Theodore Roosevelt American Inn of Court

The Impact of COVID-19 on the Courts:
Judicial Perspectives and Employment and Vaccination Law Issues

Via ZOOM

PROGRAM COMMITTEE

Chair: Russell G. Tisman, Esq.
Hon. Steven Jaeger
Hon. Helen Voutsinas
Charlie Arrowood, Esq.
Thomas O'Rourke, Esq.
Roberta Scoll, Esq.

Guest Speaker: Lisa Casa, Esq.
Forchelli Deegan Terrana LLP

WHEN: Thursday, December 17, 2020

TIME: 6:00 PM

Program Agenda

6:00 - 6:05 p.m. -- Introduction of Program - RGT

6:05 - 7:00 p.m. -- Panel - Judicial and Practitioner Perspectives on the Impact of COVID on the Courts including Landlord Tenant Matters - SG, HV, RDS, CA

7:00 - 7:20 p.m. -- Developments and Legal Issues Regarding Vaccines - TO'R

7:20 - 8:00 p.m. -- Panel - Employment Law Developments as a Result of COVID - LC, RGT

- Reasonable Accommodation Issues -- LC (7:20 - 7:40)
- Miscellaneous Employment Law Issues Arising from the COVID Pandemic -- RGT (7:40 - 8:00)

FORCHELLI DEEGAN TERRANA

Email:
rtisman@forchellilaw.com
Phone: (516) 248-1700
Fax: (866) 522-7819

Russell G. Tisman specializes in complex corporate, commercial, defense, employment, labor, personal injury, and Surrogate's Court litigation. He has tried cases and argued appeals in federal and state courts and administrative agencies throughout the United States, and in arbitration and other alternate dispute resolution fora. Mr. Tisman also actively counsels management and human resource professionals on employment and labor matters. He represents public companies, privately held businesses, insurers, financial institutions, and individuals in all types of business-related disputes, in addition to representing individuals, insurance carriers, and businesses in personal injury litigation.

Mr. Tisman commenced practice in 1977 with a multinational, Wall Street law firm. From 1980 to 1987, he was Senior Litigation Counsel of ITT Corporation, where he was responsible for employment litigation system-wide and commercial, antitrust, and product liability defense litigation. In 1985, ITT awarded him an outstanding professional achievement award. Mr. Tisman was a founding member and head of the litigation and employment and labor practices of Groman, Ross & Tisman, P.C., which joined the Firm in 2006.

He has published articles in various journals including the *Journal of the American Corporate Counsel Association*, and the *National Law Journal*, *the Suffolk Lawyer,* and treatise sections on litigation and employment topics, including chapter updates for BNA's Employment Discrimination Law treatise. He has lectured on employment and litigation law and alternative dispute resolution before both local and national audiences.

Mr. Tisman actively serves as an arbitrator and mediator in commercial and employment disputes. He has been a court-appointed arbitrator and an arbitrator for the American Arbitration Association and NAM. Mr. Tisman has been recognized for his volunteer efforts on behalf of Live On New York, formerly the New York Organ Donor Network.

He has been AV-Rated by Martindale Hubbell for more than 25 years. Mr. Tisman was honored by the Nassau County Bar Association for distinguished career, professional achievement, expertise, and leadership in the field of Labor and Employment. He repeatedly has been selected to the *New York Metro Super Lawyers* (Business Litigation), and has been selected by *Long Island Business News* as one of Long Island's leading employment and labor lawyers in its "*Who's Who in Law*" edition, and as a Legal Eagle by *Long Island Pulse Magazine*, among other honors.

PRACTICE AREAS

- Bankruptcy & Corporate Restructuring
- Employment & Labor
- Litigation

EDUCATION

- The Ohio State University, Moritz College of Law, 1977
- Northwestern University, B.A., 1973

ADMISSIONS

- New York State Bar

PROFESSIONAL AFFILIATIONS AND ACCOMPLISHMENTS

- American Bar Association
- Association of the Bar of the City of New York
- Nassau County Bar Association (Employment & Labor and Commercial Litigation Committees)
- The Theodore Roosevelt American Inn of Court (Director, Executive Committee)
- Harboring Hearts (Board Member & past Benefit Chair of its annual charity benefit)
- Past President, Lawyers Club of Huntington
- Has served on committees of the Mid-Island YJCC
- Has served on the Northwestern University Alumni Association (Past President of the Long Island Alumni Club
- Has served as Regional Co-Director of Northwestern's Alumni Admission Council

Hon. Steven M. Jaeger

Judge Steven Jaeger was appointed by Governor Andrew Cuomo to the New York State Court of Claims in June 2017. He currently serves as an Acting Supreme Court Justice in Mineola.

Judge Jaeger's judicial career began as a District Court Judge in Nassau County (from the Town of North Hempstead) from January 2002 through December 2004. Judge Jaeger was elected to the County Court bench in 2004 and served as an Acting Family Court Judge in 2005. He returned to County Court to preside in a felony trial part and later set up and presided in the Judicial Diversion (Felony Treatment Court) Part in Nassau County during 2009 and 2010. He was assigned from 2010 through 2014 to preside in Supreme Court Civil Term.

Judge Jaeger was admitted to the practice of law in New York in 1977 and worked as a criminal defense lawyer in New York City and Associate Appellate Counsel for the Legal Aid Society of the City of New York. From 1981 to 1984, he was Law Secretary to the late Hon. Alexander Vitale in both Nassau County Court and in State Supreme Court. From 1984 through 1999 he was in private practice, mainly on Long Island, where he handled both civil and criminal matters in all courts in New York State. He served as Law Secretary to Nassau County Court Judge Meryl J. Berkowitz during 2000 and 2001.

Judge Jaeger grew up in Franklin Square, NY, and graduated from Valley Stream North High School. He received his B.A. in political science from the University of Pennsylvania and his J.D. from NYU Law School. Judge Jaeger and his wife, Peggy, currently live in Glen Cove after 15 years in in Roslyn Heights and 18 years in Manhasset Hills. His son, Robert, a graduate of Herricks High School and the Washington University in St. Louis, lives in Roslyn Heights with his wife and daughter and is a consultant in the financial information services industry.

Judge Jaeger is a Past President of the Theodore Roosevelt American Inn of Court, a Past President of the Nassau Lawyers Association and on the Board of Directors of the Jewish Lawyers Association of Nassau County. He is a member of the Bar Association of Nassau County, the Women's Bar Association of Nassau County, and the Criminal Courts Bar Association of Nassau County. He has also been active in many community and charitable areas, including the National Board of Trustees of the Huntington's Disease Society of America, Inc.

BIOGRAPHY OF HELEN VOUTSINAS

Justice Voutsinas was elected to the Supreme Court in 2018. She was first elected to the District Court in 2011. During her tenure in the District Court she presided over criminal cases and served as the Presiding Judge of the DWI and Domestic Violence Misdemeanor parts.

Justice Voutsinas began her career at a private law firm handling various cases including, personal injury and commercial litigation from inception to trial. She decided to devote her life to public service and began her career in government as an Assistant Town Attorney and Counsel to the Board of Zoning and Appeals for the Town of North Hempstead handling all types of litigation. She later served as Deputy Majority Counsel to the Nassau County Legislature. She served as Principal Law Clerk to the Honorable Steven M. Jaeger from 2005-2011, in the County, Family, and Supreme Court. In her role as law secretary she handled serious criminal felony cases and other specialized cases including Domestic Violence and Drug Diversion.

In addition to being an active trial judge, Justice Voutsinas is an active leader in her community and amongst her peers. Justice Voutsinas served as President of the Long Island Hispanic Bar Association, (LIHBA) from 2017 to October 2019. She has served in various positions on the Board of the LIHBA throughout the years. She is Past President of the Nassau County Women's Bar Association (NCWBA) (2006-2007), where she advocated for women's rights, pay equity and work/life balance. She previously served as a member of the Board of Directors and held the officer positions of Corresponding Secretary, Treasurer, Vice President and Delegate to the New York State Women's Bar Association. During her tenure as President of the NCWBA she co-founded the Nassau County Women's Bar Foundation in furtherance of her desire to help women advance in both their professional and personal lives. She also served as President of the Nassau County District Court Judge's Association and on the Board of the NYS Latino Judges Association (2015-2017). She currently serves on the Board of Directors to the Theodore Roosevelt INNS of Court and is a member of the Nassau County Bar Association.

In 2014 Justice Voutsinas received the "Virginia Duncombe, Esq." award from the NCWBA for her work and commitment to enhancing legal education. In 2013, she was recognized by the Consulate General of the Dominican Republic for her achievements as a Judge of Dominican Heritage in the United States. She has also received numerous citations from the County of Nassau and Villages of Freeport and Hempstead for her contributions to the community. Justice Voutsinas is the first elected of Hispanic descent to the District Court and Supreme Court bench in Nassau County.

Both of Justice Voutsinas' parents immigrated to the United States in the 1970's. She is the eldest of three siblings and is fluent in both Spanish and Greek. Justice Voutsinas is happily married to Antonio and is a proud and devoted mother to her son, Dean and daughter, Daphne Ana.

Charlie Arrowood, Esq.
Arrowood Law
P.O. Box 20511
South Huntington, New York 11746

Charlie Arrowood (they/them) is an attorney licensed in New York state. They primarily provide transition-related legal services to transgender clients, including name and gender marker change assistance and guidance regarding health insurance coverage and employment matters.

In addition to their private practice, Charlie is Name Change Project Counsel at the Transgender Legal Defense & Education Fund, where they manage the Name Change Project's advocacy efforts, develop materials, and assist the Program Manager with training and education and developing pro bono law firm partnerships.

Charlie is the Chair of the LGBTQ Committee of the Nassau County Bar Association, a member of the National Trans Bar Association, and previously served as the Director of Name & Gender Recognition at Transcend Legal. They are a parent of two and graduate of Tulane University (B.A. History, 2009) and New York Law School (2013).

Thomas A. O'Rourke
Bodner & O'Rourke
425 Broadhollow Rd.
Melville, N. Y. 11747
631-249-7500

Thomas A. O'Rourke is a founding partner of the firm Bodner & O'Rourke. Mr. O'Rourke's practice involves all areas of patent, trademark and copyright law. For over thirty years he has been registered to practice before the United States Patent & Trademark Office. Mr. O'Rourke has counseled clients regarding the procurement and enforcement of patents, trademarks, copyrights and trade secrets in a variety of technologies including mechanical, and computer technology. In addition, his practice involves domestic and international technology transfer, acquisition and licensing. He is a member of the bar of the States of New York and California. He has also been admitted to numerous Federal District Courts and Courts of Appeal across the country including, the Court of Appeals for the Federal Circuit.

Mr. O'Rourke has been a member of the Board of Directors of the New York Intellectual Property Law Association. Mr. O'Rourke is Co-Chairman of the Suffolk County Bar Association's Committee on Intellectual Property Law and has been a member of the Advisory Board of the Licensing Journal. He has lectured on Intellectual Property Law at numerous Continuing Legal Education programs, including programs presented by the American Bar Association, the Connecticut Intellectual Property Law Association and the Suffolk County Bar Association. He was also the Editor of the New York Intellectual Property Law Association Bulletin and the author of numerous articles on patents, trademarks and copyrights for the New York Intellectual Property Law Association. Mr. O'Rourke has also authored monthly articles on intellectual property

law licensing, which have appeared in the Licensing Journal. Mr. O'Rourke has also been named as a Super Lawyer.

Mr. O'Rourke has a B.S. degree in Chemistry from Fordham University and obtained his J.D. degree from St. John's University School of Law, where he was a member of the Law Review.

Roberta D. Scoll
Nassau/Suffolk Law Services Committee, Inc.
One Helen Keller Way
Hempstead, New York 11566
(516) 292-8100

Roberta D. Scoll, Esq. joined the Nassau/Suffolk Law Services Committee, Inc. (NSLS), as Staff Attorney and has served as coordinator of the Landlord/Tenant sector of the Volunteer Lawyers Project for the past 13 years. The project represents low income clients about to be evicted from their housing and enlists the aid of volunteer attorneys to represent them. Student interns, Pro Bono Scholars, recent graduates of law school and newly admitted attorneys, also volunteer their time under the auspices of the Volunteer Lawyers Project.

Since graduation from law school, Ms. Scoll has practiced matrimonial, personal injury, trademark and copyright law. For many years she had commuted to Washington, DC as a legal consultant to the film industry's trade association and in December 2003, Ms. Scoll was instrumental during the development and start-up of Friends of the Global Fight Against AIDS, Tuberculosis and Malaria, a 501 (c)(3) non-profit corporation in Washington, DC. She was the Executive Attaché for the organizations' first President, Jack Valenti (Former President, Motion Picture Association of America, Inc.,) in addition to her duties as office manager.

She received her Juris Doctorate in 1996, from City University of New York School of Law, with a keen focus and interest in public service and public interest law. In 1997 Ms. Scoll was admitted to practice in New York State, the United States District Court for the Southern and Eastern Districts of New York, and in 2002 she was admitted to the United States Supreme Court, the United States Court of Federal Claims, United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for the Armed Forces. Ms. Scoll is a co-chair of the Nassau County Bar Association's District Court Committee, and a member of the New York State Bar Association, American Bar Association, and the Theodore Roosevelt Inn of Court.

In her current position at the Law Services, Ms. Scoll works with attorneys from both sides of the table and thanks those volunteer attorneys who have helped to keep the program going. She also warmly welcomes new attorneys to join in the experience as a Volunteer attorney representing tenants any Monday through Thursday morning in District Court at 99 Main Street, Hempstead.

FORCHELLI DEEGAN TERRANA

Email: lcasa@forchellilaw.com
Phone: (516) 248-1700
Fax: (866) 605-3518

Lisa M. Casa is an associate in the Employment and Labor practice group. She concentrates her practice in the areas of employment and labor law, sexual harassment and discrimination law, overtime and failure to pay wages law, union/management issues, and litigation.

Her articles, "The Cost of Silence: Sexual Harassment Claims in the #MeToo Era," "Ban the Box: An Equal Playing Field but More Regulations for Employers," and "EEOC v. McDonald's: Reasonable Accommodations under ADA for Job Applicants," were published in the *Nassau Lawyer*. Her article, "New York Family Leave is Here – What Employers Need to Know," was published in *The Suffolk Lawyer* and most recently, her article, *"Are Agents, Brokers and Salespersons Independent Contractors?"* was published in the *New York Real Estate Journal*.

Previously, Ms. Casa was an associate at a commercial litigation law firm located on Long Island and a boutique matrimonial law firm. Prior to working at those firms, Ms. Casa served as a law clerk to the Hon. David J. Issenman, Superior Court of New Jersey. As a law student, Ms. Casa interned for Hon. Esther Salas, United States Magistrate Judge, and with the United States' Postal Service Employment law Division.

PRACTICE AREAS

- Employment & Labor
- Litigation

EDUCATION

- Brooklyn Law School, cum laude, 2011
- The George Washington University, B.S. & B.A., summa cum laude, 2008

ADMISSIONS

- New York State Bar
- New Jersey State Bar
- United States District Court for the Eastern District of New York

PROFESSIONAL AFFILIATIONS AND ACCOMPLISHMENTS

- Nassau County Bar Association
- Nassau County Women's Bar Association
- Melville Chamber of Commerce (NeXGen Board Member)
- Nassau County Women's Bar Foundation, President of the Board (previously served as Treasurer 2017-2019)

Hon. Steven Jaeger

MATERIALS – HOW THE PANDEMIC TRANSFORMED THE COURTS

COVID-Related N.Y.S. Courts Web Pages

https://www.nycourts.gov/index.shtml -- **Coronavirus and the New York State Courts.** This is the main NYS Courts COVID web hub, with tabs and links to the pages discussed below, as well as a link (https://www.nycourts.gov/covid-archive.shtml) to an archive of COVD-related content from 3/11/20 to 7/17/20.

https://www.nycourts.gov/limited-filings.shtml -- **Updates on Expansion of Court Operations.**

- Periodic update announcements
- Summaries of operational characteristics of reopening Phases 1 through 4
- Specifies that, as of July 10, 2020, all NYC counties are in Phase 3 and the remainder of the State is in Phase 4
- Section explaining all authorized E-filing programs through NYSCEF, including the Unified Court System's Electronic Document Delivery System (EDDS), to be used where NYSCEF electronic filing is unavailable
- Summaries of (and links to) selected Administrative Orders relevant to filing system issues

https://www.nycourts.gov/index-AO.shtml -- **N.Y.S. Courts Administrative Orders web hub:**

- https://www.nycourts.gov/latest-AO.shtml -- **Statewide:** list of links to latest statewide Administrative Orders
- https://www.nycourts.gov/latest-local-AO.shtml – **Local:** list of links to latest local Administrative Orders for:
    - Courts outside of New York City, broken down into 3rd, 4th, 5th, 6th, 7th, 8th and 9th Judicial Districts, and the 10th Judicial District (Nassau County, Suffolk County)
    - N.Y.S. Court of Claims
    - N.Y.C. Family Court.

OFFICE OF THE ADMINISTRATIVE JUDGE

10TH Judicial District - Nassau County

MEMORANDUM

To: Nassau County Non-Judicial Staff

From: Hon. Norman St. George, District Administrative Judge

Date: November 18, 2020

Re: Updated Operating Protocols for Nassau County Courts

For the past many months, the Unified Court System, and by extension, the Nassau County Courts, has permitted the gradual increase of in-person proceedings in conjunction with the Governor's un-Pause New York Plan. The courts have re-opened in different phases that mirrored the Governor's plan. Foot traffic in the courthouses was gradually increased to correspond with an improvement in the metrics measuring the spread of Coronavirus. In recent weeks, however, those metrics have changed, demonstrating an increased spread of the virus and indicating the need to once again reduce foot traffic in the courthouses to protect the health and safety of litigants, lawyers, courts staff and judges.

As you may be aware, Chief Administrative Judge Lawrence Marks signaled the start of this process with his November 13, 2020 memorandum suspending new Jury Trials and new Grand Juries throughout New York State effective Monday, November 16, 2020. Judge Marks further directed that all future Bench Trials and Evidentiary Hearings (excluding Family Court) will be conducted virtually unless otherwise approved. The November 13, 2020 memo is incorporated by reference herein. This memorandum is intended to provide enhanced guidance on the implementation of that memo and the updating Operating Protocols for the Courts in Nassau County.

Please be aware that the Administrative Judge may, based on local conditions, enact more restrictive operational protocols deemed appropriate by the Administrative Judge.

This Plan should be considered an update to the Return to In-Person Operations Plan effective October 19, 2020 and to Judge Marks' Memorandum "Revised Pandemic Procedures in

the Trial Courts" dated November 13, 2020. Commencing Monday, November 23, 2020 all court operations in the Tenth Judicial District, Nassau County shall be conducted pursuant to this Plan.

I. Courthouse Operations
   A. Scheduling
      1. Any "In-Person" calendar times shall be staggered where possible and appropriate.
      2. No more than 50% of the number of courtrooms in a facility will be in use at the same time. Any conflict will be resolved by the Chief Clerk working with the Chambers of the Supervising Judge.
      3. No more than 50% of the Judges/referees/magistrates of one court type may hold In-Person calendars at any one time.
      4. In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour.
   B. Occupancy of all courtrooms shall be limited to the lesser of 10 people or ½ the posted room occupancy per code. An exception shall be granted for ongoing Jury Trials, ongoing Bench Trials, or ongoing Grand Juries currently in progress (in those instances, occupancy shall be limited to the lesser of 25 people or ½ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.
   C. The number of non-judicial staff reporting to the Courthouse shall be reduced at the discretion of the Administrative Judge to the minimum number necessary to ensure safe operation and to ensure sufficient "remote" staff is available to replace the staff reporting to the courthouse in the event there is a workplace Coronavirus exposure. All staff not reporting to the courthouse shall work remotely.
   D. All current safety measures and protocols will continue. Court managers and PPE Compliance Coordinators shall take steps to enhance monitoring and compliance with all safety measures including social distancing at all times.

II. Court Proceedings
   A. No new prospective Trial Jurors (criminal or civil) will be summoned for jury service until further notice. Pending Criminal and Civil jury trials will continue to conclusion.
   B. No new prospective Grand Jurors will be summoned for Grand Jury service until further notice. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue until completion of their term or work. Thereafter, only upon application of the appropriate District Attorney to the Administrative Judge.
   C. Notwithstanding any other provision herein, where an In-Person proceeding involves an incarcerated individual, that individual shall appear virtually utilizing electronic means unless the presiding Judge orders otherwise after appropriate application is made.
   D. Matters that may be heard In-Person (or a hybrid of In-Person and virtual) provided that the Presiding Judge first finds that it is unlawful or impractical to conduct the proceeding virtually:
      1. Matters as designated in Exhibit A
      2. Family Court Act Article 10 Evidentiary Hearings
      3. Permanency Hearings

4. Criminal Preliminary Hearings
5. Pleas and Sentences
6. Arraignments

E. Matters that may be heard In-Person (or a hybrid of In-Person and virtual)
   1. Treatment Court and Judicial Diversion appearances where the presiding Judge determines, in consultation with Supervising Judge, that an appearance in an acute case is necessary to protect the health and safety of a defendant.
   2. Any proceeding involving a self-represented litigant(s) where the presiding Judge determines that holding the proceeding via Microsoft Teams denies the self-represented litigant(s) meaningful access to the proceeding and where the presiding Judge determines that the matter can be heard In-Person consistent with all OCA safety protocols.

F. All other matters must be heard virtually using Microsoft Teams, including but not limited to:
   1. Bench Trials in Civil and Criminal cases. (For compelling reasons, the presiding Judge may forward a request for permission to conduct a Bench Trial In-Person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held In-Person.)
   2. Evidentiary Hearings in Civil and Criminal Cases. (For compelling reasons, the presiding Judge may forward a request for permission to conduct a hearing In-Person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held In-Person.)
   3. Motion arguments
   4. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
   5. ADR where both parties are represented by counsel and counsel will be present.
   6. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program
   7. Small Claims Assessment Review proceedings

Thank you for your continued cooperation, patience and flexibility. Stay Safe and Healthy.

Exhibit A

A. Criminal matters
   1. arraignments
   2. bail applications, reviews and writs
   3. temporary orders of protection
   4. resentencing of retained and incarcerated defendants
   5. essential sex offender registration act (SORA) matters

B. Family Court
   1. child protection intake cases involving removal applications
   2. juvenile delinquency cases involving remand placement applications, or modification thereof
   3. emergency family offense petitions/temporary orders of protection
   4. orders to show cause

C. Supreme Court
   1. MHL applications for an assisted outpatient treatment (AOT) plan
   2. emergency applications in guardianship matters
   3. temporary orders of protection (including but not limited to matters involving domestic violence)
   4. emergency applications related to the coronavirus
   5. emergency Election Law applications
   6. extreme risk protection orders (ERPO)

D. Civil/Housing matters
   1. applications addressing landlord lockouts (including reductions in essential services)
   2. applications addressing serious code violations
   3. applications addressing serious repair orders
   4. applications for post-eviction relief

E. Surrogate's Court - Any matter involving an individual who passed away due to COVID-related causes.

Establishing a Functioning Court System Amidst a Global Pandemic

By Brendan Kennedy

When courthouses across New York State ceased non-essential operations on March 17, few thought that COVID-19 would completely upend the day-to-day operations of the court.

In a recent webinar, Hon. George J. Silver, the deputy chief administrative judge for the New York City courts, spoke to over 150 participants about his role in helping the courts adapt to life amidst the global pandemic, what courts will look like as more in-person operations come back online, and how the technology that helped court operations during the shutdown is likely to play a role going forward.

The webinar, co-sponsored by the Torts, Insurance, & Compensation Law (TICL) and Young Lawyers sections of the New York State Bar Association, was hosted by Alyssa J. Pantzer, an associate at Herzfeld and Rubin in New York City. Pantzer serves as chair of the Automobile Liability Committee in the TICL section.

"This type of situation is nothing anyone of us has lived through," Silver said. "This is uncharted territory and it is a fast-moving situation and every day we're facing a new challenge but out of these challenges we're learning from it and learning what the new court system is going to be like."

Hon. George J. Silver recently spoke to over 150 participants about his role in helping the courts adapt to life amidst the global pandemic during a NYSBA virtual event.

Where Are the Courts Now?

Even though the court buildings in the five boroughs of New York City may have been closed for nearly three months, e-filing and some conferences were taking place during the shutdown. Silver noted the exceptional work done by the judges and non-judicial staff to keep operations open so that the people of New York could come to the courts and seek justice.

At the direction of Chief Judge Janet DiFiore, all of the civil judges in the counties of New York City started an open motions program where each of the judges significantly reduced the backlog of their motions.

"Kings County is the first county down to zero backlogged motions," Silver said. "Judges in the other counties have also done a miraculous job of reducing their motions, so lawyers can be expecting to get decisions from the court very soon."

Each phase of the court reopening plan has allowed more operations to take place and as all of New York City's courts begin to enter phase four, Silver notes that attorneys should expect to see some big differences in how some of the significant courtrooms look, due to the installation of plexiglass.

"As a lawyer for many years, one of the things I enjoyed was the interaction with the court staff and my fellow lawyers," Silver said. "You're able to develop long-lasting relationships by hanging around and just talking with people and unfortunately due to our current circumstances we can't safely do that yet."

Incorporating Technology

With restrictions on large in-person gatherings continuing for the foreseeable future, the court is looking at ways to cut down on the number of court appearances. Silver noted that there are discussions about how exactly they can accomplish that, including the formation of a committee comprised of administrative judges to formulate a uniform preliminary conference order for the city parts and general litigation part. There are also discussions about sending a ready-made order with dates on it when someone files for a preliminary conference, including a compliance date.

"Potentially we're looking at a compliance conference where if lawyers can agree, there will be a fillable online form... that will be emailed to a specific place in the compliance part, where a judge will stamp it and send it back," said Silver. "On this form, we're hoping to include a part about alternative dispute resolution and a part where a discovery dispute can be written, which then could be resolved by a virtual conference."

When it comes to technology and virtual conferences lasting into a post-COVID-19 world where effective vaccines are available, Judge Silver noted the significant gains the court has had in terms of integrating technology into operations.

"We don't want to lose track of the significant gains we've had during the pandemic," Silver said. "To the extent that we can continue using it, we certainly will, as it has been very effective."

Jury Trials and Other Alternatives

The big question in all circles of the legal community is when will jury trials resume and how can they be done safely? Silver said during the first week of August certain judges started to conduct summary trials, which are summary jury trials without the juries. They follow the same rules as a summary jury trial.

In the Supreme Court in the Bronx, Silver said that a continued trial from March had 15 jurors all agree to come back. The court, of course followed social distancing protocols and, by all accounts, the trial went well.

"One of the great things I've seen throughout the pandemic has been the willingness for attorneys to work together and provide access to justice for both people that are suing and being sued," Silver said.

COVID-19 and the Upstate Courts

By Brandon Vogel

Safety above all.

This is how the court system has operated since March, albeit continuously.

"From the beginning of this crisis, we have not closed the courts. Justice has been delivered continuously throughout this process," said Hon. Vito C. Caruso, deputy chief administrative judge (Outside NYC).

Caruso recently detailed the courts' recent and future operations on the CLE Webinar, "COVID-19 and the Upstate Courts: A Discussion With Judge Caruso."

Caruso was appointed to his current position on July 1, 2019. He said the last year has been challenging. "The job, as described to me, hasn't occurred," said Caruso. "Everything changed in March, but I am responsible for administering all 57 counties outside of the City. That includes Long Island, Buffalo and everything in between."

There had previously been resistance from the bench and bar regarding technology, particularly with e-filing, but that has subsided with the pandemic. With everyone forced to learn the new processes, it has worked, said Caruso.

Courts outside of New York City were the first to enter into phases, with the Fifth, Sixth and Seventh Judicial Districts starting first. Caruso said that courts followed the governor's lead.

"We are not bound by the governor's phases, but we felt that we should try to cooperate and to use that as our entrée into the different phases," said Caruso

The entire state outside of the city is all in sync.

"We are going to start a new phase 4.1 together, which will expand phase four," said Caruso. "That's where we are at this time."

The biggest change is the attempt to implement jury trials, both civil and criminal, said Caruso. The courts set up a pilot project for Buffalo with four civil jury trials that started in September. Caruso worked closely with Hon. Paula L. Feroleto, district administrative judge of the Eighth Judicial District.

"Once word got out, other administrative judges wanted in," said Caruso.

He is currently reviewing proposals from other districts.

"This is a very dangerous step in some respects because we are so concerned about everyone's well-being," said Caruso. "The first concern is the safety of court users, court employees and the judges."

Extra precautions will include using two courtrooms to conduct jury trials and eliminating jury deliberation rooms

"First, we have to make sure all of that is in place and working. All jury trials plans start with proper PPE, proper staging," said Caruso. We have to be sure that it's safe, but we are very optimistic that it will work.

The experience calling in grand jurors was "very positive," with a few opt-outs. He hopes to have the same experience with civil and criminal jury trials. New juror questionnaires have been modified to reflect the COVID crisis.

"It's not so much for themselves but for people around them," said Caruso. "We are very cognizant of why someone might not want to come in here, be it a juror or one of our employees."

Moderator Amanda Kuryluk (Maguire Cardona) asked Caruso if we will ever go back to in-person conferences?

Hon. Vito C. Caruso, deputy chief administrative judge (Outside

> *"We are never going to completely go to virtual in cases where we can have it done presumptively in person. If it can be done, we are going to do it."*
>
> — Judge Vito C. Caruso

"More likely, no" said Caruso. "Virtual appearances are with us for life. This is going to be a way of doing business."

He said that, before the pandemic, attorneys would often complain about coming to the courthouse, having to find parking, and accounting for travel time that could otherwise be billed. Often, conferences take no more than 15-20 minutes, he said

"If they can accomplish just about the same thing virtually, why not do it?" said Caruso. "We now are used to it."

Caruso added that upstate courts do offer meeting rooms for virtual conferencing for lawyers who might need privacy that they cannot get at home, if working with a spouse or children.

Will we get back to in-pe motions?

"That one we might. It is a 50. Many judges enjoy that as m as the lawyers," said Caruso. "I part of an attorney's training to that: to go in and appear, to g confidence, to get scolded by judge sometimes for not being pr erly prepared and learn. We wo love to be able to do it, but it wo have to be safe."

Caruso said the courts are doir mix of virtual and in-person alter tive dispute resolution. He cautio that video depositions are not good as in person, because credibi can be harder to determine on vid

"We are never going to comple ly go to virtual in cases where we have it done presumptively in p son. If it can be done, we are going do it," said Caruso. "More th likely, once we see how our civil tri work, we will expand that. The ju es prefer in-person, but we can either way. We are going to be fle ble about that," said Caruso.

"You can't be six feet away fr your client and whisper in their ear Caruso continued.

He said the courts are movi towards Microsoft Teams for conv sations between lawyers and client

"Everywhere you look, we ha hybrids," said Caruso. "Tha where we are in life."

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate the following procedures and protocols, effective as set forth below, to mitigate the effects of the COVID-19 outbreak upon the users, visitors, staff, and judicial officers of the Unified Court System:

- Effective 5 p.m. on Monday, March 16, all non-essential functions of the courts will be postponed until further notice. All essential court functions will continue, as described below.

- Jury Proceedings and Jury Trials: Effective March 16, civil jury trials in which opening statements have not commenced shall be postponed until further notice. Civil jury trials already commenced shall continue to conclusion. Criminal jury trials shall continue where jeopardy has attached; no new criminal jury trials shall be commenced. The jury selection process in civil and criminal trial matters shall be suspended until further notice. Existing grand juries will continue, upon consultation of the appropriate district attorney and empaneling judge. No new grand juries shall be empaneled absent exceptional circumstances.

- Motion practice: Effective March 16, unless otherwise directed by the court in exceptional circumstances, all motions in civil matters shall be taken on submission. When permitted, argument should be conducted by Skype or other remote means whenever possible.

- Special Parts: Effective March 17, outside of New York City, special court parts will be established in individual jurisdictions (at the courthouses listed in Attachment A) where essential matters will be consolidated; inside New York City, courthouses will remain open to handle essential matters as follows:

Supreme Court:	Essential applications as the court may allow, e.g., Mental Hygiene Law applications, civil commitments, and guardianships.
Civil matters in courts other than Supreme Court:	Essential applications as the court may allow.

Housing matters:	Essential applications as the court may allow, e.g., landlord lockouts, serious housing code violations, and repair orders. All eviction proceedings and pending eviction orders shall be suspended statewide, and court-ordered auctions of property shall be postponed, until further notice. All residential foreclosure proceedings shall be suspended statewide until further notice. I confirm that, effective March 13, 2020, residential evictions in New York City have been stayed, and the New York City Housing Court has been directed not to issue new eviction warrants when a party has not appeared in court.
Criminal (superior court) matters:	Essential applications as the court may allow. Felony matters wherein the defendant is not in custody shall be administratively adjourned until further notice. Felony matters in which defendants are in custody will either be administratively adjourned or be conducted remotely by video in New York City and in jurisdictions outside of New York City that have technology available to do so.
Criminal (lower court):	Arraignments, and essential applications as the court may allow, e.g., applications for orders of protection. Arraignments shall be conducted through video remote appearances in New York City and to the fullest extent possible elsewhere in the State. In New York City, the Red Hook Community Court and the Midtown Community Court are designated as arraignment sites where persons believed to be at medical risk related to the coronavirus will appear remotely by video. Effective Monday, March 16, misdemeanors and lesser offenses wherein the defendant is not in custody shall be administratively adjourned until further notice. Misdemeanors and lesser offenses in which defendants are

	in custody will either be administratively adjourned or be conducted remotely by video in New York City and in jurisdictions outside of New York City that have technology available to do so.
Family Court:	Essential matters as the court may allow, e.g., issues related to child protection proceedings, juvenile delinquency proceedings, family offenses, and support orders.
Surrogate's Court:	Essential applications as the court may allow.
Court of Claims:	Essential applications as the court may allow.

Activities in all other court parts shall be deferred to a later date to the fullest extent possible until further notice, unless expressly permitted by the appropriate administrative judge.

In addressing essential applications, judges will exercise judicial discretion in a manner designed to minimize court appearance and traffic in the courts.

- Court Access, Cleaning, and Reporting Protocols: The court access, cleaning, and reporting protocols set forth in the memo of the Chief Administrative Judge dated March 13, 2020 shall continue until further order.

Chief Administrative Judge of the Courts

Dated: March 16, 2020

AO/68/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, I hereby promulgate the following protocols to mitigate the adverse effects of the COVID-19 outbreak upon the practice of civil litigation before the courts of the Unified Court System, effective immediately:

1. Civil Litigation Generally: The prosecution of pending civil matters (including discovery) in a manner that requires in-person appearances or travel, or otherwise requires actions inconsistent with prevailing health and safety directives relating to the coronavirus health emergency, is strongly discouraged.

2. Civil Discovery Generally: Where a party, attorney or other person is unable to meet discovery or other litigation schedules (including dispositive motion deadlines) for reasons related to the coronavirus health emergency, the parties shall use best efforts to postpone proceedings by agreement and stipulation for a period not to exceed 90 days. Absent such agreement, the proceedings shall be deferred until such later date when the court can review the matter and issue appropriate directives. In no event will participants in civil litigation be penalized if discovery compliance is delayed for reasons relating to the coronavirus public health emergency.

Chief Administrative Judge of the Courts

Dated: March 19, 2020

AO/71/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate, effective April 13, 2020, the following additional procedures and protocols to mitigate the effects of the COVID-19 outbreak upon the users, visitors, staff, and judicial officers of the Unified Court System.

1. In addition to essential court functions as set forth in AO/78/20, trial courts will address the following matters through remote or virtual court operations and offices:

- Conferencing Pending Cases: Courts will review their docket of pending cases, assess matters that can be advanced or resolved through remote court conferencing, and schedule and hold conferences in such matters upon its own initiative, and where appropriate at the request of parties.

- Deciding Fully Submitted Motions: Courts will decide fully submitted motions in pending cases.

- Discovery and Other Ad Hoc Conferences: Courts will maintain availability during normal court hours to resolve ad hoc discovery disputes and similar matters not requiring the filing of papers.

2. Video Technology: Video teleconferences conducted by the court, or with court participation, will be administered exclusively through Skype for Business.

3. No New Filings in Nonessential Matters: No new nonessential matters may be filed until further notice; nor may additional papers be filed by parties in pending nonessential matters. The court shall file such orders in essential and nonessential matters as it deems appropriate.

Provisions of prior administrative orders inconsistent with this order shall be superseded by this order.

Chief Administrative Judge of the Courts

Dated: April 8, 2020

AO/85/20

ADMINISTRATIVE ORDER
TENTH JUDICIAL DISTRICT—NASSAU COUNTY

Pursuant to the authority vested in me, in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System and after consultation with the Chief Administrative Judge and the Deputy Chief Administrative Judge and

WHEREAS, New York State and the nation are now in the midst of an unprecedented public health crisis surrounding the outbreak of COVID-19 (coronavirus); and

WHEREAS, COVID-19 is known to be a highly infectious disease, and there is much community concern that large gatherings of people can result in greater public exposure to possible contagion or "community spread"; and

WHEREAS, on a daily basis, in courts across the State, hundreds if not thousands of people representing a broad cross-section of the community gather to conduct business in large groups in close proximity to one another,

WHEREAS, it is the goal of the Unified Court System to reduce the aforesaid contacts with the Courts in order to protect and preserve the health and well-being of courts users and staff while maintaining the functioning of the Courts, it is hereby

ORDERED that the Administrative Order issued on March 31, 2020 is hereby amended to include the attached Virtual Chambers Protocol, which shall remain in effect in the Tenth Judicial District—Nassau County until it is rescinded by further Administrative Order of this Court.

Dated: April 9, 2020
Mineola, New York

Hon. Norman St. George
Administrative Judge
Tenth Judicial District—Nassau County

Distribution:
Hon. Vito C. Caruso, Deputy Chief Administrative Judge, Courts Outside New York City

OFFICE OF THE ADMINISTRATIVE JUDGE

10TH Judicial District - Nassau County

MEMORANDUM

To: Nassau County Legal Community

From: Hon. Norman St. George, District Administrative Judge

Date: April 10, 2020

Re: Virtual Chambers Protocols for Nassau County

As always during these difficult times, it is my hope that this message finds the members of Nassau County's Legal Community and your families well and healthy. The Nassau County Legal Community continues to have my sincere gratitude for the cooperation and support you have given the Nassau County Courts during the Coronavirus pandemic. As you know, the Courts have been focused on developing new and innovative ways to continue to provide efficient, effective, and expeditious justice during the pandemic while at the same time taking all necessary and prudent measures to protect the public's health and safety.

To that end, I am pleased to announce that effective Monday, April 13, 2020, all the Judges of the Nassau County Courts will be set up with Virtual Chambers in order to permit Chambers to continue working on resolving cases in their inventories. The following Virtual Chambers protocols for Nassau County will now be implemented and further adapted to sustain the minimal physical contacts with the Court system while simultaneously permitting the Courts to expand access to designated critical business. Notwithstanding the forgoing, all Essential/Emergency matters for all Courts shall continue to be heard at the Virtual Courthouse located in the Nassau County Court, 262 Old Country Road, pursuant to my Administrative Order of March 31, 2020. The procedures and protocols for same continue to be as established in my Revised Protocol Order dated April 1, 2020. In addition, as set forth in prior Administrative Orders of Chief Administrative Judge Marks, filings of new cases, as well as use of the Electronic Filing system for existing cases, remains prohibited until further notice. I am attaching yesterday's Administrative Order from Judge Marks permitting the use of the EFS by Judges regarding Judicial decisions and Orders.

General Provisions

The Virtual Chambers Protocols for each Court in Nassau County will be implemented in two (2) phases. The first phase will commence on Monday, April 13, 2020. Phase 2 will commence as soon as feasibly possible after the implementation of the Virtual Chambers. During Phase 1, each Chambers will address pending undecided fully submitted motions. Attorneys will be permitted to directly contact each Judge's Chambers to request a virtual conference regarding priority matters and/or conferences that were pending before that Judge prior to the pandemic. In addition, each Chambers will identify priority matters in their inventory to conference virtually, specifically, the oldest cases in the Court's inventory, and those matters which the Court believes can be resolved. Phase 2 will further expand Phase 1 into the conferencing of non-priority matters pending before each Court and will extend the scope of matters that the Supreme Court will handle.

All virtual appearances will be conducted via Skype for Business or telephone conference. No party shall make an audio or video recording of a virtual appearance without the express written consent of Chambers. The use of traditional mail is discouraged in favor of sending electronic mail to Chambers using the electronic mail addresses discussed below.

PHASE 1:

During the implementation of Phase 1, priority shall be given to all outstanding motions, which shall be decided in a first in/first out basis, unless Chambers determines a certain matter to be urgent. Upon completion of these matters, Chambers may consider the entry of all judgments, stipulations and Orders particularly those that have been consented to by the parties or are unopposed.

In addition, Phase 1 will involve each Chambers reviewing the oldest matters in their inventory and handling priority conferences. This shall include, but not be limited to, the management of discovery in pending cases and settlement/disposition conferences. Attorneys may request a priority conference with the Court on pending matters by sending a standardized email request form to each Judge's Chambers. The standardized form is attached hereto and will be published on the website for the Tenth Judicial District. A group email address for each Judge's Chambers has been established for this purpose. A list of the group email addresses is attached to these protocols and will be published on the Tenth Judicial District website. Attorneys will indicate the reason for the requested conference. Chambers shall then determine whether a conference is necessary or appropriate and direct the manner of the conference, i.e., by telephone or video. Chambers also will review its inventory and contact attorneys on priority matters to schedule a conference. Upon completion of the conference, the Judge may sign and file any appropriate Orders. Any Orders will be forwarded to the Chief Clerk's Office and will be filed with the County Clerk where appropriate. Phone calls to each Judge's Chambers will result in the caller being instructed to follow the above procedure.

Regarding pro-se/unrepresented litigants, they will contact the Court using the Essential/Emergency Virtual Court phone numbers for each Court and then they will be routed to

the Chambers group email and/or the Chambers phone number in order to request conferences on pending priority matters.

PHASE 2:

Phase 2 will commence upon the substantial completion of the matters identified as a priority in Phase 1. Phase 2 will involve the expansion of cases to be considered by Chambers to include non-priority matters. The procedure for requesting a conference on a non-priority matter will follow the same procedure as set forth above. In addition, Phase 2 will involve the expansion of the Supreme Court into the establishment of a Supreme Court Virtual Trial Assignment Conference Part presided over by Justice Bruce Cozzens, a Supreme Court Virtual Old Case Conference Part presided over by Justice Vito DeStefano, a Supreme Court Virtual Blockbuster Settlement Conference Part presided over by Justice Timothy Driscoll, a Supreme Court Virtual Asbestos Conference Part presided over by Justice Jack Libert, a Supreme Court Virtual Child Victims Act Conference Part presided over by Justice Steven Jaeger and a Supreme Court Virtual Alternative Dispute Resolution Part presided over by Justice Denise Sher. Accessing these Courts will follow the above protocols.

All of the above procedures will apply to the Supreme Court (Medical Malpractice, Asbestos, Tort, Commercial, Matrimonial, and Mental Health Articles 81 and 9), Family Court, County Court, District Court and in the Surrogates Court.

All other matters and Courts will continue to be governed by my Administrative Order dated March 31, 2020 and will be limited to only Essential/Emergency matters brought in the Virtual Court.

The following additional specifics will apply to the Courts set forth below:

Supreme Court

Commercial Division

In addition to the protocols set forth above, the following protocols apply to Commercial Division matters:

Conferences with the Court on non-essential priority matters on cases currently pending before the Commercial Division Justices shall be held by appointment via telephone or via Skype for Business. Non-essential matters include, but are not limited to, conferences regarding discovery, and compliance with prior Orders. Counsel wishing to have a telephone or Skype for Business conference with Commercial Division Judges must send a jointly composed email to the Chamber's group email, copying all counsel.

Such email must include the following information:

1. The nature of the dispute that requires a conference
2. Counsel's respective positions, not to exceed 250 words, on the dispute,

3. Confirmation that all counsel join in the request for the conference,
4. Three dates and times on which all counsel are available for a conference, and
5. Each counsel's email address and cell phone number.

The Court will endeavor to schedule conferences at the earliest possible date after receiving counsel's email. The Court will not consider any other email, unless previously requested by the Court. Ex parte requests for conferences will not be considered at any time.

