

# 2020 Labor and Employment

## Coronavirus: What Employers Need to Know Now and For the Future: Part 2

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# Presenter



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# Agenda

- ***New York State Paid Sick Leave (Non-Covid)***
- ***OSHA Guidance***
- ***Reopening Considerations***

# New York General (Non-COVID-19) Sick Leave Law

# *New York General (Non-COVID-19) Sick Leave Law*

- Passed as part of budget bill signed by Governor Cuomo on April 3, 2020
- Becomes effective 180 days after it was enacted (appears to be September 30, 2020)
- Don't need to allow use of sick time until January 1, 2021

# New Paid Sick Leave Requirements

Employer Size	Sick Leave
<b>4 or fewer employees &amp; net income &lt; \$1M</b>	Up to 40 hours of <u>unpaid</u> sick leave
<b>4 or fewer employees &amp; net income &gt; \$1M</b>	Up to 40 hours of paid sick leave
<b>5 to 99 employees</b>	Up to 40 hours of paid sick leave
<b>100+ employees</b>	Up to 56 hours of paid sick leave

# Accrual Method

- **Option 1**: Provide the total amount of sick leave at the beginning of the year
  - But employer may not then reduce or revoke any accrued paid sick leave based on the number of hours worked by the employee
- **Option 2**: Employees accrue sick leave at a rate of not less than one hour per every thirty hours worked
  - Accrual starts at the commencement of employment or the effective date of the paid sick leave law, whichever is later

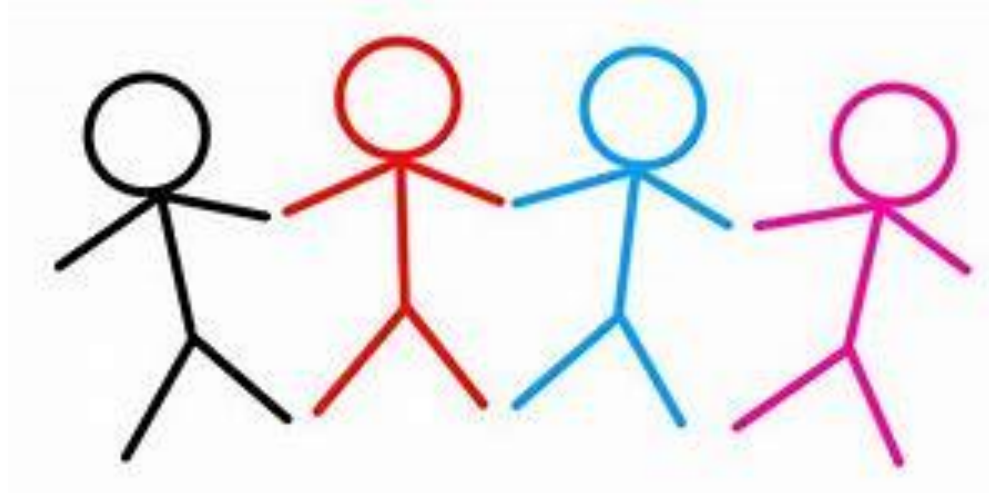
# Reasons for Sick Leave

- For a mental or physical illness, injury, or health condition of the employee or family member, regardless of whether the illness has been diagnosed or requires medical care at time of leave request
- For the diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of the employee or family member
- For an absence from work for reasons related to the employee or a family member being the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking



# Qualifying “Family Member”

- Child
- Spouse
- Domestic partner
- Parent
- Sibling
- Grandchild
- Grandparent
- Child or parent of an employee’s spouse or domestic partner



# Use of Sick Leave

- Increments of use
  - Employer may set a reasonable minimum increment for the use of sick leave, but cannot exceed 4 hours
- Compensation
  - Paid sick leave must be paid at the employee's regular rate of pay, or minimum wage, whichever is greater
- Documentation: Employer may not require the disclosure of confidential information as a condition of providing sick leave

# Carryover and Termination

- Carryover
  - Unused sick leave is carried over to the following calendar year
  - Employers with fewer than 100 employees can limit the use of sick leave to 40 hours in a calendar year
  - Employers with 100 or more employees can limit the use of sick leave to 56 hours in a calendar year
- No requirement to pay unused sick leave upon separation

# Existing PTO or Sick Leave Policies

- An employer is not required to provide any additional sick leave under the statute if...
  - The employer has adopted a sick leave or time off policy that provides employees with an amount of leave which meets or exceeds the requirements of the statute; and
  - The policy satisfies the accrual, carryover, and use requirements of the sick leave statute

