

ALL NEW YORK PUBLIC EMPLOYERS MUST DEVELOP AND FINALIZE COMMUNICABLE DISEASE-RELATED OPERATION PLANS BY APRIL 1, 2021

Hodgson Russ Labor & Employment Alert
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Earlier this month, Governor Andrew M. Cuomo signed legislation which requires all New York State public employers – including local governments, school districts and other related entities – to draft plans to address the continuation of their operations in the event that the state declares a public health emergency attributable to a communicable disease. These plans must meet certain statutory requirements and be finalized by **April 1, 2021**.

Public employers should not delay in developing their operating plans because a press release issued by the Governor's Office appears to require draft plans to be submitted to any certified unions or collective bargaining representatives within 150 days of the law's effective date, which falls on February 4, 2021. Under the new law (N.Y. Lab. Law § 27-c), all "public employers" must create an emergency operation plan that contains certain required elements. The term "public employer" is broadly defined to include "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"

School districts and boards of cooperative education services that are required to adopt school safety plans pursuant to Education Law Section 2801-a are excluded from the definition of "public employer." However, these education providers are not exempt from the requirements of the new law because the new legislation also amended Section 2801-a to require school safety plans to include protocols for responding to a declared public health emergency involving a communicable disease that are "substantially consistent" with the provisions of Labor Law Section 27-c.

All operating plans developed by covered public employers must contain the following mandatory elements:

- A list and description of positions considered essential in the event of a state-ordered reduction of the employer's in-person workforce and a *justification* for each position and title;

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- Specific descriptions of protocols the employer will follow to enable all non-essential employees and contractors to work remotely, including the procurement and distribution of required technology;
- A description of how the employer will stagger work shifts of employees and contractors to reduce overcrowding, to the extent possible;
- Protocols for the procurement of necessary personal protective equipment (“PPE”) for essential employees and contractors based on their various tasks and needs. PPE must be provided in a quantity sufficient to provide at least two pieces of each type of PPE to each essential employee and contractor during any given work shift over at least six months. Plans also must address storage and emergency access to PPE. PPE includes all equipment worn to minimize the exposure to hazards including gloves, masks, face shields, foot and eye protection, protective hearing devices, respirators, hard hats, and disposable gowns and aprons;
- Protocols for when an employee or contractor is exposed to, exhibits symptoms of, or tests positive for, the communicable disease that is the subject of the public health emergency to prevent the spread and contraction of the disease in the workplace. These protocols must detail the actions the public employer will take to immediately and thoroughly disinfect the work area of any employee or contractor known or suspected to be infected as well as any common areas, shared equipment or areas the infected employee or contractor may have touched. These protocols must also describe the employer’s policies on available leave in the event an employee needs to receive testing, treatment, isolation, or quarantine;
- Protocols for documenting the precise hours and work locations, including off-site visits, for essential employers and contractors; and
- Protocols for how the public employer will work with the employer’s locality to identify sites for emergency housing for essential employees in order to further contain the spread of the disease.

At the current time, public communications from the Governor’s Office suggest that all plans must be submitted to any certified unions and collective bargaining representatives within 150 days of the effective date of the new law, or by February 4, 2021. Certified bargaining representatives are entitled to review the draft plan to make recommendations or suggestions. Employers are obligated to respond to any recommendations, in writing, within a “reasonable timeframe.” Employers must publish a copy of the final version of the plan in a clear and conspicuous location, in the employee handbook (to the extent the employer provides a handbook to its employees), and in a location accessible to employees on the internet by no later than April 1, 2021.[1]

Employers are prohibited from retaliating against employees for making recommendations and/or suggestions regarding the content of the employer’s plan and the Department of Labor has been instructed to set up procedures (including a dedicated webpage and hotline) to report potential violations, which will allow for anonymous reporting of violations.

If you have any questions concerning the preparation or implementation of your emergency operating plan please contact Jeffrey Swiatek (716.848.1449), Andrew Freedman (716.848.1332), or any other member of our Labor & Employment team.

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[1] The original date was October 7, 2020 but Governor Cuomo has since extended the deadline to April 1, 2021 in order to grant public employers and public unions enough time to thoughtfully prepare the plans.