Matrimonial Matters

In addition to the protocols set forth above, the following protocols apply to Matrimonial matters:

Counsel and self-represented litigants may send a request for conference to the Chamber's designated email address. The email request shall include the following:

1. Case name and index number.
2. The email addresses and phone numbers for all attorneys and any self-represented litigants.
3. A brief history of the case.
4. The reason a conference is being requested and the specific issue(s) to be addressed.
5. A description of the recent efforts that have been made by the attorneys and / or litigants to address the issue(s) for which a conference is requested.
6. The court shall be notified of any Orders of Protection, CPS investigations and unusual activities related to the parties and the children

The assigned Judge will determine whether to grant the request. If granted a conference will be scheduled. The conference may be conducted by the Judge or the Law Clerk. A Skype for Business link will be sent to the participants, or the Court may require the requesting party to set up a "call-in" conference call for a specific date and time. The Judge will determine whether the conference will be held on the record, and, if held, a court reporter will be contacted to remotely transcribe the proceeding.

Counsel or a self-represented litigant may request that a motion that was previously filed but not submitted to the Court be advanced and briefed so that it may be submitted for decision. The request shall be submitted to the assigned Judge's designated email for review. The Judge will determine if the motion warrants advancement and set forth a briefing schedule.

The parties shall, upon request of the Court, email copies of all motion papers to the designated email so that the motion can be electronically reviewed and the need to go to the Courthouse is negated. The Court will decide the motion and the assigned Judge can issue a decision via email.

Surrogate's Court

During the implementation of Phase 1, priority shall be given to all outstanding motions, which shall be decided in a first in/first out basis, unless Chambers determines a certain matter to be urgent. Phase 2 will see an expansion of the cases and proceedings to be handled by Chambers to include priority matters by the means set forth above. No further expansion of the matters handled by the Surrogate's Court is contemplated at this time.

County Court

During the implementation of Phase 1, priority shall be given to all outstanding motions, which shall be decided in a first in/first out basis, unless Chambers determines a certain matter to be urgent. Attorneys may request a priority conference with the Court on pending matters involving incarcerated defendants by sending a standardized email request form to each Judge's Chambers. Chambers shall then determine whether a conference is necessary or appropriate and direct the manner of the conference, i.e., by telephone or video. Chambers also will review its inventory and contact attorneys on priority matters involving incarcerated defendants to schedule a conference.

Phase 2 will see an expansion of the cases and proceedings to be handled by Chambers to include its old inventory and non-priority conferences. This shall include, but not be limited to the management of discovery in pending cases, and disposition conferences using the procedures set forth above.

District Court (Including City Court of Long Beach and Glen Cove)

During the implementation of Phase 1, priority shall be given to all outstanding motions, which shall be decided in a first in/first out basis, unless Chambers determines a certain matter to be urgent. Upon completion of these matters, Chambers may consider the entry of all judgments, stipulations and Orders that have been consented to by the parties or are unopposed. Regarding criminal matters, Phase 1, will involve the Court accepting requests from attorneys to conference priority cases involving incarcerated defendants. Chambers also will review its inventory and contact attorneys on priority matters involving incarcerated defendants to schedule a conference.

Phase 2 will see an expansion of the cases and proceedings to be handled by Chambers to include its old inventory and non-priority conferences. This shall include, but not be limited to the management of discovery in pending cases, and settlement/disposition conferences using the procedures set forth above.

7-8-20

ADMINISTRATIVE ORDER
TENTH JUDICIAL DISTRICT-NASSAU COUNTY

Pursuant to the authority vested in the undersigned as District Administrative Judge; in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System; and after consultation with the Chief Administrative Judge and the Deputy Chief Administrative Judge and

WHEREAS, New York State and the nation are now in the midst of an unprecedented public health crisis surrounding the outbreak of COVID-19 (coronavirus); and

WHEREAS the Courts of the Tenth Judicial District-Nassau County will commence Phase Four of the Return to In-Person Operations Plan on July 10, 2020, it is hereby

ORDERED that the Return to In-Person Operations Plan (Phase Four) to be implemented on July 10, 2020 is incorporated herein; and it is further

ORDERED that all Executive Orders, Administrative Orders of the Chief Judge, the Chief Administrative Judge and the Deputy Chief Administrative Judge of the Courts outside of New York City issued in response to the COVID-19 (coronavirus) public health crisis are incorporated by reference in this Administrative Order; and it is further

ORDERED that the following matters shall be presumptively heard In-Person in the Courts of Nassau County. However, upon application by any of the parties, the Assigned Judge may agree to allow the matter to proceed virtually based on the circumstances presented. If such request is granted, the Administrative Judge shall be notified.

a. Supreme Court
   i. Bench trials
   ii. Evidentiary Hearings
   iii. Inquests
   iv. All appearances and conferences where at least one party is self-represented
   v. Essential Matters

b. County Court (Incarcerated Defendants shall appear virtually, unless otherwise ordered)
   i. Bench trials
   ii. Evidentiary Hearings
   iii. Non-custodial arraignments
   iv. Waivers of Indictment, Pleas and Sentences for non-custodial defendants

v. Motion arguments
vi. Treatment court and Judicial Diversion where the Judge determines that an appearance is necessary to protect the health and safety of a defendant
vii. Grand Jury proceedings (commencing on or after July 13, 2020)
viii. Essential Matters

c. Family Court
i. All Evidentiary Hearings (priority given to matters filed first)
ii. Child Support proceedings filed prior to June 1, 2020
iii. Permanency Hearings
iv. Article 10 Consents, Admissions and Surrenders
v. Essential Matters

d. Surrogate's Court
i. Citations and Show Cause orders
ii. Bench trials
iii. Evidentiary Hearings
iv. All appearances and conferences where at least one party is self-represented
v. Essential Matters

e. District Court-- Civil
i. Bench trials
ii. Evidentiary Hearings
iii. Small claims matters, including the small claims arbitration program, for matters that were filed prior to April 1, 2020
iv. Essential Matters

f. District Court Criminal (Incarcerated Defendants shall appear virtually, unless otherwise ordered).
i. Bench trials
ii. Evidentiary Hearings
iii. Desk Appearance Tickets filed prior to June 1, 2020
iv. Pleas and Sentences for non-custodial defendants
v. Motion arguments
vi. Treatment Court where the Judge determines that an appearance is necessary to protect the health and safety of a defendant.
vii. Essential Matters

and it is further

ORDERED that the following matters shall be presumptively heard virtually in the Courts of Nassau County. However, upon application by any of the parties, the Assigned Judge may agree to allow the matter to proceed In-Person based on the circumstances presented.

a. Supreme Court
i. All conferences, including foreclosures, where all parties are represented by counsel

ii. Motion arguments where all parties are represented by counsel
iii. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
iv. All other proceedings not listed in (1)(a) above

b. County Court
i. Conferences
ii. Waivers of Indictment, pleas and sentences where the defendant is incarcerated
iii. Felony Exams/Preliminary Hearings
iv. All other proceedings not listed in 1(b) above

c. Family Court
i. Conferences
ii. Juvenile Delinquency Proceedings
iii. Person In Need of Supervision Proceedings
iv. Adoptions
v. Appearances calendars
vi. All other proceedings not listed in (1)(c) above

d. Surrogate's Court
i. Conferences where all parties are represented by counsel
ii. Motion Arguments where all parties are represented by counsel
iii. Adoptions
iv. All other proceedings not listed in (1)(d) above

e. District Court Civil
i. Conferences
ii. Motion arguments
iii. All other proceedings not listed in (1)(e) above

f. District Court Criminal
i. Conferences
ii. Arraignment where the defendant is incarcerated
iii. Pleas and sentences where the defendant is incarcerated
iv. All other proceedings not listed in (1)(f) above

and it is further

ORDERED that all virtual matters shall be held via Skype for Business. Included in the Skype for Business invitation is a call-in number for lawyers and litigants that do not have access to Skype for Business video. In the event that a self-represented litigant is unable to access Skype for Business, arrangements shall be made at the courthouse for the litigant to appear virtually and it is further

ORDERED that Housing matters (Landlord/Tenant evictions and foreclosures) may proceed pursuant to the protocol established in the Memorandum from Chief Administrative Judge

Lawrence Marks dated June 18, 2020 and pursuant to Administrative Order AO/127/20 ("Evictions matters in which all parties are represented by counsel shall be eligible for calendaring for virtual settlement conferences") and it us further

ORDERED that Foreclosures may proceed pursuant to AO/131/20 and it is further

ORDERED that Default Judgments shall not be granted where, pursuant to CPLR § 3215, the default occurred after March 16, 2020. Furthermore, no Default Judgment requiring the defendant's notice pursuant to CPLR § 3215(g) shall be granted, unless the application was heard prior to March 17, 2020 and proper notice was given (7th Judicial District's Seventh Amended Administrative Order) and it is further

ORDERED that all Alternate Dispute Resolution ("ADR") shall be conducted virtually (Chief Administrative Judge Lawrence Marks' AO/87/20) and it is further

ORDERED that Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program will occur virtually and it is further

ORDERED that Small Claims Assessment Review ("SCAR") proceedings shall be conducted virtually.

ORDERED that to the extent possible and feasible and applicable in each particular Village, each Village Court in Nassau County will be permitted to continue reopening during Phase Four pursuant to the Statewide Town and Village Phase Three plan approved by Chief Administrative Judge Lawrence Marks.

Dated: July 8, 2020
Mineola, New York

Hon. Norman St. George
Administrative Judge
Tenth Judicial District—Nassau County

OFFICE OF THE ADMINISTRATIVE JUDGE

10TH Judicial District - Nassau County

MEMORANDUM

To: Justices, Judges, Non Judicial Staff, Nassau County Legal Community

From: Hon. Norman St. George
Administrative Judge, Nassau County

Date: July 17, 2020

Re: Courthouse Safety Measures

The safety, welfare and well-being of all who work in and enter our Courthouses are of the utmost importance. Over the last few months we have provided specific details as to all of the safety measures undertaken by the Courts in Nassau County in the midst of the current pandemic. As we have learned, the most effective protective measures used to prevent the spread of the COVID-19 virus are the wearing of face masks (and where appropriate, gloves), the frequent use of hand sanitizer and hand washing, and the enforcement of social distancing practices. As we slowly and deliberately increase In-Person Courthouse Proceedings, it is essential to re-iterate the procedures and protocols which will be required in every Courthouse in Nassau County and throughout the State of New York.

1. Everyone entering any Courthouse must have their temperature taken.

2. Everyone entering any Courthouse must wear a mask at all times that they are present in the Courthouse.

3. Everyone entering any Courtroom must wear a mask at all times that they are present in the Courtroom. During In-person proceedings, the only time that a mask may be lowered is:

   a. if the lowering of the mask is necessary for the individual to be heard while speaking (including the Judge, Attorneys, or litigants); or

   b. if the lowering of the mask is required of a witness that is testifying in order to evaluate credibility;

   Note: the lowering of a mask is only permitted in these circumstance when the individual is speaking, and provided that the individual is simultaneously wearing a Face Shield.

4. No individual shall remove or be Ordered to remove their mask.

5. If documents are physically handled during In-Person proceedings, the individuals

handling the documents should be wearing gloves. In the event that gloves are not available, each person handling a document should use hand sanitizer before and after handling any document. The use of electronic documents is strongly encouraged.

6. It is important to make frequent use of available hand sanitizer or other washing facilities in the Courthouses.

7. Everyone should at all times maintain a distance of at least six feet from other persons.

Any deviation from UCS policy should be immediately reported to Judicial and non-judicial supervisors. Thank you for your cooperation in ensuring that we maintain the safest Courthouses.

OFFICE OF THE ADMINISTRATIVE JUDGE

10TH Judicial District - Nassau County

MEMORANDUM

To: Nassau County Justices and Judges

From: Hon. Norman St. George, District Administrative Judge

Date: August 13, 2020

Re: Return to In-Person Operations for Nassau County-Phase 4.1

As the Nassau County Courts' Return to In-Person Operations Plan evolves, I will continue to provide periodic updates detailing how In-Person Operations will expand in a manner that strives to ensure the health and safety of all individuals who work in our Courthouses. As always, Nassau County's Justices and Judges have my sincere thanks for their patience with the Return to In-Person Operations process and for their tremendous cooperation throughout the process.

As you know, Phase One of the Return to In-Person Operations, which began on May 29, 2020, allowed the individual Courthouses throughout the County to re-open with Judges and their Staff returning to Chambers. Emergency and Essential Proceedings continued to be held virtually, with the Judges appearing in the Courtroom via Skype audio conference. Phase Two of the Return to In-Person Operations, which began on June 12, 2020, allowed an increase in foot traffic in the Courthouses with Emergency and Essential Proceedings occurring In-Person in designated courtrooms throughout the County. Phase Three of the Return to In-Person Operations, which began on June 26, 2020, began the expansion of the type and manner of cases which were permitted to be heard In-Person. Phase Four of the Return to In-Person Operations which began on July 10, 2020, saw another gradual increase in the type and manner of cases which were permitted to be heard In-Person.

The Nassau County Courts have been approved to begin another expansion of In-Person Operations for what is termed Phase 4.1 which will commence on Monday August 17, 2020. The highlight of Phase 4.1 will be the return of Jury Trials in Nassau County. The Office of Court Administration has approved our Pilot Plan for the return of Civil Jury Trials in Supreme Court. A copy of the Plan is attached for your review. Petit Jury Summonses will be issued in

September for Civil Jury Trials to resume in Supreme Court in the beginning of October. As the District plans for the return of Civil Jury Trials, we will be looking for five Supreme Court Justices to volunteer to conduct the first jury trials. Please contact my Chambers if you are interested.

We are awaiting the approval of our Pilot Plan for the return of Criminal Jury Trials. Under that plan, Petit Jury Summons will be issued in October for Criminal Jury Trials to resume in the County Court in November. Once the plan is approved, we will be looking for two County Court Judges to volunteer to conduct those first trials in the County Court. In addition, we have submitted a Pilot Plan for the return of Civil and Criminal Jury Trials in District Court.

GENERAL PROVISIONS

Operational Considerations:

For Phase 4.1, all of the General Safety Protocols previously implemented, including Cleaning and Sanitizing regimens that were designed to help protect the health and safety of all individuals coming into the Courthouses in Nassau County, will remain in effect and be enhanced during the implementation of Phase Four. Masks must be worn at all times by anyone entering any Courthouse. Public spaces in the Courthouses have all been configured to maintain appropriate social distancing. The signs and floor markings that have been placed throughout the Courthouses will remain in place. Plexiglass has been installed around all magnetometers and select security posts. Plexiglass has now also been installed at all public counters, central jury counter and essential courtrooms. Content specific social distancing signage provided by OCA has been posted in both English and Spanish in elevators, restrooms and by water coolers. Court Officers will continue to monitor foot traffic and ensure social distancing.

All visitors to any Courthouse shall be screened by Court Officers for potential Covid-19 infection pursuant to the June 30, 2020 Memorandum from John McConnell and Nancy Barry.

All Judges and Non-Judicial Staff shall adhere to the Self-Assessment and Thermal Temperature Screening Protocol pursuant to the July 10, 2020 Memorandum from John McConnell and Nancy Barry and the UCS Covid-19 Daily Self-Assessment and Temperature Screening Memorandum from Carolyn Grimaldi dated July 14, 2020.

Courthouses and Courtrooms

All courthouses will continue to be fully open to the public and media. While excess foot traffic will be discouraged, at no time will a member of the public or the media be excluded from the courthouse, unless there is a security or Covid-19 infection concern.

The public or media may be excluded from a courtroom only by the direct order of the Judge presiding over the case in question. In the event that the public and/or media's presence in the courtroom causes the occupancy limit of the courtroom to exceed 25% of the courtroom's stated occupancy, permission to exceed that capacity shall be sought from the District Executive or the Administrative Judge.

The number of courtrooms in a courthouse in use at one time will remain limited to 50% of the number of courtrooms in that facility. Additionally, only 50% of the judges, referees and magistrates of Supreme, County, Family, District or the City Courts may hold in-person proceedings at any one time. Where possible, court calendar and docket times will be staggered to reduce the number of individuals in the courthouse and the courtrooms. The Chief Clerks of each court will determine the appropriate staggering of cases based on the nature and type of proceeding.

Non judicial staffing will remain at its current level, not to exceed 80%.

Starting in September, all Judges and Non-Judicial Staff will be present in the various Courts unless an exceptional circumstance prevents their attendance.

In-Person and Virtual Matters

1. The following matters shall be presumptively heard In-Person. However, upon application by any of the parties, the Assigned Judge may agree to allow the matter to proceed virtually based on the circumstances presented.

    a. Supreme Court
        i. Trials
        ii. Evidentiary Hearings
        iii. Inquests
        iv. All appearances and conferences where at least one party is self-represented
        v. Essential Matters

    b. County Court (Incarcerated Defendants shall appear virtually, unless otherwise directed by the Judge)
        i. Trials
        ii. Evidentiary Hearings
        iii. Non-custodial arraignments
        iv. Waivers of Indictment, Pleas and Sentences for non-custodial defendants
        v. Motion arguments
        vi. Treatment Court and Judicial Diversion where the Judge determines that an appearance is necessary to protect the health and safety of a defendant
        vii. Grand Jury proceedings (commencing on or after July 13, 2020)
        viii. Essential Matters

    c. Family Court
        i. All Evidentiary Hearings (priority given to matters filed first)
        ii. Child Support proceedings
        iii. Permanency Hearings
        iv. Article 10 Consents, Admissions and Surrenders
        v. Essential Matters

d. Surrogate's Court
   i. Citations and Show Cause orders
   ii. Bench Trials
   iii. Evidentiary Hearings
   iv. All appearances and conferences where at least one party is self-represented
   v. Essential Matters

e. District Court - Civil
   i. Bench Trials
   ii. Evidentiary Hearings
   iii. Small claims matters, including the small claims arbitration program.
   iv. Essential Matters
   v. Desk Appearance Tickets

f. District Court - Criminal (Incarcerated Defendants shall appear virtually, unless otherwise directed by the Judge)
   i. Bench Trials
   ii. Evidentiary Hearings
   iii. Desk Appearance Tickets Arraignments
   iv. Vehicle & Traffic Appearances
   v. Pleas and Sentences for non-custodial defendants
   vi. Motion arguments
   vii. Treatment Court where the Judge determines that an appearance is necessary to protect the health and safety of a defendant.
   viii. Essential Matters

2. The following matters shall be presumptively heard virtually. However, upon application by any of the parties, the Assigned Judge may agree to allow the matter to proceed virtually based on the circumstances presented.

   a. Supreme Court
      i. All conferences, including preliminary conferences, compliance conferences, and foreclosures where all parties are represented by counsel
      ii. Motion arguments where all parties are represented by counsel
      iii. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
      iv. All other proceedings not listed in (1)(a) above

   b. County Court
      i. Conferences
      ii. Waivers of Indictment, pleas and sentences where the defendant is incarcerated
      iii. Felony Exams/Preliminary Hearings

   c. Family Court
      i. Conferences
      ii. Juvenile Delinquency Proceedings

iii. Person In Need of Supervision Proceedings
iv. Adoptions
v. Appearances calendars
vi. All other proceedings not listed in (1)(c) above

d. Surrogate's Court
i. Conferences where all parties are represented by counsel
ii. Motion Arguments where all parties are represented by counsel
iii. Adoptions
iv. All other proceedings not listed in (1)(d) above

e. District Court Civil
i. Conferences
ii. Motion arguments
iii. All other proceedings not listed in (1)(e) above

f. District Court Criminal
i. Conferences
ii. Pleas and sentences where the defendant is incarcerated
iii. All other proceedings not listed in (1)(f) above

3. Jury Trials

a. Petit Civil Jury Trials in Supreme Court will be conducted in October according to the written protocols developed by the Administrative Judge in consultation with the Deputy Chief Administrative Judge for the Courts Outside New York City.

b. In light of the success and positive feedback regarding the impaneling of Grand Juries in Nassau County during Phase Three of the Return to In-Person Operations, Petit Criminal Jury trials in the County Court will commence in November subject to the approval of Nassau County's Petit Criminal Jury Plan.

i. Civil Jury Trials
1. Summonses for Civil Jury Trials may be mailed in Term 10.
2. Civil Jury Trials shall commence in Term 11.
3. Following the completion of a Civil Jury Trial, the District shall review the jury trial protocols with the presiding Judge, lawyers, and to the extent possible, the jurors, to determine if any part of the protocols should be modified.

ii. Criminal Jury Trials
1. Summons for Criminal Jury Trials may be mailed in Term 11.
2. Criminal Jury Trials shall commence in Term 12.
3. Following the completion of a Criminal Jury Trial, the District shall review the jury trial protocols with the presiding Judge,

lawyers, and to the extent possible, jurors, to determine if any part of the protocols should be modified.

c. Prior to the scheduling of any case for trial and again immediately prior to jury selection, there shall be a robust effort to resolve the case through settlement or plea.

4. All virtual matters shall be held via Skype for Business until the conversion to Microsoft Teams is fully implemented. Included in the Skype for Business invitation is a call-in number for lawyers and litigants that do not have access to Skype for Business video. In the event that a self-represented litigant is unable to access Skype for Business, arrangements shall be made at the courthouse for the litigant to appear virtually.

5. Commercial and Residential Eviction matters may proceed pursuant to the protocols established in the Memorandum from Chief Administrative Judge Lawrence Marks dated August 12, 2020 and pursuant to Administrative Order AO/160/20. A copy of the Memorandum and Administrative Order are attached.

6. Foreclosure matters may proceed pursuant to the protocols established in the Memorandum from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and pursuant to Administrative Order AO/157/20 dated July 23, 2020.

7. Default Judgments shall not be granted where, pursuant to CPLR § 3215, the default occurred after March 16, 2020. Furthermore, no Default Judgment requiring the defendant's notice pursuant to CPLR § 3215(g) shall be granted, unless the application was heard prior to March 17, 2020 and proper notice was given (7th Judicial District's Seventh Amended Administrative Order).

8. ADR shall be conducted virtually (Chief Administrative Judge Lawrence Marks' AO/87/20).

9. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program will occur virtually.

10. Small Claims Assessment Review ("SCAR") proceedings shall be conducted virtually.

10-16-20

ADMINISTRATIVE ORDER
TENTH JUDICIAL DISTRICT-NASSAU COUNTY

Pursuant to the authority vested in the undersigned as District Administrative Judge; in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System; and after consultation with the Chief Administrative Judge and the Deputy Chief Administrative Judge and

WHEREAS, New York State and the nation are now in the midst of an unprecedented public health crisis surrounding the outbreak of COVID-19 (coronavirus); and

WHEREAS the Courts of the Tenth Judicial District-Nassau County will commence an updated Phase 4.1 of the Return to In-Person Operations Plan on October 19, 2020; it is hereby

ORDERED that the updated Return to In-Person Operations Plan (Phase 4.1) implemented on October 19, 2020 is incorporated by reference herein; and it is further

ORDERED that all Executive Orders, Administrative Orders of the Chief Judge, the Chief Administrative Judge and the Deputy Chief Administrative Judge of the Courts outside of New York City issued in response to the COVID-19 (coronavirus) public health crisis are incorporated by reference in this Administrative Order; and it is further

ORDERED that the following matters shall be presumptively heard In-Person in the Courts of Nassau County. However, upon application by any of the parties, the Assigned Judge may agree to allow the matter to proceed virtually based on the circumstances presented. If such request is granted, the Administrative Judge shall be notified.

1. In-person Matters

    a. Supreme Court
        i. Trials
        ii. Evidentiary Hearings
        iii. Inquests
        iv. All appearances and conferences where at least one party is self-represented
        v. Essential Matters

    b. County Court (Incarcerated Defendants shall appear virtually, unless otherwise ordered)
        i. Trials
        ii. Evidentiary Hearings

iii. Non-custodial arraignments
iv. Waivers of Indictment, Pleas and Sentences for non-custodial defendants
v. Motion arguments
vi. Treatment Court and Judicial Diversion where the Judge determines that an appearance is necessary to protect the health and safety of a defendant or where there is a concern that the defendant is not compliant.
vii. Grand Jury proceedings (commencing on or after July 13, 2020)
viii. Essential Matters

c. Family Court
i. All Evidentiary Hearings (priority given to matters filed first)
ii. Child Support proceedings
iii. Permanency Hearings
iv. Article 10 Consents, Admissions and Surrenders
v. Essential Matters

d. Surrogate's Court
i. Citations and Show Cause orders
ii. Bench Trials
iii. Evidentiary Hearings
iv. All appearances and conferences where at least one party is self-represented
v. Essential Matters

e. District Court Civil
i. Bench Trials
ii. Evidentiary Hearings
iii. Small claims matters, including the small claims arbitration program.
iv. Essential Matters

f. District Court Criminal (Incarcerated Defendants shall appear virtually, unless otherwise ordered).
i. Bench Trials
ii. Evidentiary Hearings
iii. Desk Appearance Tickets Arraignments
iv. Vehicle & Traffic Appearances
v. Pleas and Sentences for non-custodial defendants
vi. Motion arguments
vii. Treatment Court where the Judge determines that an appearance is necessary to protect the health and safety of a defendant or where there is a concern the defendant is not compliant.
viii. Essential Matters;

and it is further

ORDERED that the following matters shall be presumptively heard virtually in the Courts of Nassau County. However, upon application by any of the parties, the Assigned Judge may agree.

to allow the matter to proceed In-Person based on the circumstances presented. If such request is granted, the Administrative Judge shall be notified.

2. Virtual Matters

a. Supreme Court
   i. All conferences, including foreclosures, where all parties are represented by counsel
   ii. Motion arguments where all parties are represented by counsel
   iii. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
   iv. All other proceedings not listed in (1)(a) above

b. County Court
   i. Conferences
   ii. Waivers of Indictment, pleas and sentences where the defendant is incarcerated
   iii. Felony Exams/Preliminary Hearings
   iv. All other proceedings not listed in 1(b) above.

c. Family Court
   i. Conferences
   ii. Juvenile Delinquency Proceedings
   iii. Person In Need of Supervision Proceedings
   iv. Adoptions
   v. Appearances calendars
   vi. All other proceedings not listed in (1)(c) above

d. Surrogate's Court
   i. Conferences where all parties are represented by counsel
   ii. Motion Arguments where all parties are represented by counsel
   iii. Adoptions
   iv. All other proceedings not listed in (1)(d) above

e. District Court Civil
   i. Conferences
   ii. Motion arguments
   iii. Eviction proceedings
   iv. All other proceedings not listed in (1)(e) above

f. District Court Criminal
   i. Conferences
   ii. Pleas and sentences where the defendant is incarcerated
   iii. All other proceedings not listed in (1)(f) above;

and it is further

ORDERED that Jury Trials shall recommence in Nassau County pursuant to the following schedule:

1. Jury Trials

   a. Petit Civil Jury Trials in Supreme Court will be conducted in October according to the written protocols developed by the Administrative Judge in consultation with the Deputy Chief Administrative Judge for the Courts Outside New York City.

   b. In light of the success and positive feedback regarding the impaneling of Grand Juries in Nassau County during Phase Three of the Return to In-Person Operations, Petit Criminal Jury trials in the County Court will commence in November.

      i. Civil Jury Trials
         1. Summonses for Civil Jury Trials may be mailed in Term 10.
         2. Civil Jury Trials shall commence in Term 11.
         3. Following the completion of a Civil Jury Trial, the District shall review the jury trial protocols with the presiding Judge, lawyers, and to the extent possible, the jurors, to determine if any part of the protocols should be modified.

      ii. Criminal Jury Trials
         1. Summons for Criminal Jury Trials may be mailed in Term 11
         2. Criminal Jury Trials shall commence in Term 12.
         3. Following the completion of a Criminal Jury Trial, the District shall review the jury trial protocols with the presiding Judge, lawyers, and to the extent possible, jurors, to determine if any part of the protocols should be modified.

   c. Prior to the scheduling of any case for trial and again immediately prior to jury selection, there shall be a robust effort to resolve the case through settlement or plea;

and it is further

ORDERED that effective October 1, 2020 all virtual matters shall be scheduled and held held via Microsoft Teams. Included in the Microsoft Teams invitation is a call-in number for lawyers and litigants that do not have access to video. In the event that a self-represented litigant is unable to access Microsoft Teams, arrangements shall be made at the Courthouse for the litigant to appear virtually; and it is further

ORDERED that Housing matters may proceed pursuant to the protocol established in the Memorandum from Chief Administrative Judge Lawrence Marks dated October 9, 2020 and pursuant to Administrative Order AO/231/20; and it is further

ORDERED Commercial and Residential Eviction matters may proceed pursuant to the protocols established in the Memorandum from Chief Administrative Judge Lawrence Marks dated August 12, 2020 and pursuant to Administrative Order AO/160/20; and it is further

ORDERED that Foreclosure matters may proceed pursuant to the protocol established in the Memorandum from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and pursuant to Administrative Order AO/157/20 dated July 23, 2020; and it is further

ORDERED that Default Judgments shall not be granted where, pursuant to CPLR § 3215, the default occurred after March 16, 2020. Notwithstanding the foregoing, a Judge presiding over a matter wherein a party has defaulted may grant a Default Judgment where, after inquiry, the Judge determines that (a) the defaulting party has received actual notice of the action or proceeding; (b) the failure of the defaulting party to respond to the action or proceeding is not due to the Covid-19 pandemic; and (c) the granting of the Default Judgment is not contrary to any statute, Executive Order or Administrative Order. It should be noted that Executive Order 202.67 extends the toll on statutes of limitations (first set forth in EO 202.8 on March 20, 2020 and later extended) through November 3, 2020. Default Judgments may be governed by the suspension of "any specific time limit for the commencement, filing or service of any legal action, notice, motion or other process or proceeding, as described by the procedural laws of the state." A judgment adverse to the party seeking relief (plaintiff, petitioner, moving party, etc.) may be granted in the event that party fails to proceed with the action or appear in court; and it is further

ORDERED that ADR shall be conducted virtually (Chief Administrative Judge Lawrence Marks' AO/87/20); and it is further

ORDERED that Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program will occur virtually; and it is further

ORDERED that Small Claims Assessment Review ("SCAR") proceedings shall be conducted virtually; and it is further

ORDERED that to the extent possible and feasible and applicable in each particular Village, each Village Court in Nassau County will be permitted to continue reopening during the updated Phase 4.1 pursuant to the Statewide Town and Village plans approved by Chief Administrative Judge Lawrence Marks.

Dated: October 16, 2020
Mineola, New York

Hon. Norman St. George
District Administrative Judge
Tenth Judicial District—Nassau County

State of New York
Unified Court System

Lawrence K. Marks
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

MEMORANDUM

November 13, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso

From: Lawrence K. Marks LM

Subject: Revised Pandemic Procedures in the Trial Courts

In light of recent adverse trends in coronavirus transmission rates in New York State, discussions with our consultants and Governor Cuomo's most recent directives limiting congregation of groups of people in public and private locations, we are revising certain UCS statewide operational practices in the trial courts, **commencing Monday, November 16,** as follows:

- No new prospective trial jurors (criminal or civil) will be summoned for jury service until further notice. Pending criminal and civil jury trials will continue to conclusion.
- No new prospective grand jurors will be summoned for grand jury service until further notice. Pending grand juries will continue to conclusion.
- All future bench trials and hearings will be conducted virtually unless the respective Deputy Chief Administrative Judge permits otherwise. Pending bench trials will continue to conclusion.

Please note that socially-distanced in-person court conferences will continue. All coronavirus health and safety procedures should continue to be closely followed. Decisions about possible adjustment of staffing levels in the trial courts will be addressed in the coming days.

These practices may be further amended as the public health situation evolves.

Please distribute this memorandum and attachments to judges and non-judicial staff as appropriate.

c: Administrative Judges

OFFICE OF THE ADMINISTRATIVE JUDGE

10TH Judicial District - Nassau County

MEMORANDUM

To: Nassau County Supreme Court Justices

From: Hon. Norman St. George, District Administrative Judge

Date: November 13, 2020

Re: Reduction in Court Operations Effective November 16, 2020

Good Afternoon. Earlier today, Chief Administrative Judge Lawrence Marks issued a memorandum and order suspending new Jury Trials and suspending new Grand Juries throughout New York State effective Monday, November 16, 2020. Judge Marks further directed that all future Bench Trials and Evidentiary Hearings (excluding Family Court) will be conducted virtually unless otherwise approved by the Deputy Chief Administrative Judge for the Courts outside New York City.

To implement these policy changes, the Nassau County Supreme Court will no longer be calling in jurors. Any pending In-Person Jury Trials, Bench Trials, or Hearings may continue through to conclusion. Since Bench Trials will continue, CCP will have calendars on Monday, Tuesday, Wednesday and Thursday for the assignment of virtual and In-Person Bench Trials. Accordingly, it is requested that all Supreme Court Justices continue to provide their availability for Bench Trials at the beginning of each week.

As indicated above, in order for a Bench Trial or Hearing to proceed in-person, approval must be granted by the DCAJ. Therefore, all requests for In-Person Bench Trials or Hearings should be directed to my Chambers, and we will then make the request to the DCAJ's office.

Thank you for your cooperation. Stay safe and be well.

MATERIALS – VIRTUAL DEPOSITIONS

69 Misc.3d 349
Supreme Court, Westchester County, New York.

Cherlene CHASE-MORRIS, Plaintiff,
v.
Richard D. TUBBY, LTL Express Lines, Inc., and Ryder Truck Rental, Inc., Defendants.

65927/2019
Decided on August 3, 2020

Synopsis

Background: Plaintiff commenced personal injury action against multiple defendants. After multiple delays of party depositions, plaintiff moved to strike defendants' answer or, in alternative, to compel parties' depositions to proceed by video conference.

Holdings: The Supreme Court, Westchester County, Joan B. Lefkowitz, J., held that:

[1] defendant's counsel's cancellations of depositions was not willful and contumacious conduct warranting striking of defendants' answer and,

[2] parties would be required to hold depositions by video conference.

Motion granted in part and denied in part.

West Headnotes (13)

[1] **Pretrial Procedure**⇨Relevancy and materiality

The phrase "material and necessary" in statute governing scope of disclosure is to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. N.Y. CPLR § 3101(a).

[2] **Pretrial Procedure**⇨Relevancy and materiality

The test of whether information sought in disclosure is "material and necessary" to the prosecution or defense of an action is one of usefulness and reason. N.Y. CPLR § 3101(a).

[3] **Pretrial Procedure**⇨Control by court in general
Pretrial Procedure⇨Construction of discovery provisions

Although the discovery provisions of the civil practice laws and rules are to be liberally construed, a party does not have the right to uncontrolled and unfettered disclosure. N.Y. CPLR § 3101(a).

[4] **Pretrial Procedure**⇨Relevancy and materiality
Pretrial Procedure⇨Probable admissibility at trial

It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims. N.Y. CPLR § 3101(a).

[5] **Pretrial Procedure**⇨Discretion of court
Pretrial Procedure⇨Relevancy and materiality

The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter. N.Y. CPLR § 3101(a).

[6] **Pretrial Procedure**⇨Relevancy and materiality

If the information sought in discovery is sufficiently related to the issues in litigation so as to make the effort to obtain it in preparation for trial reasonable, then discovery should be permitted. N.Y. CPLR § 3101(a).

[7] **Pretrial Procedure**⇨Probable admissibility at trial

It is immaterial that the information sought in discovery may not be admissible at trial as pretrial discovery extends not only to proof that is admissible but also to matters that may lead to the disclosure of admissible proof. N.Y. CPLR § 3101(a).

[8] **Pretrial Procedure**⇨Failure to Disclose; Sanctions

On a motion to strike a pleading as a consequence of a party's failure to proceed with discovery, the nature and degree of the penalty is a matter generally left to the discretion of the trial court. N.Y. CPLR § 3126.

[9] **Pretrial Procedure**⇨Failure to Disclose; Sanctions
Pretrial Procedure⇨Facts taken as established or denial precluded; preclusion of evidence or witness

To invoke the drastic remedy of striking a pleading or of preclusion, a court must determine that the party's failure to disclose is willful and contumacious. N.Y. CPLR § 3126.

[10] **Pretrial Procedure**⇨Failure to Disclose; Sanctions
Pretrial Procedure⇨Facts taken as established or denial precluded; preclusion of evidence or witness

Willful and contumacious conduct, supporting the drastic remedy of striking a pleading or of preclusion, can be inferred from repeated noncompliance with court orders or a failure to comply with court-ordered discovery over an extended period of time, coupled with the lack of an adequate excuse for the failure. N.Y. CPLR § 3126.

[11] **Pretrial Procedure**⇨Failure to Disclose; Sanctions

Defendants' counsel's cancellation of two party deposition dates in plaintiff's personal injury action was not willful and contumacious conduct warranting striking of defendants' answer; as conceded by plaintiff's counsel, defendants' counsel was not in possession of a complete set of plaintiff's medical records when depositions were originally scheduled, despite fact that authorizations for those records had been provided approximately five months prior to that date, and it was unknown to court whether failure to obtain those records resided with defendants' counsel by failing to timely serve authorizations, whether delay resulted from closure or under-staffing of businesses due to COVID-19 pandemic, or for some other reason. N.Y. CPLR §§ 3101(a), 3126.

[12] Pretrial Procedure⇨Examination in General

The court's discretion to compel a virtual deposition can be invoked upon a showing of undue hardship.

1 Cases that cite this headnote

[13] Pretrial Procedure⇨Objections and waiver thereof

Parties would be required to hold depositions by video conference in plaintiff's personal injury action against defendants, where in-person depositions would impose undue hardship on parties due to COVID-19 pandemic, and defendants failed to present specific reasons why video depositions would be insufficient.

1 Cases that cite this headnote

Attorneys and Law Firms

**601 Plaintiff is represented by: Ricigliano & Filopei, P.C. by William Ricigliano, Esq., 20 West 36th Street, Ste. 701, New York, NY 10018, (212) 725.5755

Defendants are represented by: Connors & Connors, P.C. by Robert Joseph Phuhler, Esq., 766 Castleton Avenue, Staten Island, NY 10310, (718) 442-1700

Opinion

Joan B. Lefkowitz, J.

*350 Motion by plaintiff for an order pursuant to CPLR 3126 striking the defendants' answer, or in the alternative, for an order pursuant to CPLR 3124 compelling all parties to appear for depositions, and for such other relief as this Court may deem just and proper under the circumstances.

This motion is determined as follows:

Plaintiff commenced this action for personal injuries on October 2, 2019 by the electronic filing of a Summons and Verified Complaint. Issue was joined via the defendants' service and electronic filing of a Verified Answer on October 30, 2019.

On this motion, plaintiff's counsel alleges that the parties' depositions have not been held in accordance with the terms of the preliminary conference stipulation and order which directed that all party depositions were to take place by May 5, 2020. Several days prior to May 5, 2020, plaintiff's counsel alleges that defendants' counsel informed him that the deposition of plaintiff would not go forward. The virtual deposition was adjourned to June 9, 2020. On June 8, 2020, plaintiff's counsel states he was informed by defendants' counsel that the deposition would not go forward because the defendants had not received the plaintiff's medical records, although authorizations therefor had been exchanged in January, 2020. Plaintiff's counsel states he immediately made a good faith effort to reschedule the virtual deposition by correspondence to defendants' counsel, and further agreed to transmit plaintiff's medical records to defendants' counsel as a courtesy. Nevertheless, defendants' counsel allegedly was unwilling to provide a new date, and stated that the deposition should wait until the COVID-19 health emergency was over and in-person depositions could be held. Plaintiff's counsel disagrees that this is an appropriate resolution given the terms of the preliminary conference stipulation and order and the risks of appearing in person, and seeks an order either striking the defendants' answer or compelling the parties' depositions to proceed by video conference.

Defendants oppose the motion. Defendants' counsel submits that the virtual deposition was adjourned twice at his request because a complete set of plaintiff's medical records had not *351 been received. As such, counsel argues that the defendants' conduct in twice adjourning the plaintiff's deposition was not willful and contumacious **602 and should not subject the defendants to the drastic relief of striking their answer. Defendants' counsel alleges he now is in possession of the plaintiff's records and is ready to proceed with the deposition, but only if held in-person. To that end, defendants' counsel argues that most businesses in New York State have reopened, that some court appearances are being scheduled, and that mediation sessions are again being conducted in-person. Defendants' counsel did not raise any specific objections to video depositions and did not explain why a video deposition would not suffice in this case. Further, defendants did not address the case law

holding that virtual depositions are appropriate and warranted as a result of the COVID-19 health crisis.

Legal Analysis/Discussion

[1] [2] [3] [4] [5] [6] [7]CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v. Crowell-Collier Publishing Co.*, 21 N.Y.2d 403, 288 N.Y.S.2d 449, 235 N.E.2d 430 [1968]; *see Matter of Kapon*, 23 N.Y.3d 32, 988 N.Y.S.2d 559, 11 N.E.3d 709 [2014], *Foster v. Herbert Slepoy Corp.*, 74 A.D.3d 1139, 902 N.Y.S.2d 426 [2d Dept. 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chinuch Inc. v. Sharf*, 59 A.D.3d 408, 873 N.Y.S.2d 145 [2d Dept. 2009]; *Gilman & Ciocia, Inc. v. Walsh*, 45 A.D.3d 531, 845 N.Y.S.2d 124 [2d Dept. 2007]). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Foster v. Herbert Slepoy Corp.*, 74 A.D.3d at 1139, 902 N.Y.S.2d 426). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*see Auerbach v. Klein*, 30 A.D.3d 451, 816 N.Y.S.2d 376 [2d Dept. 2006]; *Feeley v. Midas Properties, Inc.*, 168 A.D.2d 416, 562 N.Y.S.2d 543 [2d Dept. 1990]). If the information sought is sufficiently related to the issues in litigation so as to make the effort to obtain it in preparation for trial reasonable, then discovery should be permitted (*see* ***352** *Allen v. Crowell-Collier Publishing Co.*, 21 N.Y.2d at 406-407, 288 N.Y.S.2d 449, 235 N.E.2d 430; *In re Beryl*, 118 A.D.2d 705, 499 N.Y.S.2d 980 [2d Dept. 1986]). It is immaterial that the information sought may not be admissible at trial as "pretrial discovery extends not only to proof that is admissible but also to matters that may lead to the disclosure of admissible proof" (*Twenty Four Hour Fuel Oil Corp. v. Hunter Ambulance Inc.*, 226 A.D.2d 175, 640 N.Y.S.2d 114 [1st Dept. 1996]; *Polygram Holding Inc. v. Cafaro*, 42 A.D.3d 339, 839 N.Y.S.2d 493 [1st Dept. 2007]).

[8] [9] [10]On a CPLR 3126 motion to strike a pleading as a consequence of a party's failure to proceed with discovery, "the nature and degree of the penalty ... is a matter generally left to the discretion of the Supreme Court" (*Carbajal v. Bobo Robo, Inc.*, 38 A.D.3d 820, 833 N.Y.S.2d 150 [2d Dept. 2007]). To invoke the drastic remedy of striking a pleading or of preclusion, a court must determine that the party's failure to disclose is willful and contumacious (*see Greene v. Mullen*, 70 A.D.3d 996, 893 N.Y.S.2d 895 [2d Dept. 2010]; *Kingsley v. Kantor*, 265 A.D.2d 529, 697 N.Y.S.2d 141 [2d Dept. 1999]). Willful and ****603** contumacious conduct can be inferred from repeated noncompliance with court orders or a failure to comply with court-ordered discovery over an extended period of time, coupled with the lack of an adequate excuse for the failure (*see Mei Yan Zhang v. Santana*, 52 A.D.3d 484, 860 N.Y.S.2d 129 [2d Dept. 2008]; *Carbajal*, 38 A.D.3d at 820, 833 N.Y.S.2d 150; *Prappas v. Papadatos*, 38 A.D.3d 871, 833 N.Y.S.2d 156 [2d Dept. 2007]).

[11]Here, although defendants' counsel adjourned plaintiff's deposition on two occasions, his conduct cannot be said to be willful and contumacious, warranting the striking of the defendants' answer. Defendants' counsel asserts, and plaintiff's counsel ostensibly concedes, that defendants' counsel was not in possession of a complete set of plaintiff's medical records at the time the depositions originally were scheduled, despite the fact that authorizations were provided in January, 2020. It is unknown to the court whether the failure to obtain the records resides with defendants' counsel by failing to timely serve the authorizations, whether the delay resulted from the closure or under-staffing of businesses due to the COVID-19 pandemic, or for some other reason. The court acknowledges and thanks plaintiff's counsel for voluntarily providing copies of the medical records to defendants' counsel.

