STATE OF NEW YORK

1295

2021-2022 Regular Sessions

IN SENATE

January 11, 2021

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 state disaster emergency involving a communicable disease; to amend the education law, in relation to certain protocols for responding to a declared state disaster emergency involving a communicable disease; and to amend a chapter of the laws of 2020, amending the labor law relating to requiring public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease; and amending the education law relating to certain protocols for responding to a declared public health emergency involving a communicable disease; and amending the education law relating to certain protocols for responding to a declared public health emergency involving a communicable disease, as proposed in legislative bills numbers S.8617B and A.10832, in relation to requiring public employers to adopt a plan for operations in the event of a declared state disaster emergency involving a communicable disease

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

Section 1. Section 27-c of the labor law, as added by section 1 of a chapter of the laws of 2020, amending the labor law relating to requiring public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease; and amending the education law relating to certain protocols for responding to a declared public health emergency involving a communicable disease, as proposed in legislative bills numbers S. 8617B and A. 10832, is amended to read as follows:

§ 27-c. [~~Duty~~] Preparation of public employers [~~to develop operation plans in the event of certain declared public health emergencies~~] for

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

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state disaster emergencies involving public health. 1. Definitions. For the purposes of this section:

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

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

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

~~d.~~] "Essential" shall refer to a designation made that a public employee [~~or contractor~~] is required to be physically present at a work site to perform his or her job. **Such designation may be changed at any time in the sole discretion of the employer.**

[~~e.~~] **d.** "Non-essential" shall refer to a designation made that a public employee [~~or contractor~~] is not required to be physically present at a work site to perform his or her job. **Such designation may be changed at any time in the sole discretion of the employer.**

[~~f.~~] **e.** "Communicable disease" shall mean an illness caused by an infectious agent or its toxins that occurs through the direct or indirect transmission of the infectious agent or its products from an infected individual [~~or via an animal, vector or the inanimate environment to a susceptible animal or human host~~].

[~~g.~~] **f.** "Retaliatory action" shall mean the discharge, suspension, demotion, [~~penalization,~~] or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

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

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

a. A list and description of **the types of** positions [~~and titles~~] considered essential in the event of a state-ordered reduction of in-person workforce[~~, and a justification of such consideration for each position and title included~~].

b. A [~~specific~~] description of protocols the employer will follow [~~in order to enable all~~] **for** non-essential employees [~~and contractors~~] to telecommute including, but not limited to, facilitating or requesting the procurement, distribution, downloading and installation of any needed [~~devices or~~] technology, including software, data, [~~office laptops or cell phones,~~] and the transferring of office phone lines to work or personal cell phones as practicable or applicable to the workplace**, and may include devices**.

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

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

e. A description of the protocol in the event an employee [~~or contractor~~] is exposed to a known case of the communicable disease that is the subject of the [~~public health~~] **state disaster** emergency, exhibits symptoms of such disease, or tests positive for such disease in order to prevent the spread or contraction of such disease in the workplace. Such protocol shall also detail actions to be taken to immediately and thoroughly disinfect the work area of any employee [~~or contractor~~] known or suspected to be infected with the communicable disease as well as any common area surface and shared equipment such employee [~~or contractor~~] may have touched, and the employer policy on available leave in the event of the need of an employee to receive testing, treatment, isolation, or quarantine. Such protocol shall not involve any action that would violate any existing federal, state, or local law, including regarding sick leave or health information privacy.

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

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

h. Any other requirements determined by the department of health such as contract tracing or testing, social distancing, hand hygiene and disinfectant, or mask wearing.

4. Once drafted, each public employer shall present the plan described in this section to all applicable duly recognized or certified representatives of the employer's employees, who shall then be granted an opportunity to review the plan and make recommendations, if any, provided that nothing shall preclude such representatives from making such recommendations prior to the draft being completed. The employer must consider and respond to such recommendations in writing within a reasonable timeframe. A copy of the final version of such plan shall then be published in a clear and conspicuous location, and in the employee handbook, to the extent that the employer provides such handbook to its employees, and in a location accessible on either the employer's website or on the internet accessible by employees. No employer shall take retaliatory action or otherwise discriminate against any employee for making [~~suggestions or~~] recommendations regarding the content of the plan.

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

6. Nothing in this section shall be deemed to impede, infringe, diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement, or the rights and benefits which accrue to employees through collective bargaining agreements, or otherwise diminish the integrity of the existing collective bargaining relationship.

§ 2. Subdivision 6-a of section 27-a of the labor law, as added by section 2 of a chapter of the laws of 2020, amending the labor law relating to requiring public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease; and amending the education law relating to certain protocols for responding to a declared public health emergency involving a communicable disease, as proposed in legislative bills numbers S. 8617B and A. 10832, is amended to read as follows:

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

§ 3. Paragraphs l and m of subdivision 2 of section 2801-a of the education law, as amended by section 3 of a chapter of the laws of 2020, amending the labor law relating to requiring public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease; and amending the education law relating to certain protocols for responding to a declared public health emergency involving a communicable disease, as proposed in legislative bills numbers S. 8617B and A. 10832, is amended to read as follows:

l. the designation of the superintendent, or superintendent's designee, as the district chief emergency officer responsible for coordinating communication between school staff and law enforcement and first responders, and ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring the completion and yearly updating of building-level emergency response plans; [~~or~~] **and**

m. protocols for responding to a declared [~~public health~~] **state disaster** emergency involving a communicable disease that are substantially consistent with the provisions of section twenty-seven-c of the labor law.

§ 4. Section 4 of a chapter of the laws of 2020, amending the labor law relating to requiring public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease; and amending the education law relating to certain protocols for responding to a declared public health emergency involving a communicable disease, as proposed in legislative bills numbers S. 8617B and A. 10832, is amended to read as follows:

§ 4. This act shall take effect immediately; provided, however that [~~the~~] **a draft** operation [~~plans in the event of certain declared public health emergencies~~] **plan** established pursuant to section 27-c of the labor law shall be [~~finalized and~~] published, **and provided for comments to the applicable duly recognized or certified representatives of the employer's employees and to the relevant labor-management committees not later than 150 days from the effective date of this act; and provided further** the [~~hotline and~~] webpage established pursuant to section 27-a

of the labor law shall be functional, [~~and~~] the protocols for responding to a declared [~~public health~~] **state disaster** emergency involving a communicable disease pursuant to paragraph m of subdivision 2 of section 2801-a of the education law shall be established and functional [~~within 30 days of the effective date of this act~~]**, and the operation plan shall be finalized by April 1, 2021**.

§ 5. This act shall take effect immediately.