

Impact of the Coronavirus on Employers Part IV: Reopening

Frank Kerbein SPHR
Director, Center for Human Resources
The Business Council of New York State
frank.kerbein@bcnys.org
800.332.2117

Working to create economic growth, good jobs and strong communities across New York State.



Materials are presented as informational only and not intended to provide legal, business or tax advice. The Business Council of New York State, Inc. does not provide legal, business or tax advice. The accuracy, completeness, adequacy or currency of the content is not warranted or guaranteed. Our presentations are not substitutes for the advices or services of an attorney. We recommend you consult a lawyer or other appropriate professional if you want legal, business or tax advice.



	“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 less essential, low risk 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

NYS Re-Opening Guidelines (for now)

- CDC Guidelines – 14-day decline
- Industry openings – “Phases” – construction and manufacturing
- Business Precautions – Plan to protect employees and customers
- Health care capacity by region
- Testing process
- Tracing system
- Isolation facilities
- Regional control room
- Protect and respect essential workers



Who Comes Back?

- Document objective business-related criteria for who comes back first
- Do not discriminate against older workers
- Be aware of “reasonable accommodations”
- Be careful of pre-employment health questions

Reopening Plan

- Stop the Spread
- Social Distancing
- Vendors/Customers
- Travel Considerations
- Employee Health
- Communications



Stop the Spread

Goal: To make employees feel safe upon return to work

- Communicate/Train employees and supervisors on new responsibilities/policies
- Promote personal hygiene: Train employees on frequent handwashing, properly covering coughs and sneezes and refraining from touching the face.
- Clean and sanitize frequently touched surfaces
 - Make wipes, sanitizer and cleaning products widely accessible throughout workplaces. Alcohol-based cleaning products should have 70% alcohol content or higher for effectiveness.
 - Clean break rooms and common touch areas (doorknobs, light switches, phones, fridge handles, etc.) after each shift.



Stop the Spread

- Thorough cleaning of ALL shared surfaces throughout the facility at least once every 24 hours. This includes common spaces like bathrooms, conference rooms, lunchrooms, etc.
- Shut down production in the area where a COVID-19 affected employee worked (i.e. department, line, station) to conduct cleaning, as well as shut down and clean common spaces like bathrooms, conference rooms and lunchrooms once notification of potential COVID-19 spread is suspected.
- Provide masks, shields, gloves, shoe coverings, coveralls, etc. if appropriate and available.
- Provide 'touch-free' solutions



Social Distancing

- Continue to allow work from home as an option
- Stagger shifts and start times to maximize distancing
 - Allow 30-minute buffers between shifts if possible so that employees don't come into contact during transition
 - Cross-train team, so that teams can better stagger shifts
- Provide visual markers on floors for six-foot distancing, per CDC guidance
- Stagger breaks and lunch schedules

Social Distancing

- Limit use of break rooms, remove chairs, microwaves, water coolers, etc.
- Hold meetings in large spaces where people can spread out at six-foot intervals
- Space out desks and work stations; construct temporary walls between workstations
- Conduct phone/email/virtual meetings instead of in-person meetings, even when at office

Vendors

- Separate contractors and vendors from the workforce (have them use separate bathrooms and entrances if possible)
- Prohibit nonessential vendors and deliveries from entering facility
- Require deliveries to be dropped outside facility door, eliminating vendors from entering facility.

Customers

- Offer curbside delivery instead of in-store pick-up
- Provide on-site services to customer's facility once their business is closed (after hours)
- Offer drive-through service only
- Add plastic barriers/shields at registers
- Ask customers to stay in their vehicles in parking lot while they wait
- Limit the number of customers in the facility to ensure appropriate distancing, along with visual markers on floors for six-foot distancing, per CDC guidance
- Conduct virtual sales calls



Travel Considerations

- Require a two-week quarantine for employees who return from outside of the country or a domestic COVID-19 hotspot
- Limit business travel as suggested by CDC guidelines

Employee Health

- Conduct temperature or employee wellness checks at the start of shifts to ensure employees do not exhibit COVID-19 symptoms
 - Fever >100.4 F
 - Cough
 - Shortness of breath/difficulty breathing
- Create a response plan for employees who report or demonstrate symptoms at work, have recently been at work and tested positive or have been in contact with confirmed COVID-19 case, or have not recently been at work but have tested positive or have been in contact with confirmed COVID-19 case



Employee Health

- Ask employees about their health status before they return to work from a sick leave (even if they were out with a headache); require certification by a health care professional of ability to safely return to work (particularly for those noted above)
- Employees should notify their supervisor if they have tested positive for COVID-19
- Offer a variety of leave options for employees who may have to miss work because of a COVID-19-related reason

Paid Family Leave Change

- Paragraph (16) of subdivision (a) of section 355.9 of Title 12 NYCRR is hereby amended to read as follows:
- (16) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or continuing supervision by a health care provider. Serious health condition also means a COVID-19 diagnosis by a health care provider.
- Effective 90 days after posting of emergency rule making...June 25, 2020



NYS Emergency Paid Sick Leave (PSL)