[12]To the extent that defendants' counsel indicates he is ready to proceed with depositions but only if held in-person, the court notes that the defendants do not have a motion before the court seeking such relief. Even if the defendants had filed a ***353** motion, however, such would be denied. It is settled law in New York that the court's discretion to compel a virtual deposition can be invoked upon a showing of "undue hardship" (*see Yu Hui Chen v. Chen Li Zhi*, 81 A.D.3d 818, 916 N.Y.S.2d 525 [2d Dept. 2011]) (deposition by electronic means may be ordered when undue hardship is established); *Rogovin v. Rogovin*, 3 A.D.3d 352, 770 N.Y.S.2d 342 [1st Dept. 2004]) (video deposition ordered where witness' appearance in New York would cause hardship); *Matter of Singh*, 22 Misc. 3d 288, 290, 865 N.Y.S.2d 902 [Sur. Ct., Bronx County 2008] (remote depositions permissible if undue hardship established). In its discretion, the court can also order that

the parties travel to a witness located remotely, or permit interrogatories in lieu of a deposition (*see Hoffman v. Kraus*, 260 A.D.2d 435, 688 N.Y.S.2d 575 [2d Dept. 1999]) (due to "undue hardship," the examination of the defendant may either be done in person in Hungary or by written question); *Fielding v. S. Klein Dep't Stores, Inc.*, 44 A.D.2d 668, 354 N.Y.S.2d 438 [1st Dept. 1974])(to avoid undue hardship, deposition of the defendant shall either take place in California, or in lieu thereof, by written questions).

While neither party cited case law specifically addressing the COVID-19 pandemic and its effects on pending litigation, the court notes that a majority of recent cases addressing COVID-19 issues have denied a party's attempt to have in-person depositions or proceedings. The cases reject arguments commonly made, including that in-person examinations are needed to assess a witness' demeanor, and that cases with voluminous documents cannot be held by video conference. The case law recognizes the reality that if depositions are held in-person, the witness must wear a mask, while the witness would not need to wear a mask if video depositions are conducted.

By way of example, in *Rouviere v. DePuy Orthopaedics, Inc.*, 2020 WL 3967665, 2020 U.S. Dist. LEXIS 122184 (S.D.N.Y. July 11, 2020), the plaintiffs filed a motion seeking to compel the defendant's representative to appear for a deposition in-person ****604** or to extend the deadline to conduct the deposition. The plaintiffs claimed that they needed an in-person deposition because the deposition will be "document intensive" and that they needed to observe the demeanor of the witness. The court rejected these arguments. Initially, the court explained that since the advent of COVID-19, conducting court proceedings and depositions remotely has become the " 'new normal' " and that the technology used for conducting depositions by video has improved significantly ***354** over time. The court explained that the COVID-19 virus presents significant health risks to everyone and that the recommended social distancing minimum of six feet is often difficult to obtain in a deposition setting. And, significantly, even if social distancing could be obtained, given the length of depositions and given that they are held indoors, even social distancing " 'does not guarantee a safe deposition environment' " (*Id.*, 2020 WL 3967665, at *3, 2020 U.S. Dist. LEXIS 122184, at *5-*9).

In *Reynard v. Washburn Univ. of Topeka*, 2020 WL 3791876, 2020 U.S. Dist. LEXIS 118631 (D. Kans. July 7, 2020) the plaintiff sought to have her deposition conducted by remote video. The defendant opposed, arguing that it needed an in-person deposition since the plaintiff was a significant person with a significant damages claim and that it would be impossible to conduct the deposition remotely given the large number of deposition exhibits. The defendant also argued that the threat of COVID-19 had been reduced, noting that Kansas had just entered Phase 3 of its reopening plan. The court rejected these arguments. The court noted that the mere fact that Kansas had entered Phase 3 did not lessen the health risk posed by COVID-19. The court also explained that depositions by video have become the "new normal" and that in light of recent technological advances, the defendant's claim about the number of documents was not persuasive. The court further explained how conducting the deposition remotely would actually enhance the defendant's counsel's ability to observe the plaintiff's demeanor since the plaintiff would not have to wear a mask. In addition, the court found that the mere possibility that there would be technical problems if the deposition was held remotely was not a basis to hold the deposition in-person (*see Joffe v. King & Spalding LLP*, 2020 WL 3453452, 2020 U.S. Dist. LEXIS 111188 (S.D.N.Y., June 24, 2020); *Gould Elecs. Inc. v. Livingston Cty. Rd. Comm'n*, —— F.Supp.3d ——, 2020 WL 3717792, 2020 U.S. Dist. LEXIS 118236 (E.D. Mich. June 30, 2020) (holding that a party's credibility can undeniably be assessed via video testimony and rejecting concerns regarding technical glitches); *In re Broiler Chicken Antitrust Litig.*, 2020 WL 3469166, 2020 U.S. Dist. LEXIS 111420 (N.D. Ill. June 25, 2020) (holding that technological problems which can arise during in-person as well as remote depositions is not a reason to prevent remote depositions from occurring); ***355** *Lundquist v. First Nat'l Ins. Co. of Am.*, 2020 WL 3266225, 2020 U.S. Dist. LEXIS 106124 (W.D. Wash. June 17, 2020) (" 'While the Court is sympathetic to the challenges to the legal community during this pandemic, attorneys and litigants are adapting to new ways to practice law, including preparing for and conducting depositions remotely' ").

New York's trial level courts are in accord with the above rulings and appear to conclude that virtual depositions do not cause undue hardship in light of the technology currently available and the serious health risks posed by the COVID-19 virus (*see Johnson v. Time Warner Cable New York City, LLC*, Sup. Ct., New York County, May, 28, 2020, Kalish, J., index No. 155531/2017) (remote depositions ordered ****605** where the defendant refused to proceed remotely, with the court noting, "to delay discovery until a vaccine is available or the pandemic has otherwise abated would be unacceptable."); (*Arner v. Derf Cab Corp.*, Sup. Ct., New York County, May 14, 2020, Silvera, J., index No. 151731/19) (defendants

ordered to appear for virtual depositions); (*Ai Bee Lim v. James Jian Cui*, Sup. Ct., Queens County, May 7, 2020, O'Donoghue, J., index No. 714516/2018) (defendant required to appear at a videotape deposition within 45 days in a medical malpractice case); (*Macdonald v. Pantony*, Sup. Ct., Nassau County, May 28, 2020, McCormack, J., index No. 612715/17) (remote depositions ordered unless all parties agree to face to face depositions with the appropriate social distancing); (*Stern as Executrix of Stern v. New York Presbyterian Hospital*, Sup. Ct., Kings County, June 1, 2020, Edwards, J., index No. 510384/2018) (virtual depositions ordered in a medical malpractice case).

[13]In light of the above, the branch of the plaintiff's motion to strike the defendants' answer is denied. Defendants' counsel's cancellation of two deposition dates in order to complete discovery is not willful and contumacious conduct warranting the striking of defendants' answer. To the extent plaintiff seeks to compel the depositions of all parties, the motion is granted. All depositions shall be held by video conference. As noted above, defendants' counsel, in opposing the motion, failed to present specific reasons why video depositions would be insufficient in this matter. As in the cases cited above, this court is of the opinion that in-person depositions would impose undue hardship on the parties at this time due to the COVID-19 pandemic. In addition, the parties' interests are sufficiently protected through the use of video depositions. Credibility can be determined without the obstruction of the witness' face *356 through the use of a mask and documents may be presented and examined during the examinations with relative ease. Finally, and perhaps most importantly, video depositions provide the benefit of added protection from possible exposure to the COVID-19 virus.

All other arguments raised on this motion and evidence submitted by the parties in connection thereto have been considered by this court, notwithstanding the specific absence of reference thereto.

Accordingly, it is

ORDERED that the branch of the plaintiff's motion to strike the defendants' answer is denied; and it is further

ORDERED that the branch of the motion seeking to compel the depositions of all parties is granted. Party depositions shall be completed by September 11, 2020. It is further ordered that in light of the continuing health risk posed by the COVID-19 pandemic, all depositions shall be held by video conference; and it is further

ORDERED that due to the COVID-19 health emergency, the parties are directed to use their best efforts to proceed with this action in accordance with the Administrative Order of the Chief Administrative Judge issued on June 22, 2020; and it is further

ORDERED that all parties shall appear for a virtual conference to be held by Skype Business in accordance with the Virtual Courtroom Protocol implemented in the Ninth Judicial District on **August 19, 2020 at 3:00 P.M.**; and it is further

ORDERED that plaintiff shall serve a copy of this decision and order upon defendants with notice of entry within 10 days of entry.

The foregoing constitutes the Decision and Order of this Court.

All Citations

69 Misc.3d 349, 130 N.Y.S.3d 599, 2020 N.Y. Slip Op. 20192

End of Document

Depositions Virtual

129 N.Y.S.3d 319
Supreme Court, Westchester County, New York.

Aaliyah FIELDS and Tyree Smith, Plaintiffs,
v.
MTA BUS COMPANY, Metropolitan Transportation Authority (MTA), New York City Transit Authority, The City of New York and Stephen Black, Defendants.

69449/2018
Decided August 17, 2020

Synopsis
Background: Plaintiffs brought personal injury action against defendants seeking damages for injuries allegedly sustained in motor vehicle accident. After defendants failed to appear for depositions as parties agreed in previously established compliance conference, plaintiffs filed motion to compel all parties to appear for depositions.

[Holding:] The Supreme Court, Westchester County, Joan B. Lefkowitz, J., held that parties would be required to hold depositions by video conference.

Motion granted.

West Headnotes (8)

[1] **Pretrial Procedure**⇨Discovering truth, narrowing issues, and eliminating surprise
Pretrial Procedure⇨Relevancy and materiality

The phrase "material and necessary" in statute governing scope of disclosure is to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. N.Y. CPLR § 3101(a).

[2] **Pretrial Procedure**⇨Relevancy and materiality

Test of whether information sought is "material and necessary" to the prosecution or defense in an action is one of usefulness and reason. N.Y. CPLR § 3101(a).

[3] **Pretrial Procedure**⇨Scope of Discovery

Although the discovery provisions of statute governing scope of disclosure are to be liberally construed, a party does not have the right to uncontrolled and unfettered disclosure. N.Y. CPLR § 3101(a).

[4] **Pretrial Procedure**⇨Relevancy and materiality

It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims. N.Y. CPLR § 3101(a).

[5] **Pretrial Procedure**⇨Relevancy and materiality

If the information sought by the prosecution or defense of an action is sufficiently related to the issues in litigation so as to make the effort to obtain it in preparation for trial reasonable, then discovery should be permitted. N.Y. CPLR §

3101(a).

[6] **Pretrial Procedure**⇨Probable admissibility at trial

It is immaterial that the information sought by the prosecution or defense of an action may not be admissible at trial as pretrial discovery extends not only to proof that is admissible but also to matters that may lead to the disclosure of admissible proof. N.Y. CPLR § 3101(a).

[7] **Pretrial Procedure**⇨Examination in General

Parties would be required to hold depositions by video conference in plaintiffs' personal injury action against defendants; in-person depositions would impose undue hardship on parties due to the COVID-19 pandemic, parties' interests were sufficiently protected through the use of video depositions, as credibility could be determined without the obstruction of the witness' face through the use of a mask and documents could be presented and examined during the examinations with relative ease, and video depositions provided the benefit of added protection from possible exposure to the COVID-19 virus.

1 Cases that cite this headnote

[8] **Pretrial Procedure**⇨Examination in General

The court's discretion to compel a virtual deposition can be invoked upon a showing of undue hardship.

1 Cases that cite this headnote

Attorneys and Law Firms

*320 Plaintiff Aaliyah Fields is represented by: Hecht, Kleeger & Damashek, P.C., 19 West 44th Street-Suite 1500, New York, NY 10036, (212) 490-5700

Plaintiff Tyree Fields is represented by: German Rubenstein, LLP, 19 West 44th Street-Suite 1500, New York, NY 10036, (212) 704-2020

Defendants MTA Bus Company, Metropolitan Transportation Authority (MTA), New York City Transit Authority, The City of New York are represented by: Jeffrey Samel & Partners, 150 Broadway, Suite 1600, New York, NY 10038, (212) 587-9690

Opinion

Joan B. Lefkowitz, J.

This motion is determined as follows:

This action arises from personal injuries allegedly sustained as a result of a motorist accident that occurred on November 25, 2017. Plaintiffs commenced this action on November 26, 2018 by filing a Summons and Verified Complaint. Issue was joined by the defendants' filing of an Answer on March 14, 2019, followed by an Amended Answer filed on April 11, 2019, and a Second Amended Answer filed on June 6, 2019. A Preliminary Conference Stipulation and Order was filed on December 19, 2019. Therein, counsel stipulated that the plaintiffs' deposition shall be held by April 1, 2020, and Defendants' deposition shall be held on April 2, 2020.[1]

A Compliance Conference was held on March 11, 2020. The Compliance Conference Order dated March 12, 2020 included the following directives:[2]
(i)The deposition of Plaintiff [Fields] shall be held on May 11, 2020;

(ii)The deposition of Plaintiff [Smith] shall be held on May 12, 2020;

(iii)The deposition of Defendants shall be held on May 21, 2020.

Plaintiffs filed the instant motion pursuant to CPLR § 3124 to compel all parties to appear for depositions, and related relief as this Court may deem just and proper. *321 Counsel contends the plaintiffs were ready, willing,

and able to appear for remote depositions on the dates designated in the Compliance Order; however, defendants refused to proceed with plaintiffs' depositions citing a lack of medical records. To that end, plaintiffs contend that authorizations were previously provided to defense counsel on or about November 20, 2019[2]; and plaintiffs also forwarded courtesy copies of all medical records in its possession. Counsel further contends that on May 15th, plaintiffs' counsel again agreed to provide courtesy copies of all medical records and, in the event the providers' records revealed any information that differs from those courtesy copies, counsel agreed to produce plaintiffs for a further deposition to address any such discrepancies.

Defendants filed opposition to the instant motion. Counsel states there is "no opposition to conducting depositions in the above-referenced matter"; however, at issue is "the timing and location of the depositions, held amid the COVID-19 pandemic". Counsel argues that the Governor's State of Emergency Order issued on March 7, 2020 made conducting deposition of plaintiffs on March 11 and 12 an impossibility. Defendants take the position that they intend to "personally conduct" the deposition of plaintiffs; however, defense counsel is unable to do so since its offices are located in New York City, which is still in a limited phase of reopening which does not permit such in-person operations at this time.

Defense counsel further argues that the Court lacks the authority to compel remote depositions in lieu of in-person depositions, noting that CPLR § 3113(d) provides that "[t]he parties may *stipulate* that a deposition be taken by telephone or other remote electronic means and that a party may participate electronically"(*emphasis added*). Curiously, defense counsel states that defendant "would consider" stipulating to certain alternatives to in-person depositions "[s]hould Plaintiff wish to stipulate to limit the amount of damages obtainable".[4]

Third, counsel argues that defendants have the right to in-person deposition which provide counsel with the opportunity to meet the plaintiffs to assess their demeanor and credibility during their deposition testimony. Stated differently, it is alleged that defendants would be prejudiced if the Court were to compel remote depositions of the plaintiffs.

Lastly, counsel objects to producing "essential personnel" from the Public Authority for depositions "until the State of Emergency normalizes". In that regard, counsel notes that bus operators are considered necessary personnel who have returned to work. The bus operator(s) should not be compelled to appear for a deposition in lieu of reporting to perform the essential work duties which are now imperative in light of "increased absenteeism, due to illness, and/or forced quarantine."

Decision

[1] [2] [3] [4] [5] [6]CPLR § 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v. Crowell-Collier Publishing Co.*, 21 N.Y.2d 403, 288 N.Y.S.2d 449, 235 N.E.2d 430 [1968]; *see* *322 *Kapon v. Koch*, 23 N.Y.3d 32, 988 N.Y.S.2d 559, 11 N.E.3d 709 [2014], *Foster v. Herbert Slepoy Corp.*, 74 A.D.3d 1139, 902 N.Y.S.2d 426 [2d Dept. 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chinuch Inc. v. Sharf*, 59 A.D.3d 408, 873 N.Y.S.2d 145 [2d Dept. 2009]; *Gilman & Ciocia, Inc. v. Walsh*, 45 A.D.3d 531, 845 N.Y.S.2d 124 [2d Dept. 2007]). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Foster v. Herbert Slepoy Corp.*, 74 A.D.3d at 1139, 902 N.Y.S.2d 426). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*see Auerbach v. Klein*, 30 A.D.3d 451, 816 N.Y.S.2d 376 [2d Dept. 2006]; *Feeley v. Midas Properties, Inc.*, 168 A.D.2d 416, 562 N.Y.S.2d 543 [2d Dept. 1990]). If the information sought is sufficiently related to the issues in litigation so as to make the effort to obtain it in preparation for trial reasonable, then discovery should be permitted (*see Allen v. Crowell-Collier Publishing Co.*, 21 N.Y.2d at 406-407, 288 N.Y.S.2d 449, 235 N.E.2d 430; *In re Beryl*, 118 A.D.2d 705, 499 N.Y.S.2d 980 [2d Dept. 1986]). It is immaterial that the information sought may not be admissible at trial as "pretrial discovery extends not only to proof that is admissible but also to matters that may lead to the disclosure of admissible proof" (*Twenty Four Hour Fuel Oil Corp. v. Hunter Ambulance Inc.*, 226 A.D.2d 175, 640 N.Y.S.2d 114 [1st Dept. 1996]; *Polygram Holding Inc. v. Cafaro*, 42 A.D.3d 339, 839 N.Y.S.2d 493 [1st Dept. 2007]).

[7]As a preliminary matter, the Court notes that the Defendants have not raised any objection to proceeding with depositions on the grounds that they await medical records. Instead, defense counsel's arguments rest on two general propositions: (i) Defendants intend to conduct in-person depositions at such time as "the State of Emergency normalizes"; and (ii) there is a lack of legal authority for the Court to compel remote depositions in lieu of in-person depositions. Both arguments are rejected based on the foregoing legal authority as herein stated.

[8]It is settled law in New York that the court's discretion to compel a virtual deposition can be invoked upon a showing of "undue hardship" (*see* Yu Hui Chen v. Chen Li Zhi, 81 A.D.3d 818, 916 N.Y.S.2d 525 [2d Dept. 2011]) (deposition by electronic means may be ordered when undue hardship is established); Rogovin v. Rogovin, 3 A.D.3d 352, 770 N.Y.S.2d 342 [1st Dept. 2004]) (video deposition ordered where witness' appearance in New York would cause hardship); Matter of Singh, 22 Misc. 3d 288, 290, 865 N.Y.S.2d 902 [Sur. Ct., Bronx County 2008] (remote depositions permissible if undue hardship established). In its discretion, the court can also order that the parties travel to a witness located remotely, or permit interrogatories in lieu of a deposition (*see* Hoffman v. Kraus, 260 A.D.2d 435, 688 N.Y.S.2d 575 [2d Dept. 1999]) (due to "undue hardship," the examination of the defendant may either be done in person in Hungary or by written question); Fielding v. S. Klein Dep't Stores, Inc., 44 A.D.2d 668, 354 N.Y.S.2d 438 [1st Dept. 1974])(to avoid undue hardship, deposition of the defendant shall either take place in California, or in lieu thereof, by written questions).

As noted in this Court's recent determinations related to remote depositions during *323 the COVID-19 pandemic,[5] a majority of recent cases addressing COVID-19 issues have denied a party's attempt to insist upon conducting in-person depositions. The cases reject arguments commonly made, including that in-person examinations are needed to assess a witness' demeanor as alleged by defense counsel in the present matter.

By way of example, in Rouviere v. DePuy Orthopaedics, Inc., 2020 WL 3967665, 2020 US Dist. LEXIS 122184 [S.D.N.Y. July 11, 2020], the plaintiffs filed a motion seeking to compel the defendant's representative to appear for a deposition in-person or to extend the deadline to conduct the deposition. The plaintiffs claimed that they needed an in-person deposition because the deposition will be "document intensive" and that they needed to observe the demeanor of the witness. The court rejected these arguments. Initially, the court explained that since the advent of COVID-19, conducting court proceedings and depositions remotely has become the " 'new normal' " and that the technology used for conducting depositions by video has improved significantly over time. The court explained that the COVID-19 virus presents significant health risks to everyone and that the recommended social distancing minimum of six feet is often difficult to obtain in a deposition setting. And, significantly, even if social distancing could be obtained, given the length of depositions and given that they are held indoors, even social distancing " 'does not guarantee a safe deposition environment' " (*Id.*, 2020 WL 3967665, at *3, 2020 U.S. Dist. LEXIS 122184, at *5-*9).

In Reynard v. Washburn Univ. of Topeka, 2020 WL 3791876, 2020 U.S. Dist. LEXIS 118631 [D. Kans. July 7, 2020] the plaintiff sought to have her deposition conducted by remote video. The defendant opposed, arguing that it needed an in-person deposition since the plaintiff was a significant person with a significant damages claim and that it would be impossible to conduct the deposition remotely given the large number of deposition exhibits. The defendant also argued that the threat of COVID-19 had been reduced, noting that Kansas had just entered Phase 3 of its reopening plan. The court rejected these arguments. The court noted that the mere fact that Kansas had entered Phase 3 did not lessen the health risk posed by COVID-19. The court explained that depositions by video have become the "new normal". The court further explained how conducting the deposition remotely actually enhances the defendant's counsel's ability to observe the plaintiff's demeanor since the plaintiff would not have to wear a mask. In addition, the court found that the mere possibility that there would be technical problems if the deposition was held remotely was not a basis to hold the deposition in-person (*see* Joffe v. King & Spalding LLP, 2020 WL 3453452, 2020 U.S. Dist. LEXIS 111188 [S.D.N.Y., June 24, 2020]); Gould Elecs. Inc. v. Livingston Cty. Rd. Comm'n, — F.Supp.3d —, 2020 WL 3717792, 2020 U.S. Dist. LEXIS 118236 [E.D. Mich. June 30, 2020] (holding that a party's credibility can undeniably be assessed via video testimony); In re Broiler Chicken Antitrust Litig., 2020 WL 3469166, 2020 U.S. Dist. LEXIS 111420 [N.D. Ill. June 25, 2020] (holding that technological problems which can arise during in-person as well as remote depositions is not a reason to prevent remote depositions from occurring); *324 Lundquist v. First Nat'l Ins. Co. of Am., 2020 WL 3266225, 2020 U.S. Dist. LEXIS 106124 [W.D. Wash. June 17, 2020] (" 'While the Court is sympathetic to the challenges to the legal community during this pandemic, attorneys and litigants are adapting to new ways to practice law, including preparing for and conducting depositions remotely' ").

New York's trial level courts are in accord with the above rulings and appear to conclude that virtual depositions do not cause undue hardship in light of the technology currently available and the serious health risks posed by the COVID-19 virus (*see Johnson v. Time Warner Cable New York City, LLC*, 2020 WL 2769117, Sup. Ct., New York County, May, 28, 2020, Kalish, J., Index No. 155531/2017) (remote depositions ordered where the defendant refused to proceed remotely, with the court noting, "to delay discovery until a vaccine is available or the pandemic has otherwise abated would be unacceptable."); (*Arner v. Derf Cab Corp.*, Sup Ct, New York County, May 14, 2020, Silvera, J., Index No. 151731/19) (defendants ordered to appear for virtual depositions); (*Ai Bee Lim v. James Jian Cui*, Sup. Ct., Queens County, May 7, 2020, O'Donoghue, J., Index No. 714516/2018) (defendant required to appear at a videotape deposition within 45 days in a medical malpractice case); (*Macdonald v. Pantony*, Sup. Ct., Nassau County, May 28, 2020, McCormack, J., Index No. 612715/17) (remote depositions ordered unless all parties agree to face to face depositions with the appropriate social distancing); (*Stern as Executrix of Stern v. New York Presbyterian Hospital*, Sup. Ct., Kings County, June 1, 2020, Edwards, J., index No. 510384/2018) (virtual depositions ordered in a medical malpractice case). Under the circumstances presented, this Court has likewise concluded that virtual depositions do not cause undue hardship and provide the benefit of added protection from possible exposure to the COVID-19 virus (*see Chase-Morris v. Tubby*, — N.Y.3d —, — N.Y.S.3d —, — N.E.3d —, 2020 WL 4516920, Sup. Ct., Westchester County, August 3, 2020, Lefkowitz, J., Index No. 65927/2019; *see also Thompson v. Stein*, Sup Ct, Westchester County, August 13, 2020, Lefkowitz, J., Index No. 59068/2019).

In light of the foregoing legal authority, plaintiffs' motion to compel the depositions of all parties is granted. All depositions shall be held by video conference. As in the cases cited above, this court is of the opinion that in-person depositions would impose undue hardship on the parties at this time due to the COVID-19 pandemic. In addition, the parties' interests are sufficiently protected through the use of video depositions. Credibility can be determined without the obstruction of the witness' face through the use of a mask and documents may be presented and examined during the examinations with relative ease. Perhaps most importantly, video depositions provide the benefit of added protection from possible exposure to the COVID-19 virus. Finally, as it relates to the depositions of defendants, defense counsel failed to move for nor assert sufficient grounds for a protective order (*see generally* CPLR § 3103[a]). Notwithstanding, the Court certainly recognizes the importance of the duties of bus operator(s) in providing public transportation; however, there is no indication that plaintiffs are unable or unwilling to make appropriate considerations for any such deponent's work schedule and overall availability when scheduling remote depositions.

All other arguments raised on this motion and evidence submitted by the parties in connection thereto have been considered by this court, notwithstanding the specific absence of reference thereto.

Accordingly, it is

*325 ORDERED that the plaintiffs' motion to compel the depositions of all parties is granted. Party depositions shall be completed by September 21, 2020. It is further ordered that in light of the continuing health risk posed by the COVID-19 pandemic, all depositions shall be held by video conference. All counsel shall make reasonable accommodations in consideration of the work schedule and availability of any essential worker who is a deponent in this matter; and it is further

ORDERED that due to the COVID-19 health emergency, the parties are directed to use their best efforts to proceed with this action in accordance with the Administrative Order of the Chief Administrative Judge issued on June 22, 2020; and it is further

ORDERED that all parties shall appear for a virtual conference to be held by Skype Business in accordance with the Virtual Courtroom Protocol implemented in the Ninth Judicial District on **September 23, 2020 at 10:00a.m.**; and it is further

ORDERED that plaintiff shall serve a copy of this decision and order upon defendants with notice of entry within 10 days of entry.

The foregoing constitutes the Decision and Order of this Court.

All Citations

129 N.Y.S.3d 319, 2020 N.Y. Slip Op. 20203

Footnotes

1 NYSCEF Doc. 23.

2 NYSCEF Doc. 28.

3 See Plaintiffs' Motion at Ex. C.

4 Defendant's Aff. in Opposition ¶30.

5 See *Chase-Morris v. Tubby, et.al.*, Supreme Court, Westchester County Index #65927/2019 [NYSCEF Doc. 32]; see also *Thompson v. Stein*, Supreme Court, Westchester County Index #59068/2019 [NYSCEF Doc. 72].

End of Document

FILED: NEW YORK COUNTY CLERK 05/28/2020 03:14 PM INDEX NO. 155531/2017
NYSCEF DOC. NO. 85 RECEIVED NYSCEF: 05/28/2020

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM
Justice

----------X

NICHOLI JOHNSON and LISA JOHNSON,

Plaintiffs,

- v -

TIME WARNER CABLE NEW YORK CITY LLC and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

Defendants.

----------X

INDEX NO. 155531/2017

MOTION DATE 5/27/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for DISCOVERY.

Motion by Plaintiffs Nicholi Johnson and Lisa Johnson (collectively, "Plaintiffs"), pursuant to CPLR 3124, to compel Defendant Time Warner Cable New York City LLC (TWC") and its counsel Hurwitz & Fine, P.C. ("H&F") to: (a) produce for examination by remote means, non-party Mike Sicsko ("Sicsko"); (b) produce for examination by remote means, non-party Javier Duque ("Duque"); (c) produce for examination by remote means a TWC witness ("the Field Services Witness") with knowledge of its Field Services Department and related CATV operations on Staten Island, New York at or about the time of the subject incident, August 21, 2014; and (d) remove the subject "midspan clamp" and remaining "messenger" wire from the site of the incident for expert inspection, evaluation and testing. In the alternative, Plaintiffs move for an order pursuant to CPLR 3126 prohibiting TWC from supporting or opposing its claims or defenses by introducing any affidavit or testimony of Sicsko, Duque or TWC in evidence; or introducing evidence of the conditions at the site and time of the incident sought to be determined at trial.

For reasons that will be explained below, Plaintiffs' motion is granted in part to the extent that the parties are to take the depositions of Sicsko, Duque, and the Field Services Witness (collectively, the "Remote Witnesses") by remote means – through a service such as Veritext Virtual or one of similar functionality as agreed upon by the parties – upon Plaintiffs serving the parties with a copy of this decision and order with notice of entry. With regard to the branch of the motion seeking to compel TWC and H&F to remove the subject "midspan clamp" and remaining "messenger" wire from the site of the incident for expert inspection, evaluation and testing, this branch is denied without prejudice to Plaintiffs making a renewed application for said relief upon the Phase 2 reopening of Staten Island.

FILED: NEW YORK COUNTY CLERK 05/28/2020 03:14 PM INDEX NO. 155531/2017
NYSCEF DOC. NO. 85 RECEIVED NYSCEF: 05/28/2020

BACKGROUND

This is an action for common law negligence and violations of the Labor Law. In sum and substance, on August 21, 2014, Plaintiff Nicholi Johnson ("Nicholi") allegedly fell 25-30 feet from his ladder as he was performing repair work on cable wires in Staten Island. At the time Nicholi was employed by Midtown Express, LLC ("Midtown"), a "field services" subcontractor of TWC. Plaintiffs assert that the accident occurred because the portion of the cable wires known as the "Suspension Strand was improperly installed and improperly tensioned, causing excessive movement in the strand and consequently, dangerous movement of the ladder which Nicholi was required to use." (NYSCEF Doc. No. 50 [Affirm in Supp] ¶ 11.)

On the instant motion, Plaintiffs seek to compel depositions of the following witnesses by remote means:

(a) Sicsko, the former Vice-President of Operations for Midtown;
(b) Duque, the former Safety Foreman for Midtown; and
(c) The Field Services Witness.

TWC does not oppose having the above depositions taken, but argues that these depositions should occur in the traditional, in-person format, after social distancing restrictions related to the current COVID-19 pandemic have been lifted. Indeed, prior to the onset of the pandemic, the parties had agreed that Duque's deposition would be held in the town of his residence Alpharetta, Georgia and that Sicsko's deposition would be held in New York. (NYSCEF Doc. No. 58 [January 14, 2020 CC Order].)

In addition to seeking the depositions of the aforesaid Remote Witnesses, Plaintiffs also request that the Court compel TWC to remove and preserve certain portions of the subject cable wires known as the subject "midspan clamp" and the "messenger wire." TWC notes that the parties previously agreed to additional non-destructive inspection + testing of remaining clamps/wires at Incident Location on or before 3/31/20; the parties will consult on destructive testing upon completion of inspection." (NYSCEF Doc. No. 64 [Memo in Opp] at 10, quoting January 14, 2020 CC Order].) TWC argues that it "must have its designated representative present at all stages of the inspection and testing, which will require that representative to be able to do so under the then existing executive order and restrictions in place relative to the COVID-19 pandemic." (Id. at 11.)

DISCUSSION

I. Depositions of the Remote Witnesses

Pursuant to CPLR 3103 (a), the trial court may regulate "any disclosure device" in order to "prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice." (Id.) "The decision to allow a party or witness to testify via video conference link is left to a trial court's discretion." (*Am. Bank Note Corp. v Daniele*, 81 AD3d 500, 501 [1st Dept 2011].) When a party seeks to appear for a deposition in a manner other than by appearing in person within the

state of New York, as required by CPLR 3110 (a), that party must demonstrate that so appearing would cause "undue hardship." (*LaRusso v Brookstone, Inc.*, 52 AD3d 576, 577 [2d Dept 2008].)

Here, there is no dispute that appearing for a deposition in person during the current COVID-19 pandemic would cause the Remote Witnesses, the lawyers, and the court reporter "undue hardship," place them in potential danger, and is not feasible as practical matter. The dispute here is how to address this hardship and danger. Plaintiffs argue that the depositions should occur via video-conference as this is a safe and legal alternative to appearing in person and complies with social distancing requirements. TWC's counsel argues that the depositions should be postponed indefinitely until the pandemic restrictions are lifted. Currently, there is no prediction for when all of the pandemic restrictions will be lifted.

While no side claims that it lacks the ability to conduct these depositions by video—and, indeed, during a pre-motion Skype for Business conference, TWC's counsel noted that he had recently conducted a six-hour deposition by remote means in another case—TWC's counsel argues that the depositions of the Remote Witnesses should be taken in-person because he himself, TWC, Sicsko and Duque "do not feel comfortable participating in a deposition conducted by videoconference technology." (NYSCEF Doc. No. 62 [Sicsko Aff.] ¶ 4.) During a Skype for Business conference with this Court, TWC's counsel argued that he would be prejudiced if he was not able to sit next to the Remote Witnesses during their depositions; and he further stated that he was unable to travel during the pandemic. TWC's counsel argues that the prejudice would be particularly acute in this case because of the nature and severity of Nicholi's injuries.

TWC's counsel further argues that the parties also need to conduct an inspection of the incident location, which cannot occur until the pandemic restrictions are relaxed. As such, TWC's counsel argues that the action cannot be put on the trial calendar until the pandemic restrictions are relaxed, regardless. Furthermore, TWC's counsel argues that even if the case is put on the trial calendar, it remains unclear when jury trials will resume in New York County. TWC's counsel argue that,, as such, there is no rush to take the depositions of the Remote Witnesses.[1]

This Court disagrees with TWC's counsel. To delay discovery until a vaccine is available or the pandemic has otherwise abated would be unacceptable. It goes without saying that business as usual is no longer the normal. The legal profession and its clients are currently coming to grips with the "new normal" brought about by the COVID-19 pandemic. Among other things, this "new normal" means that it is no longer safe and practical for depositions to be taken in person, as was the default during the "old normal." TWC's counsel suggests that this case should simply be put on hold until the "old normal" returns.

However, as in any case, there is always a concern that a witness may become unavailable to testify for any number of reasons, including illness or death. During a pandemic,

[1] Although neither Duque or Sicsko are employed by TCW, they are represented by TWC's counsel and TWC's counsel previously agreed to produce them. As such, this Court rejects any assertion by TWC's counsel that he lacks sufficient control of Duque or Sicsko to produce them for depositions by remote means.

this concern is stronger. Moreover, it remains uncertain how soon the "old normal" will return—if it ever does.[2]

Although TWC's counsel feels that he will be prejudiced by not being able to physically sit next to the Remote Witnesses during their depositions, this order does not prohibit him from doing so. To the extent that the law and social distancing guidance allow, TWC's counsel (or a co-counsel of his choosing) may be in the same room sitting next to these Remote Witnesses while Plaintiff's counsel appears by remote means.

As such, this Court exercises its discretion to order that the Remote Witnesses be deposed by remote means.

II. Removal of the Subject Midspan Clamp and Messenger Wires

Given that the New York City area has not begun any phase of reopening its economy—unlike the upstate regions—it would be ill-advised for this Court to compel any removal of the subject wires and clamps at this time. To do so might unnecessarily require certain individuals to work in close proximity or it might redirect TWC personnel away from essential operations.

It would appear to the Court that the better course is for the parties, as previously agreed during the January 14, 2020 compliance conference, to conduct "additional non-destructive inspection + testing of remaining clamps/wires at [the] Incident Location" within thirty (30) days of Staten Island entering Phase 2 of reopening its economy pursuant to New York State's PAUSE Order.

Further, pursuant to the May 19, 2020 telephone conference, the parties have agreed to the examination of the clamp at a date to be agreed upon.

To the extent that the parties cannot agree on whether or not to remove certain hardware from the Incident Site, Plaintiffs shall have leave to renew the branch of the instant motion seeking such removal, upon Staten Island entering Phase 2 of reopening its economy pursuant to New York State's PAUSE Order.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion by Plaintiffs Nicholi Johnson and Lisa Johnson (collectively, "Plaintiffs"), pursuant to CPLR 3124, to compel Defendant Time Warner Cable New York City LLC (TWC") and its counsel Hurwitz & Fine, P.C. ("H&F") to: (a) produce for examination by remote means, non-party Mike Sicsko ("Sicsko"); (b) produce for examination by remote means, non-party Javier Duque ("Duque"); (c) produce for examination by remote means a TWC

[2] In a similar vein, as the United States Supreme Court explained to one president seeking to stay a lawsuit against him until the end of his presidency, delaying litigation "would increase the danger of prejudice resulting from the loss of evidence, including the inability of witnesses to recall specific facts, or the possible death of a party." (*Clinton v Jones*, 520 US 681, 707-08 [1997].)

FILED: NEW YORK COUNTY CLERK 05/28/2020 03:14 PM INDEX NO. 155531/2017
NYSCEF DOC. NO. 85 RECEIVED NYSCEF: 05/28/2020

witness ("the Field Services Witness") with knowledge of its Field Services Department and related CATV operations on Staten Island, New York at or about the time of the subject incident, August 21, 2014; and (d) remove the subject "midspan clamp" and remaining "messenger" wire from the site of the incident for expert inspection, evaluation and testing is GRANTED IN PART to the extent that this Court orders that upon service of a copy of the instant decision and order with notice of entry, TWC's counsel H&F shall produce Sicsko, Duque, and the Field Services Witness ("the Remote Witnesses") for depositions by remote means, which will occur on Veritext Virtual or a similar platform for remote depositions as agreed upon by the parties, and the motion is otherwise denied without prejudice to Plaintiffs' having leave to renew the branch of said motion seeking removal of certain hardware from the incident location upon Staten Island entering Phase 2 of reopening its economy pursuant to New York State's PAUSE Order; and it is further

ORDERED that depositions of the Remote Witnesses shall take place as follows:

a) TWC's counsel shall produce Sicsko on or before June 26, 2020;
b) TWC's counsel shall produce Duque on or before July 17, 2020; and
c) TWC's counsel shall produce Field Services Witness on before July 24, 2020 (and if there is no such witness available, TWC's counsel shall so inform Plaintiff's counsel via an affidavit from a person with knowledge within five (5) days of being served with notice of entry of the instant decision and order);

And it is further

ORDERED that Plaintiffs' counsel shall serve a copy of the instant decision and order with notice of entry within five (5) days of the NYSCEF filing date of the instant decision and order.

The foregoing constitutes the decision and order of this Court.

5/28/2020
DATE

ROBERT DAVID KALISH, J.S.C.

CHECK ONE:		CASE DISPOSED			[X]	NON-FINAL DISPOSITION	
		GRANTED		DENIED	[X]	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

[redacted]

Plaintiffs,

- against -

[redacted]

Defendants.

Index No. [redacted]

Hon. Steven M. Jaeger

STIPULATION AND ORDER FOR REMOTE DEPOSITIONS PURSUANT TO CPLR §3113(D)

WHEREAS, counsel for Plaintiffs Nicholas Costea, as Trustee of The Revocable Trust Agreement of Anna Costea dated March 31, 2005 as successor to Anna Costea and Nicholas Costea, as Trustee of The Revocable Trust Agreement of Andreas Costea dated March 31, 2005 as successor to Andreas Costea (*"Plaintiffs"*) and Defendants Vemen Management Corp., Cosmopolitan Diner LLC, Cosmopolitan Diner LLC as assignee of Vemen Management Corp. and Vassilios Kefalas individually and d/b/a Vemen Management Corp. (*"Defendants"*) had a Conference with the Law Secretary, Keisha N. Marshall, Esq., on July 7, 2020, in connection with the above-referenced matter:

WHEREAS, the Court has directed that the depositions of all parties take place on July 29, 2020;

WHEREAS, the parties agree that they will endeavor to conduct the depositions in person to the greatest extent possible;

WHEREAS, in light of current circumstances due to the COVID-19 pandemic, the parties agree that it may be necessary for depositions to take place by remote means, in part or in whole, as provided under CPLR § 3113;

NOW, THEREFORE IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the parties, subject to approval by the Court, as follows:

1. In the event that any or all depositions in this matter take place by remote video graphic means, each deponent shall be video-recorded.

2. The parties agree to use Precise for court reporting, videoconference, and remote deposition services. The parties agree that a Precise employee or contractor may attend each remote deposition to video and audio record the deposition, troubleshoot any technological issues, and administer virtual breakout rooms.

3. The parties agree that video-recorded remote depositions may be used at a Trial or Hearing or for any other purpose for which a deposition may be used to the same extent as an in-person deposition under CPLR § 3117 or any other applicable statute or rule.

4. The parties agree not to object to the use of these video recordings on the basis that the deposition was taken remotely.

5. The parties agree that in the event that the deponent, court reporter, counsel for the parties, and/or the videographer participate in the videoconference deposition

remotely and separately, each individual shall be visible to all other participants, their statements shall be audible to all participants, and they shall strive to ensure that each of their environments is free from noise and distractions to the extent possible.

6. No counsel shall initiate a private conference, including but not limited to, communications via text message, electronic mail, or the chat feature in the videoconferencing system with any deponent while a question is pending, except for the sole and limited purpose of determining whether a privilege should be asserted or with the consent of all counsel present.

7. During breaks in the deposition, the parties may use a virtual breakout room feature. Conversations in virtual breakout rooms shall not be recorded.

8. Remote depositions shall be recorded by video graphic and stenographic means. The witness's video feed shall be recorded and maintained separate from any video feed used for counsel or exhibits. The court reporter's transcript shall constitute the official record of the deposition and a copy of the transcript and all videotapes shall be provided to the witness consistent with CPLR § 3116 and 22 N.Y.C.R.R. § 202.15. The court reporter shall certify at the deposition that the deposition was taken pursuant to the terms of this Stipulation and a copy of this Stipulation shall be marked as an exhibit to the deposition.

9. To the greatest extent possible, any and all exhibits shall be exchanged on or before July 27, 2020, to allow each party ample time to print the exhibits in advance of the scheduled depositions.

10. Any and all exhibits that are not exchanged on or before July 27, 2020, shall be marked and shown to the witness electronically, in a manner that allows the

witness to review the entire exhibit. To the extent possible, exhibits will be introduced using electronic document sharing technology or by using screen sharing technology within the videoconferencing platform. Otherwise, exhibits may be sent to the deponent and all counsel present by email.

11. The court reporter shall be physically located in New York and shall have the authority to administer oaths and affirmations remotely as if the deponent were physically located in New York, even if the deponent is located in a state other than New York or is outside the United States.

12. The parties expressly waive all objections to the authority of the court reporter to administer oaths or affirmations, including the authority to administer oaths or affirmations remotely to a witness outside of New York.

13. The court reporter may be given a copy of the video recording or any associated video or audio feeds and may review them to improve the accuracy of the written transcript.

14. The deponent shall provide government-issued photo identification satisfactory to the court reporter and this identification must be legible on the video record.

15. At the beginning of each deposition, the Precise employee responsible for video recording the deposition shall state their name, company affiliation, the date, time, and place (which shall be deemed to be the location of the court reporter) of the deposition and that it is occurring by remote video graphic means, the name of the deponent, and shall administer the oath or affirmation and identify all persons present.

16. The parties agree to work collaboratively and in good faith with Precise to assess each deponent's technological abilities and to troubleshoot any issues at least 48 hours in

advance of the deposition so any adjustments can be made. The parties also agree to work collaboratively to address and troubleshoot technological (including audio or video) issues that arise during a deposition and make such provisions as are reasonable under the circumstances to address such issues. This provision shall not be interpreted to compel any party to proceed with a deposition where the deponent cannot hear or understand the other participants or where the participants cannot hear or understand the deponent.

17. Every deponent shall endeavor to have technology sufficient to appear for a videotaped deposition (e.g., a webcam and computer or telephone audio), and bandwidth sufficient to sustain the remote deposition. Counsel for each deponent shall consult with the deponent prior to the deposition to ensure the deponent has the required technology. If not, counsel for the deponent shall endeavor to supply it prior to the deposition. In the case of third-party witnesses, counsel noticing the deposition shall supply any necessary technology that the deponent does not have, provided that the deponent shall identify any needed technology at least seven days prior to the deposition date.

18. Time during which the witness, first chair counsel for any party or, if a witness is separately represented, counsel for the witness, has their video or audio feed disrupted shall not count toward any applicable time limit.

19. This Stipulation applies to remote depositions of parties and non-parties. Non-party deponents shall be provided with a copy of this stipulation at least 24 hours prior to the deposition and shall sign an agreement to be bound by its terms.

20. If a third party deponent does not agree to be bound by the terms of this stipulation,

the parties will meet and confer and if the parties cannot resolve the issue, shall request a Conference with the Court as soon as practicably feasible to address the issue.

IT IS FURTHER STIPULATED AND AGREED, that this Stipulation may be executed in one or more counterparts, and that electronic signatures shall be deemed the same as an original for purposes of this stipulation.

Dated: July 8, 2020
Great Neck, New York

Attorneys for Plaintiffs
[redacted]
(516) 487-[redacted]

Attorneys for Defendants
[redacted]

IT IS SO ORDERED.

