

STATE OF NEW YORK

8617--A

IN SENATE

June 22, 2020

Introduced by Sens. GOUNARDES, HOYLMAN, LIU, MYRIE, RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged and said bill committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to requiring public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease; and to amend the education law, in relation to certain protocols for responding to a declared public health emergency involving a communicable disease

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 27-c to
2 read as follows:

3 § 27-c. Duty of public employers to develop operation plans in the
4 event of certain declared public health emergencies. 1. Definitions.
5 For the purposes of this section:

6 a. "Personal protective equipment" shall mean all equipment worn to
7 minimize exposure to hazards, including gloves, masks, face shields,
8 foot and eye protection, protective hearing devices, respirators, hard
9 hats, and disposable gowns and aprons.

10 b. "Public employer" or "employer" shall mean the state of New York, a
11 county, city, town, village or any other political subdivision or civil
12 division of the state, a public authority, commission or public benefit
13 corporation, or any other public corporation, agency, instrumentality or
14 unit of government which exercises governmental power under the laws of
15 this state, provided, however, that this subdivision shall not include
16 any employer as defined in section twenty-eight hundred one-a of the
17 education law.

18 c. "Contractor" shall mean an individual performing services as party
19 to a contract awarded by the state of New York or any other public
20 employer defined in paragraph b of this subdivision.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 d. "Essential" shall refer to a designation made that a public employ-
2 ee or contractor is required to be physically present at a work site to
3 perform his or her job.

4 e. "Non-essential" shall refer to a designation made that a public
5 employee or contractor is not required to be physically present at a
6 work site to perform his or her job.

7 f. "Communicable disease" shall mean an illness caused by an infec-
8 tious agent or its toxins that occurs through the direct or indirect
9 transmission of the infectious agent or its products from an infected
10 individual or via an animal, vector or the inanimate environment to a
11 susceptible animal or human host.

12 g. "Retaliatory action" shall mean the discharge, suspension,
13 demotion, penalization, or discrimination against any employee, or other
14 adverse employment action taken against an employee in the terms and
15 conditions of employment.

16 2. Each public employer in the state of New York shall prepare a plan
17 for the continuation of operations in the event that the governor
18 declares a public health emergency involving a communicable disease.
19 Such plans shall follow the provisions for review and publication as
20 prescribed in subdivision four of this section.

21 3. The operations plan required by this section shall include, but not
22 be limited to:

23 a. A list and description of positions and titles considered essential
24 in the event of a state-ordered reduction of in-person workforce, and a
25 justification of such consideration for each position and title
26 included.

27 b. A specific description of protocols the employer will follow in
28 order to enable all non-essential employees and contractors to telecom-
29 mute including, but not limited to, facilitating or requesting the
30 procurement, distribution, downloading and installation of any needed
31 devices or technology, including software, data, office laptops or cell
32 phones, and the transferring of office phone lines to work or personal
33 cell phones as practicable or applicable to the workplace.

34 c. A description of how the employer will, to the extent possible,
35 stagger work shifts of essential employees and contractors in order to
36 reduce overcrowding on public transportation systems and at worksites.

37 d. A description of the protocol the employer will implement in order
38 to procure the appropriate personal protective equipment for essential
39 employees and contractors, based upon the various tasks and needs of
40 such employees and contractors in a quantity sufficient to provide at
41 least two pieces of each type of personal protective equipment to each
42 essential employee and contractor during any given work shift over at
43 least six months. Such description shall also include a plan for storage
44 of such equipment to prevent degradation and permit immediate access in
45 the event of an emergency declaration.

46 e. A description of the protocol in the event an employee or contrac-
47 tor is exposed to a known case of the communicable disease that is the
48 subject of the public health emergency, exhibits symptoms of such
49 disease, or tests positive for such disease in order to prevent the
50 spread or contraction of such disease in the workplace. Such protocol
51 shall also detail actions to be taken to immediately and thoroughly
52 disinfect the work area of any employee or contractor known or suspected
53 to be infected with the communicable disease as well as any common area
54 surface and shared equipment such employee or contractor may have
55 touched, and the employer policy on available leave in the event of the
56 need of an employee to receive testing, treatment, isolation, or quaran-

1 time. Such protocol shall not involve any action that would violate any
2 existing federal, state, or local law, including regarding sick leave or
3 health information privacy.