Sick Leave Requirements

- 10 or fewer employees (as of January 1, 2020) – must provide unpaid, job protected sick time during an employee's period of ordered quarantine or isolation (and then PFL/DBL)
- 10 or fewer employees with net income of more than \$1 million - must provide five days of paid sick leave (and then PFL/DBL)
- 11 to 99 employees - must provide five days of paid sick leave (and then PFL/DBL)
- 100 or more employees must provide up to fourteen days of paid sick leave (no additions PFL/DBL)
- Paid for by the employer...no reimbursement
- Public employers must provide at least fourteen days of paid sick leave



NYS Emergency Paid Sick Leave (PSL)

Then...for the duration of the quarantine/isolation-less than 100 employees:

- Combination of PFL and DBL to 100% of pay to a maximum of \$2,884.62 (\$150,000 annually)

Example:

- An employee making \$150,000 per year (\$2,884.62 per week) may be eligible for:
 - \$840.70 payment from PFL (60% of average weekly wage to the 2020 maximum benefit amount), and
 - \$2,043.92 payment from DBL (a significant – temporary increase over the current maximum of \$170/wk.)



Federal Emergency Paid Sick Leave

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns
3. Experiencing COVID-19 symptoms and seeking medical diagnosis
4. Caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns
5. Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.



Federal Emergency Paid Sick Leave

- Only applies to employers with less than 500 employees.
- Up to 80 hours of paid sick leave (Part timers paid regular hours worked)
- At regular rate of pay for reasons #1-3 (Capped at \$511/day; \$5,110 total)
- At 2/3 regular rate of pay for reasons #4-6 (Capped at \$200/day; \$2,000 total)
- Provides an exception for employers who are healthcare providers or emergency responders
- This paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers
- This act takes effect April 1, 2020 and remains in effect until December 31, 2020.



Emergency FMLA Expansion

- Only available for an employee to take FMLA leave if their child's school has closed due to the pandemic
- Only businesses with less than 500 employees and all public employers will be covered by the emergency FMLA
- The first 10 days of leave under the FMLA will be unpaid, employees may elect to use their accrued vacation and/or PTO leave during this time
- After the first 10 days of leave, employees would be entitled to two-thirds of their regular rate. Pay would be capped at \$200 per day/\$10,000
- 10 weeks total
- Job protected leave



Federal Emergency FMLA

- Provides an exception for employers who are healthcare providers or emergency responders
- Employees only need be employed for at least 30 days prior to the designated leave
- Exempts small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business...



Health Care Provider/First Responder

Anyone employed at:

Doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.



Health Care Provider/First Responder

Anyone employed at:

An entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider



Health Care Provider/First Responder

Military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.



Federal Emergency FMLA

- The provision of PSL or expanded FMLA would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting PSL or expanded FMLA would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting PSL or expanded FMLA, and these labor or services are needed for the small business to operate at a minimal capacity.
- Department encourages collaboration



Tax Credits For Paid Sick And Paid Family And Medical Leave

- Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, rather than depositing them with the IRS.
- Only those employers who are required to offer Emergency FMLA and Emergency Paid Sick Leave may receive these credits.

[https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#allocable qualified health plan expenses](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#allocable%20qualified%20health%20plan%20expenses)



The
Business
Council

Reduction in Pay

- NYS Wage Theft Prevention Act
- Wage Acknowledgment Forms
- <https://labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm>

NYS UI – Shared Work Program

- Employees can receive partial UI benefits while working reduced hours. Full-time, part-time and seasonal employees are eligible.
- The plan can cover your total work force, a particular shift or shifts, or a work unit or units. Submit your application at least one week, but not more than four weeks, before the proposed effective date.
- Employed at least two employees working in New York State and
- For four consecutive calendar quarters, you or your predecessor, must have:
 - Paid UI contributions or In lieu of contributions, elected reimbursement of benefits paid to your former employees
- <https://labor.ny.gov/ui/dande/sharedwork1.shtm>