Dated: July 13, 2020

Steven M. Jaeger

Hon. Steven M. Jaeger, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

[redacted]

Plaintiffs,

- against -

[redacted]

Defendants.

Index No.: [redacted]

Hon. Steven M. Jaeger

STIPULATION AND ORDER FOR DEPOSITIONS

IT IS HEREBY STIPULATED AND AGREED by and between counsel for Plaintiffs Nicholas Costea, as Trustee of The Revocable Trust Agreement of Anna Costea dated March 31, 2005 as successor to Anna Costea and Nicholas Costea, as Trustee of The Revocable Trust Agreement of Andreas Costea dated March 31, 2005 as successor to Andreas Costea (*"Plaintiffs"*) and Defendants Vemen Management Corp., Cosmopolitan Diner LLC, Cosmopolitan Diner LLC as assignee of Vemen Management Corp. and Vassilios Kefalas individually and d/b/a Vemen Management Corp. (*"Defendants"*) as follows:

1. The depositions of Plaintiffs and Defendants shall take place on July 29, 2020 at 10:00 a.m. at The Law Firm of Elias C. Schwartz, PLLC located at 343 Great Neck Road, Great Neck, New York 11021; and
2. The deposition date of July 29, 2020 is a firm date and shall not be adjourned absent permission of the Court; and

3. It is anticipated that the depositions of both Plaintiffs and Defendants shall not last more than one day, however, in the event that the depositions take longer than expected, the depositions shall continue from day to day until all depositions have been completed; and

4. The parties agree to conduct the depositions in person to the fullest extent possible with any and all protections in place to ensure the physical safety of the participants, including but not limited to, social distancing, the use of masks, hand sanitizer, separation of parties by plexiglass, and other means and methods necessary to comply with CDC guidelines; and

5. In the event that the depositions cannot be conducted in person entirely and there is any degree of a remote component with respect to said depositions, the parties agree to comply with the terms and conditions contained in the enclosed Stipulation and Order for Remote Depositions pursuant to CPLR § 3113(D) which is annexed hereto.

Dated: July 8, 2020
Great Neck, New York

Attorneys for Plaintiffs

Attorneys for Defendants

IT IS SO ORDERED.

Dated: July 13, 2020

Steven M. Jaeger

Hon. Steven M. Jaeger, J.S.C.

ADDITIONAL MATERIALS

Administrative Order-Nassau County 12/1/2020

ADMINISTRATIVE ORDER
TENTH JUDICIAL DISTRICT-NASSAU COUNTY

Pursuant to the authority vested in me, in accordance with the recent operational protocols issued by the Chief Administrative Judge for the trial courts of the Unified Court System and after consultation with the Chief Administrative Judge and the Deputy Chief Administrative Judge and

WHEREAS, New York State and the nation are now in the midst of an unprecedented public health crisis surrounding the outbreak of COVID-19 (coronavirus); and

WHEREAS, COVID-19 is known to be a highly infectious disease, and there is much community concern that large gatherings of people can result in greater public exposure to possible contagion or "community spread"; and

WHEREAS, on a daily basis, in courts across the State, hundreds if not thousands of people representing a broad cross-section of the community gather to conduct business in large groups in close proximity to one another; and

WHEREAS, the Courts of the Tenth Judicial District—Nassau County commenced Phase I of the Return to In-Person Operations Plan ("RIOP") on May 29, 2020; Phase II of the RIOP on June 12, 2020; Phase III of the RIOP on June 26, 2020; Phase IV of the RIOP on July 10, 2020; Phase 4.1 of the RIOP on August 17, 2020; and the Updated RIOP Phase 4.1 on October 19, 2020; and

WHEREAS, further Updated Operating Protocols were promulgated and became effective on November 23, 2020; it is hereby

ORDERED that effective immediately the following rules be put into effect in the Tenth Judicial District-Nassau County until rescinded.

As hereinafter used, "Assigned Judge" shall refer to the Judge assigned to hear the case on and before March 16, 2020.

A. General matters and matters applicable to more than one case type.

1. In accordance with the directives of Chief Administrative Judge Lawrence Marks, all Jury Trials (both Civil and Criminal) are suspended throughout the State, including within the Tenth Administrative District—Nassau County. All Bench Trials and

Evidentiary Hearings (both Civil & Criminal) will be conducted virtually unless otherwise approved by the Administrative Judge in consultation with the Deputy Chief Administrative Judge for the Courts Outside of New York City.

2. Until further Administrative Order or Executive Order, residential eviction matters may proceed pursuant to the protocol established in the memoranda from Chief Administrative Judge Lawrence Marks dated October 9, 2020 and November 17, 2020 and pursuant to Administrative Orders AO/231/20 and AO/268/20. Further reference is made to Executive Order 202.72 signed by the Governor on November 3, 2020, the Tenant Safe Harbor Act (Ch. 127, L. 2020) and the CDC Agency Order filed on September 1, 2020.

3. Until further Administrative order or Executive Order, Default Judgments shall not be granted where, pursuant to CPLR 3215, the default occurred after March 16, 2020. Notwithstanding the foregoing, a Judge presiding over a matter wherein a party has defaulted may grant a Default Judgment where, after inquiry, the Judge determines that (a) the defaulting party has received actual notice of the action or proceeding; (b) the failure of the defaulting party to respond to the action or proceeding is not due to the COVID-19 pandemic; and (c) the granting of the Default Judgment is not contrary to any statute, Executive Order or Administrative Order.

4. **The Return to In-Person Operations Plan ("RIOP") (Phase I) implemented on May 29, 2020; the RIOP (Phase II) implemented on June 12, 2020, the RIOP (Phase III) implemented on June 26, 2020, the RIOP (Phase IV) implemented on July 10, 2020, the RIOP (Phase 4.1) implemented on August 17, 2020, the Updated RIOP Phase 4.1 implemented on October 19, 2020, including the Updated Operating Protocols implemented on November 23, 2020, are incorporated herein and all provisions of this Administrative Order shall be read in conjunction with all the protocols promulgated by this Court.**

5. The Virtual Courtroom Protocol enacted by the Administrative Order signed on March 31 2020, to the extent not inconsistent with the Updated Operating Protocols, remains in full force and effect and all provisions of this Administrative Order shall be read in conjunction with the Virtual Courtroom Protocol and any subsequent amendments thereto. (Note: As of October 1, 2020 all virtual matters shall be scheduled and held held via Microsoft Teams.).

6. Occupancy of any courtroom shall be limited to the lesser of 10 people or ½ the posted room occupancy per code. An exception shall be granted for ongoing grand juries currently in progress. Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.

7. Staff shall report to the courthouse as determined by his/her supervisor in consultation with the Chief Clerk. Any requests for exemptions must be discussed with the Administrative Judge. Courthouse In-Person staffing levels shall not exceed seventy-five

percent (75%). A minimum of twenty-five percent (25%) of staff shall be scheduled to work virtually.

8. All Temporary Orders of Protection issued in any criminal or civil matter that have expired or are due to expire on or after March 19, 2020 "shall be extended under the same terms and conditions until the date the matter is re-calendared, unless the order is sooner terminated or modified by a Judge or Justice of the court that issued the order" pursuant to Administrative Order AO/73/20 signed by the Chief Administrative Judge of the Courts on March 19, 2020.

9. All filings shall be pursuant to the Administrative Order signed by the Chief Administrative Judge of the Courts (AO/267/20 and any amendments thereto).

10. Judges shall direct, to the greatest extent possible, the use of virtual technology in matters that occur off court premises (depositions, discovery, etc.). Such language should be included in any scheduling orders.

11. A proceeding involving a self-represented litigant(s) may proceed In-person (or a hybrid of In-person or Virtual) where the presiding Judge determines that holding the proceeding via Microsoft Teams denies the self-represented litigant(s) meaningful access to the proceeding and where the presiding Judge determines that the matter can be heard In-Person consistent with all OCA safety protocols.

12. Reference is made specifically to the Updated Operating Protocols, Section II.D.1 and the Exhibit A referenced therein for the list of additional matters that may be heard In-Person (or a hybrid of In-Person and Virtual) provided that the Presiding Judge first finds that it is unlawful or impractical to conduct the proceeding virtually.

B. Supreme Civil

1. No new prospective Trial Jurors will be summoned for jury service until further notice.

2. All Mental Hygiene Law proceedings in which a party is confined to a hospital or other facility shall be conducted with appearances by means of remote audiovisual technology or telephone pursuant to Administrative Order AO/72/20 signed by the Chief Administrative Judge of the Courts on March 22, 2020.

3. Until further Administrative Order or Executive Order, foreclosure matters may proceed pursuant to the protocol established in the memoranda from Chief Administrative Judge Lawrence Marks dated July 24, 2020 and October 22, 2020 and pursuant to Administrative Orders AO/157/20 dated July 23, 2020 and AO/232/20 dated October 22, 2020. Further reference is made to Executive Order 202.28 signed by the Governor on May 7, 2020, Executive Order 202.64 signed by the Governor on September 18, 2020, Executive Order 202.67 signed by the Governor on October 4, 2020, and the Laws of New York 2020, Chapters 112 and 126. All Foreclosure Auctions must adhere to the Foreclosure Auction Plan of the Tenth Judicial District-Nassau County.

C. County Court

1. No new prospective Trial Jurors will be summoned for jury service until further notice.

2. Criminal Preliminary Hearings, Pleas, and Sentences may be heard In-Person (or a hybrid of In-Person or Virtual) providing that the Presiding Judge first makes a determination that it is unlawful or impractical to conduct the proceedings virtually.

3. Notwithstanding any other provision herein, where an In-Person proceeding involves an incarcerated individual, that individual shall appear virtually utilizing electronic means unless the Presiding Judge orders otherwise after appropriate application is made.

4. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders and Administrative Orders. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 7 days of the signing of this order, whichever is later. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter that is greater than 30 days.

5. Existing Grand Juries, pursuant to Section 190.15 of the Criminal Procedure Law, may be extended to conclude pending matters. The current Grand Jury shall be continued until a new Grand Jury is convened, and will be available for Subpoena Applications. In the event that the current Grand Jury is unable to continue, a new Grand Jury shall be convened on November 30, 2020. Currently seated Special Grand Juries shall continue for their current Term.

D. Treatment Courts/OSP

1. Treatment Courts and Opioid Stabilization Parts will be handled by the Assigned Judge and reference is made to Paragraph (II)(E)(1) of the Updated Operating Protocols Effective November 23, 2020.

2. Virtual conferences are encouraged (reference is made to Administrative Order AO/87/20 of Chief Administrative Judge Lawrence Marks dated May 1, 2020, "Problem-solving courts may conduct virtual court conferences with counsel, court staff, service providers, and, where practicable, clients").

E. Family Court

1. All matters shall be addressed by the Assigned Judge and appropriately scheduled. Virtual calendars are strongly encouraged.

2. Family Court Article 10 Evidentiary Hearings may be heard In-Person (or a hybrid of In-Person or Virtual) providing that the Presiding Judge first makes a determination that it is unlawful or impractical to conduct the proceedings virtually.

3. Judges should ensure that all Permanency Planning Hearings are timely scheduled and heard pursuant to existing Federal or State Law. Difficulties in scheduling the hearings should immediately be brought to the attention of the Supervising Judge.

4. All cases involving a youth that is currently in detention shall be reviewed by the Assigned Judge, at a minimum, at least once every fourteen days.

5. No new S (PINS), F (Support), P (Paternity), or U (UIFSA) warrants may be issued unless approved by the Supervising Judge. Only D (Juvenile Delinquent) warrants may be issued at the discretion of the Assigned Judge.

6. The Youth Part arraignment procedure established in the Virtual Courtroom Protocol dated March 31, 2020 is modified only as follows: arraignments will take place at the District Court located at 99 Main Street in Hempstead.

F. Surrogate's Court

1. All matters shall be calendared consistent with all Administrative Orders and Executive Orders at the discretion of the Presiding Surrogate.

G. District Court

1. No new prospective Trial Jurors will be summoned for jury service until further notice.

2. Notwithstanding any other provision herein, where an In-Person proceeding involves an incarcerated individual, that individual shall appear virtually utilizing electronic means unless the Presiding Judge orders otherwise after appropriate application is made.

3. Criminal Preliminary Hearings, Pleas, and Sentences may be heard In-Person (or a hybrid of In-Person or Virtual) providing that the Presiding Judge first makes a determination that it is unlawful or impractical to conduct the proceedings virtually.

4. All pending criminal cases shall be addressed by the Assigned Judge and appropriately scheduled consistent with applicable Executive Orders, Administrative Orders and the Updated Operating Protocols Effective November 23, 2020. The issuance of the new return date shall occur on or before the currently scheduled adjourned date or within 7 days of the signing of this order, whichever is later. For Defendants not in custody, there shall be no adjournment of a matter that is greater than 60 days. For defendants in custody, there shall be no adjournment of a matter that is greater than 30 days.

5. Arraignments, except for Desk Appearance Tickets, shall be held pursuant to the procedures set forth in the Virtual Courtroom Protocol dated March 31, 2020 which is only modified as stated herein to permit arraignments to take place at the District Court located at 99 Main Street in Hempstead.

H. Town and Village Courts

1. All matters in Town and Village Courts are to take place according to the Updated Operating Protocols for Town and Village Courts in the Tenth Judicial District—Nassau County which became effective November 23, 2020.

Dated: December 1, 2020
Mineola, New York

Hon. Norman St. George, J.S.C.
Administrative Judge, Tenth Judicial District

MATERIALS - CIVIL JURY TRIALS

OFFICE OF THE ADMINISTRATIVE JUDGE
10TH Judicial District - Nassau County

MEMORANDUM

To: Hon. Vito C. Caruso, Deputy Chief Administrative Judge
Hon. Craig Doran, Administrative Judge, 7th Judicial District

From: Hon. Norman St. George, District Administrative Judge

Date: August 5, 2020

Re: Petit Juror Reopening for Civil Trials in Nassau County

In accordance with the directives of the Chief Judge and the Chief Administrative Judge, the Courts in Nassau County are planning a limited return of Civil Jury Trials in Nassau County Supreme Court for October 2020.

For the return of Petit Jurors, all General Safety Protocols that have been implemented throughout the phased reopening of the Courts to help protect the health and safety of all individuals coming into the Courthouses in Nassau County will remain in effect.

Masks must be worn at all times by all Petit Jurors entering Supreme Court. Public spaces in Supreme Court, including the Central Jury Room, have all been configured to maintain appropriate social distancing. Plexiglass has been installed around all magnetometers, security posts, the Central Jury Counter and essential Courtrooms. Content specific social distancing signage provided by OCA has been posted in both English and Spanish in elevators, restrooms and water coolers. Court Officers are present to monitor foot traffic, ensure social distancing, and screen all Courthouse visitors for Covid-19 pursuant to the protocols developed by the Office of Court Administration.

OPERATIONAL CONSIDERATIONS:

Summoning the Petit Jurors

As a threshold matter, it should be noted that the recent return of Grand Jurors as part of the Nassau County Phase Three Reopening was a resounding success. Three Grand Juries were

impaneled in total. There were no issues with prospective Grand Jurors willingness to serve and we accordingly anticipate no issues with prospective Petit Juror's willingness to serve. Many of the same protocols and procedures used for the summoning of Grand Jurors will be used for the summoning of Petit Jurors.

Typically, there are five Jury empaneling rooms for Counsel to use for selecting a Jury. However, since these rooms do not permit proper social distancing, the empaneling will take place in the Central Jury Room itself. The Central Jury Room seats over 300 potential jurors at one time permitting for maximum physical distancing for prospective jurors. If needed, the Trial Judge may report to the Central Jury Room to preside over Petit Jury selection. One Jury trial will pick at a time with two days allocated for Jury selection for each trial. As with the Grand Jury, the Petit Jurors reporting for service will have staggered summoning times, both in the morning and in the afternoon, so that no more than 40 Petit Jurors will be sitting at one time.

Parking Lot 14 will be designated for the potential Petit Jurors who are responding to Summonses.

Courtroom Considerations:

There are 25 Courtrooms available for Jury Trials in the Supreme Court building. No more than five trials will be conducted at once in order to ensure that Supreme Court courtroom use remains at less than 50% as set forth in Nassau County's Phase Four Return to Operations Memo.

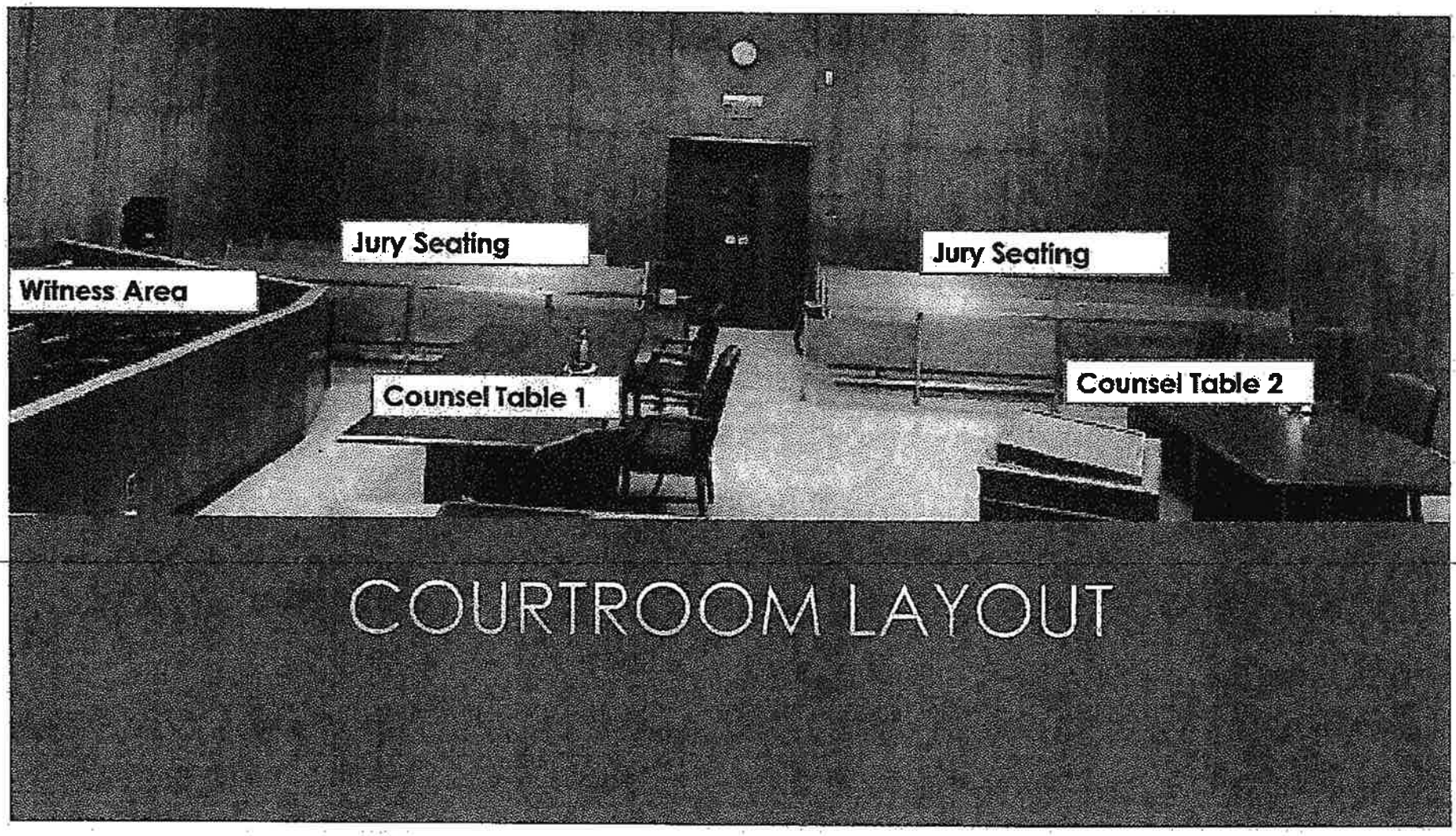
Two courtrooms will be allocated for each trial. One Courtroom will be used for the trial. The second Courtroom will be used for Jury deliberations and the Jury break room. To maximize social distancing in the Trial Courtroom, Jurors will seated in the spectator area. Counsel tables will be turned to face the Jury box to permit full social distancing between plaintiff's and defendant's counsel. Witnesses will give testimony from the Jury box to permit social distancing between the witnesses, counsel, the Judge, court reporter and Jury. The Court reporter will be placed in the witness stand for proper social distancing from the Judge, witness, and Jury. The use of face masks will be mandatory in the Courtroom. Face shields will be provided for additional protection to any Juror or Court personnel who requests them

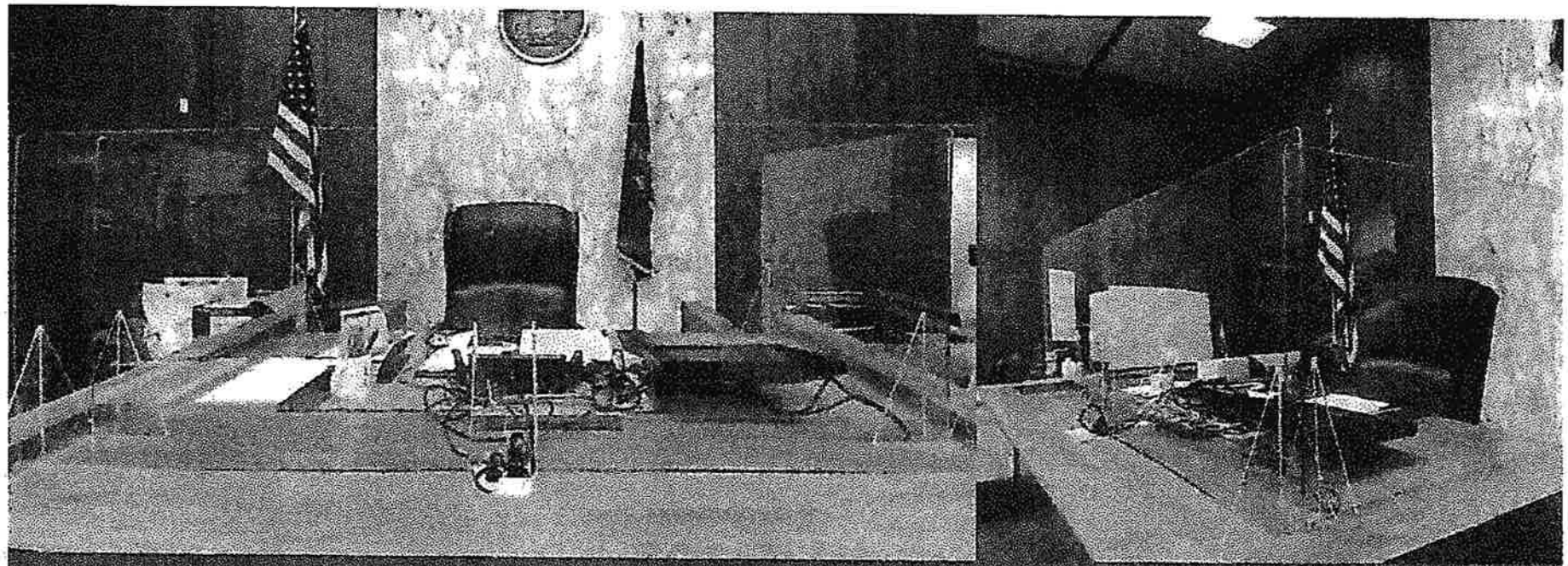
As noted, the second courtroom will be used for Jury deliberations and as the Jury breakroom, taking the place of the Jury deliberation rooms in the back areas of Supreme Court. The Jury deliberation rooms in Supreme Court are not appropriate for social distancing, necessitating the use of the larger rooms, in this case, a second courtroom.

In order to maintain maximum physical distancing in the courtroom, the Judges will work with counsel to stipulate to as much evidence as possible prior to the trial. One courtroom in Supreme Court is currently configured for the electronic presentation of documents and evidence, this courtroom will be utilized as a trial courtroom. Where physical evidence must be presented in paper form, gloves will be provided to all individuals who are required to handle the evidence.

Cleaning and Sanitizing

The court will provide individualized cleaning services for all Courtrooms being used for Jury trial and Jury deliberations. Provisions will be made to clean and sanitize the witness area between the testimony of witnesses. In addition, sanitizing wipes will be provided in the witness area to provide the witness the opportunity to clean the area themselves for increased comfort and peace of mind. In addition, hand sanitizer stations will be made available throughout the courtroom for use by the witnesses and any other individuals required to handle physical evidence, documentary or otherwise.


Witness Area
Jury Seating
Counsel Table 1
Jury Seating
Counsel Table 2
COURTROOM LAYOUT



THE BENCH WITH PLEXIGLASS

Hon. Helen Voutsinas

The Impact of COVID-19 on the Courts:

a Judicial Perspective –

The Statute of Limitations

December 17, 2020

Hon. Helen Voutsinas
Supreme Court Justice

State of New York

Executive Chamber

No. 202.8

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

WHEREAS, in order to facilitate the most timely and effective response to the COVID-19 emergency disaster, it is critical for New York State to be able to act quickly to gather, coordinate, and deploy goods, services, professionals, and volunteers of all kinds; and

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 19, 2020 the following:

- In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020;
- Subdivision 1 of Section 503 of the Vehicle and Traffic Law, to the extent that it provides for a period of validity and expiration of a driver's license, in order to extend for the duration of this executive order the validity of driver's licenses that expire on or after March 1, 2020;
- Subdivision 1 of Section 491 of the Vehicle and Traffic Law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, in order to extend for the duration of this executive order the validity of non-driver identification cards that expire on or after March 1, 2020;
- Sections 401, 410, 2222, 2251, 2261, and 2282(4) of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a registration certificate or number plate for a motor vehicle or trailer, a motorcycle, a snowmobile, a vessel, a limited use vehicle, and an all-terrain vehicle, respectively, in order to extend for the duration of this executive order the validity of such registration certificate or number plate that expires on or after March 1, 2020;
- Section 420-a of the vehicle and traffic law to the extent that it provides an expiration for temporary registration documents issued by auto dealers to extend the validity of such during the duration of this executive order.
- Subsection (a) of Section 602 and subsections (a) and (b) of Section 605 of the Business Corporation Law, to the extent they require meetings of shareholders to be noticed and held at a physical location.

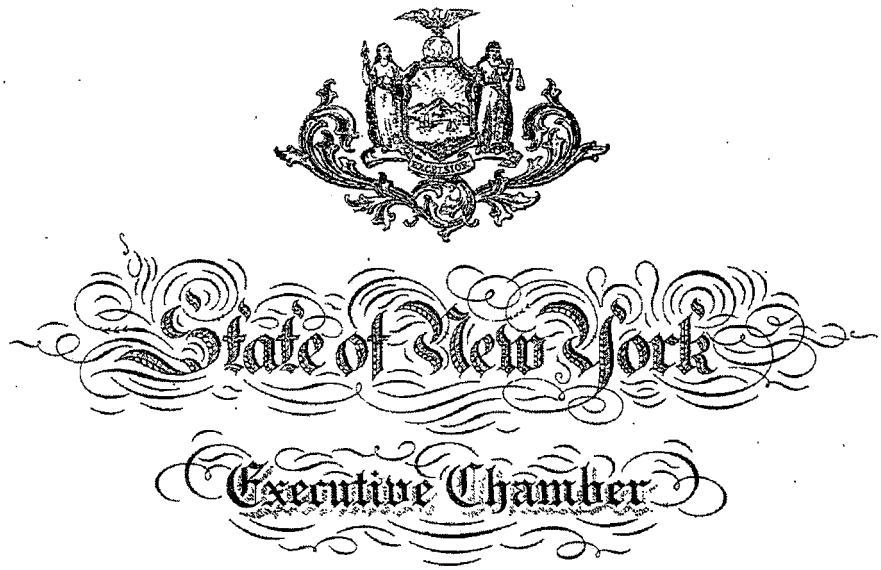
NOW, THEREFORE, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through April 19, 2020:

- The provisions of Executive Order 202.6 are hereby modified to read as follows: Effective on March 22 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions. An entity providing essential services or functions whether to an essential business or a non-essential business shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function. Any business violating the above order shall be subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law.
- There shall be no enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.
- Effective at 8 p.m. March 20, any appointment that is in-person at any state or county department of motor vehicles is cancelled, and until further notice, only on-line transactions will be permitted.
- The authority of the Commissioner of Taxation and Finance to abate late filing and payment penalties pursuant to section 1145 of the Tax Law is hereby expanded to also authorize abatement of interest, for a period of 60 days for a taxpayers who are required to file returns and remit sales and use taxes by March 20, 2020, for the sales tax quarterly period that ended February 29, 2020.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twentieth day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor



No. 202.14

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order to 202, for thirty days until May 7, 2020, except as limited below.

IN ADDITION, I hereby temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, for the period from the date of this Executive Order through May 7, 2020, the following:

- Section 6524 of the Education Law, section 60.7 of title 8 of NYRR and section paragraph (1) of subdivision (g) 405.4 of title 10 of the NYCRR to the extent necessary to allow any physician who will graduate in 2020 from an academic medical program accredited by a medical education accrediting agency for medical education by the Liaison Committee on Medical Education or the American Osteopathic Association, and has been accepted by an Accreditation Council for Graduate Medical Education accredited residency program within or outside of New York State to practice at any institution under the supervision of a licensed physician;

- Subdivisions one, two, four, five, eight and nine of Section 1726 of the Surrogate's Court Procedure Act are hereby modified to provide that any parent, a legal guardian, a legal custodian, or primary caretaker who works or volunteers in a health care facility or who reasonably believes that they may otherwise be exposed to COVID-19, may designate a standby guardian by means of a written designation, in accordance with the process set forth in such subdivisions; and such designation shall become effective also in accordance with the process set forth in such subdivisions; and

- Sections 3216(d)(1)(C) and 4306(g) of the Insurance Law, subject to consideration by the Superintendent of Financial Services of the liquidity and solvency of the applicable insurer, corporation subject to Article 43 of the Insurance Law, or health maintenance organization certified pursuant to Article 44 of the Public Health Law, to:

- Extend the period for the payment of premiums to the later of the expiration of the applicable contractual grace period and 11:59 p.m. on June 1, 2020, for any comprehensive health insurance policyholder or contract holder under an individual policy or contract, as those terms are used in such sections, who is facing a financial hardship as a result of the COVID-19 pandemic; and
- Require that the applicable insurer, corporation subject to Article 43 of the Insurance Law, or health maintenance organization certified pursuant to Article 44 of the Public Health Law shall be responsible for the payment of claims during such period and shall not retroactively terminate the insurance policy or contract for non-payment of premium during such period.

FURTHER, I hereby issue the following directives for the period from the date of this Executive Order through May 7, 2020:

- Any medical equipment (personal protective equipment (PPE), ventilators, respirators, bi-pap, anesthesia, or other necessary equipment or supplies as determined by the Commissioner of Health) that is held in inventory by any entity in the state, or otherwise located in the state shall be reported to DOH. DOH may shift any such items not currently needed, or needed in the short term future by a health care facility, to be transferred to a facility in urgent need of such inventory, for purposes of ensuring New York hospitals, facilities and health care workers have the resources necessary to respond to the COVID-19 pandemic, and distribute them where there is an immediate need. The DOH shall either return the inventory as soon as no longer urgently needed and/or, in consultation with the Division of the Budget, ensure compensation is paid for any goods or materials acquired at the rates prevailing in the market at the time of acquisition, and shall promulgate guidance for businesses and individuals seeking payment.

- By virtue of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, and 202.13 which closed or otherwise restricted public or private businesses or places of public accommodation, and which required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations, games, meetings or other social events), all such Executive Orders shall be continued, provided that the expiration dates of such Executive Orders shall be aligned, such that all in-person business restrictions and workplace restrictions will be effective until 11:59 p.m. on April 29, 2020, unless later extended by a future Executive Order.

- The enforcement of any violation of the foregoing directives on and after April 7, 2020, in addition to any other enforcement mechanism stated in any prior executive orders, shall be a violation punishable as a violation of public health law section 12-b(2) and the Commissioner of Health is directed and authorized to issue emergency regulations. The fine for such violation by an individual who is participating in any gathering which violates the terms of the orders or is failing to abide by social distancing restrictions in effect in any place which is not their home shall not exceed $1,000.

- The directive contained in Executive Order 202.4 as amended by Executive Order 202.11 related to the closure of schools statewide shall hereafter be modified to provide that all schools shall remain closed through April 29, 2020, at which time the continued closure shall be re-evaluated. No school shall be subject to a diminution in school aid due to failure to meet the 180 day in session requirement as a result of the COVID-19 outbreak, provided their closure does not extend beyond the term set forth herein. School districts must continue plans for alternative instructional options, distribution and availability of meals, and child care, with an emphasis on serving children of essential workers, and continue to first use any vacation or snow days remaining.

- Superintendent of Financial Services shall have the authority to promulgate an emergency regulation, subject to consideration by the Superintendent of Financial Services of the liquidity and solvency of the applicable insurer, corporation subject to Article 43 of the Insurance Law, health maintenance organization certified pursuant to Article 44 of the Public Health Law, or student health plan certified pursuant to Insurance Law § 1124, to:
  - extend the period for the payment of premiums to the later of the expiration of the applicable contractual grace period and 11:59 p.m. on June 1, 2020 for any small group or student blanket comprehensive health insurance policy or contract, or any child health insurance plan policy or contract where the policyholder or contract holder pays the entire premium, as those terms are used in the Insurance Law, for any policyholder or contract holder who is facing financial hardship as a result of the COVID-19 pandemic; and

- require that the applicable insurer, corporation subject to Article 43 of the Insurance Law, health maintenance organization certified pursuant to Article 44 of the Public Health Law, or student health plan certified pursuant to Insurance Law § 1124, shall be responsible for the payment of claims during such period and shall not retroactively terminate the insurance policy or contract for non-payment of premium during such period.

- Superintendent of Financial Services shall have the authority to promulgate emergency regulations necessary to implement this Executive Order, including regulations regarding: (1) the waiver of late fees; and (2) the prohibition on reporting negative data to credit bureaus.

- For the purposes of Estates Powers and Trusts Law (EPTL) 3-2.1(a)(2), EPTL 3-2.1(a)(4), Public Health Law 2981(2)(a), Public Health Law 4201(3), Article 9 of the Real Property Law, General Obligations Law 5-1514(9)(b), and EPTL 7-1.17, the act of witnessing that is required under the aforementioned New York State laws is authorized to be performed utilizing audio-video technology provided that the following conditions are met:
  - The person requesting that their signature be witnessed, if not personally known to the witness(es), must present valid photo ID to the witness(es) during the video conference, not merely transmit it prior to or after;
  - The video conference must allow for direct interaction between the person and the witness(es), and the supervising attorney, if applicable (e.g. no pre-recorded videos of the person signing);
  - The witnesses must receive a legible copy of the signature page(s), which may be transmitted via fax or electronic means, on the same date that the pages are signed by the person;
  - The witness(es) may sign the transmitted copy of the signature page(s) and transmit the same back to the person; and
  - The witness(es) may repeat the witnessing of the original signature page(s) as of the date of execution provided the witness(es) receive such original signature pages together with the electronically witnessed copies within thirty days after the date of execution.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this seventh day of April in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.28

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14, for thirty days until June 6, 2020, except as modified below:

- The suspension or modification of the following statutes and regulations are not continued, and such statutes, codes and regulations are in full force and effect as of May 8, 2020:
    - 10 NYCRR 405.9, except to the limited extent that it would allow a practitioner to practice in a facility where they are not credentialed or have privileges, which shall continue to be suspended; 10 NYCRR 400.9; 10 NYCRR 400.11, 10 NYCRR 405; 10 NYCRR 403.3; 10 NYCRR 403.5; 10 NYCRR 800.3, except to the extent that subparagraphs (d) and (u) could otherwise limit the scope of care by paramedics to prohibit the provision of medical service or extended service to COVID-19 or suspected COVID-19 patients; 10 NYCRR 400.12; 10 NYCRR 415.11; 10 NYCRR 415.15; 10 NYCRR 415.26; 14 NYCRR 620; 14 NYCRR 633.12; 14 NYCRR 636-1; 14 NYCRR 686.3; and 14 NYCRR 517;
    - Mental Hygiene Law Sections 41.34; 29.11; and 29.15;
    - Public Health Law Sections 3002, 3002-a, 3003, and 3004-a to the extent it would have allowed the Commissioner to make determination without approval by a regional or state EMS board;
    - Subdivision (2) of section 6527, Section 6545, and Subdivision (1) of Section 6909 of the Education Law; as well as subdivision 32 of Section 6530 of the Education Law, paragraph (3) of Subdivision (a) of Section 29.2 of Title 8 of the NYCRR, and sections 58-1.11, 405.10, and 415.22 of Title 10 of the NYCRR;
    - All codes related to construction, energy conservation, or other building code, and all state and local laws, ordinances, and regulations which would have otherwise been superseded, upon approval by the Commissioner of OPWDD, as applicable only for temporary changes to physical plant, bed capacities, and services provided; for facilities under the Commissioners jurisdiction.

IN ADDITION, I hereby temporarily suspend or modify the following if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, for the period from the date of this Executive Order through June 6, 2020:

- Sections 7-103, 7-107 and 7-108 of the General Obligations Law to the extent necessary to provide that:

    - Landlords and tenants or licensees of residential properties may, upon the consent of the tenant or licensee, enter into a written agreement by which the security deposit and any interest accrued thereof, shall be used to pay rent that is in arrears or will become due. If the amount of the deposit represents less than a full month rent payment, this consent does not constitute a waiver of the remaining rent due and owing for that month. Execution in counterpart by email will constitute sufficient execution for consent;
    - Landlords shall provide such relief to tenants or licensees who so request it that are eligible for unemployment insurance or benefits under state or federal law or are otherwise facing financial hardship due to the COVID-19 pandemic;
    - It shall be at the tenant or licensee's option to enter into such an agreement and landlords shall not harass, threaten or engage in any harmful act to compel such agreement;
    - Any security deposit used as a payment of rent shall be replenished by the tenant or licensee, to be paid at the rate of 1/12 the amount used as rent per month. The payments to replenish the security deposit shall become due and owing no less than 90 days from the date of the usage of the security deposit as rent. The tenant or licensee may, at their sole option, retain insurance that provides relief for the landlord in lieu of the monthly security deposit replenishment, which the landlord, must accept such insurance as replenishment.

- Subdivision 2 of section 238-a of the Real Property Law to provide that no landlord, lessor, sub-lessor or grantor shall demand or be entitled to any payment, fee or charge for late payment of rent occurring during the time period from March 20, 2020, through August 20, 2020; and

- Section 8-400 of the Election Law is modified to the extent necessary to require that to the any absentee application mailed by a board of elections due to a temporary illness based on the COVID-19 public health emergency may be drafted and printed in such a way to limit the selection of elections to which the absentee ballot application is only applicable to any primary or special election occurring on June 23, 2020, provided further that for all absentee ballot applications already mailed or completed that purported to select a ballot for the general election or to request a permanent absentee ballot shall in all cases only be valid to provide an absentee ballot for any primary or special election occurring on June 23, 2020. All Boards of Elections must provide instructions to voters and post prominently on the website, instructions for completing the application in conformity with this directive.

- The suspension of the provisions of any time limitations contained in the Criminal Procedure Law contained in Executive Order 202.8 is modified as follows:

    - Section 182.30 of the Criminal Procedure Law, to the extent that it would prohibit the use of electronic appearances for certain pleas;
    - Section 180.60 of the Criminal Procedure Law to provide that (i) all parties' appearances at the hearing, including that of the defendant, may be by means of an electronic appearance; (ii) the Court may, for good cause shown, withhold the identity, obscure or withhold the image of, and/or disguise the voice of any witness testifying at the hearing pursuant to a motion under Section 245.70 of the Criminal Procedure law—provided that the Court is afforded a means to judge the demeanor of a witness;
    - Section 180.80 of the Criminal Procedure Law, to the extent that a court must satisfy itself that good cause has been shown within one hundred and forty-four hours from May 8, 2020 that a defendant should continue to be held on a felony complaint due to the inability to empanel a grand jury due to COVID-19, which may constitute such good cause pursuant to subdivision three of such section; and
    - Section 190.80 of the Criminal Procedure Law, to the extent that to the extent that a court must satisfy itself that good cause has been shown that a defendant should continue to be held on a felony complaint beyond forty-five days due to the inability to empanel a grand jury due to COVID-19, which may constitute such good cause pursuant to subdivision b of such section provided that such defendant has been provided a preliminary hearing as provided in section 180.80.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through June 6, 2020:

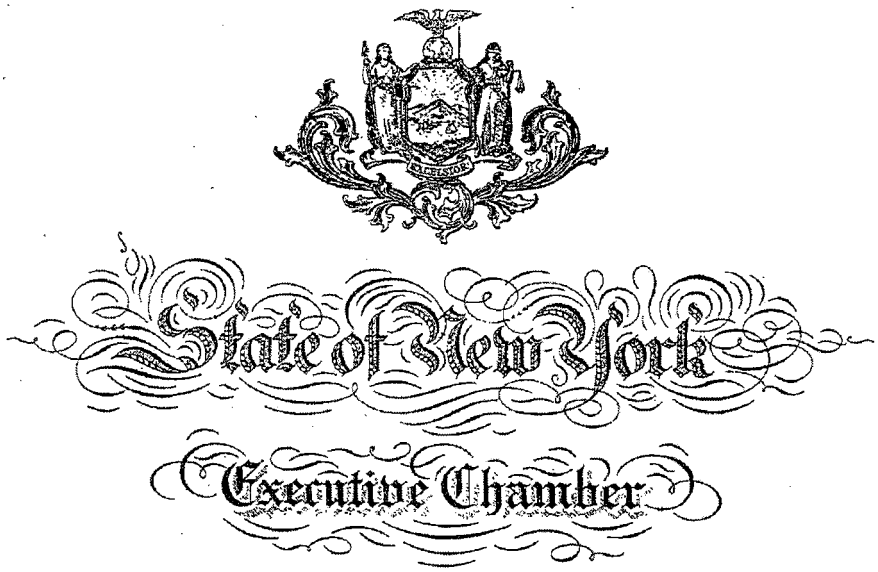
- There shall be no initiation of a proceeding or enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, owned or rented by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020.

- Executive Order 202.18, which extended the directive contained in Executive Orders 202.14 and 202.4 as amended by Executive Order 202.11 related to the closure of schools statewide, is hereby continued to provide that all schools shall remain closed through the remainder of the school year. School districts must continue plans for alternative instructional options, distribution and availability of meals, and child care, with an emphasis on serving children of essential workers.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this seventh of May in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor



No. 202.38

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14, as continued as contained in Executive Order 202.27 and 202.28 until July 6, 2020; and

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives for the period from the date of this Executive Order through July 6, 2020:

- Consistent with Center for Disease Controls and Prevention and New York State Department of Health Guidance, commercial building owners, retail store owners and those authorized on their behalf to manage public places within their buildings and businesses (collectively "Operators") shall have the discretion to require individuals to undergo temperature checks prior to being allowed admittance. Further, Operators shall have the discretion to deny admittance to (i) any individual who refuses to undergo such a temperature check and (ii) any individual whose temperature is above that proscribed by New York State Department of Health Guidelines. No Operator shall be subject to a claim of violation of the covenant of quiet enjoyment, or frustration of purpose, solely due to their enforcement of this directive. This directive shall be applied in a manner consistent with the American with Disabilities Act and any provision of either New York State or New York City Human Rights Law.

- The directive contained in Executive Order 202.3, as extended, that required any restaurant or bar to cease serving patrons food or beverage on-premises, is hereby modified to the extent necessary to allow a restaurant or bar to serve patrons food or beverage on-premises only in outdoor space, provided such restaurant or bar is in compliance with Department of Health guidance promulgated for such activity.

- Executive Order 202.35 which continued the directive of Executive Order 202.33 is hereby modified to permit any non-essential gatherings for houses of worship at no greater than 25% of the indoor capacity of such location, provided it is in a geographic area in Phase 2 of re-opening, and further provided that social distancing protocols and cleaning and disinfection protocols required by the Department of Health are adhered to.