# Miscellaneous Provisions

- No retaliation for exercising right to use sick leave
- Restoration to same position with same terms
- Payroll records must reflect the amount of sick leave provided to each employee
- Upon employee's written or oral request, employer must provide summary of sick leave accrued and used in all years to employee within three business days
- Regulations and guidance may be issued before effective date

# OSHA Guidance



# OSHA Considerations

- The Occupational Safety and Health Act's General Duty Clause requires employers to furnish each worker with a place of employment which is “free from recognized hazards that are causing or are likely to cause death or serious physical harm”
- Requires employers to keep the workplace free from contagious diseases that meet those criteria
- OSHA does not have a separate safety standard for airborne illnesses, such as the coronavirus – its guidance is merely a recommendation

# OSHA Reporting

- OSHA record-keeping requirement (29 CFR Part 1904) mandates the recording of certain work-related injuries and illnesses for covered employers
- OSHA has said coronavirus is a recordable illness when an employee is infected on the job
  - Ex. From a co-worker, from a patient, from a client, etc.



# OSHA Reporting

- All employers, regardless of size or industry, must record a work-related coronavirus infection if it results in a fatality, or in-patient hospitalization
- Illness not resulting in hospitalization must be reported yearly on March 2 (for the preceding calendar year)
- Hospitalizations must be reported within 24 hours, and all fatalities within 8 hours

# OSHA Reporting

- OSHA recording is done through forms available online, or by phone
- OSHA requires covered employers to post a summary of injuries and illnesses each preceding year, from February to April
- OSHA's coronavirus webpage can be found at:  
<https://www.osha.gov/SLTC/covid-19/standards.html#workers>

# OSHA Recommendations

- Develop Infectious Disease Preparedness and Response Plan
- Prepare and Implement Basic Infection Prevention Methods
- Develop Policies and Procedures for Prompt Identification and Isolation of Infected People
- Develop, Implement, and Communicate about Workplace Flexibilities and Protections
- Implement Workplace Controls
- Follow Existing OSHA Standards

# *Returning to Work After the PAUSE: Planning and Preparedness Starting Now*



# Are you ready to re-open?

***On May 4<sup>th</sup> Governor Cuomo announced a four phase opening plan starting May 15<sup>th</sup>***

- ***In the Capital Region 5 out of 7 requirements identified by the Governor are met***
  - ***Just need decline in hospitalizations and deaths***
- ***North Country, Finger Lakes, Southern Tier & Mohawk Valley Regions have met all 7 requirements***

***Now is the time to plan re-opening!***

# 7 Reopening Criteria

- ***14-day decline in hospitalizations OR <15 new hospitalizations (3-day avg.)***
- ***14-day decline in hospitalized deaths OR <5 new hospitalized deaths (3-day avg.)***
- ***<2 new hospitalizations per 100,000 residents (3-day avg.)***
- ***At least 30% of hospital beds available***
- ***At least 30% of ICU beds available***
- ***Test at least 30 per 1,000 residents of county each month***
- ***30 contact tracers per 100,000 residents OR enough to keep up with infection rate***

## Regional COVID-19 Metrics: Where Regions Currently Stand

Report as of May 12, 2020

### Region

- Capital Region
- Central New York
- Finger Lakes
- Long Island
- Mid-Hudson
- Mohawk Valley
- New York City
- North Country
- Southern Tier
- Western New York



### Metrics Met

Capital Region	5/7
Central New York	6/7
Finger Lakes	7/7
Long Island	5/7
Mid-Hudson	5/7
Mohawk Valley	7/7
New York City	4/7
North Country	7/7
Southern Tier	7/7
Western New York	5/7