CARES Act

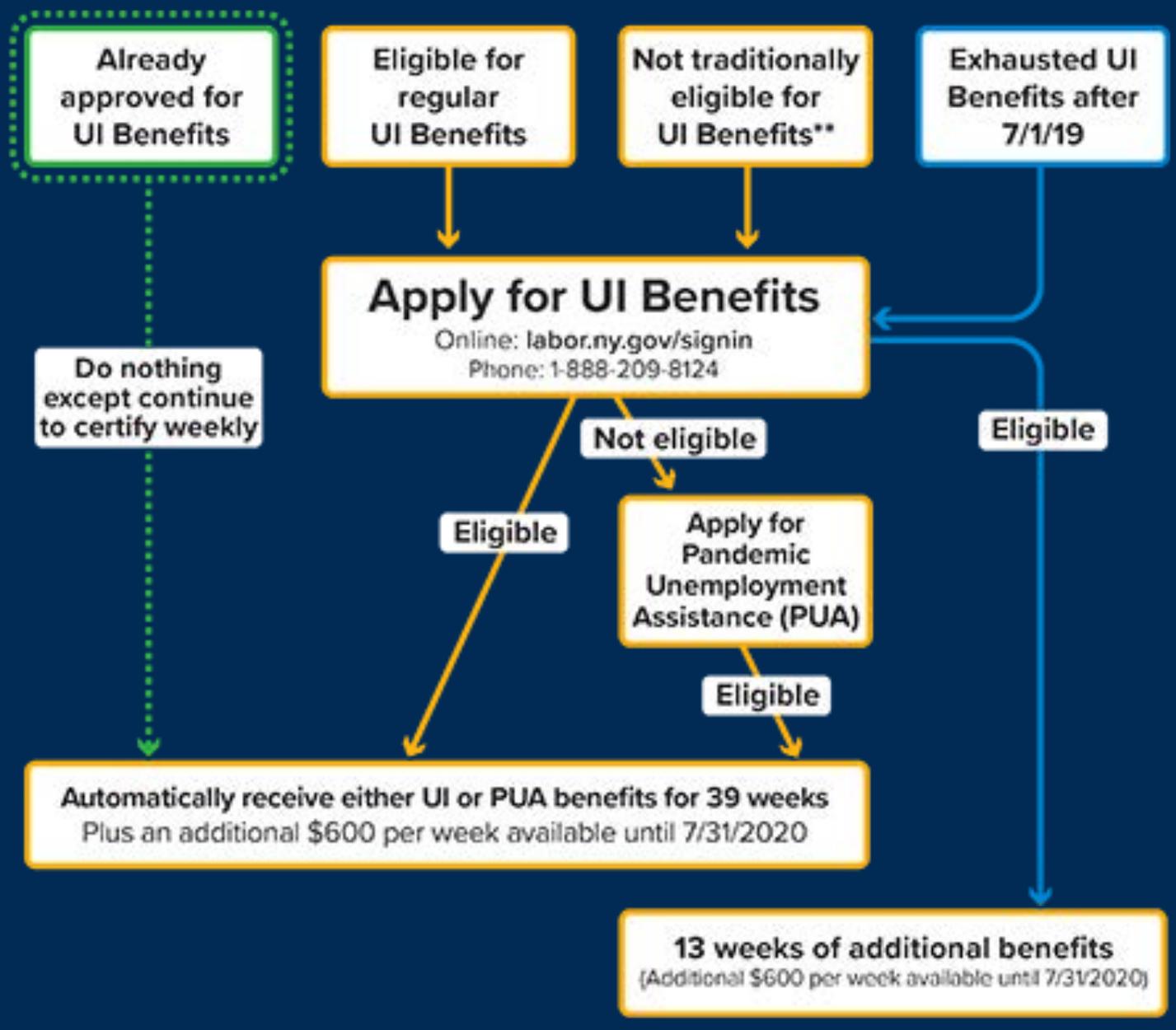
- Small Business “Paycheck Protection Program”
 - You have until June 30, 2020 to restore in full wages and salaries reduced between 2/15/2020 and 4/26/2020
 - Workforce reduction to be restored by 6/30/2020
- Economic Injury Disaster Loans
- Unemployment Programs



CARES Act – Unemployment Provisions

- Additional \$600 per worker per week available
- Additional payment sunsets 7/31/2020
- Does not apply to someone working from home
- Effective 1/27/2020 to 12/31/2020
- Total cap of 39 weeks
- No one week waiting period





Getting them back from UI

- Claimant must be “ready, willing, and able to work” and actively seeking employment
- If the claimant refuses rehire or fails to report to work, they may become ineligible for benefits
- Your offer of employment must pay at least the Unemployment Insurance cutoff wage (10% lower than the Unemployment Insurance prevailing wage) for similar work
- “Employee relations” concerns

NYS Department of Labor
PO Box 15130
Albany, NY 12212-5130
or fax to: (518) 402-6175



Resources

- Business Council Coronavirus
<https://www.bcnys.org/managing-coronavirus>
- NY State Covid-19 Leave
<https://www.governor.ny.gov/programs/paid-sick-leave-covid-19-impacted-new-yorkers>
- OSHA
<https://www.osha.gov/>
- EEOC
<https://www.eeoc.gov/>

- New York Health Department
<https://www.health.ny.gov/>
- Centers for Disease Control
<https://www.cdc.gov/>
- World Health Organization
<https://www.who.int/>
- US Dept. of Labor
<https://www.dol.gov/>



Next Webinar

Annual Harassment Training

This one-hour webinar is intended to provide individuals responsible for providing training the tools and strategies necessary to deliver a training program that meets NYS guidelines as defined in the new sexual harassment laws effective October 2019. We will also cover requirements related to the development and communication of the required sexual harassment policy.

Thursday, May 21, 2020

11:00 am. – 12:00 pm

This program has been approved for HRCI certification



Frank Kerbein SPHR
Director, Center for Human Resources
The Business Council of New York State

frank.kerbein@bcnys.org

800.332.2117

Interested in Membership?

<https://www.bcnys.org/become-a-member>