- Upon the resumption of on-premises outdoor service of food and beverages at the licensed premises of restaurants and bars, to facilitate compliance with social distancing requirements in connection with such service, notwithstanding any provision of the Alcoholic Beverage Control law, restaurants or bars in the state of New York shall be permitted to expand the premises licensed by the State Liquor Authority to use (a) contiguous public space (for example, sidewalks or closed streets) and/or (b) otherwise unlicensed contiguous private space under the control of such restaurant or bar, subject to reasonable limitations and procedures set by the Chairman of the State Liquor Authority and, with respect to (a) the use of public space, subject to the reasonable approval of the local municipality, and all subject to the guidance promulgated by the Department of Health.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this sixth day of June in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.48

EXECUTIVE ORDER

CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14, as continued and contained in Executive Order 202.27, 202.28, , and 202.38, for another thirty days through August 5, 2020, except the following:

- The suspension or modification of the following statutes and regulations, and the following directives, are not continued, and such statutes, codes, and regulations are in full force and effect as of July 7, 2020:
    - The suspension of Education law section 3604(7), and any associated directives, which allowed for the Commissioner of Education to reduce instructional days, as such suspensions and directives have been superseded by statute, contained in Chapter 107 of the Laws of 2020;
    - The suspension of Section 33.17 of the Mental Hygiene Law and associated regulations to the extent necessary to permit providers to utilize staff members transport individuals receiving services from the Office of Mental Health or a program or provider under the jurisdiction of the Office of Mental Health during the emergency;
    - The suspensions of sections 2800(1)(a) and (2)(a); 2801(1) and (2); 2802(1) and (2); and 2824(2) of the Public Authorities Law, to the extent consistent and necessary to allow the director of the Authorities Budget Office to disregard such deadlines due to a failure by a state or local authority to meet the requirements proscribed within these sections during the period when a properly executed declaration of a state of emergency has been issued, are continued only insofar as they allow a state or local authority a sixty day extension from the original statutory due date for such reports;
    - Section 390-b of the Social Services Law and regulations at sections 413.4 and 415.15 of Title 18 of the NYCRR;
    - Subdivision 8 of section 8-407 of the Election Law;

- The suspension of Criminal Procedure Law to the extent it requires a personal appearance of the defendant, and there is consent, in any jurisdiction where the Court has been authorized to commence in-person appearances by the Chief Administrative Judge; provided further that the suspension or modification of the following provisions of law are continued:
  - Section 150.40 of the Criminal Procedure Law, is hereby modified to provide that the 20-day timeframe for the return date for a desk appearance ticket is extended to 90 days from receiving the appearance ticket;
  - Section 190.80 of the Criminal Procedure Law, is hereby modified to provide that the 45-day time limit to present a matter to the grand jury following a preliminary hearing or waiver continues to be suspended and is tolled for an additional 30 days;
  - Section 30.30 of the Criminal Procedure Law, is hereby modified to require that speedy trial time limitations remain suspended until such time as petit criminal juries are reconvened or thirty days, whichever is later;
  - Article 195 of the Criminal Procedure Law, is hereby suspended to the extent that it would prohibit the use of electronic appearances for certain pleas, provided that the court make a full and explicit inquiry into the waiver and voluntariness thereof;
  - Sections 190.45 and 190.50 of the Criminal Procedure Law, are hereby modified to the extent necessary to allow an incarcerated defendant to appear virtually with his or her counsel before the grand jury to waive immunity and testify in his or her own defense, provided the defendant elects to do so;
  - The suspension of Section 180.80 and 190.80 of the Criminal Procedure Law, as modified by Executive Order 202.28, is hereby continued for a period not to exceed thirty days in any jurisdiction where there is not a grand jury empaneled; and when a new grand jury is empaneled to hear criminal cases, then 180.80 and 190.80 of the criminal procedure law shall no longer be suspended beginning one week after such grand jury is empaneled;
  - The suspension of Sections 180.60 and 245.70 of the Criminal Procedure Law, as modified by Executive Order 202.28, which allowed protective orders to be utilized at preliminary hearings, is hereby continued for a period of thirty days; and
  - The suspension of Sections 182.20, in addition to the modification contained in Executive Order 202.28 of section 182.30 of the Criminal Procedure Law is hereby extended for a period of thirty days, to the extent that it would prohibit the use of electronic appearances for felony pleas, or electronic appearances for preliminary hearings or sentencing;

- Business Corporation law sections 602, 605, and 708, as such suspensions have been superseded by statute, as contained in Chapter 122 of the Laws of 2020;

- Banking Law Section 39 (2), as such suspension has been superseded by statute, as contained in Chapters 112 and 126 of the Laws of 2020, as well as the directives contained in Executive Order 202.9;

- Insurance Law and Banking Law provisions suspended by virtue of Executive Order 202.13, which coincide with the expiration of the Superintendent's emergency regulations;

- Subdivision (28) of Section 171 of the Tax Law, to the extent that the Commissioner has extended any filing deadline;

- Sections 3216(d)(1)(c) and 4306 (g) of the Insurance Law, and any associated regulatory authority provided by directive in Executive Order 202.14, as the associated emergency regulations are no longer in effect;

- The directive contained in Executive Order 202.28, as extended, that prohibited initiation of a proceeding or enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, is continued only insofar as it applies to a commercial tenant or commercial mortgagor, as it has been superseded by legislation for a residential tenant, and residential mortgagor, in Chapters 112, 126, and 127 of the Laws of 2020; and

- The directive contained in Executive Order 202.10 related to restrictions, as amended by Executive Order 202.11, related dispensing hydroxychloroquine or chloroquine, as recent findings and the U.S. Food & Drug Administration's revocation of the emergency use authorization has alleviated supply shortages for permitted FDA uses of these medications.

- The directives contained in Executive Order 202.3, that closed video lottery gaming or casino gaming, gym, fitness center or classes, and movie theaters, and the directives contained in Executive Order 202.5 that closed the indoor common portions of retail shopping malls, and all places of public amusement, whether indoors or outdoors, as amended, are hereby modified to provide that such directives remain in effect only until such time as a future Executive Order opening them is issued.

IN ADDITION, I hereby suspend or modify for thirty days through August 5, 2020:

- the provisions of Articles 11-A and 11-B of the State Finance Law, and any regulations authorized thereunder, to the extent necessary to respond to the direct and indirect economic, financial, and social effects of the COVID-19 pandemic.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives for the period from the date of this Executive Order through August 5, 2020:

- The directive contained in Executive Order 202.41, that discontinued the reductions and restrictions on in-person workforce at non-essential businesses or other entities in Phase Three industries or entities, as determined by the Department of Health, in eligible regions, is hereby modified only to the extent that indoor food services and dining continue to be prohibited in New York City.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this sixth day of July in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.55

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby continue the directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.21, and Executive Order 202.27, 202.28, 202.29, 202.30, 202.38, 202.39, and 202.40, as continued and contained in Executive Order 202.48, 202.49, and 202.50 for another thirty days through September 4, 2020, and I hereby suspend or modify for thirty days through September 4, 2020:

- Sections 5-11.0(a), 5-16.0(a) 5-18.0(1) and 6-22.0 of the Nassau County Administrative Code, to the extent necessary to authorize the Nassau County Executive to:
    - change the deadline for the County Assessor to complete the extension of taxes for 2020-2021 school district purposes (and file the certificate associated therewith), from September 18, 2020 to October 16, 2020;
    - change the deadline for the County Legislature to levy such taxes from September 18, 2020 to October 16, 2020;
    - change the deadline for the County to deliver to the town tax receivers the 2020-2021 school district assessment roll and warrants from September 28, 2020 to October 26, 2020;
    - change the deadline that first half 2020-2021 school district taxes shall be due and payable from October 1, 2020 to November 1, 2020; and
    - change the deadline by which the first half 2020-2021 school district taxes may be paid without interest or penalties from November 10, 2020 to December 10, 2020, with payments made after such date to be subject to interest and penalties beginning on December 11, 2020.

- Section 730(3) of the Real Property Tax Law, to the extent necessary to extend the deadline for filing a 2020 small claims assessment review petition in relation to property located in Nassau County to September 4, 2020; provided that such deadline shall not be further extended unless expressly provided otherwise by an Executive Order issued hereafter;

- Section 711 of the Real Property and Proceedings Law, Section 232-a of the Real Property Law, and subdivisions 8 and 9 of section 4 of the Multiple Dwelling Law, and any other law or regulation are suspended and modified to the extent that such laws would otherwise create a landlord tenant relationship between any individual assisting with the response to COVID-19 or any individual that

has been displaced due to COVID-19, and any individual or entity, including but not limited to any hotel owner, hospital, not-for-profit housing provider, hospital, or any other temporary housing provider who provides temporary housing for a period of thirty days or more solely for purposes of assisting in the response to COVD-19;

- Sections 352-eeee(2)-(2)(a) of the General Business Law, and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires that an offering statement or prospectus filed with the Department of Law must be declared effective within fifteen months from filing or from the date of issuance of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing (the "Fifteen Month Period"), and any such Fifteen Month Period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days (the "Tolling Period"). In addition, any deadlines contained within paragraphs 352-eeee(1)(f), 352-eeee(1)(g), 352-eeee(2)(c)(vi), 352-eeee(2)(c)(vii), and 352-eeee(2)(d)(ix) shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must treat all tenants in occupancy as non-purchasing tenants as defined by GBL 352-eeee(1)(e) for the duration of the Tolling Period, and must provide all such tenants in occupancy with all protections accorded to non-purchasing tenants under GBL 352-eeee for the duration of the Tolling Period. Sponsor must submit an amendment to the offering plan to the Department of Law updating the date by which sponsor must declare the offering plan effective, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law;

- Sections 352-eee(2)-(2)(a) of the General Business Law, and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires that an offering statement or prospectus filed with the Department of Law must be declared effective within twelve months from filing or from the date of issuance of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing (the "Twelve Month Period"), and any such Twelve Month Period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days ("the Tolling Period"). In addition, any deadlines contained within paragraphs 352-eee(1)(f), 352-eee(1)(g), 352-eee(2)(d)(vi), and 352-eee(2)(d)(ix) shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must treat all tenants in occupancy as non-purchasing tenants as defined by GBL 352-eee(1)(e) for the duration of the Tolling Period, and must provide all such tenants in occupancy with all protections accorded to non-purchasing tenants under GBL 352-eee for the duration of the Tolling Period. Sponsor must submit an amendment to the offering plan to the Department of Law updating the date by which sponsor must declare the offering plan effective, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law;

- 13 NYCRR § 20.3(o)(12), and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to offer rescission if the first closing of a unit does not occur within a period of twelve months after the projected date for such closing (corresponding to the projected first year of operation) as set forth in the offering plan, and any such twelve month period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must submit an amendment to the offering plan to the Department of Law updating the first year of operation and projected date of first closing, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law. The Department of Law shall not deem the tolling provided under this Executive Order and Executive Order 202.18 of any such twelve month period to be a material and/or adverse event or change under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise;

- 13 NYCRR § 22.3(k)(10), and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to offer rescission if the first closing of a home or lot does not occur within a period of twelve months after the projected date for such closing (corresponding to the projected first year of operation) as set forth in the offering plan, and any such twelve month period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must submit an amendment to the offering plan to the Department of Law updating the first year of operation and projected date of first closing, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law. The Department of Law shall not deem the tolling provided under this Executive Order and Executive Order 202.18 of any such twelve month period to be a material and/or adverse event or change under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise;

- 13 NYCRR § 25.3(l)(12), and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to offer rescission if the units are not ready for occupancy within a period of twelve months after the projected date for such closing (corresponding to the

projected first year of operation) as set forth in the offering plan, and any such twelve month period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must submit an amendment to the offering plan to the Department of Law updating the first year of operation and projected date of first closing, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law. The Department of Law shall not deem the tolling provided under this Executive Order and Executive Order 202.18 of any such twelve month period to be a material and/or adverse event or change under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise;

- 13 NYCRR §§ 18.3(g)(1), 20.3(h)(1), 21.3(g), 22.3(g)(1), 23.3(h)(1), 24.3(j)(1), and 25.3(h)(1) and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to set forth a budget for the first year of operation, the requirements with respect to any such budget for the projected first year of operation shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must submit an amendment to the offering plan to the Department of Law updating the first year of operation, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law, and shall not be required to offer rescission unless such budget for the first year of operation increases by 25 percent or more during the pendency of this Executive Order (or rescission otherwise is required under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise). The Department of Law shall not deem the tolling provided under this Executive Order and Executive Order 202.18 of sponsor's requirements with respect to the budget for the first year of operation to be a material and/or adverse event or change under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise;

- Section 339-ee(2) of the Real Property Law, and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it provides that as each unit in a condominium is first conveyed "there shall be allowed a credit against the mortgage recording taxes (except the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of the tax law) that would otherwise be payable on a purchase money mortgage," in respect of a portion of certain mortgage taxes previously paid, provided certain two-year time periods (as specified therein) have not elapsed before the recordation of the declaration of condominium or the first condominium unit is sold, as the case may be, the running of any such two-year period(s) is hereby suspended for the duration of this Executive Order, and any such two-year period is hereby extended for a period equal to the duration of this Executive Order plus an additional period of 120 days.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fifth of August in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.55.1

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

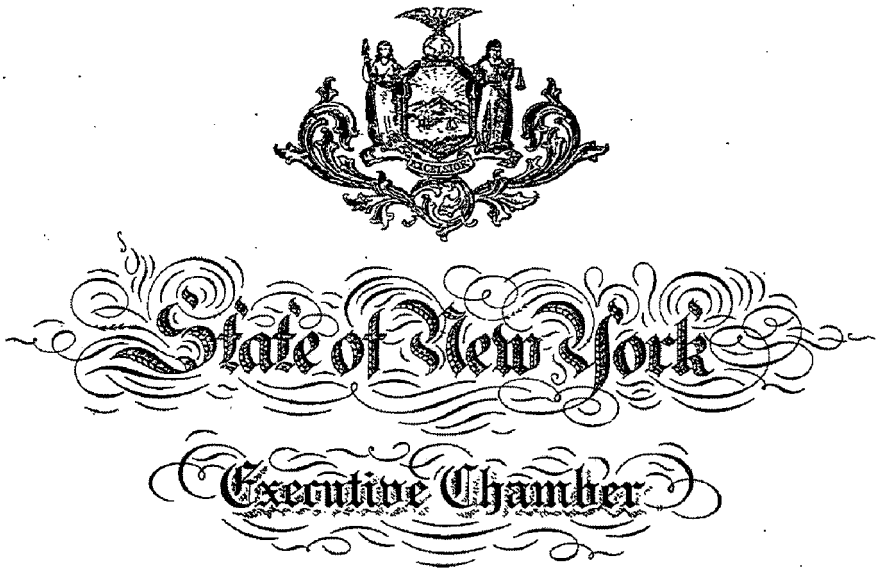
WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby amend Executive Order 202.55 to include all suspensions and modifications, not superseded by a suspension or modification in a subsequent Executive Order for the Executive Orders listed in 202.55; and provided further, Executive Orders 202.48, 202.49, and 202.50 are continued in their entirety, through September 4, 2020.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this sixth of August in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor



No. 202.60

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, the 2019 Novel Coronavirus (COVID-19) arrived in New York predominantly from Europe, with over 2.2 million travelers coming in between the end of January and March 16, 2020, when the federal government finally implemented a full European travel ban;

WHEREAS, during that period of time, 2.2 million travelers landed in the New York City metropolitan area and entered New York's communities, which, when combined with the density of our population, caused New York to have the highest infection rate of COVID-19 in the country;

WHEREAS, both cases of travel-related and community contact transmission of COVID-19 have been documented throughout New York State and, despite the persistent and diligent efforts of state and local governments to trace, test, and contain the virus, such transmission is expected to continue;

WHEREAS, New York has undertaken a cautious, incremental and evidence-based approach to reopening the State of New York;

WHEREAS, the dedication of New Yorkers to"flatten the curve" has successfully slowed the transmission of COVID-19, and these vigilant efforts must continue to protect ourselves and our friends, family members, neighbors, and community members;

WHEREAS, the State of New York had the highest infection rate, but has succeeded in reducing the rate to one of the lowest in the country, and New York is one of only a few states reported to be on track to contain COVID-19 transmission;

WHEREAS, other states that may have taken a less cautious approach are experiencing an increased prevalence of COVID-19 cases, and the prevalence of cases in other states continues to present a significant risk to New York's progress; and

WHEREAS, the federal government has failed to sufficiently address the causes and effects of the COVID-19 pandemic ravaging the nation by failing to, among other actions, establish a nation-wide testing strategy and impose a nation-wide face covering mandate;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster continues to exist for which affected state agencies and local governments are unable to respond adequately. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby continue the declaration of the State Disaster Emergency effective March 7, 2020, as set forth in Executive Order 202. This Executive order shall remain in effect until October 4, 2020.

IN ADDITION, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby continue the suspensions, modifications, and directives, not superseded by a subsequent directive, made by Executive Orders 202 up to and including 202.21, and 202.27, 202.28, 202.29, 202.30, 202.38, 202.39, 202.40, 202.48, 202.49, 202.50, as extended, and Executive Order 202.55 and 202.55.1 for another thirty days through October 4, 2020 and do hereby suspend or modify the following:

- Section 2804 of the Public Authorities Law, to the extent necessary to permit public authorities to receive comments concerning a proposed toll adjustment through public hearings held remotely, use of telephone conference, video conference, and/or other means of transmission, including acceptance of public comments electronically or by mail, and to permit all required documentation and records to be available in an electronic format on the internet and upon request;

- Subdivision 4 of section 1 of chapter 25 of the laws of 2020 is modified to the extent necessary to provide that in addition to any travel to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice, an employee shall not be eligible for paid sick leave benefits or any other paid benefits pursuant to this chapter if such employee voluntarily travels to a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven day rolling average, and which the commissioner of the department of health has designated as meeting these conditions as outlined in the advisory issued pursuant to Executive Order 205, and the employee did not begin travel to such state before the commissioner of the department of health designated such state, and the travel was not taken as part of the employee's employment or at the direction of the employee's employer;

- The suspension contained in Executive Order 202.8, as continued and modified most recently in Executive Order 202.48 and 202.55 and 202.55.1, is hereby amended to provide that the tolling of civil statutes of limitation shall be lifted as it relates to any action to challenge the approval by any municipal government or public authority of a construction project that includes either affordable housing or space for use by not-for-profit organizations. The suspension of Section 30.30 of the Criminal Procedure Law, is hereby modified to require that speedy trial time limitations remain suspended in a jurisdiction until such time as petit criminal juries are reconvened in that jurisdiction; Criminal Procedure Law 170.70 is no longer suspended, and for any appearance which has been required to be in-person may continue to be conducted virtually with the consent of the parties.

- Rural Electric Cooperatives Law Section 17(d) to the extent necessary to eliminate the minimum in-person quorum requirements;

- Title 5 of Article 11 of the Real Property Tax Law, is suspended with respect to the ability of a municipality to sell liens.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives through October 4, 2020:

- The directive contained in Executive Order 202.45, as extended, requiring closure of all schools statewide to in-person instruction, is hereby modified only insofar as to authorize schools statewide to be open for instruction, effective September 1, 2020, subject to adherence to Department of Health issued guidance and directives, and provided further that school districts must continue plans to ensure the availability of meals, and the availability of child care for health care and emergency response workers, for any school district that is conducting its operations remotely and provided further that for any district which closes to in-person instruction, a contingency plan to immediately provide such services must be maintained;

- Whenever a coroner or medical examiner has a reasonable suspicion that COVID-19 or influenza was a cause of death, but no such tests were performed within 14 days prior to death in a nursing home or hospital, or by the hospice agency, the coroner or medical examiner shall administer both a COVID-19 and influenza test within 48 hours after death, whenever the body is received within 48 hours after death, in accordance with regulations promulgated by the Department of Health. The coroner or medical examiner shall report the death to the Department of Health immediately after and only upon receipt of both such test results through a means determined by the Department of Health. The State Department of Health shall provide assistance for any requesting coroner or medical examiner.

- Nassau County Administrative Code § 5-17.0(2) to the extent necessary to suspend the deadline to pay 2019-2020 second half general taxes appearing on the Nassau County tax roll without interest or penalties from August 10, 2020 to August 31, 2020 for residential property that was owned in whole or in part at the time of their death by healthcare workers and first responders in Nassau County who passed away after contracting the novel coronavirus and which is now owned by immediate family members or their estates.

- Nassau County Administrative Code § 5-16.0(b) to the extent necessary to provide a discount of one percent on payments of second half 2020-2021 school district taxes which are made on or before December 10, 2020.

- The directive contained in Executive Order 202.3, as extended, that required closure to the public of any facility authorized to conduct video lottery gaming or casino gaming, is hereby modified to allow such facilities to open beginning on or after September 9, 2020, subject to adherence to Department of Health guidance.

- The directive contained in Executive Order 202.50, as amended by Executive Order 202.53, that allowed indoor common portions of retail shopping malls to open in regions of the state that are in Phase Four of the state's reopening, provided that such malls continue to be closed in the New York City region, is hereby amended to allow such malls to open in the New York City region, so long as such malls adhere to Department of Health issued guidance on and after September 9, 2020.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fourth day of September in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.67

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster continues to exist for which affected state agencies and local governments are unable to respond adequately. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby continue the declaration of the State Disaster Emergency effective March 7, 2020, as set forth in Executive Order 202. This Executive order shall remain in effect until November 3, 2020.

IN ADDITION, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, or to provide any directive necessary to respond to the disaster, do hereby continue the suspensions and modifications of law, and any directives not superseded by a subsequent directive contained in Executive Orders 202 up to and including 202.21, and 202.27, 202.28, 202.29, 202.30, 202.38, 202.39, 202.40, 202.48, 202.49, 202.50, 202.55 and 202.55.1, as extended, and Executive Order 202.60 for another thirty days through November 3, 2020, except:

- Subdivision 1 of Section 491 of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, shall no longer be suspended or modified as of November 3, 2020;

- Sections 401, 410, 2222, 2251, 2251, and 2282(4) of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a registration certificate or number plate for a motor vehicle or trailer, a motorcycle, a snowmobile, a vessel, a limited use vehicle, and an all-terrain vehicle, shall no longer be suspended or modified as of November 3, 2020;

- Section 420-a of the Vehicle and Traffic law, to the extent that it provides an expiration for temporary registration documents issued by auto dealers shall no longer be suspended or modified as of November 3, 2020; and

- The suspension in Executive Order 202.8, as modified and extended in subsequent Executive Orders, that tolled any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any statute, local law, ordinance, order, rule,

or regulation, or part thereof, is hereby continued, as modified by prior executive orders, provided however, for any civil case, such suspension is only effective until November 3, 2020, and after such date any such time limit will no longer be tolled, and provided further:

- The suspension and modification of Section 30.30 of the criminal procedure law, as continued and modified in EO 202.60, is hereby no longer in effect, except for felony charges entered in the counties of New York, Kings, Queens, Bronx, and Richmond, where such suspension and modification continues to be effective through October 19, 2020; thereafter for these named counties the suspension is no longer effective on such date or upon the defendant's arraignment on an indictment, whichever is later, for indicted felony matters, otherwise for these named counties the suspension and modification of Section 30.30 of the criminal procedure law for all criminal actions proceeding on the basis of a felony complaint shall no longer be effective, irrespective, 90 days from the signing of this Executive order on January 2, 2021.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fourth day of October in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, I hereby promulgate the following protocols to mitigate the adverse effects of the COVID-19 outbreak upon the practice of civil litigation before the courts of the Unified Court System, effective immediately:

1. Civil Litigation Generally: The prosecution of pending civil matters (including discovery) in a manner that requires in-person appearances or travel, or otherwise requires actions inconsistent with prevailing health and safety directives relating to the coronavirus health emergency, is strongly discouraged.

2. Civil Discovery Generally: Where a party, attorney or other person is unable to meet discovery or other litigation schedules (including dispositive motion deadlines) for reasons related to the coronavirus health emergency, the parties shall use best efforts to postpone proceedings by agreement and stipulation for a period not to exceed 90 days. Absent such agreement, the proceedings shall be deferred until such later date when the court can review the matter and issue appropriate directives. In no event will participants in civil litigation be penalized if discovery compliance is delayed for reasons relating to the coronavirus public health emergency.

Chief Administrative Judge of the Courts

Dated: March 19, 2020

AO/71/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, in light of the emergency circumstances caused by the continuing COVID-19 outbreak in New York State and the nation, and consistent with the Governor of New York's recent executive order suspending statutes of limitation in legal matters, I direct that, effective immediately and until further order, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters attached as Exh. A. This directive applies to both paper and electronic filings.

Chief Administrative Judge of the Courts

Dated: March 22, 2020

AO/78/20

Exhibit A

Essential Proceedings
Administrative Order AO/78/20
March 22, 2020

A. Criminal matters
1. arraignments
2. bail applications, reviews and writs
3. temporary orders of protection
4. resentencing of retained and incarcerated defendants
5. essential sex offender registration act (SORA) matters

B. Family Court
1. child protection intake cases involving removal applications
2. newly filed juvenile delinquency intake cases involving remand placement applications, or modification thereof
3. emergency family offense petitions/temporary orders of protection
4. orders to show cause
5. stipulations on submission

C. Supreme Court
1. Mental Hygiene Law (MHL) applications and hearings addressing patient retention or release
2. MHL hearings addressing the involuntary administration of medication and other medical care
3. newly filed MHL applications for an assisted outpatient treatment (AOT) plan
4. emergency applications in guardianship matters
5. temporary orders of protection (including but not limited to matters involving domestic violence)
6. emergency applications related to the coronavirus
7. emergency Election Law applications
8. extreme risk protection orders (ERPO)

D. Civil/Housing matters
1. applications addressing landlord lockouts (including reductions in essential services)
2. applications addressing serious code violations
3. applications addressing serious repair orders
4. applications for post-eviction relief

E. All Courts
1. any other matter that the court deems essential

This list of essential proceedings is subject to ongoing review and amendment as necessary.

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate, effective April 13, 2020, the following additional procedures and protocols to mitigate the effects of the COVID-19 outbreak upon the users, visitors, staff, and judicial officers of the Unified Court System.

1. In addition to essential court functions as set forth in AO/78/20, trial courts will address the following matters through remote or virtual court operations and offices:

- Conferencing Pending Cases: Courts will review their docket of pending cases, assess matters that can be advanced or resolved through remote court conferencing, and schedule and hold conferences in such matters upon its own initiative, and where appropriate at the request of parties.

- Deciding Fully Submitted Motions: Courts will decide fully submitted motions in pending cases.

- Discovery and Other Ad Hoc Conferences: Courts will maintain availability during normal court hours to resolve ad hoc discovery disputes and similar matters not requiring the filing of papers.

2. Video Technology: Video teleconferences conducted by the court, or with court participation, will be administered exclusively through Skype for Business.

3. No New Filings in Nonessential Matters: No new nonessential matters may be filed until further notice; nor may additional papers be filed by parties in pending nonessential matters. The court shall file such orders in essential and nonessential matters as it deems appropriate.

Provisions of prior administrative orders inconsistent with this order shall be superseded by this order.

Chief Administrative Judge of the Courts

Dated: April 8, 2020

AO/85/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to a delegation of authority vested in me, with the approval of the Administrative Board of the Courts, and following consultation and agreement with the respective County Clerks outside of the City of New York, I hereby confirm and extend programs for the consensual/voluntary use of electronic means for the filing and service of documents ("e filing") in Supreme Court as set forth in 22 NYCRR §202.5-b, for such matters set forth in Exh. A (and any other matters hereinafter deemed by the Chief Administrative Judge to be essential proceedings during the coronavirus public health emergency) that lie within the civil jurisdiction of the Supreme Court, in the counties set forth in Exh. B, effective immediately.

Chief Administrative Judge of the Courts

Dated: April 15, 2020

AO/81B/20

EXHIBIT A

Essential Proceedings
Administrative Order AO/78/20
March 22, 2020

A. Criminal matters
1. arraignments
2. bail applications, reviews and writs
3. temporary orders of protection
4. resentencing of retained and incarcerated defendants
5. essential sex offender registration act (SORA) matters

B. Family Court
1. child protection intake cases involving removal applications
2. newly filed juvenile delinquency intake cases involving remand placement applications, or modification thereof
3. emergency family offense petitions/temporary orders of protection
4. orders to show cause
5. stipulations on submission

C. Supreme Court
1. Mental Hygiene Law (MHL) applications and hearings addressing patient retention or release
2. MHL hearings addressing the involuntary administration of medication and other medical care
3. newly filed MHL applications for an assisted outpatient treatment (AOT) plan
4. emergency applications in guardianship matters
5. temporary orders of protection (including but not limited to matters involving domestic violence)
6. emergency applications related to the coronavirus
7. emergency Election Law applications
8. extreme risk protection orders (ERPO)

D. Civil/Housing matters
1. applications addressing landlord lockouts (including reductions in essential services)
2. applications addressing serious code violations
3. applications addressing serious repair orders
4. applications for post-eviction relief

E. All Courts
1. any other matter that the court deems essential

This list of essential proceedings is subject to ongoing review and amendment as necessary.

EXHIBIT B

Counties Permitting E-filing of Essential Matters in Supreme Court

(AO/81B/20 – Exh. B)

Albany
Broome
Cattaraugus
Cayuga
Chautauqua
Chemung
Chenango
Clinton
Columbia
Cortland
Delaware
Dutchess
Erie
Essex
Franklin
Genesee
Jefferson
Lewis
Livingston
Madison
Monroe
Nassau
Niagara
Oneida
Onondaga
Ontario
Orange
Oswego
Otsego
Putnam
Rensselaer
Rockland
St. Lawrence
Saratoga
Schuyler
Seneca
Steuben
Suffolk
Sullivan
Tioga
Tompkins
Ulster
Warren
Washington
Wayne
Westchester
Yates

Bronx
Kings
New York
Queens
Richmond County

Supreme Court
of the
State of New York

HON. DEBORAH A. KAPLAN
ADMINISTRATIVE JUDGE FOR CIVIL MATTERS

DENIS REO, ESQ.
CHIEF CLERK

60 CENTRE ST.
NEW YORK, NY 10007

By Administrative Order dated April 8, 2020 (AO/85/20), Chief Administrative Judge Lawrence Marks directed that, effective April 13, 2020, in addition to the essential court functions set forth in AO/78/20, trial courts would begin conferencing pending cases through remote or virtual court operations in an effort to resolve the matters. In accordance with Judge Marks' directive, Supreme Court, New York County-Civil Term has created a Remote Conference Part (RCP). Cases that had previously been scheduled in the Administrative Coordinating Part (Part 40), the Judicial Mediation Part (J-Med) and the Early Settlement Parts, but which were adjourned when the court began hearing only essential matters, will be scheduled for remote settlement conferences in RCP. Parties will receive a notice through NYSCEF notifying them that their case has been selected for a remote settlement conference and requesting that the attorneys notify the Trial Support Office of their availability. Cases will then be administratively scheduled for Skype or telephonic conferences before one of several judges who have volunteered to conference cases. Skype invitations will be sent to attorneys at the email addresses provided in NYSCEF. If participants have any Skype connectivity issues, they may seek assistance by emailing: SkypeTest@nycourts.gov.

AO/85/20 further directs that courts may hold remote conferences at the parties' request, where appropriate, and, in addition, be available during normal court hours to resolve ad hoc discovery disputes and other matters that do not require the filing of papers. A party who wishes to request a remote conference may email a completed Conference Request form to sfc-conferencerequest@nycourts.gov. Upon receipt, the Conference Request form will be forwarded directly to the assigned judge or the judge's staff for a response. It is within the judge's discretion to grant or deny a request for a conference. Written opposition to a request for a conference is not permitted.

Self-represented litigants who are unable to comply with these protocols should contact the Chief Clerk's Office at 646-386-3001 for assistance.

Dated: April 17, 2020

NYS SUPREME COURT, CIVIL BRANCH, NEW YORK COUNTY

STANDARD FORM TO REQUEST A CONFERENCE ON PENDING CASES

Case Caption _____

Index No. _____ **Judge** _____

Motion Pending (Y/N; if yes, indicate relief sought) _____

Plaintiff's Counsel (or self-represented litigant) Email Address, and Phone Number

Defendant's Counsel (or self-represented litigant) Email Address, and Phone Number

Reason for Conference and Issue(s) to Be Addressed (indicate whether adversary has been contacted/notified of the request for a conference):

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate, effective May 4, 2020 and until further order, the following additional procedures and protocols to mitigate the effects of the COVID-19 outbreak upon the judicial officers, staff, and users of the Unified Court System.

A. In pending matters, digital copies of (1) motions, cross-motions, responses, replies and applications (including post-judgment applications), (2) notices of appeal and cross-appeal, (3) stipulations of discontinuance, stipulations of adjournment, and other stipulations; (4) notes of issue, and (5) such other papers as the Chief Administrative Judge may direct, shall be accepted for filing purposes by all courts and clerical officers of the Unified Court System (including County Clerks acting as clerks of court) when presented for filing through (1) the UCS New York State Courts Electronic Filing (NYSCEF) system; (2) the UCS Electronic Document Delivery System (EDDS); or (3) such other document delivery method as the Chief Administrative Judge shall approve.

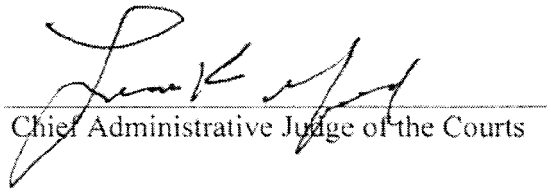
B. Documents filed through the EDDS system shall be served by electronic means, including electronic mail or facsimile. Filing fees required for documents filed through the EDDS system shall be paid by credit card or, where credit card payment is unavailable, by check delivered to the appropriate clerk's office by U.S. Mail or overnight mail service.

C. The provisions of paragraphs A and B above are authorized on a temporary basis, and will be reviewed and circumscribed promptly at the conclusion of the COVID-19 public health emergency.

D. Problem-solving courts may conduct virtual court conferences with counsel, court staff, service providers, and, where practicable, clients.

E. Judges may refer matters for virtual alternative dispute resolution, including to neutrals on court-established panels, community dispute resolution centers, and ADR-dedicated court staff.

F. The court shall not request working copies of documents in paper format.



Chief Administrative Judge of the Courts

Dated: May 1, 2020

AO/87/20

Electronic Document Delivery System: Welcome

This site lets you electronically deliver documents to the courts and -- during the COVID-19 public health emergency -- file documents electronically in many courts that do not usually permit electronic filing. For more detailed information, view the **EDDS Notice**, the **EDDS FAQ** page or the **EDDS User Manual**.

To help you with the delivery of your documents, please choose the location where you would like to send your documents, then follow the screens for additional directions. For information about which legal matters are handled by the various courts of New York State, visit Which court should I go to?

Select the court you want to deliver your documents to:

City Court - Civil (outside NYC)

City Court - Criminal (outside NYC)

Civil Court - New York City

County Court - Criminal Term (outside NYC)

Court of Claims

Criminal Court NYC

District Court - Civil Term (Nassau/Suffolk)

District Court - Criminal Term (Nassau/Suffolk)

Family Court

Nassau - SCARS

Supreme Court - Criminal Term (Inside NYC)

Supreme Court - Civil Term (limited availability for certain courts and case types. Read more ...)

Surrogate's Court (limited availability for certain courts and case types. Read more ...)

Please Note

1. A document sent through the Electronic Document Delivery System (EDDS) with a request for filing should be treated as "filed" only upon receipt of notice from the court clerk or County Clerk (or upon publication of notice on a County Clerk web page) that the document has been accepted for filing.
2. Documents sent via EDDS do not constitute service upon any other party. Documents accepted for filing through EDDS must be served on other parties **by electronic means or by mail**.
3. An unrepresented party can use EDDS to send documents to the court, after notifying the court and other parties that they wish to use this method. If EDDS is used, they must serve all such documents on other parties by mail, email, or other electronic means.
4. **EDDS should NOT be used for the delivery of emergency applications except in a Family Court that has been authorized to receive such applications via EDDS, or in a Court where the Judge directs the use of EDDS for that purpose. For more information on filing such applications please contact the court directly.** To find contact information for a court go to https://www.nycourts.gov/courts/

NOTICE TO THE PUBLIC

May 4, 2020

EDDS: UCS Program for Electronic Delivery of Documents

In response to the COVID-19 public health emergency and the expansion of "virtual" court operations, the Unified Court System has initiated a new program to transmit digitized documents (in pdf format) to UCS courts, County Clerks, and other court-related offices around the State. The Electronic Document Delivery System ("EDDS") allows users, in a single transaction, to (1) enter basic information about a matter on a UCS webpage portal page; (2) upload one or more pdf documents; and (3) send those documents electronically to a court or clerk selected by the user. Upon receipt of the document(s) by the court, the sender will receive an email notification, together with a unique code that identifies the delivery. More detailed instructions for sending or filing documents through EDDS may be found on the **EDDS FAQ** page.

Users/Senders should keep several important points in mind when using this system:

1. EDDS May be Used to File Papers with Certain Courts: At the direction of the Chief Administrative Judge, during the COVID-19 public health crisis EDDS can be used to deliver documents for filing with certain courts— including some Family Courts, Criminal Courts, Supreme Court, the Court of Claims, Surrogate's Courts, and District Courts, and City Courts. (EDDS is not available in the New York City Criminal Court.)

   To use the system for filing, the sender must simply check a box on the sender information screen, complete the sending of the document(s) to the appropriate court through the EDDS system, and pay any required filing fee by credit card. The clerk's office will review the document(s) for sufficiency and, if the clerk determines that filing prerequisites have been met, accept them for filing purposes. In the event that a clerk's office has accepted and filed a document received through EDDS, the sender will be notified of that fact by email or publication on a public database. *If no email or published notification is issued indicating that the document has been accepted for filing, the sender should not assume that the filing has occurred. The sender may contact the clerk's office to inquire about the status of a proposed filing.*

2. EDDS is Not a Substitute for E-filing or NYSCEF: Please note that, although EDDS may be used for filing in various courts, it does not replace and may not substitute for filing under the New York State Courts Electronic Filing System (NYSCEF). Therefore, it should not be used in matters where NYSCEF is available on either a mandatory or consensual basis. (Counties and case types where NYSCEF is available are listed on NYSCEF's **Authorized for E-Filing** page.)

3. EDDS Delivery is not "Service" on Other Parties: Finally, unlike NYSCEF, delivery of a document through EDDS does not constitute service of the document on any other party. If service is required, the sender must serve by some other means.

In sum, EDDS is a document delivery portal that complements the UCS electronic filing system and which, upon completion and together with NYSCEF, will allow remote and immediate delivery of digitized documents throughout the Unified Court System.

Frequently Asked Questions

UCS Electronic Document Delivery System (EDDS)

In response to the COVID-19 public health emergency and the expansion of "virtual" court operations, the Unified Court System has initiated a new program to transmit digitized documents (in pdf format) to UCS courts, County Clerks, and other court-related offices around the State, commencing on May 4, 2020.

Q: What is EDDS?

The Electronic Document Delivery System ("EDDS") allows users, in a transaction commenced at a UCS web portal, to (1) enter basic information about a matter; (2) upload one or more pdf documents; and (3) send those documents electronically to a court or clerk selected by the user. Upon receipt of the document(s) by the court, the sender will receive an email notification, together with a unique code that identifies the delivery.

Q: Why has UCS developed this new document delivery system?

The new system is intended to reduce the need for delivery or filing of paper copies of documents with the courts – and thereby to minimize foot traffic during the COVID-19 public health emergency. It will also facilitate the court system's expanded virtual court operations, which rely upon digital documents.

Q: Can EDDS be used to file documents with courts and County Clerks?

Yes – but with some notable restrictions and qualifications.

Most courts that currently accept filings in paper format will accept pdf copies of the filed document through EDDS. Supreme Courts, County Courts, Family Courts, Surrogates Courts, District Courts, and City Courts. However, this program will not be available in the New York City Criminal Court and may have restricted use in some other courts.

Importantly, EDDS is not intended to duplicate or supplant the New York State Courts Electronic Filing System (NYSCEF) and may not be used for filing in matters where NYSCEF is available on either a mandatory or consensual basis. Court users familiar with NYSCEF will recall that it is broadly available in many civil matters in Supreme Court, Surrogate's Court, and the Court of Claims around the State. Before using EDDS for filing, please make sure that NYSCEF is unavailable. (A list of courts and case types approved for e-filing through the NYSCEF system may be found on the Authorized for E-Filing page.)

Q: How do I file a document through EDDS?

To file a document through EDDS, you must begin at the **UCS EDDS** page. There you will be instructed in simple steps to enter appropriate identifying information (including sender contact information, and information about the case and document[s]), to select the county and court for delivery, upload the document(s), and to complete the transmission. If a filing fee is required, you will also be instructed about payment of the fee through online credit card or, in some cases, telephonic credit card transaction.

Once your transaction is complete, the clerk's office will review the submission and, if it meets all filing requirements, will file the documents as requested. If the submission is incomplete or unsatisfactory for filing, you will be notified of the problem by email or other means.

Q: How long will it take to file a document I have submitted through EDDS?

The Court System will make every effort to address filing requests promptly upon receipt. However, considering current operation restrictions, it may take one or more days for a filing request to be reviewed and approved.

Q: May I file documents with clerk's offices in person or by mail?

During the current COVID-19 public health emergency, and consistent with State and national health directives, many courts buildings and offices have remained closed and/or consolidated. Pursuant to AO/114/20, in courts and case types set forth in Exh. A to that order, to the extent that NYSCEF is not available, represented parties must commence new matters exclusively by mail. Following commencement of a new matter, and in pending matters, represented parties must file papers through the EDDS or by mail.

Q: Should I file emergency applications through EDDS?

During the COVID-19 health emergency, UCS courts around the state have established locations and procedures for the submission of emergency applications. EDDS is not designed to supplant those procedures and **should not be used for filing emergency applications.**

Q: How should I serve documents filed through EDDS?

By order of the Chief Administrative Judges, documents filed by EDDS should be served on other parties by electronic means, including email or facsimile, or in the counties set forth in AO/114/20 Exhibit A, parties can serve by electronic means or by mail. (Unlike NYSCEF, EDDS is not a system for service of papers.)

Q: What types of documents may be filed through EDDS?

Any document that is currently being accepted for filing by the UCS in pending nonessential matters may be filed through EDDS or in the counties set forth in AO/114/20 Exh. A, parties can also file mail. (Nonessential matters are legal proceedings other than those deemed "essential" during the COVID-19 public health emergency, as directed by the Chief Administrative Judge in late March [AO/78/20]). However, please remember that EDDS is unavailable in courts and case types where NYSCEF filing is available.

Q: What if I have problems using EDDS?

Because EDDS is a new system which substantially changes offices practices in court clerk and county clerk offices around the state – and at a time when court operations are dealing with new realities of remote and curtailed operation -- we anticipate that its rollout will not be trouble-free. **Please report any problems using the new system to us by email at** edds@nycourts.gov, and we will do our best to remedy them as quickly as possible. Please feel free to send comments and suggestions about the new system to us at this same email address.

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate, effective immediately and until further order, the following additional procedures and protocols to mitigate the effects of the COVID-19 public health emergency.

A. The court shall not order or compel, for a deposition or other litigation discovery, the personal attendance of physicians or other medical personnel (including administrative personnel) who perform services at a hospital or other medical facility that is active in the treatment of COVID-19 patients. Parties are encouraged to pursue discovery in cooperative fashion to the fullest extent possible.

B. The provisions of paragraph A are authorized on a temporary basis, and will be reviewed and circumscribed promptly at the conclusion of the COVID-19 public health emergency.

Chief Administrative Judge of the Courts

Dated: May 2, 2020

AO/88/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, I hereby direct that, effective immediately, Administrative Order AO/88/20 shall be cancelled and shall have no further force or effect.

In light of the ongoing coronavirus public health emergency, counsel and litigants are strongly encouraged to pursue discovery in cooperative fashion and to employ remote technology in discovery whenever possible. In the event that physicians or other medical personnel (including administrative personnel) are unavailable for deposition or other litigation discovery for reasons relating to the treatment of COVID-19 patients, and the parties are unable to resolve the scheduling issue cooperatively, that issue should be presented to the court for resolution.

Chief Administrative Judge of the Courts

Dated: June 22, 2020

AO/129/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, with the approval of the Administrative Board of the Courts, upon notice by the Presiding Judge of the Court of Claims, and, as appropriate, in consultation with or with the approval of County Clerks, I hereby continue and extend the Unified Court System program for the consensual/voluntary and mandatory use of electronic means for the filing and service of documents ("e-filing"), in the manner authorized pursuant to L. 1999, c. 367, as amended by L. 2009, c. 416, L. 2010, c. 528, L. 2011, c. 543, L. 2012, c. 184, L.2013, c. 113, L. 2015, c. 237, L. 2017, c. 99, L. 2018, c. 168, and L. 2019, c. 212, effective immediately (or at such later date as specified in Exh. A), as follows:

1. all civil matters in Supreme Court in all counties listed in Exh. A shall, unless approved for mandatory (or mandatory in part) electronic filing by prior administrative order, henceforth be accepted for consensual/voluntary electronic filing. Mandatory (and mandatory in part) electronic filing shall continue in those counties as authorized in AO/245/19.