4 f. A protocol for documenting precise hours and work locations,
5 including off-site visits, for essential employees and contractors. Such
6 protocol shall be designed to aid in tracking of the disease and to
7 identify the population of exposed employees and contractors in order to
8 facilitate the provision of any benefits which may be available to
9 certain employees and contractors on that basis.

10 g. A protocol for how the public employer will work with such employ-
11 er's locality to identify sites for emergency housing for essential
12 employees in order to further contain the spread of the communicable
13 disease that is the subject of the declared emergency, to the extent
14 applicable to the needs of the workplace.

15 4. Once drafted, each public employer shall present the plan described
16 in this section to all applicable duly recognized or certified represen-
17 tatives of the employer's employees, who shall then be granted an oppor-
18 tunity to review the plan and make recommendations, if any, provided
19 that nothing shall preclude such representatives from making such recom-
20 mendations prior to the draft being completed. The employer must consid-
21 er and respond to such recommendations within a reasonable timeframe. A
22 copy of the final version of such plan shall then be published in a
23 clear and conspicuous location, and in the employee handbook, to the
24 extent that the employer provides such handbook to its employees, and in
25 a location accessible on either the employer's website or on the inter-
26 net accessible by employees. No employer shall take retaliatory action
27 against any employee for making suggestions or recommendations regarding
28 the content of the plan.

29 5. The department shall establish procedures to allow for public
30 employees or contract workers to contact and inform the department of
31 any alleged or believed violations of any of the provisions described in
32 this section.

33 6. Nothing in this section shall be deemed to impede, infringe, dimin-
34 ish or impair the rights of a public employee or employer under any law,
35 rule, regulation or collectively negotiated agreement, or the rights and
36 benefits which accrue to employees through collective bargaining agree-
37 ments, or otherwise diminish the integrity of the existing collective
38 bargaining relationship.

39 § 2. Section 27-a of the labor law is amended by adding a new subdivi-
40 sion 6-a to read as follows:

41 6-a. Form of complaints. The department shall establish a dedicated
42 webpage and hotline through which any public employee under the juris-
43 isdiction of this section or contractor as defined by the chapter which
44 added this subdivision may report alleged or believed violations of any
45 state law, regulation, rule or guidance related to occupational health
46 and safety involving a communicable disease, including but not limited
47 to the novel coronavirus COVID-19. Such webpage and hotline shall allow
48 individuals to report alleged or believed violations anonymously.

49 § 3. Paragraphs k and l of subdivision 2 of section 2801-a of the
50 education law, as amended by section 1 of part B of chapter 56 of the
51 laws of 2016, are amended to read as follows:

52 k. a description of the duties of hall monitors and any other school
53 safety personnel, the training required of all personnel acting in a
54 school security capacity, and the hiring and screening process for all
55 personnel acting in a school security capacity; [and]

1 1. the designation of the superintendent, or superintendent's designee,
2 as the district chief emergency officer responsible for coordinating
3 communication between school staff and law enforcement and first
4 responders, and ensuring staff understanding of the district-level safety
5 plan. The chief emergency officer shall also be responsible for
6 ensuring the completion and yearly updating of building-level emergency
7 response plans; or

8 m. protocols for responding to a declared public health emergency
9 involving a communicable disease that are substantially consistent with
10 the provisions of section twenty-seven-c of the labor law.

11 § 4. This act shall take effect immediately; provided, however that
12 the operation plans in the event of certain declared public health emergencies
13 established pursuant to section 27-c of the labor law shall be
14 finalized and published, the hotline and webpage established pursuant to
15 section 27-a of the labor law shall be functional, and the protocols for
16 responding to a declared public health emergency involving a communicable
17 disease pursuant to paragraph m of subdivision 2 of section 2801-a
18 of the education law shall be established and functional within 30 days
19 of the effective date of this act.