduced in a uniform amount (i.e., covered employee are working under a schedule reflecting a 40% reduction of work hours from previous full-time schedules).

Which employees can be included in a Shared Work plan?

The employer’s Shared Work plan must be defined by a “unit” of employees (greater than one), which may not be the same as the bargaining unit under the collective bargaining agreement. A unit could be all an employer’s employees or an entire department of employees.

In our industry, the unit would typically be a rational grouping of employees in a particular building, such as cleaning employees or security employees.

Shared Work does not require all aspects of an employer’s operations be subject to the same threat of layoff. If only some portion of a building’s operations will be reduced—for example, evening shift cleaning when tenant floors are less occupied—it is possible to apply to Shared Work for that “unit” of the building’s operations while other shifts and functions are not included. Specifically, employers do not necessarily need to structure shared work “units” to include all members of a bargaining unit or all members of a given title. The program is structured to permit great flexibility and units may be configured to accommodate business needs, employee scheduling concerns, and other applicable workplace requirements.

What Reporting is required to the NY DOL?

Employers and employees must submit weekly certification forms to the NY DOL.

1. The employer certifies the percentage of reduced hours for that particular week, which must be a reduction of between 20-60% below previous schedule at the time of plan approval.
2. Use of paid sick day or vacation day under Shared Work is treated and reported as a paid work day, which should not affect the employee’s UIB for that week.
3. Employees certify to continued employment with the employer and whether the employee worked for any other employer during that week. Employees working for another employer while under Shared Work will have their UIB reduced to reflect the additional earnings.

What are the terms of the Agreement between 32BJ and the RAB on Shared Work?

Under the statute on Shared Work, the employees' representative must consent to an employer's plan application. This has been achieved for RAB members and includes the following conditions for any Shared Work plans with 32BJ-represented employees:

1. Employees must be scheduled for a minimum of 8 hours per scheduled shift, or the employer's equivalent duration for the shift of full-time employees;
2. Scheduled days of the week should be fixed; and
3. Employer shall maintain all fringe benefits for all participating employees in the same form and level as provided to the employees under their previous schedules.

What will the reduced schedules be under Shared Work?

Applying for DOL approval for a Shared Work plan does not require any specific scheduling structure, only the prevention of lay-offs through a reduced schedule that results in 20-60% less work hours for remaining employees. In addition, the Agreement between 32BJ and RAB requires shifts to be a full eight (8) hours, where such employees were full time prior to implementation of a Shared Work Plan. Under these combined parameters, the simplest and least controversial reduced schedules for full time employees are these:

1. 20% reduction (32 hours): 4 days on, 1 day off each week
40% reduction (24 hours): 3 days on, 2 days off each week
50% reduction (20 hours): 3 days on, 2 days off, 2 days on 3 days off, alternating weeks
60% reduction (16 hours): 2 days on, 3 days off each week
2. A reduced schedule in the form of alternating one week on and one week off is not permitted. While amounting to a 50% reduction of work hours overall, the employees' weekly certifications would reflect a 0% reduction on weeks they are working and a 100% reduction on the weeks they are not. This would disqualify employees from Shared Work each week.
3. Shared Work does not protect overtime hours employees previously worked. A Shared Work schedule is based reduction from a previous work week schedule that does not exceed 40 hours/week.

Can the terms of an approved Shared Work plan be changed as conditions change?

Yes. The Shared Work Program is flexible and can change week by week within the parameters of the Program.

1. If an employer submits an application for Shared Work for a 40% reduction of the employees' prior schedule and client demands change to require either an increase or decrease in required work hours, the employer may adjust the schedule in subsequent weeks provided that change is accurately certified in the weekly reporting requirements to the DOL by the employer and employees and applied uniformly to all employees in that unit.
2. If an employer needs to lay-off, or recall, a certain number of employees before being in a position to establish a workable reduced schedule for the remaining staff, Shared Work allows for that. However, the program may not be applied retroactively; i.e., if an employer previously enacted a reduced schedule, it may submit the existing schedule for approval as a Shared Work plan, but the enhanced UIB to employees would not be applied retroactively to when the reduced schedule began.
3. If employees working under Shared Work leave or are discharged, that position can be filled with a new employee. The program is not limited to specific employees working at the time of application.