Chief Administrative Judge of the Courts

Dated: May 8, 2020

AO/98/20

Exhibit A

Administrative Order AO/98/20
May 8, 2020

Albany (3rd JD)
Bronx (within NYC – 12th JD)
Broome (6th JD)
Cattaraugus (8th JD)
Cayuga (7th JD)
Chautauqua (8th JD)
Chemung (6th JD)
Chenango (6th JD)
Clinton (4th JD)
Columbia (3rd JD)
Cortland (6th JD)
Delaware (6th JD)
Dutchess (9th JD)
Erie (8th JD)
Essex (4th JD)
Franklin (4th JD)
Genesee (8th JD)
Jefferson (5th JD)
Kings (within NYC – 2nd JD)
Lewis (5th JD)
Livingston (7th JD)
Madison (6th JD)
Monroe (7th JD)
Nassau (10th JD)
New York (within NYC – 1st JD)
Niagara (8th JD)
Oneida (5th JD)
Onondaga (5th JD)
Ontario (7th JD)
Orange (9th JD)
Oswego (5th JD)
Otsego (6th JD)
Putnam (9th JD)
Queens (within NYC – 11th JD)
Rensselaer (3rd JD)
Richmond (within NYC – 13th JD)
Rockland (9th JD)
St. Lawrence (4th JD)
Saratoga (4th JD)
Schuyler (6th JD)
Seneca (7th JD)
Steuben (7th JD)

Suffolk (10th JD)
Sullivan (3rd JD)
Tioga (6th JD)
Tompkins (6th JD)
Ulster (3rd JD)
Warren (4th JD)
Washington (4th JD)
Wayne (7th JD)
Westchester (9th JD)
Wyoming (8th JD) *(effective May 15, 2020)
Yates (7th JD)

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and consistent with the Governor's determination approving the easing of restrictions on commerce imposed due to the COVID-19 health emergency, I hereby direct that, notwithstanding the terms of any prior administrative order:

1. In the counties and on the dates set forth in Exh. A, in courts and case types approved for electronic filing through the New York State Courts Electronic Filing System (NYSCEF), represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF or, where permitted under NYSCEF court rules, by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.

2. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the counties and on the dates set forth in Exh. A, represented parties must commence new matters exclusively by mail, except where otherwise authorized by the Chief Administrative Judge. Following commencement of a new matter, and in pending matters, represented parties must file papers through the Unified Court System's Electronic Document Delivery System (EDDS) or by mail, and must serve papers (other than commencement documents) by electronic means or by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.

3. In the counties and on the date set forth in Exh. B, in courts and case types approved for electronic filing through NYSCEF, represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.

4. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the counties and on the date set forth in Exh. B, represented parties in pending matters may submit for filing digital copies of (1) motions, cross-motions, responses, replies and applications, (2) notices of appeal and cross-appeal, (3) stipulations of discontinuance, stipulations of adjournment, and other stipulations; (4) notes of issue, and (5) such other papers as the Chief Administrative Judge may direct, to courts and clerical officers of the Unified Court System (including County Clerks acting as clerks of court) through EDDS

or such other document delivery method as the Chief Administrative Judge shall approve. Represented parties must serve documents filed through EDDS by electronic means, including electronic mail or facsimile. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.

This order shall not affect procedures for the filing and service of essential matters, and, on the dates that it becomes effective, supersedes administrative orders AO/87/20 (pars. A-C) and AO/114/20.

Chief Administrative Judge of the Courts

Dated: May 28, 2020

AO/115/20

Exhibit A

Region: Counties	Effective Date
Finger Lakes: Orleans, Monroe, Wayne, Genesee, Wyoming, Livingston, Ontario, Yates, and Seneca. Mohawk Valley: Herkimer, Oneida, Otsego, Fulton, Montgomery, and Schoharie. Southern Tier: Steuben, Schuyler, Chemung, Tompkins, Tioga, Broome, Chenango, and Delaware.	May 18, 2020
North Country: Clinton, Franklin, St. Lawrence, Jefferson, Lewis, Hamilton, and Essex. Central New York: Oswego, Cayuga, Cortland, Onondaga, and Madison.	May 20, 2020
Western New York: Allegany, Cattaraugus, Chautauqua, Erie, and Niagara.	May 21, 2020
Capital Region: Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, and Washington.	May 26, 2020
Mid-Hudson: Dutchess, Orange, Putnam, Rockland, and Westchester.	May 27, 2020
Mid-Hudson (remainder): Sullivan and Ulster.	May 28, 2020
Long Island: Nassau and Suffolk.	May 29, 2020

Exhibit B

Region: Counties	Effective Date
New York City: New York, Bronx, Queens, Kings, and Richmond.	May 25, 2020

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and consistent with the Governor's determination approving the easing of restrictions on commerce imposed due to the COVID-19 health emergency, I hereby direct that, effective June 10, 2020:

1. In courts and case types approved for electronic filing through the New York State Courts Electronic Filing System (NYSCEF), represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF or, where permitted under NYSCEF court rules, by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.

2. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the trial courts, represented parties must commence new matters exclusively by mail, except where otherwise authorized by the Chief Administrative Judge. Following commencement of a new matter, and in pending matters, represented parties must file papers through the Unified Court System's Electronic Document Delivery System (EDDS) or by mail, and must serve papers (other than commencement documents) by electronic means or by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.

3. This order shall not affect procedures for the filing and service of papers in essential matters.

4. The court shall not request working copies of documents in paper format.

Chief Administrative Judge of the Courts

Dated: June 9, 2020

AO/121/20

CORONAVIRUS AND THE NEW YORK STATE COURTS

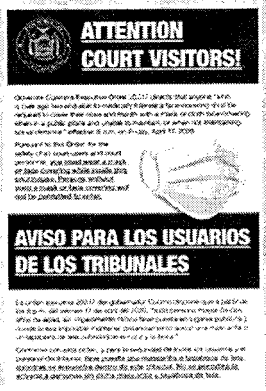
UCS Home for Covid19

Administrative Orders

Expansion of Court Operations

Tested Positive for Covid19

Virtual Court Appearances: How Do I?



COVID-19 Mask Multi-Language Poster

Latest STATEWIDE Administrative Orders

AO/232/20
AO/231/20
AO/216/20
AO/160A/20
AO/157/20
AO/149/20
AO/143/20
AO/131/20
AO/129/20
AO/127/20 (superseded by AO/160A/20)
AO/121/20
AO/115/20
AO/114/20
AO/111/20
AO/102/20
AO/101/20
AO/99/20
AO/98/20
AO/96/20
AO/95/20
AO/94/20
AO/93/20
AO/88/20
AO/87/20
AO/86/20
AO/85/20
AO/81B/20
AO/81A/20
AO/81/20
AO/80/20
AO/78/20
AO/75/20/Corrected
AO/75/20
AO/74/20
AO/73/20
AO/71/20
AO/68/20
AO/66/20
AO/39/20
AO/3/20

Executive Orders: A Suspension, Not a Toll of the SOL

During the pandemic, Governor Cuomo has issued a series of executive orders that have suspended procedural deadlines, including the statute of limitations. Various articles have been written that describe these executive orders as a toll of the statute of limitations for court. This article discusses the important legal distinction between a "toll" and a "suspension."

By **Thomas F. Whelan** October 06, 2020 at 11:54 AM

During the COVID-19 pandemic, Governor Andrew M. Cuomo has issued, and continues to issue, a series of executive orders (65 in total so far), that have suspended procedural deadlines, including the statute of limitations. Various articles have been written that describe these executive orders as a toll of the statute of limitations for court proceedings (*see* Thomas A. Moore and Matthew Gaier, Medical Malpractice, *Toll on Statute of Limitations During the COVID-19 Emergency*, NYLJ, June 1, 2020; Patrick M. Connors, New York Practice, *The COVID-19 Toll: Time Periods And the Courts During Pandemic*, NYLJ, July 17, 2020). However, there is an important legal distinction between a "toll" and a "suspension."

While a toll stops the running of the limitation period, with a tacked-on time period, a suspension of the statute of limitations would provide for a grace period until the conclusion of the last suspension directive in the latest executive order, a significantly shorter time period. Since no court has yet weighed in on whether these executive orders constitute a toll, these authors may have unwittingly set a trap for the unwary. This article examines the controlling statute and applicable caselaw and concludes that the executive orders should be considered a suspension and not a toll.

On March 7, 2020, the governor issued Executive Order No. 202, which declared a State of Emergency for the entire State of New York, due to the increasing transmission of COVID-19. On March 20, 2020, the Governor issued Executive Order No. 202.8, entitled "Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency," which temporarily suspended or modified any time limitations set forth in any statute, legislative or administrative act, from March 20, 2020 until April 19, 2020.

This executive order stated: "[i]n accordance with the directive of the Chief Judge of the State to limit court operations to essential matters,...any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state,...is hereby *tolled* from the date of this executive order until April 19, 2020 (emphasis added)." The use of the word "tolled" in the executive order appears to be the basis for the contrary conclusions noted in the above mentioned articles.

Since that date, the governor has extended the suspension seven times by Executive Orders 202.14, 202.28, 202.38, 202.48, 202.55, 202.55.1 and 202.60. Each of these executive orders repeats the phrase "temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or part thereof, ..." The most recent Executive Order, No. 202.60, states the governor "hereby continue[s] the suspensions, modifications, and directives, not superseded by a subsequent directive,...for another thirty days through Oct. 4, 2020..." None of the subsequent executive orders uses the word "toll." Every executive order makes explicit reference to Executive Law §29-a for its authority. Therefore, an examination of that statute is necessary.

Executive Law §29-a, entitled "Suspension of other laws," expressly permits the governor to "temporarily suspend any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, ..." (§29-a[1.]). A temporary amendment was made to Executive Law 29-a, effective from March 3, 2020 to April 29, 2021 (L.2020, c. 23, §4), authorizing the governor to issue directives during a state disaster emergency.

This amendment also removed the requirement that the executive order needed to list the "specific provision of" the temporarily suspended statute, local law, ordinance, or orders, rules or regulations, or parts thereof. By statute, each suspension order or directive is clearly limited in duration for a period not to exceed thirty days, but "the governor may extend the suspension for additional periods not to exceed thirty days each" (§29-a[2.][a.]). The word "toll" is not found in the statute.

The COVID-19 executive orders are similar to those issued after the 9/11 attack and the Superstorm Sandy emergency. The only real difference is that those executive orders followed the pre-existing statutory language and listed the "specific provision of" the temporarily suspended statute, local law, ordinance, or orders, rules or regulations, or parts thereof.

For instance, on Sept. 11, 2001, Governor George E. Pataki issued Executive Order No. 113, declaring a disaster state of emergency (9 NYCRR 5.11) and on September 12, 2001 he issued Executive Order No. 113.7, suspending temporarily CPLR 201, which prevents Courts from extending the statute of limitations. Future executive orders provided for a cutoff date. In *Scheja v Sosa*, 4 AD3d 410 (2d Dept. 2004), it was held that the executive orders provided for a grace period of up until November 8, 2001 to satisfy the statute of limitations.

The notion that the executive orders should be interpreted as a tolling provision for the number of days the orders spanned, no matter when the statute of limitations expired, was expressly rejected (*see also Koebel v New York State Comptroller*, 66 AD3d 1307 [3rd Dept. 2009]; Randolph v CIBC World Markets, 219 F. Supp.2d 399 [S.D. N.Y. 2002]).

On Oct. 31, 2012, Governor Cuomo signed Executive Order No. 52 (9 NYCRR 8.52) suspending the statute of limitations, in particular, CPLR 201, due to Superstorm Sandy. It was held, by various lower courts, that Executive Order No. 52 was not a "blanket toll." Instead, Executive Order 52 suspended those actions whose limitation period would have ended during the period from when the disaster emergency was declared through the date of its

conclusion. It was a grace period, not an additional time period, to be tacked-on to the expiration date of the statute of limitations.

So, under those prior executive orders, the courts concluded that it was only where the limitation period would have ended during the suspension period, that relief was afforded from the ordinary limitation period by commencing an action when the suspension period ended. The articles mentioned above, offer that the COVID-19 Executive Orders not only stop the statute of limitations clock, but tack-on to the end date of the final executive order, for statute of limitations purposes, the entire time period that the executive orders were in place. However, statutory construction should be interpreted to suspend the running of the period during the COVID-19 crisis, and no more.

The Moore and Gaier Medical Malpractice column fails to address Executive Law §29-a and advances the analogy to the tolls established by the continuous treatment doctrine in medical malpractice actions and in motions seeking leave to file a late notice of claim. Tolls do exist in the law (*see* CPLR 204[a]).

For instance, the statute of limitations is tolled during the pendency of a petition to seeking leave to file a late notice of claim under General Municipal Law §50-i(1) and recommences only for the period of time remaining to file the action (*see Bayne v City of New York*, 137 AD3d 428 [1st Dept. 2016] [13 days to file]; *Doddy v City of New York*, 45 AD3d 431 [1st Dept. 2007] [8 days to file]; *Barchet v New York City Tr. Auth.*, 20 NY2d 1[1967] [5 days to commence action]). The continuous treatment doctrine serves as a toll because the patient is not compelled to initiate judicial proceedings so long as

the physician continues to treat the injury (*see McDermott v Torre*, 56 NY2d 399 [1982]).

However, these are very distinct and separate situations from the statutory construction of Executive Law §29-a. Moreover, this column offers examples that appear to be flawed. At the time of publication of the column, the authors argue that the executive orders covered the 78-day period starting on March 20, 2020 and ending on June 6, 2020.

The column then argues, as follows: "If a statute of limitations was set to expire on March 25, 2020, the plaintiff will now have until 78 days later, June 11, 2020 to timely commence the action...The same applies where the statute of limitations would have expired after the toll ended. If it was to expire on June 30, 2020, it is extended by the toll until Sept. 16, 2020." The authors reject the simple extension of the statute of limitations until the emergency is over, for what they say is practical reasons.

The Connors New York Practice column renames the various executive orders as "the COVID-19 Toll." The column acknowledges that the 9/11 and Superstorm Sandy executive orders did not "toll" the statute of limitations, but rather extended those time periods to a date certain. As of the time of publication of this column, the author argues that the executive orders covered the 138-day period starting on March 20, 2020 and ending on August 5, 2020. Two hypotheticals are offered. Although worded differently than the Moore and Gaier column, the end result is the same.

In the first hypothetical, the three-year statute of limitations expires on April 1, 2020, with just 12 days remaining on the statute when Executive Order 202.8

was issued on March 20, 2020. Therefore, plaintiff has just "12 days from Aug. 6, 2020, the first day the COVID-19 Toll is no longer in effect." The second hypothetical involves a six-year breach of contract claim that accrued on April 1, 2019. Such would normally expire on April 1, 2025, "yet it was tolled for 138 days in 2020 during the COVID-19 Toll. The statute of limitations will expire on Aug. 17, 2025."

The column does not examine Executive Law §29-a in detail. However, in section 33 of the July 2020 Supplement to the New York Practice treatise, Professor Connors notes that "[o]ne may question whether the COVID-19 Toll created by the COVID-19 executive orders exceeds the Governor's power...".

So, what does it mean to suspend time limits under Executive Law §29-a? While sometimes in decisions the words "toll" and "suspend" are used interchangeably, appellate courts that have considered Executive Order 202.8 have held, for instance, that it "temporarily suspends the operation of CPL 180.80" (*see, e.g., People v Franchi*, 182 AD3d 563 [2d Dept. 2020]) and does not denote it as a toll.

The Court of Appeals has rejected attempts to utilize the COVID-19 pandemic and, in particular, Executive Order 202.8, to suspend Election Law deadlines during the health crisis, for claimed practical reasons (*see Seawright v Board of Elections in City of New York*, 35 NY3d 227 [2020] ["During the most difficult and trying of times, consistent enforcement and strict adherence to legislative judgment should be reinforced - not undermined"]; *see also Echevarria v Board of Elections in City of New York*, 183 AD3d 857 [2d Dept. 2020]).

Where, as here, one is asked to resolve "a question of statutory interpretation, our primary consideration is to ascertain and give effect to the intent of the Legislature," with "[t]he statutory text [being] the clearest indicator of legislative intent" (*Matter of DaimlerChysler Corp. v Spitzer*, 7 NY3d 653 [2006]; *see also Chisholm v Georgia*, 2 U.S. [2 Dall] 419 [1793]). If "the statutory language is clear and unambiguous," one must "construe it so as to give effect to the plain meaning of the words used" (*Patrolmen's Benevolent Assn. of City of N.Y. v City of New York*, 41 NY2d 205 [1976]).

Here, Executive Law §29-a could not be any clearer—the governor, during an emergency, has the power to "temporarily suspend" statute of limitation laws. Any contrary view, that the governor can "toll" the statute of limitations, is rewriting the law, which, as noted by the Court of Appeals, is not the function of the courts.

With the issuance of Executive Order No. 202.8—and its successors—in total, the statute of limitations has been "temporarily suspended" by 198 days—the number of days between March 20 and Oct. 4. According to the examples offered in the columns discussed above, on some actions, if the emergency orders were to end on October 4, 198 days should be added to the existing 198 day suspension, for an almost 400 day toll. Such runs counter to the plain definition of the word. Black's Law Dictionary (11th ed. 2019) defines "suspend" as "1. to interrupt; postpone; defer (the fire alarm suspended the prosecutor's opening statement). 2. To temporarily keep (a person) from performing a function, occupying an office, holding a job, or exercising a right or privilege (the attorney's law license was suspended for violating the Model Rules of Professional Conduct)."

Such is unlike a toll which stops the running of a limitation period, just to be restarted with a tacked-on time period. The suspension in Executive Law §29-a is consistent with the suspension for local government emergency orders found in Executive Law §24. As currently existing, the executive orders provide for a grace period of up until Oct. 5, 2020, the date after the last suspension order, to satisfy the statute of limitations. Counsel should be forewarned and be prepared to act appropriately if they intend to rely upon the suspension provisions.

Thomas F. Whelan *is a Supreme Court Justice sitting in Riverhead, N.Y.*

Toll on Statutes of Limitations During the COVID-19 Emergency

In their Medical Malpractice column, Thomas A. Moore and Matthew Gaier review pertinent executive orders that tolled statutes of limitations and analyze them in relation to the decisional law and prior executive orders issued in response to different emergencies.

By **Thomas A. Moore and Matthew Gaier** June 01, 2020 at 12:30 PM

Due to the shutdown of the court system brought about by the COVID-19 pandemic, the Governor has issued a series of executive orders that toll the statutes of limitations on actions in New York, as well as filing deadlines applicable to litigation in the state court system. The original executive order was issued on March 20, 2020, and has twice been extended by subsequent executive orders, the most recent of which extends this toll to June 6, 2020—and it is possible that the toll may yet be extended further. Despite the clear language of the executive order and the equally clear intent in issuing it to facilitate a shutdown of businesses to cope with the COVID-19 emergency, there has been a degree of confusion and trepidation about its impact. In this column, we therefore review the pertinent executive orders and analyze them in relation to the decisional law and prior executive orders issued in response to different emergencies.

On March 7, 2020, Governor Cuomo issued Executive Order 202, declaring a disaster emergency for the entire state to remain in effect until Sept. 7, 2020. The Governor has since issued numerous further executive orders, which have collectively effected the statewide shutdown and imposed measures to accommodate that shutdown. Executive Order 202.8, issued on March 20, 2020, provides in pertinent part:

In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020.

Subsequently, Executive Order 202.14 extended the provisions Executive Order 202.8 to May 7, 2020, and Executive Order 202.28 extended them to June 6, 2020. Hence, as it currently stands, the tolling provision of Executive Order 202.8 runs 78 days from March 20, 2020 through June 6, 2020.

For the purpose of analyzing the impact of these executive orders on statutes of limitations, the focus is on the language that "any specific time limit for the commencement, filing, or service of any legal action ... is hereby tolled from the date of this executive order until April 19, 2020." That is because the word "toll" means that the running of the clock is stayed during that time period.

In *McDermott v. Torre*, 56 N.Y.2d 399, 407 (1982), in determining whether the three-year statute of limitations applicable to medical malpractice actions that accrued before July 1, 1975 or the two and one half years statute of limitations applicable to malpractice actions accruing after that date applied to a case that accrued before that date but was tolled by continuous treatment, the Court of Appeals distinguished between a toll and a delay of accrual, and held that continuous treatment is a toll of the statute of limitations and that the statutory period does not begin to run until the toll ends. The court stated:

The action having accrued in 1974, the three-year Statute of Limitations then in effect attached. Torre's continuing treatment of plaintiff, if any, served to toll the running of the statute, but not to truncate it by imposing the lesser time limit of section 214-a. Thus, whenever treatment of plaintiff is found to have ended, a three-year time period for bringing suit should be imposed.

Further elucidation of the impact of a toll is gleaned from decisions addressing the impact on statutes of limitations of motions seeking permission to file late notices of claim. In *Barchet v New York City Tr. Auth.*, 20 N.Y.2d 1 (1967), the court held that "the statute was tolled from the time the plaintiff commenced the proceeding to obtain leave of the court to file a late notice of claim until the order of Special Term granting that relief appeared in the *New York Law Journal*, the date upon which it was to take effect." The court explained the impact of the toll in that case, as follows:

On December 18, 1964, when the proceeding to file a late notice of claim was commenced, there remained five days in which to commence the action. The order of Special Term granting leave to file a late notice of claim took effect on February 19, 1965. The Statute of Limitations then commenced to run again.

Similarly, in *Doddy v. City of New York*, 45 A.D.3d 431 (1st Dept. 2007), the court held:

Plaintiffs moved to file a late notice of claim on July 10, 1991, 8 days before the year–and–90–day statute of limitations expired. A decision granting the motion, deeming the notice of claim timely served, was entered on March 31, 1992. The statute of limitations, tolled for 265 days, ran anew as of that date, and plaintiffs were required to serve their summons and complaint upon defendants on or before April 8, 1992.

It is therefore clear that the effect of a toll is to stay the running of the statute of limitations during the time that the toll is in effect, and that the statutory period resumes running upon the termination of the toll. The toll effected by Executive Order 202.8 and its subsequent extensions, as it currently stands, covers the 78-day period starting on March 20, 2020 and ending on June 6, 2020. That means that any cause of action that accrued prior to March 20, 2020 is extended by 78 days. If a statute of limitations was set to expire on March 25, 2020, the plaintiff will now have until 78 days later, June 11, 2020 to timely commence the action. If a statute of limitations was set to expire on May 28, 2020, the plaintiff will have until Aug. 14, 2020. The same applies where the statute of limitations would have expired after the toll ended. If it was to expire on June 30, 2020, it is extended by the toll until Sept. 16, 2020.

By its terms, the toll provided for in the executive orders also applies to causes of action that accrue during the period that it is in effect. However, the duration of the toll in those case will only be in effect for the period from the time it accrued until the toll ends. Therefore, a prospective plaintiff cannot simply tack on 78 days. Instead, the statute of limitations for any cause of

action that accrues during the period of the toll will commence running on June 6, 2020.

There is an important practical impact of tolling statutes of limitations during this period rather than simply extending them until the emergency is over—it eliminates the impetus for a run on the courts in a rush to file as soon as the emergency is over. The courts would be overwhelmed by new filings that had accumulated during the shutdown. The tolling provision permits business to return to normal and new litigation to proceed as if the shutdown had not occurred.

The concerns that have been raised regarding the impact of Executive Order 202.8 stem largely from the impact of prior executive orders addressing statutes of limitations during prior state-wide emergencies, particularly during the Hurricane Sandy and 9/11 emergencies. However, the provisions and language of those executive orders were fundamentally different than that provided in Executive Order 202.8. For instance, Executive Order No. 113.7, issued on Sept. 12, 2001, provided, in pertinent part:

I hereby temporarily suspend, from the date the disaster emergency was declared, pursuant to Executive Order Number 113, issued on September 11, 2001 until further notice, the following laws:

Section 201 of the Civil Practice Law and Rules, so far as it bars actions whose limitation period concludes during the period commencing from the date that the disaster emergency was declared pursuant to Executive Order Number 113, issued on September 11, 2001, until further notice, and so far as it limits a courts authority to extend such time, whether or not the time to

commence such an action is specified in Article 2 of the Civil Practice Law and Rules ... .

Thus, by its express terms, the executive order suspended statutes of limitations only to the extent that they expired during the period of the emergency. Executive Order 52, issued on Oct. 31, 2012 in response to Hurricane Sandy, employed identical language. Neither of those executive orders stated that the statutes of limitations were tolled during a specified period.

The Second Department's decision addressing Executive Order 113.7 of 2011 and attendant executive orders in *Scheja v. Sosa*, 4 A.D.3d 410, 411-12 (2d Dept. 2004), sheds light on the distinctions between Executive Order 202.8 and the executive orders issued to address those earlier emergencies. It observed:

On September 12, 2001, the Governor issued Executive Order No. 113.7, continuing Executive Order No. 113 and amending it to suspend temporarily, until further notice, CPLR 201 insofar as it barred actions the limitations period of which concluded during the period from the date that the disaster emergency was declared (Sept. 11, 2001) pursuant to Executive Order No. 113, until further notice (see 9 NYCRR 5.113). By Executive Order No. 113.28, the Governor provided a cutoff date of October 12, 2001, for the general suspension of the statute of limitations contained in Executive Order No. 113.7 (see 9 NYCRR 5.113). The order provided an exception for those litigants or their attorneys who had been directly affected by the terrorist attack and temporarily suspended, until November 8, 2001, CPLR 201 insofar as it barred an action, by or on behalf of such person, if the limitations period with

respect to a particular action concluded during the period the Executive Order was in effect (see 9 NYCRR 5.113).

In rejecting the argument of the plaintiff, who filed his complaint on March 19, 2002, that he should qualify for the extension of the statute of limitations under the executive orders, the court stated:

The plain meaning of these Executive Orders is that any litigant who was affected by the World Trade Center attacks and whose statute of limitations period expired between September 11, 2001 and November 8, 2001, was given a grace period of up until November 8, 2001, to satisfy the statute (*see Randolph v. CIBC World Markets*, 219 F Supp 2d 399, 401). The plaintiff urges an extraordinary interpretation of the Governor's Executive Orders as a tolling provision. According to his argument, any litigant who was affected by the disaster emergency could have their period of limitations tolled for the number of days from September 11, 2001, to November 8, 2001, no matter when the statute of limitations expired. This could not have been the intent of the Governor's Executive Orders. The state of emergency caused by the attacks on September 11, 2001, no longer existed at the time the plaintiff was required to commence his action in February 2002 and thus could not have interfered with his ability to meet the statute of limitations.

While the court noted that the emergency no longer existed when the plaintiff's statute of limitations expired in that case, that was in the context of its rejection of the plaintiff's interpretation of the executive orders "as a tolling provision." That it was not a toll is patently clear from (1) its express language suspending CPLR 201 only "so far as it bars actions whose limitation period concludes during the period commencing from the date that the disaster

emergency was declared"; and (2) the absence of language that statutes of limitations were "tolled" from the date of the executive order until a specific date in the future. Executive Order 202.8 of 2020 was not limited to the former circumstance and it expressly used the language specifying the latter.

The tolling provision of Executive Order 202.08 was analyzed in the context of criminal proceedings by the court in *People ex rel Badillo v. Brann*, 2020 WL 1878094 (Sup. Ct., Queens Co. 2020, Zayas, J.), who compared the language of that executive order to those issued in response to Hurricane Sandy, and concluded that the "combined effect" of the 2012 executive orders "did not sweep as broadly as Executive Order 202.8—which makes sense, since, despite the immense scope of the disaster caused by Hurricane Sandy, that crisis did not result in the sort of unprecedented statewide shutdown of an as-yet-unknown duration caused by COVID-19—and thus explains why they were drafted differently."

There appears little basis for disputing that Executive Order 202.8 imposes a toll on all statutes of limitations for the duration of the period specified therein and in the subsequent executive orders extending it. It is a logical and practical remedy for an emergency that has effectively led to a time-out in litigation, in the courts and in society in general, and it will enable the practice of law to resume where it left off once the emergency abates.

Thomas A. Moore *is senior partner and* **Matthew Gaier** *is a partner of Kramer, Dillof, Livingston & Moore.*

The COVID-19 Toll: Time Periods and the Courts During Pandemic

In his New York Practice, Patrick Connors writes: "Despite a global pandemic lockdown, New York's procedural world refuses to rest, and numerous important developments have taken place to grapple with the problems caused by the spread of COVID-19."

By **Patrick M. Connors** July 17, 2020 at 12:49 PM

So much has changed in the world since our last piece appeared in the March 16 edition of the Law Journal. At that time, in the middle of the presidential primary season, we were concerned about pleading and preserving affirmative defenses. Fast forward four months and we are now in the midst of the COVID-19 disaster emergency. Like so many parts of New York state, our courts were effectively locked down at the end of March and filings, even in e-filed actions, were prohibited in all but "essential matters."

Despite a global pandemic lockdown, New York's procedural world refuses to rest, and numerous important developments have taken place to grapple with the problems caused by the spread of COVID-19. Too many, in fact, to discuss in this limited space. Therefore, we will focus on some of the basics

and refer the reader to the July 2020 Supplement to Siegel and Connors, New York Practice, which is now available on Westlaw. The July 2020 Supplement contains an expanded discussion of the issues addressed here, and coverage of many other procedural issues arising during the COVID-19 disaster emergency.

Executive Orders Creating the COVID-19 Toll

On March 7, Gov. Andrew Cuomo issued Executive Order 202 declaring a disaster emergency for the entire state of New York due to the transmission of COVID-19 (COVID-19 Disaster Emergency). On March 20, he issued Executive Order 202.8, which states:

Any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020 ...

Among other things, Executive Order 202.8 essentially tolled any statute of limitations contained in the CPLR and other "procedural laws of the state" until April 19, 2020, (the COVID-19 Toll). Then, in a series of executive orders issued approximately every 30 days, the governor extended the COVID-19 Toll "through Aug. 5, 2020." See Executive Order 202.14 (April 7, 2020) (continuing the toll in Executive Order 202.8 until May 7, 2020); Executive Order 202.28 (May 7, 2020) (continuing the tolls in Executive Orders 202.8 and 202.14 until June 6, 2020); Executive Order 202.38 (June 6, 2020)

(continuing the tolls in Executive Orders 202.8, 202.14, and 202.28 until July 6, 2020); Executive Order 202.48 (July 6, 2020) (continuing the tolls in Executive Orders 202.8, 202.14, 202.28, and 202.38 "through Aug. 5, 2020").

Executive Law Section 29-a(2)(a) prohibits the governor from suspending laws "for a period in excess of 30days," but permits extensions of the suspensions. Therefore, the governor may issue additional executive orders after we go to press that affect the COVID-19 Toll, and readers should check for those.

'Toll' v. 'Extension'

While the courts possess broad powers to extend most deadlines contained in the CPLR and court rules, see, e.g., CPLR 2004, CPLR 201 provides that "[n]o court shall extend the time limited by law for the commencement of an action." That prohibition, and two others discussed below, is what makes the above executive orders and the COVID-19 Toll necessary. Without them, the New York state courts are powerless to extend the statute of limitations and a few other important time periods, regardless of how compelling the plaintiff's hardship may be.

Unfortunately, this is the third time in recent memory that New York's governor has needed to issue executive orders addressing the statute of limitations and certain other time periods. In September and October 2001, in the wake of the 9/11 attacks, Gov. George Pataki issued executive orders affecting various time periods and in October and November 2012, Gov. Cuomo issued similar executive orders in the wake of Superstorm Sandy. See Siegel & Connors, New York Practice § 33 (July 2020 Supplement).

The 9/11 and Superstorm Sandy executive orders did not "toll" time periods, such as the statute of limitations. Rather, they extended those time periods to a date certain. Furthermore, the extension in the 9/11 executive orders was only extended to those "directly affected by the disaster emergency" and appeared to contemplate a court application to obtain the extension. *See* 9 N.Y.C.R.R. § 5.113.28; Siegel & Connors, New York Practice § 33 (July 2020 Supplement).

By contrast, the COVID-19 executive orders do not simply extend statutes of limitations periods that expire during the disaster emergency, but rather toll all statutes of limitations on claims that accrued on or before March 20, 2020, and which were not time-barred on that date. The COVID-19 Toll is the equivalent of a pause or a time-out of sorts, stopping the clock on March 20, and then turning it on again on Aug. 6, at least under the most recent executive order. Furthermore, the COVID-19 Toll applies to numerous time periods in addition to the statute of limitations and does not require a party relying on the toll to demonstrate that they were directly affected by the COVID-19 Disaster Emergency. See Siegel & Connors, New York Practice § 33 (July 2020 Supplement).

Hypotheticals Applying the COVID-19 Toll

The COVID-19 Toll, as it currently exists, amounts to a period of 138 days from March 20 "through Aug. 5, 2020." Two hypotheticals help to demonstrate the effect of the COVID-19 Toll:

Hypo #1: The three-year statute of limitations on plaintiff's negligence claim for personal injuries was to expire on April 1, 2020. That means there were 12 days remaining on the statute when Executive Order 202.8 was issued on

March 20, 2020. Therefore, plaintiff has until Aug. 18, 2020, to commence her action, i.e., 12 days from Aug. 6, 2020, the first day the COVID-19 Toll is no longer in effect. Plaintiff will not get the benefit of the full 138-day COVID-19 Toll in this hypothetical because she only had 12 days left on the statute of limitations when the COVID-19 Toll took effect.

Hypo #2: Plaintiff's breach of contract claim accrues on April 1, 2019. The statute of limitations on the plaintiff's breach of contract claim is six years, and would normally expire on April 1, 2025, yet it was tolled for 138 days in 2020 during the COVID-19 Toll. The statute of limitations will expire on Aug. 17, 2025.

There are additional hypotheticals in section 33 of the July 2020 Supplement to the New York Practice treatise, but as we can see from the above examples, the COVID-19 Toll will likely be with us for a long time. Its application will almost certainly be debated in numerous cases.

Time Periods Outside the CPLR

Both actions and special proceedings are now commenced by filing in New York State courts. *See* Siegel & Connors, New York Practice § 45. The language in Executive Order 202.8 tolling "any specific time limit for the commencement [or] filing ... of any legal action" covers statutes of limitations in CPLR Article 2 and elsewhere in the "procedural laws of the state." This would include the 2-year statute of limitations for wrongful death actions in the EPTL, the one-year and 90-day period in the General Municipal Law, and the four-year statute of limitations for breach of contract or warranty with respect to the sale of goods. *See* Siegel & Connors, New York Practice § 35 ("Statutes of Limitations Periods Outside the CPLR"). It should also be read to

cover statutes of limitations in special proceedings, including CPLR Article 78 proceedings, as "[t]he word 'action' includes a special proceeding." CPLR 105(b).

Time to Serve Initiatory Papers

After interposing a claim in an action by filing, the plaintiff must serve the initiatory papers within 120 days of the filing. CPLR 306-b. In a special proceeding, the petitioner must serve the initiatory papers within 15 days after the expiration of the statute of limitations. CPLR 306-b; *see* Siegel & Connors, New York Practice §§ 63, 553. The courts already have the power to extend these service periods for "good cause shown or in the interest of justice." Nonetheless, the language in Executive Order 202.8 tolls "any specific time limit for the ... *service* of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state" (emphasis added). Therefore, if the time periods to make service under CPLR 306-b were still running on the date Executive Order 202.8 was issued (March 20, 2020), or are running at any time during the COVID-19 Toll, they are tolled. The plaintiff or petitioner can also seek an extension of time to serve under CPLR 306-b if the COVID-19 Toll is not sufficient, and will likely be able to establish that "good cause" or "the interest of justice" will be served by granting at least some extension due to the COVID-19 disaster emergency.

Time to Appeal, Contest Arbitration, and Seek Arbitration

In addition to the statute of limitations, two additional time periods are deemed sacred in New York Practice and generally cannot be extended by the courts: the time to take an appeal, *see* Siegel & Connors, New York Practice §§ 533-

34; and the time to commence a special proceeding to stay arbitration after being served with a demand for arbitration. Executive Order 202.8 tolls "any specific time limit for the ... filing, or service of any ... notice [or] motion ... as prescribed by the procedural laws of the state." That language tolls the running of the 30-day period in CPLR 5513(a) to serve and file the notice of appeal. It also tolls the 30-day period to move for permission to appeal contained in CPLR 5513(b), which applies to situations in which the appeal is not as of right. *See* § 533. The language in Executive Order 202.8 noted above tolling "any specific time limit for the commencement [or] filing ... of any legal action" will toll the running of the 20-day period in CPLR 7503(c) to commence a special proceeding to stay arbitration. *See* Siegel & Connors, New York Practice § 33 (July 2020 Supplement).

The proponent of arbitration can also face statute of limitations issues. *See* Siegel & Connors, New York Practice § 590. The claim in an arbitration proceeding is deemed interposed for statute of limitations purposes upon the service of "a demand for arbitration or a notice of intention to arbitrate." CPLR 7503(c). A strong argument can be made that the language in Executive Order 202.8 tolling "any specific time limit for the ... service of any legal ... notice ... or other process ... as prescribed by the procedural laws of the state" tolls the service of a demand for arbitration under CPLR 7503(c), but it is highly recommended that one avoid establishing law on the point by promptly serving the demand.

Time to Serve Notice of Claim

Section 50-e of the General Municipal Law, which applies to tort claims against municipal entities, ordinarily requires service of a notice of claim on

the entity within 90 days after the claim arises. See Siegel & Connors, New York Practice § 32. In that Executive Order 202.8 tolls "any specific time limit for the ... service of any ... notice ... as prescribed by the procedural laws of the state," it tolls the running of the 90-day period to serve a notice of claim. As noted above, the one-year and 90 days statute of limitations in General Municipal Law section 50-i is also the beneficiary of the COVID-19 Toll. The court has the power on an application under General Municipal Law section 50-e(5) to stretch the 90-day notice of claim period up to the one-year and 90 days statute of limitations in section 50-i, plus any applicable tolls. See Siegel & Connors, New York Practice § 32 ("Application for Leave to Serve Late Notice of Claim"). Therefore, the COVID-19 Toll will serve to toll the period within which the court can extend the time to serve a late notice of claim. Nonetheless, any extension of time to serve the notice of claim is always within the discretion of the court and should be promptly sought.

Various Other Time Periods Covered by COVID-19 Toll

The broad language in the COVID-19 executive orders covers a large number of time periods, even those that can be extended by the courts without the benefit of the COVID-19 Toll. These include, among others, certain periods governing a defendant's time to appear in an action and CPLR 3212(a)'s deadline for summary judgment motions. Defendants need to be careful here. While the COVID-19 Toll applies to the service of a notice of appearance under CPLR 320(a), a CPLR 3211(a) pre-answer motion to dismiss, and a CPLR 3024 corrective motion, it does not apply to toll the defendant's time to serve an answer! This is all addressed in further detail in the July 2020 Supplement to Siegel and Connors, New York Practice.

Patrick M. Connors *is the Albert and Angela Farone Distinguished Professor in New York Civil Practice at Albany Law School. He is the author of Siegel & Connors, New York Practice (Thomson, 6th ed. 2018), which is supplemented biannually in January and July.*

Section 29-A

Suspension of other laws

Executive (EXC)

1. Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster or if necessary to assist or aid in coping with such disaster. The governor, by executive order, may issue any directive during a state disaster emergency declared in the following instances: fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, disease outbreak, air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse. Any such directive must be necessary to cope with the disaster and may provide for procedures reasonably necessary to enforce such directive.

2. Suspensions pursuant to subdivision one of this section shall be subject to the following standards and limits, which shall apply to any directive where specifically indicated:

a. no suspension or directive shall be made for a period in excess of thirty days,

provided, however, that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each;

b. no suspension or directive shall be made which is not in the interest of the health or welfare of the public and which is not reasonably necessary to aid the disaster effort;

c. any such suspension order shall specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension;

d. the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such statute, local law, ordinance, order, rule or regulation suspended, and may include other terms and conditions;

e. any such suspension order or directive shall provide for the minimum deviation from the requirements of the statute, local law, ordinance, order, rule or regulation suspended consistent with the goals of the disaster action deemed necessary; and

f. when practicable, specialists shall be assigned to assist with the related emergency actions to avoid needless adverse effects resulting from such suspension.

3. Such suspensions or directives shall be effective from the time and in the manner prescribed in such orders and shall be published as soon as practicable in the state bulletin.

4. The legislature may terminate by concurrent resolution executive orders issued under this section at any time.

* NB Effective until April 30, 2021

* § 29-a. Suspension of other laws. 1. Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.

2. Suspensions pursuant to subdivision one of this section shall be subject to the following standards and limits:

a. no suspension shall be made for a period in excess of thirty days, provided, however, that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each;

b. no suspension shall be made which does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;

c. any such suspension order shall specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension;

d. the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such statute, local law, ordinance, order, rule or regulation suspended, and may include other terms and conditions;

e. any such suspension order shall provide for the minimum deviation from the requirements of the statute, local law, ordinance, order, rule or regulation suspended consistent with the disaster action deemed necessary; and

f. when practicable, specialists shall be assigned to assist with the related emergency actions to avoid needless adverse effects resulting from such suspension.

3. Such suspensions shall be effective from the time and in the manner prescribed in such orders and shall be published as soon as practicable in the state bulletin.

4. The legislature may terminate by concurrent resolution executive orders issued under this section at any time.

* NB Effective April 30, 2021

PREV
SECTION 29
Direction Of State Agency Assistance In A Disaster Emergency (/Legislation/Laws/EXC/29/)

NEXT
SECTION 29-B
Use Of Disaster Emergency Response Personnel In Disasters (/Legislation/Laws/EXC/29-B/)

No. 202

EXECUTIVE ORDER

Declaring a Disaster Emergency in the State of New York

WHEREAS, on January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern;

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and more are expected to continue; and

WHEREAS, New York State is addressing the threat that COVID-19 poses to the health and welfare of its residents and visitors.

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster is impending in New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York. This Executive Order shall be in effect until September 7, 2020; and

IN ADDITION, this declaration satisfies the requirements of 49 C.F.R. 390.23(a)(l)(A), which provides relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR). Such relief from the FMCSR is necessary to ensure that crews are available as needed.