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	14-Day Decline in new Hospitalizations OR Under 18 new Hospitalizations (1 day avg)	14-Day Decline in Hospital Deaths OR Fatalities (1 day avg)	New Hospitalizations (lower 2 per 1000 residents - 1 day rolling avg)	Share of new beds available (forecast of 30%)	Share of ICU beds available (forecast of 30%)	30 and 14 days ago tested monthly (1 day avg) (2 new tests per week)	Contact tracing (6 per 1000 residents or based on infection rate)	Metrics Met
Capital Region	0   18 ✗	0   8 ✗	1.32 ✓	33% ✓	51% ✓	1,099 / 1,085 ✓	Expected ✗	5/7 ✗
Central New York	0   8 ✓	1   3 ✓	1.07 ✓	43% ✓	53% ✓	798 / 776 ✗	Yes ✓	6/7 ✗
Finger Lakes	0   11 ✓	0   4 ✓	0.84 ✓	42% ✓	53% ✓	1,829 / 1,829 ✓	Yes ✓	7/7 ✓
Long Island	31   425 ✓	3   99 ✗	2.66 ✗	30% ✓	33% ✓	4,540 / 2,836 ✓	Expected ✗	5/7 ✗
Mid-Hudson	29   132 ✓	3   69 ✗	2.25 ✗	33% ✓	49% ✓	4,017 / 2,322 ✓	Expected ✗	5/7 ✗
Mohawk Valley	0   4 ✓	2   2 ✓	0.82 ✓	51% ✓	64% ✓	534 / 485 ✓	Yes ✓	7/7 ✓
New York City	30   820 ✓	29   502 ✓	2.64 ✗	28% ✗	24% ✗	13,327 / 8,399 ✓	Expected ✗	4/7 ✗
North Country	19   3 ✓	7   1 ✓	0.16 ✓	52% ✓	68% ✓	434 / 418 ✓	Yes ✓	7/7 ✓
Southern Tier	0   5 ✓	1   2 ✓	0.21 ✓	44% ✓	42% ✓	988 / 938 ✓	Yes ✓	7/7 ✓
Western New York	0   28 ✗	4   9 ✗	1.85 ✓	45% ✓	55% ✓	1,443 / 1,381 ✓	Expected ✗	5/7 ✗

# Finger Lakes



Region	14-day decline in hospitalizations OR Under 15 new hospitalizations (3-day avg)	14-day decline in hospital deaths OR Fewer than 5 deaths (3-day avg)	New hospitalizations (Under 2 per 100K residents— 3 day rolling avg)	Share of total beds available (threshold of 30%)	Share of ICU beds available (threshold of 30%)	30 per 1k residents tested monthly (7-day average of new tests per day)	Contact Tracers 30 per 100K residents or based on infection rate	Metrics Met
Finger Lakes	Y	Y	0.94	46%	55%	Y	Y	7/7



# New York Plan to “Un-Pause” (Regionally)

	“More-Essential” Industry	“Less-Essential” Industry
Low Infection Risk	Services/product <u>more essential</u> , <u>low risk</u> of workplace or customer infection spread	Services/product <u>less essential</u> , <u>low risk</u> of workplace or customer infection spread
Higher Infection Risk	Services/product <u>more essential</u> , <u>higher risk</u> of workplace or customer infection spread	Services/product <u>less essential</u> , <u>higher risk</u> of workplace or customer infection spread

# NY Four Phases of Reopening

- 1<sup>st</sup> - Construction, manufacturing, wholesale supply chain and select retail (curbside pickup)**
- 2<sup>nd</sup> - Retail, professional services, finance, insurance, retail administrative support, and real estate/rental leasing**
- 3<sup>rd</sup> - Restaurant, food services, hotels**
- 4<sup>th</sup> - Entertainment, recreation, arts and education**

# Legal Considerations for Returning to Work

- Federal and State Guidance
- Potential Liability Concerns
- Contractual Limitations
- Other Regulatory Considerations

# Workplace Risk Assessment

- Employer-Specific and Fact-Dependent
- Disease Transmission Analysis –
  - Where and how is transmission most likely? Common areas, conference rooms, hallways, bathrooms, entrance/exit, areas of interaction with the public
  - Are there areas where employees are typically in close contact?
  - Are certain portions of your workforce more vulnerable?

