

Calling All Public Employers: Time to Develop a Pandemic Operations Plan

This past Labor Day, Governor Cuomo signed [legislation](#) which requires all New York State public employers to adopt a plan for operations in the event of a declared public health emergency involving a communicable disease. The new legislation will constitute New York State Labor Law Section 27-c, and clearly serves as a political response to the effects of the sudden onset of the COVID-19 pandemic this past Spring. Such a plan must be finalized and published by **April 1, 2021**.

The April 1, 2021 effective date of this new pandemic operations plan has been a source of confusion among many public employers and legal practitioners. The plan was initially required to be established within 30 days of the law's enactment (October 7, 2020), but an [approval memorandum](#) issued by the Governor's office extended the deadline, stating: "In order to afford affected public employers and public unions enough time to adequately prepare the required operations plans, I have secured an agreement with the Legislature to make certain technical changes to the bill, including an extension of the date by which the operations plans are required to be completed to April 1, 2021." The [press release](#) from the Governor's Office announcing the new legislation further confirms this point.

For the purposes of this new law, "public employer" is defined to include the State of New York and any county, city, town, village or other political subdivision or civil division of the state, public authority, commission or public benefit corporation, or any other public corporation, agency, instrumentality, or unit of government which exercises governmental powers under the laws of the State. The definition excludes school districts and boards of cooperative educational services that are required to adopt school safety plans pursuant to Education Law Section 2801-a, but the new legislation also amends Education Law Section 2801-a to require that such safety plans 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.

Pursuant to Labor Law Section 27-c, all covered public employers must develop a pandemic operations plan which includes:

1. A list and description of all positions and titles considered essential in the event of a state-ordered reduction of in-person workforce, and the justification for classifying each position as essential;
2. Protocols the employer will follow in order to enable non-essential employees to telecommute or work remotely, including plans to obtain any needed devices or technology such as software, 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;
3. A plan describing how the employer will, to the extent possible, stagger work shifts of essential employees and contractors in order to reduce overcrowding on public transportation and at work sites;
4. A description of the protocol the employer will implement to obtain necessary personal protective equipment (PPE) for essential employees and contractors, based upon the various tasks and needs of such employees, 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 a six-month period of time. PPE includes: "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";

5. A description of the protocol outlining what happens in the event an employee or contractor is exposed to the communicable disease, exhibits symptoms or tests positive for such disease, in order to prevent the spread or contraction of such disease in the workplace, including policies regarding the disinfection of the workplace and available leave for employees;
6. Policies for documenting hours and work locations for essential employees and contractors to aid in tracking the disease; and
7. A protocol for how the public employer will work with the locality to identify sites for emergency housing for essential employees.

For public employers covered by Labor Law Section 27-c, draft plans must be submitted by the employer to any certified unions within 150 days of the law's September 7, 2020 effective date (thus, on or before February 4, 2021). Unions may then review the plan and make recommendations for changes to the employer. The employer must respond to any such recommendations in writing within a "reasonable" time frame. For school districts, it appears that the amendment of school safety plans to include protocols that are substantially consistent with the provisions of Labor Law Section 27-c must be accomplished pursuant to the procedures set forth in Education Law Section 2801-a.

Once finalized, the plan must be posted in a clear and conspicuous location and published in the employee handbook, to the extent that the public employer provides such a handbook to its employees. The plan must also be accessible either on the employer's website or on the internet accessible by employees.

Notably, the law also provides that the Department of Labor will establish an online portal for public employees to report violations of health and safety rules for communicable diseases.

If you have any questions about this information memo, please contact [Christopher T. Kurtz](#), [Jacqueline A. Giordano](#), any attorney in our [Labor and Employment practice](#) or the attorney at the firm with whom you are regularly in contact.



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