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize all necessary State agencies to take appropriate action to assist local governments and individuals in containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 6, 2020 the following:

Section 112 of the State Finance Law, to the extent consistent with Article V, Section 1 of the State Constitution, and to the extent necessary to add additional work, sites, and time to State contracts or to award emergency contracts, including but not limited to emergency contracts or leases for relocation and support of State operations under Section 3 of the Public Buildings Law; or emergency contracts under Section 9 of the Public Buildings Law; or emergency contracts for professional services under Section 136-a of the State Finance Law; or emergency contracts for commodities, services, and technology under Section 163 of the State Finance Law; or design-build or best value contracts under and Part F of Chapter 60 of the Laws of 2015 and Part RRR of Chapter 59 of the Laws of 2017; or emergency contracts for purchases of commodities, services, and technology through any federal GSA schedules, federal 1122 programs, or other state, regional, local, multi-jurisdictional, or cooperative contract vehicles;

Section 163 of the State Finance Law and Article 4-C of the Economic Development Law, to the extent necessary to allow the purchase of necessary commodities, services, technology, and materials without following the standard notice and procurement processes;

Section 97-G of the State Finance Law, to the extent necessary to purchase food, supplies, services, and equipment or furnish or provide various centralized services, including but not limited to, building design and construction services to assist affected local governments, individuals, and other non-State entities in responding to and recovering from the disaster emergency;

Section 359-a, Section 2879, and 2879-a of the Public Authorities Law to the extent necessary to purchase necessary goods and services without following the standard procurement processes;

Sections 375, 385 and 401 of the Vehicle and Traffic Law to the extent that exemption for vehicles validly registered in other jurisdictions from vehicle registration, equipment and dimension requirements is necessary to assist in preparedness and response to the COVID-19 outbreak;

Sections 6521 and 6902 of the Education Law, to the extent necessary to permit unlicensed individuals, upon completion of training deemed adequate by the Commissioner of Health, to collect throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse;

Subdivision 6 of section 2510 and section 2511 of the Public Health Law, to the extent necessary to waive or revise eligibility criteria, documentation requirements, or premium contributions; modify covered health care services or the scope and level of such services set forth in contracts; increase subsidy payments to approved organizations, including the maximum dollar amount set forth in contracts; or provide extensions for required reports due by approved organizations in accordance with contracts;

Section 224-b and subdivision 4 of section 225 of the Public Health Law, to the extent necessary to permit the Commissioner of Health to promulgate emergency regulations and to amend the State Sanitary Code;

Subdivision 2 of section 2803 of the Public Health Law, to the extent necessary to permit the Commissioner to promulgate emergency regulations concerning the facilities licensed pursuant to Article 28 of the Public Health Law, including but not limited to the operation of general hospitals;

Subdivision 3 of section 273 of the Public Health Law and subdivisions 25 and 25-a of section 364-j of the Social Services Law, to the extent necessary to allow patients to receive prescribed drugs without delay;

Section 400.9 and paragraph 7 of subdivision f of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law ("Article 28 facilities") that are treating patients during the disaster emergency to rapidly discharge, transfer, or receive such patients, as authorized by the Commissioner of Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd) and any associated regulations;

Section 400.11 of Title 10 of the NYCRR, to the extent necessary to permit Article 28 facilities receiving patients as a result of the disaster emergency to complete patient review instruments as soon as practicable;

Section 405 of Title 10 of the NYCRR, to the extent necessary to maintain the public health with respect to treatment or containment of individuals with or suspected to have COVID-19;

Subdivision d and u of section 800.3 of Title 10 of the NYCRR, to the extent necessary to permit emergency medical service personnel to provide community paramedicine, transportation to destinations other than hospitals or health care facilities, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Commissioner of Health;

Paragraph 3 of subdivision f of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit nursing supervision visits for personal care services provided to individuals affected by the disaster emergency be made as soon as practicable;

Sections 8602 and 8603 of the Education Law, and section 58-1.5 of Title 10 of the NYCRR, to the extent necessary to permit individuals who meet the federal requirements for high complexity testing to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection;

Subdivision 4 of section 6909 of the Public Health Law, subdivision 6 of section 6527 of the Education Law, and section 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by this executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection;

Section 596 of Title 14 of the NYCRR to the extent necessary to allow for rapid approval of the use of the telemental health services, including the requirements for in-person initial assessment prior to the delivery of telemental health services, limitations on who can deliver telemental health services, requirements for who must be present while telemental health services are delivered, and a recipient's right to refuse telemental health services;

Section 409-i of the Education Law, section 163-b of the State Finance Law with associated OGS guidance, and Executive Order No. 2 are suspended to the extent necessary to allow elementary and secondary schools to procure and use cleaning and maintenance products in schools; and sections 103 and 104-b of the General Municipal Law are suspended to the extent necessary to allow schools to do so without the usual advertising for bids and offers and compliance with existing procurement policies and procedures;

Article 7 of the Public Officers Law, section 41 of the General Construction Law, and section 3002 of the Public Health Law, to the extent necessary to permit the Public Health and Health Planning Council and the State Emergency Medical Services Council to meet and take such actions as authorized by law, as may be necessary to respond to the COVID-19 outbreak, without meeting quorum requirements or permitting the public in-person access to meetings, provided that any such meetings must be webcast and means for effective public comment must be made available; and

FURTHER, I hereby temporarily modify, for the period from the date of this Executive Order through April 6, 2020, the following laws:

Section 24 of the Executive Law; Sections 104 and 346 of the Highway Law; Sections 1602, 1630, 1640, 1650, and 1660 of the Vehicle and Traffic Law; Section 14(16) of the Transportation Law; Sections 6-602 and 17-1706 of the Village Law; Section 20(32) of the General City Law; Section 91 of Second Class Cities Law; Section 19-107(ii) of the New York City Administrative Code; and Section 107.1 of Title 21 of the New York Codes, Rules and Regulations, to the extent necessary to provide the Governor with the authority to regulate traffic and the movement of vehicles on roads, highways, and streets.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this seventh day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.29

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202.15, 202.16, 202.17, 202.18, 202.19, 202.20, and 202.21, for thirty days until June 7, 2020; and

IN ADDITION, I hereby temporarily modify, beginning on the date of this Executive Order, the following:

- Section 214-g of the Civil Practice Law and Rules, to the extent it allows an action to be commenced not later than one year and six months after the effective date of such section, is hereby modified to allow an action commenced pursuant to such section to be commenced not later than one year and eleven months after the effective date of such section.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this eighth day of May in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

Section 214-G

Certain child sexual abuse cases

Civil Practice Law & Rules (CVP)

Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age, which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than one year and six months after the effective date of this section. In any such claim or action: (a) in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law,

to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such sections of the penal law shall apply; and (b) dismissal of a previous action, ordered before the effective date of this section, on grounds that such previous action was time barred, and/or for failure of a party to file a notice of claim or a notice of intention to file a claim, shall not be grounds for dismissal of a revival action pursuant to this section.

PREV
SECTION 214-F
Action To Recover Damages For Personal Injury Caused By Contact With Or Exposure To Any Substance Or Combination Of Substances Found With... (/Legislation/Laws/CVP/214-F/)

NEXT
SECTION 214-H
Certain Actions By Public Water Suppliers To Recover Damages For Injury To Property (/Legislation/Laws/CVP/214-H/)

CHAPTER 130

AN ACT to amend the civil practice law and rules, in relation to extending the statute of limitations for certain child sexual abuse cases

Became a law August 3, 2020, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. Section 214-g of the civil practice law and rules, as added by chapter 11 of the laws of 2019, is amended to read as follows:

§ 214-g. Certain child sexual abuse cases. Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age, which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than [~~one year~~] two years and six months after the effective date of this section. In any such claim or action: (a) in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such sections of the penal law shall apply; and (b) dismissal of a previous action, ordered before the effective date of this section, on grounds that such previous action was time barred, and/or for failure of a party to file a notice of claim or a notice of intention to file a claim, shall not be grounds for dismissal of a revival action pursuant to this section.

§ 2. This act shall take effect immediately.

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

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS
Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly

Appellate Division of the Supreme Court
First Judicial Department

AD1 2.0 – First Department Operations During the November and December Terms

Updated November 16, 2020

Appeals – Oral Arguments

In light of the continuing public health emergency in New York State, recent adverse trends in coronavirus transmission rates, and the Governor's most recent directive limiting congregation of groups in public and private locations, **commencing on November 25, 2020**, the Appellate Division, First Department will hold **all oral arguments remotely via Microsoft Teams. There will be no in-person oral arguments until further notice**. The Court will be holding oral argument three days per week, on Tuesdays, Wednesdays, and Thursdays at 2:00 p.m. If necessary, arguments will also be held at 10:00 a.m. on Friday mornings.

The online oral argument survey is suspended until further notice.

Please note that once a matter has been calendared, there will be no adjournments. If a party cannot appear for oral argument as scheduled on the calendar, the matter will be taken on submission as far as that party is concerned.

Requests for Oral Argument. Once a matter is calendared, the parties are required to make requests for oral argument by email. (This directive is in addition to the rule requirement that argument requests be stated on the briefs). The requests for oral argument shall be made in advance, no later than one week prior to the calendar date, by emailing the Court at AD1OralArgument@nycourts.gov, with an e-mailed copy to opposing counsel or self-represented litigant. A completed notice of appearance with the contact information, including e-mail address, of the attorney who will appear remotely, shall be attached to the request.

If an out-of-state attorney has been granted leave to appear pro hac vice, a notice of appearance is required for both the New York attorney of record and the out-of-state attorney, together with a copy of the letter from the Court granting the pro hac vice application.

When a request for oral argument is made in a non-enumerated matter, the request should be accompanied by a letter specifying the reasons why oral argument should be granted.

When making an oral argument request, please indicate the name of the matter, the argument date, the appellate case number and the **time needed** for oral argument, **not the time desired**. Parties will be advised as to whether the Court has granted oral argument. The request should not be made until a matter has been calendared for a particular term and date. Failure to timely and properly request oral argument will result in the matter being heard on submission.

As customary, oral arguments will be livestreamed on the Court's website. Only counsel and self-represented litigants who are arguing will be permitted attend the remote oral arguments.

Screening Before Entering Courthouse

Prior to entering the courthouse, all persons will be subject to COVID-19 screening and temperature checks. Persons (a) subject to the quarantine restrictions on travelers contained in Governor Cuomo's Executive Order No. 205; or (b) experiencing symptoms associated with COVID-19, including fever, a new cough, difficulty breathing, sore throat, muscle or body aches, vomiting and diarrhea, or a new loss of taste or smell; or (c) who have tested positive or had close contact with anyone who has tested positive for COVID-19 in the last 14 days will not be permitted to enter the courthouse.

Facial Covering: All persons who enter the courthouse are required to (a) wear a mask or facial covering at all times and (b) comply with social distancing guidelines and directives of the court officers. Please note that vented masks (masks with exhalation valves or vents) may not be worn in the courthouse.

Filing Deadlines Reinstated

By order entered May 8, 2020, the Court rescinded its prior order which suspended filing deadlines and reinstated the filing deadlines for the remaining 2020 terms.

Hard Copy Filing

The requirement that hard copy records, appendices, briefs and motions be filed continues to be suspended until further notice.

Electronic Filing

Matters Subject to Mandatory E-filing

Effective July 27, 2020, all matters before the First Department, except original proceedings and attorney matters, are subject to mandatory e-filing via NYSCEF in accordance with the procedural and electronic filing rules of the Court. For additional information on the e-filing requirements, please click here.

Original Proceedings and Attorney Matters

All filings, including petitions, motions and applications, made in connection with original proceedings and attorney matters shall be submitted electronically via the Digital Submission portal in NYSCEF. For additional information on the Digital Submission portal, please click here.

Admission of Attorneys to the Bar

The Court's Committee on Character and Fitness is processing admission applications. Applications and other documents shall be transmitted electronically until further notice. Candidates for admission will be interviewed and the admission ceremonies will be held remotely via Microsoft Teams until further notice.

The Court has resumed the issuance of certificates of good standing. Instructions for obtaining a certificate of good standing are posted on the webpage of the Committee on Character and Fitness.

Effective July 22, 2020, the Court of Appeals established the Temporary Authorization Program which allows eligible graduates of ABA-approved law schools to apply for the temporary authorization to practice law. Additional information is posted on the website of the Committee on Character and Fitness.

Attorney Grievance Matters

The Attorney Grievance Committee is fully operational. Complaints, pleadings and all other submissions shall be transmitted electronically to the Committee until further notice. Additional information is posted on the Attorney Grievance Committee webpage.

Pre-argument Conference Program

The pre-argument conference program has resumed operations and remote conferences are being held via Microsoft Teams and other virtual platforms.

Notice to Counsel

Appellate Division, Second Judicial Department Sittings

In response to the recent increase in the number of persons experiencing COVID-19 in the New York Metropolitan Area, beginning November 23, 2020, and until further notice, counsel and self-represented litigants who have submitted briefs on matters in which argument is permitted under the Second Department Rules of Practice (*see*, 22 NYCRR 670.15[b]), and who have properly requested argument time on their briefs, will be presumed to be either presenting oral argument via Microsoft Teams or submitting. If such counsel or self-represented litigants wish to pursue their request to orally argue, **they must notify the Court as to the name and e-mail address of the individual who will be presenting remote argument by e-mail to AD2-Calendars@nycourts.gov , on which all counsel and self-represented litigants are copied, no later than five business days prior to the date on which the matter is calendared. Failure to timely and properly notify the Court will result in the matter being marked submitted on behalf of that counsel or self-represented litigant.**

While remote argument is preferred and strongly encouraged, counsel or self-represented litigants may ask the Court for permission to argue in person. Such a request must be made by an e-mail to AD2-Calendars@nycourts.gov , on which all counsel and self-represented litigants are copied, at least five business days prior to the date of argument, and must be supported by the reasons why, in the applicant's view, oral argument via Microsoft Teams cannot be accomplished. Such requests will be decided in the discretion of the panel hearing the appeal.

Please be advised that **no one who (a) is subject to the Quarantine Restrictions on Travelers arriving in New York contained in Governor Cuomo's most recent order https://coronavirus.health.ny.gov/covid-19-travel-advisory , (b) is experiencing symptoms associated with COVID, including fever or feeling feverish, a new cough, difficulty breathing, a sore throat, muscle aches or body aches, vomiting or diarrhea, and new loss of taste or smell, or (c) has tested positive, or had close contact (being within 6 feet of an infected person for at least 15 minutes starting from two days before that person exhibited COVID symptoms or two days prior to being tested for asymptomatic patients) with anyone who has tested positive, for COVID in the last 14 days, will be permitted to enter any New York State courthouse.** All persons entering any New York State courthouse will be subject to temperature checks and COVID screening by court personnel and are required to wear a mask or facial covering at all times, except when they are actually presenting argument to the Court, and must comply with social distancing guidelines and the directions of members of the Court's Department of Public Safety.

The Court thanks you for your cooperation during these difficult times. With the cooperation of counsel, self-represent litigants and Court staff, we can appropriately address the challenges that lie ahead.

The Impact of COVID-19 on the Courts:

a Judicial Perspective –

The Statute of Limitations

December 17, 2020

Hon. Helen Voutsinas
Supreme Court Justice

State of New York

Executive Chamber

No. 202.8

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

WHEREAS, in order to facilitate the most timely and effective response to the COVID-19 emergency disaster, it is critical for New York State to be able to act quickly to gather, coordinate, and deploy goods, services, professionals, and volunteers of all kinds; and

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 19, 2020 the following:

- In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020;
- Subdivision 1 of Section 503 of the Vehicle and Traffic Law, to the extent that it provides for a period of validity and expiration of a driver's license, in order to extend for the duration of this executive order the validity of driver's licenses that expire on or after March 1, 2020;
- Subdivision 1 of Section 491 of the Vehicle and Traffic Law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, in order to extend for the duration of this executive order the validity of non-driver identification cards that expire on or after March 1, 2020;
- Sections 401, 410, 2222, 2251, 2261, and 2282(4) of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a registration certificate or number plate for a motor vehicle or trailer, a motorcycle, a snowmobile, a vessel, a limited use vehicle, and an all-terrain vehicle, respectively, in order to extend for the duration of this executive order the validity of such registration certificate or number plate that expires on or after March 1, 2020;
- Section 420-a of the vehicle and traffic law to the extent that it provides an expiration for temporary registration documents issued by auto dealers to extend the validity of such during the duration of this executive order.
- Subsection (a) of Section 602 and subsections (a) and (b) of Section 605 of the Business Corporation Law, to the extent they require meetings of shareholders to be noticed and held at a physical location.

NOW, THEREFORE, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through April 19, 2020:

- The provisions of Executive Order 202.6 are hereby modified to read as follows: Effective on March 22 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions. An entity providing essential services or functions whether to an essential business or a non-essential business shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function. Any business violating the above order shall be subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law.
- There shall be no enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days.
- Effective at 8 p.m. March 20, any appointment that is in-person at any state or county department of motor vehicles is cancelled, and until further notice, only on-line transactions will be permitted.
- The authority of the Commissioner of Taxation and Finance to abate late filing and payment penalties pursuant to section 1145 of the Tax Law is hereby expanded to also authorize abatement of interest, for a period of 60 days for a taxpayers who are required to file returns and remit sales and use taxes by March 20, 2020, for the sales tax quarterly period that ended February 29, 2020.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twentieth day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.14

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order to 202, for thirty days until May 7, 2020, except as limited below.

IN ADDITION, I hereby temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, for the period from the date of this Executive Order through May 7, 2020, the following:

- Section 6524 of the Education Law, section 60.7 of title 8 of NYRR and section paragraph (1) of subdivision (g) 405.4 of title 10 of the NYCRR to the extent necessary to allow any physician who will graduate in 2020 from an academic medical program accredited by a medical education accrediting agency for medical education by the Liaison Committee on Medical Education or the American Osteopathic Association, and has been accepted by an Accreditation Council for Graduate Medical Education accredited residency program within or outside of New York State to practice at any institution under the supervision of a licensed physician;

- Subdivisions one, two, four, five, eight and nine of Section 1726 of the Surrogate's Court Procedure Act are hereby modified to provide that any parent, a legal guardian, a legal custodian, or primary caretaker who works or volunteers in a health care facility or who reasonably believes that they may otherwise be exposed to COVID-19, may designate a standby guardian by means of a written designation, in accordance with the process set forth in such subdivisions; and such designation shall become effective also in accordance with the process set forth in such subdivisions; and

- Sections 3216(d)(1)(C) and 4306(g) of the Insurance Law, subject to consideration by the Superintendent of Financial Services of the liquidity and solvency of the applicable insurer, corporation subject to Article 43 of the Insurance Law, or health maintenance organization certified pursuant to Article 44 of the Public Health Law, to:

- Extend the period for the payment of premiums to the later of the expiration of the applicable contractual grace period and 11:59 p.m. on June 1, 2020, for any comprehensive health insurance policyholder or contract holder under an individual policy or contract, as those terms are used in such sections, who is facing a financial hardship as a result of the COVID-19 pandemic; and

- Require that the applicable insurer, corporation subject to Article 43 of the Insurance Law, or health maintenance organization certified pursuant to Article 44 of the Public Health Law shall be responsible for the payment of claims during such period and shall not retroactively terminate the insurance policy or contract for non-payment of premium during such period.

FURTHER, I hereby issue the following directives for the period from the date of this Executive Order through May 7, 2020:

- Any medical equipment (personal protective equipment (PPE), ventilators, respirators, bi-pap, anesthesia, or other necessary equipment or supplies as determined by the Commissioner of Health) that is held in inventory by any entity in the state, or otherwise located in the state shall be reported to DOH. DOH may shift any such items not currently needed, or needed in the short term future by a health care facility, to be transferred to a facility in urgent need of such inventory, for purposes of ensuring New York hospitals, facilities and health care workers have the resources necessary to respond to the COVID-19 pandemic, and distribute them where there is an immediate need. The DOH shall either return the inventory as soon as no longer urgently needed and/or, in consultation with the Division of the Budget, ensure compensation is paid for any goods or materials acquired at the rates prevailing in the market at the time of acquisition, and shall promulgate guidance for businesses and individuals seeking payment.

- By virtue of Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, and 202.13 which closed or otherwise restricted public or private businesses or places of public accommodation, and which required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason (e.g. parties, celebrations, games, meetings or other social events), all such Executive Orders shall be continued, provided that the expiration dates of such Executive Orders shall be aligned, such that all in-person business restrictions and workplace restrictions will be effective until 11:59 p.m. on April 29, 2020, unless later extended by a future Executive Order.

- The enforcement of any violation of the foregoing directives on and after April 7, 2020, in addition to any other enforcement mechanism stated in any prior executive orders, shall be a violation punishable as a violation of public health law section 12-b(2) and the Commissioner of Health is directed and authorized to issue emergency regulations. The fine for such violation by an individual who is participating in any gathering which violates the terms of the orders or is failing to abide by social distancing restrictions in effect in any place which is not their home shall not exceed $1,000.

- The directive contained in Executive Order 202.4 as amended by Executive Order 202.11 related to the closure of schools statewide shall hereafter be modified to provide that all schools shall remain closed through April 29, 2020, at which time the continued closure shall be re-evaluated. No school shall be subject to a diminution in school aid due to failure to meet the 180 day in session requirement as a result of the COVID-19 outbreak, provided their closure does not extend beyond the term set forth herein. School districts must continue plans for alternative instructional options, distribution and availability of meals, and child care, with an emphasis on serving children of essential workers, and continue to first use any vacation or snow days remaining.

- Superintendent of Financial Services shall have the authority to promulgate an emergency regulation, subject to consideration by the Superintendent of Financial Services of the liquidity and solvency of the applicable insurer, corporation subject to Article 43 of the Insurance Law, health maintenance organization certified pursuant to Article 44 of the Public Health Law, or student health plan certified pursuant to Insurance Law § 1124, to:

  - extend the period for the payment of premiums to the later of the expiration of the applicable contractual grace period and 11:59 p.m. on June 1, 2020 for any small group or student blanket comprehensive health insurance policy or contract, or any child health insurance plan policy or contract where the policyholder or contract holder pays the entire premium, as those terms are used in the Insurance Law, for any policyholder or contract holder who is facing financial hardship as a result of the COVID-19 pandemic; and

- require that the applicable insurer, corporation subject to Article 43 of the Insurance Law, health maintenance organization certified pursuant to Article 44 of the Public Health Law, or student health plan certified pursuant to Insurance Law § 1124, shall be responsible for the payment of claims during such period and shall not retroactively terminate the insurance policy or contract for non-payment of premium during such period.

- Superintendent of Financial Services shall have the authority to promulgate emergency regulations necessary to implement this Executive Order, including regulations regarding: (1) the waiver of late fees; and (2) the prohibition on reporting negative data to credit bureaus.

- For the purposes of Estates Powers and Trusts Law (EPTL) 3-2.1(a)(2), EPTL 3-2.1(a)(4), Public Health Law 2981(2)(a), Public Health Law 4201(3), Article 9 of the Real Property Law, General Obligations Law 5-1514(9)(b), and EPTL 7-1.17, the act of witnessing that is required under the aforementioned New York State laws is authorized to be performed utilizing audio-video technology provided that the following conditions are met:
  - The person requesting that their signature be witnessed, if not personally known to the witness(es), must present valid photo ID to the witness(es) during the video conference, not merely transmit it prior to or after;
  - The video conference must allow for direct interaction between the person and the witness(es), and the supervising attorney, if applicable (e.g. no pre-recorded videos of the person signing);
  - The witnesses must receive a legible copy of the signature page(s), which may be transmitted via fax or electronic means, on the same date that the pages are signed by the person;
  - The witness(es) may sign the transmitted copy of the signature page(s) and transmit the same back to the person; and
  - The witness(es) may repeat the witnessing of the original signature page(s) as of the date of execution provided the witness(es) receive such original signature pages together with the electronically witnessed copies within thirty days after the date of execution.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this seventh day of April in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.28

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14, for thirty days until June 6, 2020, except as modified below:

- The suspension or modification of the following statutes and regulations are not continued, and such statutes, codes and regulations are in full force and effect as of May 8, 2020:
    - 10 NYCRR 405.9, except to the limited extent that it would allow a practitioner to practice in a facility where they are not credentialed or have privileges, which shall continue to be suspended; 10 NYCRR 400.9; 10 NYCRR 400.11, 10 NYCRR 405; 10 NYCRR 403.3; 10 NYCRR 403.5; 10 NYCRR 800.3, except to the extent that subparagraphs (d) and (u) could otherwise limit the scope of care by paramedics to prohibit the provision of medical service or extended service to COVID-19 or suspected COVID-19 patients; 10 NYCRR 400.12; 10 NYCRR 415.11; 10 NYCRR 415.15; 10 NYCRR 415.26; 14 NYCRR 620; 14 NYCRR 633.12; 14 NYCRR 636-1; 14 NYCRR 686.3; and 14 NYCRR 517;
    - Mental Hygiene Law Sections 41.34; 29.11; and 29.15;
    - Public Health Law Sections 3002, 3002-a, 3003, and 3004-a to the extent it would have allowed the Commissioner to make determination without approval by a regional or state EMS board;
    - Subdivision (2) of section 6527, Section 6545, and Subdivision (1) of Section 6909 of the Education Law; as well as subdivision 32 of Section 6530 of the Education Law, paragraph (3) of Subdivision (a) of Section 29.2 of Title 8 of the NYCRR, and sections 58-1.11, 405.10, and 415.22 of Title 10 of the NYCRR;
    - All codes related to construction, energy conservation, or other building code, and all state and local laws, ordinances, and regulations which would have otherwise been superseded, upon approval by the Commissioner of OPWDD, as applicable only for temporary changes to physical plant, bed capacities, and services provided; for facilities under the Commissioners jurisdiction.

IN ADDITION, I hereby temporarily suspend or modify the following if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, for the period from the date of this Executive Order through June 6, 2020:

- Sections 7-103, 7-107 and 7-108 of the General Obligations Law to the extent necessary to provide that:

    - Landlords and tenants or licensees of residential properties may, upon the consent of the tenant or licensee, enter into a written agreement by which the security deposit and any interest accrued thereof, shall be used to pay rent that is in arrears or will become due. If the amount of the deposit represents less than a full month rent payment, this consent does not constitute a waiver of the remaining rent due and owing for that month. Execution in counterpart by email will constitute sufficient execution for consent;
    - Landlords shall provide such relief to tenants or licensees who so request it that are eligible for unemployment insurance or benefits under state or federal law or are otherwise facing financial hardship due to the COVID-19 pandemic;
    - It shall be at the tenant or licensee's option to enter into such an agreement and landlords shall not harass, threaten or engage in any harmful act to compel such agreement;
    - Any security deposit used as a payment of rent shall be replenished by the tenant or licensee, to be paid at the rate of 1/12 the amount used as rent per month. The payments to replenish the security deposit shall become due and owing no less than 90 days from the date of the usage of the security deposit as rent. The tenant or licensee may, at their sole option, retain insurance that provides relief for the landlord in lieu of the monthly security deposit replenishment, which the landlord, must accept such insurance as replenishment.

- Subdivision 2 of section 238-a of the Real Property Law to provide that no landlord, lessor, sub-lessor or grantor shall demand or be entitled to any payment, fee or charge for late payment of rent occurring during the time period from March 20, 2020, through August 20, 2020; and

- Section 8-400 of the Election Law is modified to the extent necessary to require that to the any absentee application mailed by a board of elections due to a temporary illness based on the COVID-19 public health emergency may be drafted and printed in such a way to limit the selection of elections to which the absentee ballot application is only applicable to any primary or special election occurring on June 23, 2020, provided further that for all absentee ballot applications already mailed or completed that purported to select a ballot for the general election or to request a permanent absentee ballot shall in all cases only be valid to provide an absentee ballot for any primary or special election occurring on June 23, 2020. All Boards of Elections must provide instructions to voters and post prominently on the website, instructions for completing the application in conformity with this directive.

- The suspension of the provisions of any time limitations contained in the Criminal Procedure Law contained in Executive Order 202.8 is modified as follows:

    - Section 182.30 of the Criminal Procedure Law, to the extent that it would prohibit the use of electronic appearances for certain pleas;
    - Section 180.60 of the Criminal Procedure Law to provide that (i) all parties' appearances at the hearing, including that of the defendant, may be by means of an electronic appearance; (ii) the Court may, for good cause shown, withhold the identity, obscure or withhold the image of, and/or disguise the voice of any witness testifying at the hearing pursuant to a motion under Section 245.70 of the Criminal Procedure law—provided that the Court is afforded a means to judge the demeanor of a witness;
    - Section 180.80 of the Criminal Procedure Law, to the extent that a court must satisfy itself that good cause has been shown within one hundred and forty-four hours from May 8, 2020 that a defendant should continue to be held on a felony complaint due to the inability to empanel a grand jury due to COVID-19, which may constitute such good cause pursuant to subdivision three of such section; and
    - Section 190.80 of the Criminal Procedure Law, to the extent that to the extent that a court must satisfy itself that good cause has been shown that a defendant should continue to be held on a felony complaint beyond forty-five days due to the inability to empanel a grand jury due to COVID-19, which may constitute such good cause pursuant to subdivision b of such section provided that such defendant has been provided a preliminary hearing as provided in section 180.80.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through June 6, 2020:

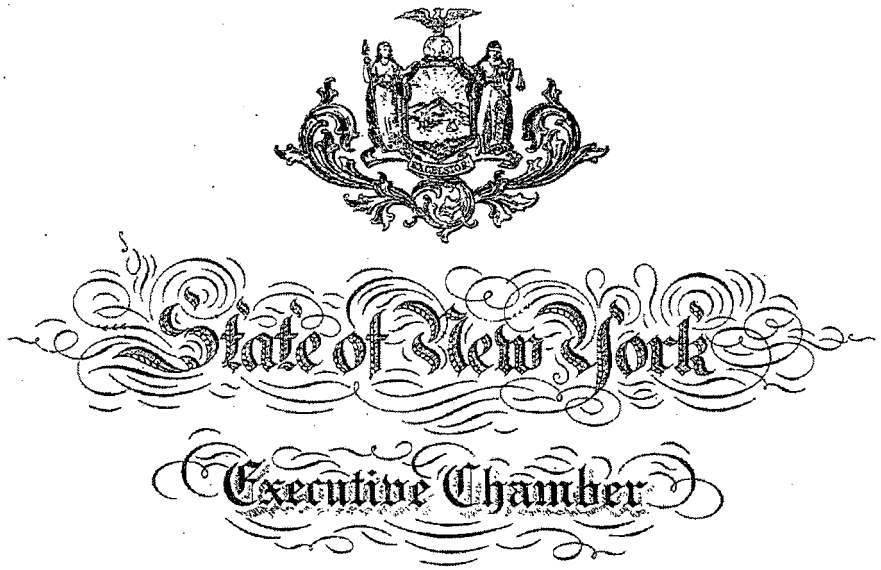
- There shall be no initiation of a proceeding or enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, owned or rented by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020.

- Executive Order 202.18, which extended the directive contained in Executive Orders 202.14 and 202.4 as amended by Executive Order 202.11 related to the closure of schools statewide, is hereby continued to provide that all schools shall remain closed through the remainder of the school year. School districts must continue plans for alternative instructional options, distribution and availability of meals, and child care, with an emphasis on serving children of essential workers.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this seventh of May in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor



No. 202.38

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14, as continued as contained in Executive Order 202.27 and 202.28 until July 6, 2020; and

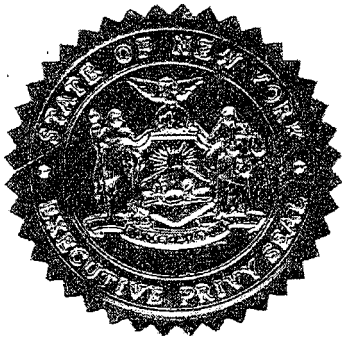
IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives for the period from the date of this Executive Order through July 6, 2020:

- Consistent with Center for Disease Controls and Prevention and New York State Department of Health Guidance, commercial building owners, retail store owners and those authorized on their behalf to manage public places within their buildings and businesses (collectively "Operators") shall have the discretion to require individuals to undergo temperature checks prior to being allowed admittance. Further, Operators shall have the discretion to deny admittance to (i) any individual who refuses to undergo such a temperature check and (ii) any individual whose temperature is above that proscribed by New York State Department of Health Guidelines. No Operator shall be subject to a claim of violation of the covenant of quiet enjoyment, or frustration of purpose, solely due to their enforcement of this directive. This directive shall be applied in a manner consistent with the American with Disabilities Act and any provision of either New York State or New York City Human Rights Law.

- The directive contained in Executive Order 202.3, as extended, that required any restaurant or bar to cease serving patrons food or beverage on-premises, is hereby modified to the extent necessary to allow a restaurant or bar to serve patrons food or beverage on-premises only in outdoor space, provided such restaurant or bar is in compliance with Department of Health guidance promulgated for such activity.

- Executive Order 202.35 which continued the directive of Executive Order 202.33 is hereby modified to permit any non-essential gatherings for houses of worship at no greater than 25% of the indoor capacity of such location, provided it is in a geographic area in Phase 2 of re-opening, and further provided that social distancing protocols and cleaning and disinfection protocols required by the Department of Health are adhered to.

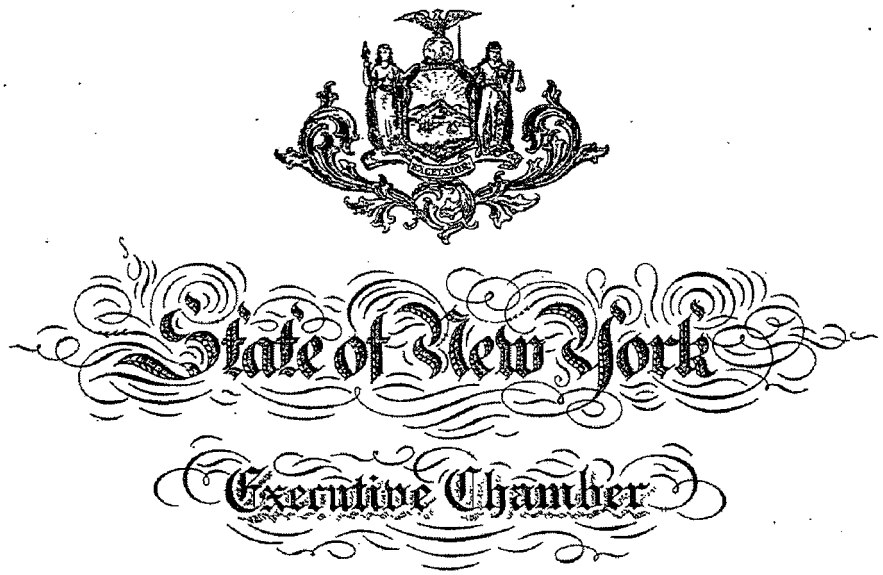
- Upon the resumption of on-premises outdoor service of food and beverages at the licensed premises of restaurants and bars, to facilitate compliance with social distancing requirements in connection with such service, notwithstanding any provision of the Alcoholic Beverage Control law, restaurants or bars in the state of New York shall be permitted to expand the premises licensed by the State Liquor Authority to use (a) contiguous public space (for example, sidewalks or closed streets) and/or (b) otherwise unlicensed contiguous private space under the control of such restaurant or bar, subject to reasonable limitations and procedures set by the Chairman of the State Liquor Authority and, with respect to (a) the use of public space, subject to the reasonable approval of the local municipality, and all subject to the guidance promulgated by the Department of Health.



GIVEN under my hand and the Privy Seal of the State in the City of Albany this sixth day of June in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor



No. 202.48

EXECUTIVE ORDER

CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.14, as continued and contained in Executive Order 202.27, 202.28, , and 202.38, for another thirty days through August 5, 2020, except the following:

- The suspension or modification of the following statutes and regulations, and the following directives, are not continued, and such statutes, codes, and regulations are in full force and effect as of July 7, 2020:
    - The suspension of Education law section 3604(7), and any associated directives, which allowed for the Commissioner of Education to reduce instructional days, as such suspensions and directives have been superseded by statute, contained in Chapter 107 of the Laws of 2020;
    - The suspension of Section 33.17 of the Mental Hygiene Law and associated regulations to the extent necessary to permit providers to utilize staff members transport individuals receiving services from the Office of Mental Health or a program or provider under the jurisdiction of the Office of Mental Health during the emergency;
    - The suspensions of sections 2800(1)(a) and (2)(a); 2801(1) and (2); 2802(1) and (2); and 2824(2) of the Public Authorities Law, to the extent consistent and necessary to allow the director of the Authorities Budget Office to disregard such deadlines due to a failure by a state or local authority to meet the requirements proscribed within these sections during the period when a properly executed declaration of a state of emergency has been issued, are continued only insofar as they allow a state or local authority a sixty day extension from the original statutory due date for such reports;
    - Section 390-b of the Social Services Law and regulations at sections 413.4 and 415.15 of Title 18 of the NYCRR;
    - Subdivision 8 of section 8-407 of the Election Law;

- The suspension of Criminal Procedure Law to the extent it requires a personal appearance of the defendant, and there is consent, in any jurisdiction where the Court has been authorized to commence in-person appearances by the Chief Administrative Judge; provided further that the suspension or modification of the following provisions of law are continued:
  - Section 150.40 of the Criminal Procedure Law, is hereby modified to provide that the 20-day timeframe for the return date for a desk appearance ticket is extended to 90 days from receiving the appearance ticket;
  - Section 190.80 of the Criminal Procedure Law, is hereby modified to provide that the 45-day time limit to present a matter to the grand jury following a preliminary hearing or waiver continues to be suspended and is tolled for an additional 30 days;
  - Section 30.30 of the Criminal Procedure Law, is hereby modified to require that speedy trial time limitations remain suspended until such time as petit criminal juries are reconvened or thirty days, whichever is later;
  - Article 195 of the Criminal Procedure Law, is hereby suspended to the extent that it would prohibit the use of electronic appearances for certain pleas, provided that the court make a full and explicit inquiry into the waiver and voluntariness thereof;
  - Sections 190.45 and 190.50 of the Criminal Procedure Law, are hereby modified to the extent necessary to allow an incarcerated defendant to appear virtually with his or her counsel before the grand jury to waive immunity and testify in his or her own defense, provided the defendant elects to do so;
  - The suspension of Section 180.80 and 190.80 of the Criminal Procedure Law, as modified by Executive Order 202.28, is hereby continued for a period not to exceed thirty days in any jurisdiction where there is not a grand jury empaneled; and when a new grand jury is empaneled to hear criminal cases, then 180.80 and 190.80 of the criminal procedure law shall no longer be suspended beginning one week after such grand jury is empaneled;
  - The suspension of Sections 180.60 and 245.70 of the Criminal Procedure Law, as modified by Executive Order 202.28, which allowed protective orders to be utilized at preliminary hearings, is hereby continued for a period of thirty days; and
  - The suspension of Sections 182.20, in addition to the modification contained in Executive Order 202.28 of section 182.30 of the Criminal Procedure Law is hereby extended for a period of thirty days, to the extent that it would prohibit the use of electronic appearances for felony pleas, or electronic appearances for preliminary hearings or sentencing;

- Business Corporation law sections 602, 605, and 708, as such suspensions have been superseded by statute, as contained in Chapter 122 of the Laws of 2020;

- Banking Law Section 39 (2), as such suspension has been superseded by statute, as contained in Chapters 112 and 126 of the Laws of 2020, as well as the directives contained in Executive Order 202.9;

- Insurance Law and Banking Law provisions suspended by virtue of Executive Order 202.13, which coincide with the expiration of the Superintendent's emergency regulations;

- Subdivision (28) of Section 171 of the Tax Law, to the extent that the Commissioner has extended any filing deadline;

- Sections 3216(d)(1)(c) and 4306 (g) of the Insurance Law, and any associated regulatory authority provided by directive in Executive Order 202.14, as the associated emergency regulations are no longer in effect;

- The directive contained in Executive Order 202.28, as extended, that prohibited initiation of a proceeding or enforcement of either an eviction of any residential or commercial tenant, for nonpayment of rent or a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, is continued only insofar as it applies to a commercial tenant or commercial mortgagor, as it has been superseded by legislation for a residential tenant, and residential mortgagor, in Chapters 112, 126, and 127 of the Laws of 2020; and

- The directive contained in Executive Order 202.10 related to restrictions, as amended by Executive Order 202.11, related dispensing hydroxychloroquine or chloroquine, as recent findings and the U.S. Food & Drug Administration's revocation of the emergency use authorization has alleviated supply shortages for permitted FDA uses of these medications.

- The directives contained in Executive Order 202.3, that closed video lottery gaming or casino gaming, gym, fitness center or classes, and movie theaters, and the directives contained in Executive Order 202.5 that closed the indoor common portions of retail shopping malls, and all places of public amusement, whether indoors or outdoors, as amended, are hereby modified to provide that such directives remain in effect only until such time as a future Executive Order opening them is issued.

IN ADDITION, I hereby suspend or modify for thirty days through August 5, 2020:

- the provisions of Articles 11-A and 11-B of the State Finance Law, and any regulations authorized thereunder, to the extent necessary to respond to the direct and indirect economic, financial, and social effects of the COVID-19 pandemic.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives for the period from the date of this Executive Order through August 5, 2020:

- The directive contained in Executive Order 202.41, that discontinued the reductions and restrictions on in-person workforce at non-essential businesses or other entities in Phase Three industries or entities, as determined by the Department of Health, in eligible regions, is hereby modified only to the extent that indoor food services and dining continue to be prohibited in New York City.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this sixth day of July in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.55

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby continue the directives, not superseded by a subsequent directive, made by Executive Order 202 and each successor Executive Order up to and including Executive Order 202.21, and Executive Order 202.27, 202.28, 202.29, 202.30, 202.38, 202.39, and 202.40, as continued and contained in Executive Order 202.48, 202.49, and 202.50 for another thirty days through September 4, 2020, and I hereby suspend or modify for thirty days through September 4, 2020:

- Sections 5-11.0(a), 5-16.0(a) 5-18.0(1) and 6-22.0 of the Nassau County Administrative Code, to the extent necessary to authorize the Nassau County Executive to:
    - change the deadline for the County Assessor to complete the extension of taxes for 2020-2021 school district purposes (and file the certificate associated therewith), from September 18, 2020 to October 16, 2020;
    - change the deadline for the County Legislature to levy such taxes from September 18, 2020 to October 16, 2020;
    - change the deadline for the County to deliver to the town tax receivers the 2020-2021 school district assessment roll and warrants from September 28, 2020 to October 26, 2020;
    - change the deadline that first half 2020-2021 school district taxes shall be due and payable from October 1, 2020 to November 1, 2020; and
    - change the deadline by which the first half 2020-2021 school district taxes may be paid without interest or penalties from November 10, 2020 to December 10, 2020, with payments made after such date to be subject to interest and penalties beginning on December 11, 2020.