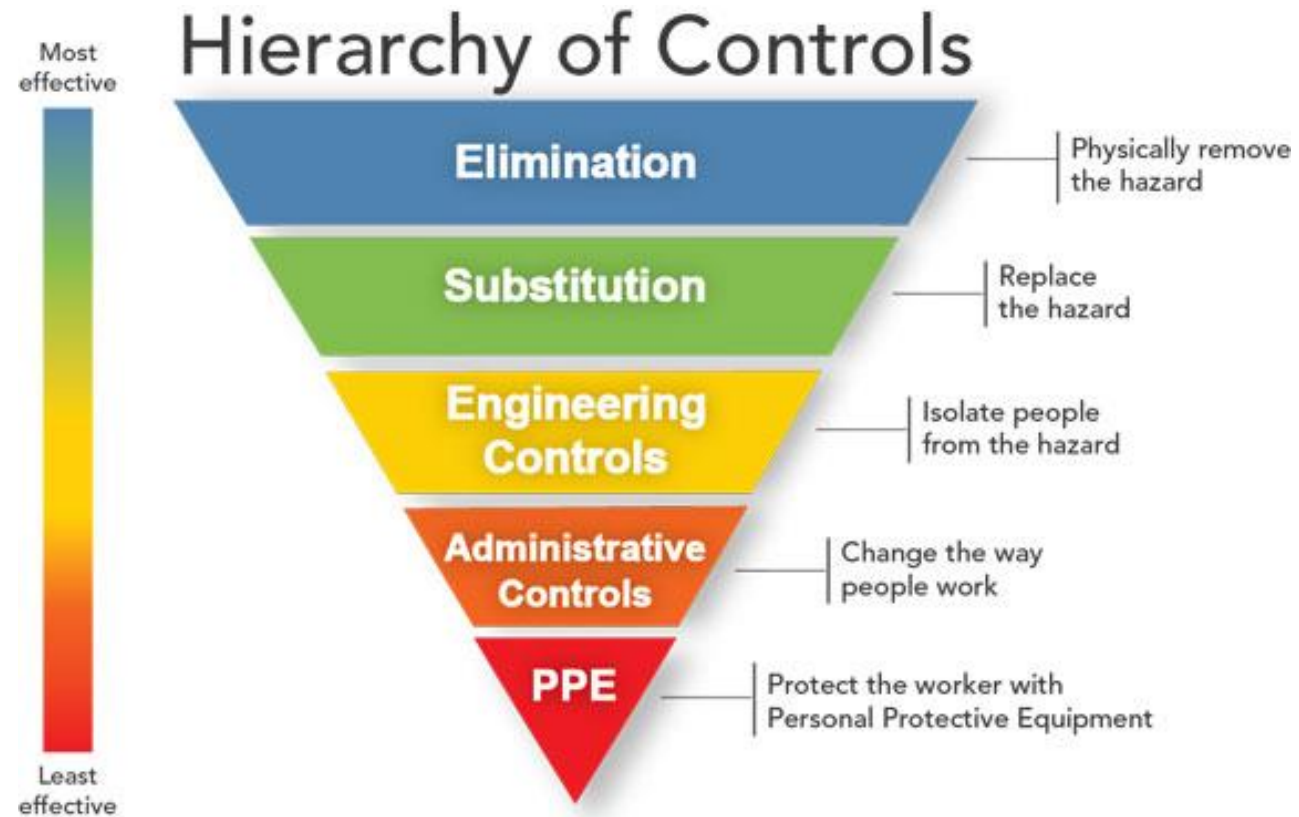
# The Reopening Toolkit

- Workplace Safety Plan
- Proactive Infection Management Plan
- Employee Relations Work Plan
- Communication and Training Plan

# Workplace Safety Plan

- Sanitization
- Social Distancing
- Employee Health Screening and Monitoring
- Personal Protective Equipment
- Business Travel
- Other Considerations

# Hazard Control



# Elimination and Substitution



## ***Elimination***

- ***Remove sick people from the workplace***
- ***Screening***
- ***Mass vaccination (when available)***

## ***Substitution (tread carefully so as not to be discriminatory)***

- ***Vulnerable population restrictions***
- ***Antibody testing to determine which employees have immunity (recognizing that immunity is still an open question)***



# Engineering Controls

## Engineering Controls

Isolate people  
from the hazard

- ***Heating Ventilation and Air Conditioning (HVAC) controls***
  - *More fresh air*
  - *More air changes*
  - *Better filtration*
  - *Ultra violet light*
- ***In room HEPA units***
- ***Installing sneeze guards at points of sale***
- ***Installing physical barriers between people***
- ***Touchless surfaces where feasible (e.g. doors, faucets)***

# Administrative Controls

**Administrative  
Controls**

Change the way  
people work

- **Performing proper consistent hand hygiene**
- Social distancing – maintaining AT LEAST 6 feet between people
- Limiting the number of people gathered
- Fewer tables in cafeterias
- Cleaning and disinfecting
- Placing hand sanitizing stations at entrances and throughout facilities
- Staggering work shifts to minimize contact between people
- Continue with work from home practices

# Personal Protective Equipment



- ***Face Coverings for everyone***
- ***N95 Respirator or equivalent, generally reserved for healthcare workers***
- ***Caution on universal glove use. Can lead to accidental self-exposure.***
  - ***Emphasis should be placed on proper hand washing and hygiene***

# Workplace Safety Plan Suggestions

- **Social Distancing**
  - Limiting use of common areas, remote conferences, one-way traffic patterns in the office
- **Physical Barriers**
  - Air filtration, sneeze guards, touchless systems
- **Remote Work**
  - Can employees continue to work from home? Can schedules be staggered to part-time work from home or different start/end times? Can employees be brought back in phases?
- **Cleaning and Disinfecting**
- **Employee Health Screening**
  - PCR and anti-body tests, Return to Work Certifications

# Workplace Safety Plan Suggestions

- Employee Health Monitoring
  - Proactive Infection Management Plan
- PPE
  - Will you require face coverings and other PPE? Do you have access to sufficient PPE to cover your workforce?
- Employee Hygiene
  - Hand washing, hand sanitizer, cleaning shared workspaces and equipment
- Travel
  - Revise travel policies/limit all nonessential business travel, inquiries regarding personal travel
- Public Interaction
  - Protocols for dealing with customers, vendors, etc.

# Proactive Infection Management Plan

- Employee Exhibits Symptoms Without a Positive Test
- Employee Tests Positive
- Employee Without Symptoms in Close Contact with Someone Who Tests Positive
- Return to Work

# Employees Who Test Positive

- Communication
  - Designate a point of contact to manage employee communication (about positive tests, symptoms, etc.), communicate with local health dept. on tracking, communicate with landlord and neighboring businesses
- Contact Tracing
  - ID employees who came in contact with infected employees, determine extent of exposure, etc.

# Employees Who Test Positive

- Cleaning and Disinfecting
  - Follow CDC guidance on disinfecting, close off and disinfect areas where infected employees were working
- Documentation
  - Document steps taken
  - Possible OSHA reporting



# *Employees With Symptoms/Contact with Infected Person*

- *Determine what symptoms they're experiencing*
- *Who should be notified*
- *Isolating the employee vs. sending them home*
- *Look to state/federal guidance*
- *Further steps*
  - *Contact tracing*
  - *Cleaning and disinfecting*
  - *When can they return to work*

# Returning to Work

- ***Establish Criteria for Return to work***
  - ***Return to Work Certification/statement haven't experienced symptoms for a certain period of time***
  - ***PCR/Anti-body testing***
  - ***Maintained isolation for at least 7 days after illness onset***
  - ***No fever for at least 72 hours without fever-reducing medications***
  - ***Improvement of other symptoms***
  - ***Requiring PPE after return to work***

# Employee Relations Work Plan

- Review Existing Leave Policies
- Return to Work Issues
  - Who to bring back, and how
  - Managing attendance issues
- Compliance with Emergency Leave Laws (EFMLA, EPL, ect.)
- Compliance with Other Legal Requirements/Guidance
  - Wage and hour (over time, spread of hours, split-shift), possible accommodations, etc.

# Communication and Training Plan

- Assign Point of Contact
- Return-to-Work Communication
  - Dates of reopening, scheduling, telework, social distancing, cleaning/sanitation, health screenings, hygiene protocols, PPE, etc.
- Training
  - Train supervisors and managers to ensure consistent compliance with new policies and plans
- Workplace Signage
  - Reminders of new policies, social distancing, etc.

# Communication and Training Plan

- ***Contractors/Vendors/Visitors***
  - ***Consider how to communicate changes to contractors, vendors, visitors***
- ***Employee Feedback and Periodic Review***
  - ***Consider how communications are being received and understood by employees, whether they are effective or not, and adjust as necessary***
- ***Documentation***
  - ***Maintain copies of all communications***
  - ***Think about document retention***

# *Start Planning Now – Consider Phased*

## *Reintegration*

### **Phase 1:**

Enhanced Office Sanitization - What are we doing to make the building safe? ( Set tentative dates)

### **Phase 2:**

Reintegration training for leadership and staff.

Who is returning? Do we need to create staggered schedules? ( Set tentative dates)

### **Phase 3:**

Group 1 - returns to the office to set up social distancing signage, PPE stations, coordinate office deep cleaning.

Other Groups- Gradually invite back to the office in 14-day intervals. (Set tentative dates)

**Phase 4:** Full reintegration. Visitor restrictions lifted; business travel reinstated.

# Questions?



# Bond Resources on COVID-19

- ***<https://www.bsk.com/new-york-labor-and-employment-law-report>***
- ***<https://www.bsk.com/coronavirus/overview>***