- Section 730(3) of the Real Property Tax Law, to the extent necessary to extend the deadline for filing a 2020 small claims assessment review petition in relation to property located in Nassau County to September 4, 2020; provided that such deadline shall not be further extended unless expressly provided otherwise by an Executive Order issued hereafter;

- Section 711 of the Real Property and Proceedings Law, Section 232-a of the Real Property Law, and subdivisions 8 and 9 of section 4 of the Multiple Dwelling Law, and any other law or regulation are suspended and modified to the extent that such laws would otherwise create a landlord tenant relationship between any individual assisting with the response to COVID-19 or any individual that

has been displaced due to COVID-19, and any individual or entity, including but not limited to any hotel owner, hospital, not-for-profit housing provider, hospital, or any other temporary housing provider who provides temporary housing for a period of thirty days or more solely for purposes of assisting in the response to COVD-19;

- Sections 352-eeee(2)-(2)(a) of the General Business Law, and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires that an offering statement or prospectus filed with the Department of Law must be declared effective within fifteen months from filing or from the date of issuance of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing (the "Fifteen Month Period"), and any such Fifteen Month Period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days (the "Tolling Period"). In addition, any deadlines contained within paragraphs 352-eeee(1)(f), 352-eeee(1)(g), 352-eeee(2)(c)(vi), 352-eeee(2)(c)(vii), and 352-eeee(2)(d)(ix) shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must treat all tenants in occupancy as non-purchasing tenants as defined by GBL 352-eeee(1)(e) for the duration of the Tolling Period, and must provide all such tenants in occupancy with all protections accorded to non-purchasing tenants under GBL 352-eeee for the duration of the Tolling Period. Sponsor must submit an amendment to the offering plan to the Department of Law updating the date by which sponsor must declare the offering plan effective, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law;

- Sections 352-eee(2)-(2)(a) of the General Business Law, and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires that an offering statement or prospectus filed with the Department of Law must be declared effective within twelve months from filing or from the date of issuance of the letter of the attorney general stating that the offering statement or prospectus has been accepted for filing (the "Twelve Month Period"), and any such Twelve Month Period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days ("the Tolling Period"). In addition, any deadlines contained within paragraphs 352-eee(1)(f), 352-eee(1)(g), 352-eee(2)(d)(vi), and 352-eee(2)(d)(ix) shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must treat all tenants in occupancy as non-purchasing tenants as defined by GBL 352-eee(1)(e) for the duration of the Tolling Period, and must provide all such tenants in occupancy with all protections accorded to non-purchasing tenants under GBL 352-eee for the duration of the Tolling Period. Sponsor must submit an amendment to the offering plan to the Department of Law updating the date by which sponsor must declare the offering plan effective, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law;

- 13 NYCRR § 20.3(o)(12), and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to offer rescission if the first closing of a unit does not occur within a period of twelve months after the projected date for such closing (corresponding to the projected first year of operation) as set forth in the offering plan, and any such twelve month period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must submit an amendment to the offering plan to the Department of Law updating the first year of operation and projected date of first closing, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law. The Department of Law shall not deem the tolling provided under this Executive Order and Executive Order 202.18 of any such twelve month period to be a material and/or adverse event or change under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise;

- 13 NYCRR § 22.3(k)(10), and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to offer rescission if the first closing of a home or lot does not occur within a period of twelve months after the projected date for such closing (corresponding to the projected first year of operation) as set forth in the offering plan, and any such twelve month period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must submit an amendment to the offering plan to the Department of Law updating the first year of operation and projected date of first closing, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law. The Department of Law shall not deem the tolling provided under this Executive Order and Executive Order 202.18 of any such twelve month period to be a material and/or adverse event or change under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise;

- 13 NYCRR § 25.3(l)(12), and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to offer rescission if the units are not ready for occupancy within a period of twelve months after the projected date for such closing (corresponding to the

projected first year of operation) as set forth in the offering plan, and any such twelve month period, shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must submit an amendment to the offering plan to the Department of Law updating the first year of operation and projected date of first closing, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law. The Department of Law shall not deem the tolling provided under this Executive Order and Executive Order 202.18 of any such twelve month period to be a material and/or adverse event or change under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise;

- 13 NYCRR §§ 18.3(g)(1), 20.3(h)(1), 21.3(g), 22.3(g)(1), 23.3(h)(1), 24.3(j)(1), and 25.3(h)(1) and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it requires sponsor to set forth a budget for the first year of operation, the requirements with respect to any such budget for the projected first year of operation shall be tolled and extended for a period equal to, in the aggregate, the duration of this Executive Order plus an additional period of 120 days. Sponsor must submit an amendment to the offering plan to the Department of Law updating the first year of operation, as necessary, within 45 days from the expiration of this Executive Order or within such other longer timeframe as may be specified by the Department of Law, and shall not be required to offer rescission unless such budget for the first year of operation increases by 25 percent or more during the pendency of this Executive Order (or rescission otherwise is required under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise). The Department of Law shall not deem the tolling provided under this Executive Order and Executive Order 202.18 of sponsor's requirements with respect to the budget for the first year of operation to be a material and/or adverse event or change under terms of the offering plan or any order, rule, or regulation applicable thereto, or otherwise;

- Section 339-ee(2) of the Real Property Law, and any order, rule, or regulation in furtherance of the requirements thereof, to the extent it provides that as each unit in a condominium is first conveyed "there shall be allowed a credit against the mortgage recording taxes (except the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of the tax law) that would otherwise be payable on a purchase money mortgage," in respect of a portion of certain mortgage taxes previously paid, provided certain two-year time periods (as specified therein) have not elapsed before the recordation of the declaration of condominium or the first condominium unit is sold, as the case may be, the running of any such two-year period(s) is hereby suspended for the duration of this Executive Order, and any such two-year period is hereby extended for a period equal to the duration of this Executive Order plus an additional period of 120 days.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fifth of August in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.55.1

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

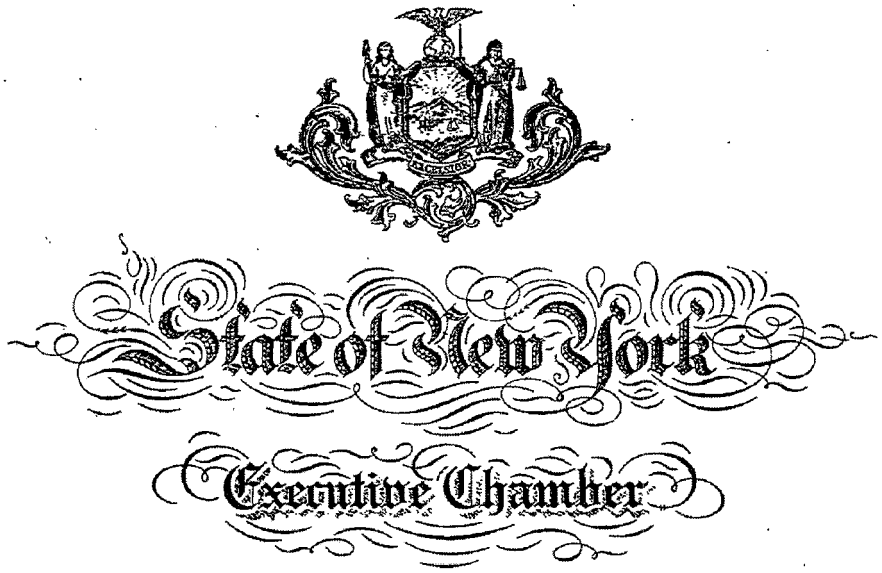
WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby amend Executive Order 202.55 to include all suspensions and modifications, not superseded by a suspension or modification in a subsequent Executive Order for the Executive Orders listed in 202.55; and provided further, Executive Orders 202.48, 202.49, and 202.50 are continued in their entirety, through September 4, 2020.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this sixth of August in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor



No. 202.60

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, the 2019 Novel Coronavirus (COVID-19) arrived in New York predominantly from Europe, with over 2.2 million travelers coming in between the end of January and March 16, 2020, when the federal government finally implemented a full European travel ban;

WHEREAS, during that period of time, 2.2 million travelers landed in the New York City metropolitan area and entered New York's communities, which, when combined with the density of our population, caused New York to have the highest infection rate of COVID-19 in the country;

WHEREAS, both cases of travel-related and community contact transmission of COVID-19 have been documented throughout New York State and, despite the persistent and diligent efforts of state and local governments to trace, test, and contain the virus, such transmission is expected to continue;

WHEREAS, New York has undertaken a cautious, incremental and evidence-based approach to reopening the State of New York;

WHEREAS, the dedication of New Yorkers to"flatten the curve" has successfully slowed the transmission of COVID-19, and these vigilant efforts must continue to protect ourselves and our friends, family members, neighbors, and community members;

WHEREAS, the State of New York had the highest infection rate, but has succeeded in reducing the rate to one of the lowest in the country, and New York is one of only a few states reported to be on track to contain COVID-19 transmission;

WHEREAS, other states that may have taken a less cautious approach are experiencing an increased prevalence of COVID-19 cases, and the prevalence of cases in other states continues to present a significant risk to New York's progress; and

WHEREAS, the federal government has failed to sufficiently address the causes and effects of the COVID-19 pandemic ravaging the nation by failing to, among other actions, establish a nation-wide testing strategy and impose a nation-wide face covering mandate;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster continues to exist for which affected state agencies and local governments are unable to respond adequately. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby continue the declaration of the State Disaster Emergency effective March 7, 2020, as set forth in Executive Order 202. This Executive order shall remain in effect until October 4, 2020.

IN ADDITION, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby continue the suspensions, modifications, and directives, not superseded by a subsequent directive, made by Executive Orders 202 up to and including 202.21, and 202.27, 202.28, 202.29, 202.30, 202.38, 202.39, 202.40, 202.48, 202.49, 202.50, as extended, and Executive Order 202.55 and 202.55.1 for another thirty days through October 4, 2020 and do hereby suspend or modify the following:

- Section 2804 of the Public Authorities Law, to the extent necessary to permit public authorities to receive comments concerning a proposed toll adjustment through public hearings held remotely, use of telephone conference, video conference, and/or other means of transmission, including acceptance of public comments electronically or by mail, and to permit all required documentation and records to be available in an electronic format on the internet and upon request;

- Subdivision 4 of section 1 of chapter 25 of the laws of 2020 is modified to the extent necessary to provide that in addition to any travel to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice, an employee shall not be eligible for paid sick leave benefits or any other paid benefits pursuant to this chapter if such employee voluntarily travels to a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven day rolling average, and which the commissioner of the department of health has designated as meeting these conditions as outlined in the advisory issued pursuant to Executive Order 205, and the employee did not begin travel to such state before the commissioner of the department of health designated such state, and the travel was not taken as part of the employee's employment or at the direction of the employee's employer;

- The suspension contained in Executive Order 202.8, as continued and modified most recently in Executive Order 202.48 and 202.55 and 202.55.1, is hereby amended to provide that the tolling of civil statutes of limitation shall be lifted as it relates to any action to challenge the approval by any municipal government or public authority of a construction project that includes either affordable housing or space for use by not-for-profit organizations. The suspension of Section 30.30 of the Criminal Procedure Law, is hereby modified to require that speedy trial time limitations remain suspended in a jurisdiction until such time as petit criminal juries are reconvened in that jurisdiction; Criminal Procedure Law 170.70 is no longer suspended, and for any appearance which has been required to be in-person may continue to be conducted virtually with the consent of the parties.

- Rural Electric Cooperatives Law Section 17(d) to the extent necessary to eliminate the minimum in-person quorum requirements;

- Title 5 of Article 11 of the Real Property Tax Law, is suspended with respect to the ability of a municipality to sell liens.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives through October 4, 2020:

- The directive contained in Executive Order 202.45, as extended, requiring closure of all schools statewide to in-person instruction, is hereby modified only insofar as to authorize schools statewide to be open for instruction, effective September 1, 2020, subject to adherence to Department of Health issued guidance and directives, and provided further that school districts must continue plans to ensure the availability of meals, and the availability of child care for health care and emergency response workers, for any school district that is conducting its operations remotely and provided further that for any district which closes to in-person instruction, a contingency plan to immediately provide such services must be maintained;

- Whenever a coroner or medical examiner has a reasonable suspicion that COVID-19 or influenza was a cause of death, but no such tests were performed within 14 days prior to death in a nursing home or hospital, or by the hospice agency, the coroner or medical examiner shall administer both a COVID-19 and influenza test within 48 hours after death, whenever the body is received within 48 hours after death, in accordance with regulations promulgated by the Department of Health. The coroner or medical examiner shall report the death to the Department of Health immediately after and only upon receipt of both such test results through a means determined by the Department of Health. The State Department of Health shall provide assistance for any requesting coroner or medical examiner.

- Nassau County Administrative Code § 5-17.0(2) to the extent necessary to suspend the deadline to pay 2019-2020 second half general taxes appearing on the Nassau County tax roll without interest or penalties from August 10, 2020 to August 31, 2020 for residential property that was owned in whole or in part at the time of their death by healthcare workers and first responders in Nassau County who passed away after contracting the novel coronavirus and which is now owned by immediate family members or their estates.

- Nassau County Administrative Code § 5-16.0(b) to the extent necessary to provide a discount of one percent on payments of second half 2020-2021 school district taxes which are made on or before December 10, 2020.

- The directive contained in Executive Order 202.3, as extended, that required closure to the public of any facility authorized to conduct video lottery gaming or casino gaming, is hereby modified to allow such facilities to open beginning on or after September 9, 2020, subject to adherence to Department of Health guidance.

- The directive contained in Executive Order 202.50, as amended by Executive Order 202.53, that allowed indoor common portions of retail shopping malls to open in regions of the state that are in Phase Four of the state's reopening, provided that such malls continue to be closed in the New York City region, is hereby amended to allow such malls to open in the New York City region, so long as such malls adhere to Department of Health issued guidance on and after September 9, 2020.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fourth day of September in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.67

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster continues to exist for which affected state agencies and local governments are unable to respond adequately. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby continue the declaration of the State Disaster Emergency effective March 7, 2020, as set forth in Executive Order 202. This Executive order shall remain in effect until November 3, 2020.

IN ADDITION, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, or to provide any directive necessary to respond to the disaster, do hereby continue the suspensions and modifications of law, and any directives not superseded by a subsequent directive contained in Executive Orders 202 up to and including 202.21, and 202.27, 202.28, 202.29, 202.30, 202.38, 202.39, 202.40, 202.48, 202.49, 202.50, 202.55 and 202.55.1, as extended, and Executive Order 202.60 for another thirty days through November 3, 2020, except:

- Subdivision 1 of Section 491 of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, shall no longer be suspended or modified as of November 3, 2020;

- Sections 401, 410, 2222, 2251, 2251, and 2282(4) of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a registration certificate or number plate for a motor vehicle or trailer, a motorcycle, a snowmobile, a vessel, a limited use vehicle, and an all-terrain vehicle, shall no longer be suspended or modified as of November 3, 2020;

- Section 420-a of the Vehicle and Traffic law, to the extent that it provides an expiration for temporary registration documents issued by auto dealers shall no longer be suspended or modified as of November 3, 2020; and

- The suspension in Executive Order 202.8, as modified and extended in subsequent Executive Orders, that tolled any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any statute, local law, ordinance, order, rule,

or regulation, or part thereof, is hereby continued, as modified by prior executive orders, provided however, for any civil case, such suspension is only effective until November 3, 2020, and after such date any such time limit will no longer be tolled, and provided further:

- The suspension and modification of Section 30.30 of the criminal procedure law, as continued and modified in EO 202.60, is hereby no longer in effect, except for felony charges entered in the counties of New York, Kings, Queens, Bronx, and Richmond, where such suspension and modification continues to be effective through October 19, 2020; thereafter for these named counties the suspension is no longer effective on such date or upon the defendant's arraignment on an indictment, whichever is later, for indicted felony matters, otherwise for these named counties the suspension and modification of Section 30.30 of the criminal procedure law for all criminal actions proceeding on the basis of a felony complaint shall no longer be effective, irrespective, 90 days from the signing of this Executive order on January 2, 2021.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fourth day of October in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, I hereby promulgate the following protocols to mitigate the adverse effects of the COVID-19 outbreak upon the practice of civil litigation before the courts of the Unified Court System, effective immediately:

1. Civil Litigation Generally: The prosecution of pending civil matters (including discovery) in a manner that requires in-person appearances or travel, or otherwise requires actions inconsistent with prevailing health and safety directives relating to the coronavirus health emergency, is strongly discouraged.

2. Civil Discovery Generally: Where a party, attorney or other person is unable to meet discovery or other litigation schedules (including dispositive motion deadlines) for reasons related to the coronavirus health emergency, the parties shall use best efforts to postpone proceedings by agreement and stipulation for a period not to exceed 90 days. Absent such agreement, the proceedings shall be deferred until such later date when the court can review the matter and issue appropriate directives. In no event will participants in civil litigation be penalized if discovery compliance is delayed for reasons relating to the coronavirus public health emergency.

Chief Administrative Judge of the Courts

Dated: March 19, 2020

AO/71/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, in light of the emergency circumstances caused by the continuing COVID-19 outbreak in New York State and the nation, and consistent with the Governor of New York's recent executive order suspending statutes of limitation in legal matters, I direct that, effective immediately and until further order, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters attached as Exh. A. This directive applies to both paper and electronic filings.

Chief Administrative Judge of the Courts

Dated: March 22, 2020

AO/78/20

Exhibit A

Essential Proceedings
Administrative Order AO/78/20
March 22, 2020

A. Criminal matters
1. arraignments
2. bail applications, reviews and writs
3. temporary orders of protection
4. resentencing of retained and incarcerated defendants
5. essential sex offender registration act (SORA) matters

B. Family Court
1. child protection intake cases involving removal applications
2. newly filed juvenile delinquency intake cases involving remand placement applications, or modification thereof
3. emergency family offense petitions/temporary orders of protection
4. orders to show cause
5. stipulations on submission

C. Supreme Court
1. Mental Hygiene Law (MHL) applications and hearings addressing patient retention or release
2. MHL hearings addressing the involuntary administration of medication and other medical care
3. newly filed MHL applications for an assisted outpatient treatment (AOT) plan
4. emergency applications in guardianship matters
5. temporary orders of protection (including but not limited to matters involving domestic violence)
6. emergency applications related to the coronavirus
7. emergency Election Law applications
8. extreme risk protection orders (ERPO)

D. Civil/Housing matters
1. applications addressing landlord lockouts (including reductions in essential services)
2. applications addressing serious code violations
3. applications addressing serious repair orders
4. applications for post-eviction relief

E. All Courts
1. any other matter that the court deems essential

This list of essential proceedings is subject to ongoing review and amendment as necessary.

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate, effective April 13, 2020, the following additional procedures and protocols to mitigate the effects of the COVID-19 outbreak upon the users, visitors, staff, and judicial officers of the Unified Court System.

1. In addition to essential court functions as set forth in AO/78/20, trial courts will address the following matters through remote or virtual court operations and offices:

- Conferencing Pending Cases: Courts will review their docket of pending cases, assess matters that can be advanced or resolved through remote court conferencing, and schedule and hold conferences in such matters upon its own initiative, and where appropriate at the request of parties.

- Deciding Fully Submitted Motions: Courts will decide fully submitted motions in pending cases.

- Discovery and Other Ad Hoc Conferences: Courts will maintain availability during normal court hours to resolve ad hoc discovery disputes and similar matters not requiring the filing of papers.

2. Video Technology: Video teleconferences conducted by the court, or with court participation, will be administered exclusively through Skype for Business.

3. No New Filings in Nonessential Matters: No new nonessential matters may be filed until further notice; nor may additional papers be filed by parties in pending nonessential matters. The court shall file such orders in essential and nonessential matters as it deems appropriate.

Provisions of prior administrative orders inconsistent with this order shall be superseded by this order.

Chief Administrative Judge of the Courts

Dated: April 8, 2020

AO/85/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to a delegation of authority vested in me, with the approval of the Administrative Board of the Courts, and following consultation and agreement with the respective County Clerks outside of the City of New York, I hereby confirm and extend programs for the consensual/voluntary use of electronic means for the filing and service of documents ("e filing") in Supreme Court as set forth in 22 NYCRR §202.5-b, for such matters set forth in Exh. A (and any other matters hereinafter deemed by the Chief Administrative Judge to be essential proceedings during the coronavirus public health emergency) that lie within the civil jurisdiction of the Supreme Court, in the counties set forth in Exh. B, effective immediately.

Chief Administrative Judge of the Courts

Dated: April 15, 2020

AO/81B/20

EXHIBIT A

Essential Proceedings
Administrative Order AO/78/20
March 22, 2020

A. Criminal matters
1. arraignments
2. bail applications, reviews and writs
3. temporary orders of protection
4. resentencing of retained and incarcerated defendants
5. essential sex offender registration act (SORA) matters

B. Family Court
1. child protection intake cases involving removal applications
2. newly filed juvenile delinquency intake cases involving remand placement applications, or modification thereof
3. emergency family offense petitions/temporary orders of protection
4. orders to show cause
5. stipulations on submission

C. Supreme Court
1. Mental Hygiene Law (MHL) applications and hearings addressing patient retention or release
2. MHL hearings addressing the involuntary administration of medication and other medical care
3. newly filed MHL applications for an assisted outpatient treatment (AOT) plan
4. emergency applications in guardianship matters
5. temporary orders of protection (including but not limited to matters involving domestic violence)
6. emergency applications related to the coronavirus
7. emergency Election Law applications
8. extreme risk protection orders (ERPO)

D. Civil/Housing matters
1. applications addressing landlord lockouts (including reductions in essential services)
2. applications addressing serious code violations
3. applications addressing serious repair orders
4. applications for post-eviction relief

E. All Courts
1. any other matter that the court deems essential

This list of essential proceedings is subject to ongoing review and amendment as necessary.

EXHIBIT B

Counties Permitting E-filing of Essential Matters in Supreme Court

(AO/81B/20 – Exh. B)

Albany
Broome
Cattaraugus
Cayuga
Chautauqua
Chemung
Chenango
Clinton
Columbia
Cortland
Delaware
Dutchess
Erie
Essex
Franklin
Genesee
Jefferson
Lewis
Livingston
Madison
Monroe
Nassau
Niagara
Oneida
Onondaga
Ontario
Orange
Oswego
Otsego
Putnam
Rensselaer
Rockland
St. Lawrence
Saratoga
Schuyler
Seneca
Steuben
Suffolk
Sullivan
Tioga
Tompkins
Ulster
Warren
Washington
Wayne
Westchester
Yates

Bronx
Kings
New York
Queens
Richmond County

Supreme Court
of the
State of New York

HON. DEBORAH A. KAPLAN
ADMINISTRATIVE JUDGE FOR CIVIL MATTERS

DENIS REO, ESQ.
CHIEF CLERK

60 CENTRE ST.
NEW YORK, NY 10007

By Administrative Order dated April 8, 2020 (AO/85/20), Chief Administrative Judge Lawrence Marks directed that, effective April 13, 2020, in addition to the essential court functions set forth in AO/78/20, trial courts would begin conferencing pending cases through remote or virtual court operations in an effort to resolve the matters. In accordance with Judge Marks' directive, Supreme Court, New York County-Civil Term has created a Remote Conference Part (RCP). Cases that had previously been scheduled in the Administrative Coordinating Part (Part 40), the Judicial Mediation Part (J-Med) and the Early Settlement Parts, but which were adjourned when the court began hearing only essential matters, will be scheduled for remote settlement conferences in RCP. Parties will receive a notice through NYSCEF notifying them that their case has been selected for a remote settlement conference and requesting that the attorneys notify the Trial Support Office of their availability. Cases will then be administratively scheduled for Skype or telephonic conferences before one of several judges who have volunteered to conference cases. Skype invitations will be sent to attorneys at the email addresses provided in NYSCEF. If participants have any Skype connectivity issues, they may seek assistance by emailing: SkypeTest@nycourts.gov.

AO/85/20 further directs that courts may hold remote conferences at the parties' request, where appropriate, and, in addition, be available during normal court hours to resolve ad hoc discovery disputes and other matters that do not require the filing of papers. A party who wishes to request a remote conference may email a completed Conference Request form to sfc-conferencerequest@nycourts.gov. Upon receipt, the Conference Request form will be forwarded directly to the assigned judge or the judge's staff for a response. It is within the judge's discretion to grant or deny a request for a conference. Written opposition to a request for a conference is not permitted.

Self-represented litigants who are unable to comply with these protocols should contact the Chief Clerk's Office at 646-386-3001 for assistance.

Dated: April 17, 2020

NYS SUPREME COURT, CIVIL BRANCH, NEW YORK COUNTY

STANDARD FORM TO REQUEST A CONFERENCE ON PENDING CASES

Case Caption _____

Index No. _____ **Judge** _____

Motion Pending (Y/N; if yes, indicate relief sought) _____

Plaintiff's Counsel (or self-represented litigant) Email Address, and Phone Number

Defendant's Counsel (or self-represented litigant) Email Address, and Phone Number

Reason for Conference and Issue(s) to Be Addressed (indicate whether adversary has been contacted/notified of the request for a conference):

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate, effective May 4, 2020 and until further order, the following additional procedures and protocols to mitigate the effects of the COVID-19 outbreak upon the judicial officers, staff, and users of the Unified Court System.

A. In pending matters, digital copies of (1) motions, cross-motions, responses, replies and applications (including post-judgment applications), (2) notices of appeal and cross-appeal, (3) stipulations of discontinuance, stipulations of adjournment, and other stipulations; (4) notes of issue, and (5) such other papers as the Chief Administrative Judge may direct, shall be accepted for filing purposes by all courts and clerical officers of the Unified Court System (including County Clerks acting as clerks of court) when presented for filing through (1) the UCS New York State Courts Electronic Filing (NYSCEF) system; (2) the UCS Electronic Document Delivery System (EDDS); or (3) such other document delivery method as the Chief Administrative Judge shall approve.

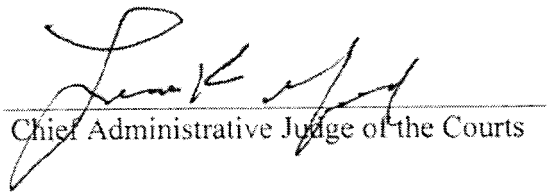
B. Documents filed through the EDDS system shall be served by electronic means, including electronic mail or facsimile. Filing fees required for documents filed through the EDDS system shall be paid by credit card or, where credit card payment is unavailable, by check delivered to the appropriate clerk's office by U.S. Mail or overnight mail service.

C. The provisions of paragraphs A and B above are authorized on a temporary basis, and will be reviewed and circumscribed promptly at the conclusion of the COVID-19 public health emergency.

D. Problem-solving courts may conduct virtual court conferences with counsel, court staff, service providers, and, where practicable, clients.

E. Judges may refer matters for virtual alternative dispute resolution, including to neutrals on court-established panels, community dispute resolution centers, and ADR-dedicated court staff.

F. The court shall not request working copies of documents in paper format.



Chief Administrative Judge of the Courts

Dated: May 1, 2020

AO/87/20

New York State Unified Court System

Electronic Document Delivery System: Welcome

This site lets you electronically deliver documents to the courts and -- during the COVID-19 public health emergency -- file documents electronically in many courts that do not usually permit electronic filing. For more detailed information, view the **EDDS Notice**, the **EDDS FAQ** page or the **EDDS User Manual**.

To help you with the delivery of your documents, please choose the location where you would like to send your documents, then follow the screens for additional directions. For information about which legal matters are handled by the various courts of New York State, visit Which court should I go to?

Select the court you want to deliver your documents to:

City Court - Civil (outside NYC)

City Court - Criminal (outside NYC)

Civil Court - New York City

County Court - Criminal Term (outside NYC)

Court of Claims

Criminal Court NYC

District Court - Civil Term (Nassau/Suffolk)

District Court - Criminal Term (Nassau/Suffolk)

Family Court

Nassau - SCARS

Supreme Court - Criminal Term (Inside NYC)

Supreme Court - Civil Term (limited availability for certain courts and case types. Read more ...)

Surrogate's Court (limited availability for certain courts and case types. Read more ...)

Please Note

1. A document sent through the Electronic Document Delivery System (EDDS) with a request for filing should be treated as "filed" only upon receipt of notice from the court clerk or County Clerk (or upon publication of notice on a County Clerk web page) that the document has been accepted for filing.
2. Documents sent via EDDS do not constitute service upon any other party. Documents accepted for filing through EDDS must be served on other parties **by electronic means or by mail.**
3. An unrepresented party can use EDDS to send documents to the court, after notifying the court and other parties that they wish to use this method. If EDDS is used, they must serve all such documents on other parties by mail, email, or other electronic means.
4. **EDDS should NOT be used for the delivery of emergency applications except in a Family Court that has been authorized to receive such applications via EDDS, or in a Court where the Judge directs the use of EDDS for that purpose. For more information on filing such applications please contact the court directly.** To find contact information for a court go to https://www.nycourts.gov/courts/

NOTICE TO THE PUBLIC

May 4, 2020

EDDS: UCS Program for Electronic Delivery of Documents

In response to the COVID-19 public health emergency and the expansion of "virtual" court operations, the Unified Court System has initiated a new program to transmit digitized documents (in pdf format) to UCS courts, County Clerks, and other court-related offices around the State. The Electronic Document Delivery System ("EDDS") allows users, in a single transaction, to (1) enter basic information about a matter on a UCS webpage portal page; (2) upload one or more pdf documents; and (3) send those documents electronically to a court or clerk selected by the user. Upon receipt of the document(s) by the court, the sender will receive an email notification, together with a unique code that identifies the delivery. More detailed instructions for sending or filing documents through EDDS may be found on the **EDDS FAQ** page.

Users/Senders should keep several important points in mind when using this system:

1. EDDS May be Used to File Papers with Certain Courts: At the direction of the Chief Administrative Judge, during the COVID-19 public health crisis EDDS can be used to deliver documents for filing with certain courts— including some Family Courts, Criminal Courts, Supreme Court, the Court of Claims, Surrogate's Courts, and District Courts, and City Courts. (EDDS is not available in the New York City Criminal Court.)

To use the system for filing, the sender must simply check a box on the sender information screen, complete the sending of the document(s) to the appropriate court through the EDDS system, and pay any required filing fee by credit card. The clerk's office will review the document(s) for sufficiency and, if the clerk determines that filing prerequisites have been met, accept them for filing purposes. In the event that a clerk's office has accepted and filed a document received through EDDS, the sender will be notified of that fact by email or publication on a public database. *If no email or published notification is issued indicating that the document has been accepted for filing, the sender should not assume that the filing has occurred. The sender may contact the clerk's office to inquire about the status of a proposed filing.*

2. EDDS is Not a Substitute for E-filing or NYSCEF: Please note that, although EDDS may be used for filing in various courts, it does not replace and may not substitute for filing under the New York State Courts Electronic Filing System (NYSCEF). Therefore, it should not be used in matters where NYSCEF is available on either a mandatory or consensual basis. (Counties and case types where NYSCEF is available are listed on NYSCEF's **Authorized for E-Filing** page.)

3. EDDS Delivery is not "Service" on Other Parties: Finally, unlike NYSCEF, delivery of a document through EDDS does not constitute service of the document on any other party. If service is required, the sender must serve by some other means.

In sum, EDDS is a document delivery portal that complements the UCS electronic filing system and which, upon completion and together with NYSCEF, will allow remote and immediate delivery of digitized documents throughout the Unified Court System.

Frequently Asked Questions

UCS Electronic Document Delivery System (EDDS)

In response to the COVID-19 public health emergency and the expansion of "virtual" court operations, the Unified Court System has initiated a new program to transmit digitized documents (in pdf format) to UCS courts, County Clerks, and other court-related offices around the State, commencing on May 4, 2020.

Q: What is EDDS?

The Electronic Document Delivery System ("EDDS") allows users, in a transaction commenced at a UCS web portal, to (1) enter basic information about a matter; (2) upload one or more pdf documents; and (3) send those documents electronically to a court or clerk selected by the user. Upon receipt of the document(s) by the court, the sender will receive an email notification, together with a unique code that identifies the delivery.

Q: Why has UCS developed this new document delivery system?

The new system is intended to reduce the need for delivery or filing of paper copies of documents with the courts – and thereby to minimize foot traffic during the COVID-19 public health emergency. It will also facilitate the court system's expanded virtual court operations, which rely upon digital documents.

Q: Can EDDS be used to file documents with courts and County Clerks?

Yes – but with some notable restrictions and qualifications.

Most courts that currently accept filings in paper format will accept pdf copies of the filed document through EDDS. Supreme Courts, County Courts, Family Courts, Surrogates Courts, District Courts, and City Courts. However, this program will not be available in the New York City Criminal Court and may have restricted use in some other courts.

Importantly, EDDS is not intended to duplicate or supplant the New York State Courts Electronic Filing System (NYSCEF) and may not be used for filing in matters where NYSCEF is available on either a mandatory or consensual basis. Court users familiar with NYSCEF will recall that it is broadly available in many civil matters in Supreme Court, Surrogate's Court, and the Court of Claims around the State. Before using EDDS for filing, please make sure that NYSCEF is unavailable. (A list of courts and case types approved for e-filing through the NYSCEF system may be found on the Authorized for E-Filing page.)

Q: How do I file a document through EDDS?

To file a document through EDDS, you must begin at the **UCS EDDS** page. There you will be instructed in simple steps to enter appropriate identifying information (including sender contact information, and information about the case and document[s]), to select the county and court for delivery, upload the document(s), and to complete the transmission. If a filing fee is required, you will also be instructed about payment of the fee through online credit card or, in some cases, telephonic credit card transaction.

Once your transaction is complete, the clerk's office will review the submission and, if it meets all filing requirements, will file the documents as requested. If the submission is incomplete or unsatisfactory for filing, you will be notified of the problem by email or other means.

Q: How long will it take to file a document I have submitted through EDDS?

The Court System will make every effort to address filing requests promptly upon receipt. However, considering current operation restrictions, it may take one or more days for a filing request to be reviewed and approved.

Q: May I file documents with clerk's offices in person or by mail?

During the current COVID-19 public health emergency, and consistent with State and national health directives, many courts buildings and offices have remained closed and/or consolidated. Pursuant to AO/114/20, in courts and case types set forth in Exh. A to that order, to the extent that NYSCEF is not available, represented parties must commence new matters exclusively by mail. Following commencement of a new matter, and in pending matters, represented parties must file papers through the EDDS or by mail.

Q: Should I file emergency applications through EDDS?

During the COVID-19 health emergency, UCS courts around the state have established locations and procedures for the submission of emergency applications. EDDS is not designed to supplant those procedures and **should not be used for filing emergency applications**.

Q: How should I serve documents filed through EDDS?

By order of the Chief Administrative Judges, documents filed by EDDS should be served on other parties by electronic means, including email or facsimile, or in the counties set forth in AO/114/20 Exhibit A, parties can serve by electronic means or by mail. (Unlike NYSCEF, EDDS is not a system for service of papers.)

Q: What types of documents may be filed through EDDS?

Any document that is currently being accepted for filing by the UCS in pending nonessential matters may be filed through EDDS or in the counties set forth in AO/114/20 Exh. A, parties can also file mail. (Nonessential matters are legal proceedings other than those deemed "essential" during the COVID-19 public health emergency, as directed by the Chief Administrative Judge in late March [AO/78/20]). However, please remember that EDDS is unavailable in courts and case types where NYSCEF filing is available.

Q: What if I have problems using EDDS?

Because EDDS is a new system which substantially changes offices practices in court clerk and county clerk offices around the state – and at a time when court operations are dealing with new realities of remote and curtailed operation -- we anticipate that its rollout will not be trouble-free. **Please report any problems using the new system to us by email at** edds@nycourts.gov, and we will do our best to remedy them as quickly as possible. Please feel free to send comments and suggestions about the new system to us at this same email address.

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and at the direction of the Chief Judge, I hereby promulgate, effective immediately and until further order, the following additional procedures and protocols to mitigate the effects of the COVID-19 public health emergency.

A. The court shall not order or compel, for a deposition or other litigation discovery, the personal attendance of physicians or other medical personnel (including administrative personnel) who perform services at a hospital or other medical facility that is active in the treatment of COVID-19 patients. Parties are encouraged to pursue discovery in cooperative fashion to the fullest extent possible.

B. The provisions of paragraph A are authorized on a temporary basis, and will be reviewed and circumscribed promptly at the conclusion of the COVID-19 public health emergency.

Chief Administrative Judge of the Courts

Dated: May 2, 2020

AO/88/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, I hereby direct that, effective immediately, Administrative Order AO/88/20 shall be cancelled and shall have no further force or effect.

In light of the ongoing coronavirus public health emergency, counsel and litigants are strongly encouraged to pursue discovery in cooperative fashion and to employ remote technology in discovery whenever possible. In the event that physicians or other medical personnel (including administrative personnel) are unavailable for deposition or other litigation discovery for reasons relating to the treatment of COVID-19 patients, and the parties are unable to resolve the scheduling issue cooperatively, that issue should be presented to the court for resolution.

Chief Administrative Judge of the Courts

Dated: June 22, 2020

AO/129/20

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, with the approval of the Administrative Board of the Courts, upon notice by the Presiding Judge of the Court of Claims, and, as appropriate, in consultation with or with the approval of County Clerks, I hereby continue and extend the Unified Court System program for the consensual/voluntary and mandatory use of electronic means for the filing and service of documents ("e-filing"), in the manner authorized pursuant to L. 1999, c. 367, as amended by L. 2009, c. 416, L. 2010, c. 528, L. 2011, c. 543, L. 2012, c. 184, L.2013, c. 113, L. 2015, c. 237, L. 2017, c. 99, L. 2018, c. 168, and L. 2019, c. 212, effective immediately (or at such later date as specified in Exh. A), as follows:

1. all civil matters in Supreme Court in all counties listed in Exh. A shall, unless approved for mandatory (or mandatory in part) electronic filing by prior administrative order, henceforth be accepted for consensual/voluntary electronic filing. Mandatory (and mandatory in part) electronic filing shall continue in those counties as authorized in AO/245/19.

Chief Administrative Judge of the Courts

Dated: May 8, 2020

AO/98/20

Exhibit A

Administrative Order AO/98/20
May 8, 2020

Albany (3rd JD)
Bronx (within NYC – 12th JD)
Broome (6th JD)
Cattaraugus (8th JD)
Cayuga (7th JD)
Chautauqua (8th JD)
Chemung (6th JD)
Chenango (6th JD)
Clinton (4th JD)
Columbia (3rd JD)
Cortland (6th JD)
Delaware (6th JD)
Dutchess (9th JD)
Erie (8th JD)
Essex (4th JD)
Franklin (4th JD)
Genesee (8th JD)
Jefferson (5th JD)
Kings (within NYC – 2nd JD)
Lewis (5th JD)
Livingston (7th JD)
Madison (6th JD)
Monroe (7th JD)
Nassau (10th JD)
New York (within NYC – 1st JD)
Niagara (8th JD)
Oneida (5th JD)
Onondaga (5th JD)
Ontario (7th JD)
Orange (9th JD)
Oswego (5th JD)
Otsego (6th JD)
Putnam (9th JD)
Queens (within NYC – 11th JD)
Rensselaer (3rd JD)
Richmond (within NYC – 13th JD)
Rockland (9th JD)
St. Lawrence (4th JD)
Saratoga (4th JD)
Schuyler (6th JD)
Seneca (7th JD)
Steuben (7th JD)
Suffolk (10th JD)
Sullivan (3rd JD)
Tioga (6th JD)
Tompkins (6th JD)
Ulster (3rd JD)
Warren (4th JD)
Washington (4th JD)
Wayne (7th JD)
Westchester (9th JD)
Wyoming (8th JD) *(effective May 15, 2020)
Yates (7th JD)

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and consistent with the Governor's determination approving the easing of restrictions on commerce imposed due to the COVID-19 health emergency, I hereby direct that, notwithstanding the terms of any prior administrative order:

1. In the counties and on the dates set forth in Exh. A, in courts and case types approved for electronic filing through the New York State Courts Electronic Filing System (NYSCEF), represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF or, where permitted under NYSCEF court rules, by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.

2. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the counties and on the dates set forth in Exh. A, represented parties must commence new matters exclusively by mail, except where otherwise authorized by the Chief Administrative Judge. Following commencement of a new matter, and in pending matters, represented parties must file papers through the Unified Court System's Electronic Document Delivery System (EDDS) or by mail, and must serve papers (other than commencement documents) by electronic means or by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.

3. In the counties and on the date set forth in Exh. B, in courts and case types approved for electronic filing through NYSCEF, represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.

4. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the counties and on the date set forth in Exh. B, represented parties in pending matters may submit for filing digital copies of (1) motions, cross-motions, responses, replies and applications, (2) notices of appeal and cross-appeal, (3) stipulations of discontinuance, stipulations of adjournment, and other stipulations; (4) notes of issue, and (5) such other papers as the Chief Administrative Judge may direct, to courts and clerical officers of the Unified Court System (including County Clerks acting as clerks of court) through EDDS

or such other document delivery method as the Chief Administrative Judge shall approve. Represented parties must serve documents filed through EDDS by electronic means, including electronic mail or facsimile. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.

This order shall not affect procedures for the filing and service of essential matters, and, on the dates that it becomes effective, supersedes administrative orders AO/87/20 (pars. A-C) and AO/114/20.

Chief Administrative Judge of the Courts

Dated: May 28, 2020

AO/115/20

Exhibit A

Region: Counties	Effective Date
Finger Lakes: Orleans, Monroe, Wayne, Genesee, Wyoming, Livingston, Ontario, Yates, and Seneca. Mohawk Valley: Herkimer, Oneida, Otsego, Fulton, Montgomery, and Schoharie. Southern Tier: Steuben, Schuyler, Chemung, Tompkins, Tioga, Broome, Chenango, and Delaware.	May 18, 2020
North Country: Clinton, Franklin, St. Lawrence, Jefferson, Lewis, Hamilton, and Essex. Central New York: Oswego, Cayuga, Cortland, Onondaga, and Madison.	May 20, 2020
Western New York: Allegany, Cattaraugus, Chautauqua, Erie, and Niagara.	May 21, 2020
Capital Region: Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, and Washington.	May 26, 2020
Mid-Hudson: Dutchess, Orange, Putnam, Rockland, and Westchester.	May 27, 2020
Mid-Hudson (remainder): Sullivan and Ulster.	May 28, 2020
Long Island: Nassau and Suffolk.	May 29, 2020

Exhibit B

Region: Counties	Effective Date
New York City: New York, Bronx, Queens, Kings, and Richmond.	May 25, 2020

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and consistent with the Governor's determination approving the easing of restrictions on commerce imposed due to the COVID-19 health emergency, I hereby direct that, effective June 10, 2020:

1. In courts and case types approved for electronic filing through the New York State Courts Electronic Filing System (NYSCEF), represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF or, where permitted under NYSCEF court rules, by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.

2. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the trial courts, represented parties must commence new matters exclusively by mail, except where otherwise authorized by the Chief Administrative Judge. Following commencement of a new matter, and in pending matters, represented parties must file papers through the Unified Court System's Electronic Document Delivery System (EDDS) or by mail, and must serve papers (other than commencement documents) by electronic means or by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.

3. This order shall not affect procedures for the filing and service of papers in essential matters.

4. The court shall not request working copies of documents in paper format.

Chief Administrative Judge of the Courts

Dated: June 9, 2020

AO/121/20

CORONAVIRUS AND THE NEW YORK STATE COURTS

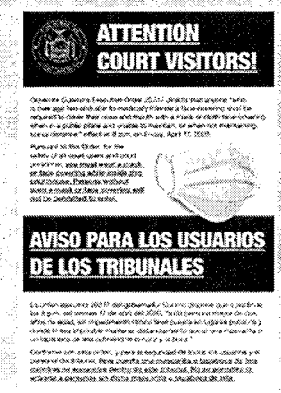
UCS Home for Covid19

Administrative Orders

Expansion of Court Operations

Tested Positive for Covid19

Virtual Court Appearances: How Do I?



COVID-19 Mask Multi-Language Poster

Latest STATEWIDE Administrative Orders

AO/232/20
AO/231/20
AO/216/20
AO/160A/20
AO/157/20
AO/149/20
AO/143/20
AO/131/20
AO/129/20
AO/127/20 (superseded by AO/160A/20)
AO/121/20
AO/115/20
AO/114/20
AO/111/20
AO/102/20
AO/101/20
AO/99/20
AO/98/20
AO/96/20
AO/95/20
AO/94/20
AO/93/20
AO/88/20
AO/87/20
AO/86/20
AO/85/20
AO/81B/20
AO/81A/20
AO/81/20
AO/80/20
AO/78/20
AO/75/20/Corrected
AO/75/20
AO/74/20
AO/73/20
AO/71/20
AO/68/20
AO/66/20
AO/39/20
AO/3/20

Executive Orders: A Suspension, Not a Toll of the SOL

During the pandemic, Governor Cuomo has issued a series of executive orders that have suspended procedural deadlines, including the statute of limitations. Various articles have been written that describe these executive orders as a toll of the statute of limitations for court. This article discusses the important legal distinction between a "toll" and a "suspension."

By **Thomas F. Whelan** October 06, 2020 at 11:54 AM

During the COVID-19 pandemic, Governor Andrew M. Cuomo has issued, and continues to issue, a series of executive orders (65 in total so far), that have suspended procedural deadlines, including the statute of limitations. Various articles have been written that describe these executive orders as a toll of the statute of limitations for court proceedings (*see* Thomas A. Moore and Matthew Gaier, Medical Malpractice, *Toll on Statute of Limitations During the COVID-19 Emergency*, NYLJ, June 1, 2020; Patrick M. Connors, New York Practice, *The COVID-19 Toll: Time Periods And the Courts During Pandemic*, NYLJ, July 17, 2020). However, there is an important legal distinction between a "toll" and a "suspension."

While a toll stops the running of the limitation period, with a tacked-on time period, a suspension of the statute of limitations would provide for a grace period until the conclusion of the last suspension directive in the latest executive order, a significantly shorter time period. Since no court has yet weighed in on whether these executive orders constitute a toll, these authors may have unwittingly set a trap for the unwary. This article examines the controlling statute and applicable caselaw and concludes that the executive orders should be considered a suspension and not a toll.

On March 7, 2020, the governor issued Executive Order No. 202, which declared a State of Emergency for the entire State of New York, due to the increasing transmission of COVID-19. On March 20, 2020, the Governor issued Executive Order No. 202.8, entitled "Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency," which temporarily suspended or modified any time limitations set forth in any statute, legislative or administrative act, from March 20, 2020 until April 19, 2020.

This executive order stated: "[i]n accordance with the directive of the Chief Judge of the State to limit court operations to essential matters,...any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state,...is hereby *tolled* from the date of this executive order until April 19, 2020 (emphasis added)." The use of the word "tolled" in the executive order appears to be the basis for the contrary conclusions noted in the above mentioned articles.

Since that date, the governor has extended the suspension seven times by Executive Orders 202.14, 202.28, 202.38, 202.48, 202.55, 202.55.1 and 202.60. Each of these executive orders repeats the phrase "temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or part thereof, ..." The most recent Executive Order, No. 202.60, states the governor "hereby continue[s] the suspensions, modifications, and directives, not superseded by a subsequent directive,...for another thirty days through Oct. 4, 2020..." None of the subsequent executive orders uses the word "toll." Every executive order makes explicit reference to Executive Law §29-a for its authority. Therefore, an examination of that statute is necessary.

Executive Law §29-a, entitled "Suspension of other laws," expressly permits the governor to "temporarily suspend any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, ..." (§29-a[1.]). A temporary amendment was made to Executive Law 29-a, effective from March 3, 2020 to April 29, 2021 (L.2020, c. 23, §4), authorizing the governor to issue directives during a state disaster emergency.

This amendment also removed the requirement that the executive order needed to list the "specific provision of" the temporarily suspended statute, local law, ordinance, or orders, rules or regulations, or parts thereof. By statute, each suspension order or directive is clearly limited in duration for a period not to exceed thirty days, but "the governor may extend the suspension for additional periods not to exceed thirty days each" (§29-a[2.][a.]). The word "toll" is not found in the statute.

The COVID-19 executive orders are similar to those issued after the 9/11 attack and the Superstorm Sandy emergency. The only real difference is that those executive orders followed the pre-existing statutory language and listed the "specific provision of" the temporarily suspended statute, local law, ordinance, or orders, rules or regulations, or parts thereof.

For instance, on Sept. 11, 2001, Governor George E. Pataki issued Executive Order No. 113, declaring a disaster state of emergency (9 NYCRR 5.11) and on September 12, 2001 he issued Executive Order No. 113.7, suspending temporarily CPLR 201, which prevents Courts from extending the statute of limitations. Future executive orders provided for a cutoff date. In *Scheja v Sosa*, 4 AD3d 410 (2d Dept. 2004), it was held that the executive orders provided for a grace period of up until November 8, 2001 to satisfy the statute of limitations.

The notion that the executive orders should be interpreted as a tolling provision for the number of days the orders spanned, no matter when the statute of limitations expired, was expressly rejected (*see also Koebel v New York State Comptroller*, 66 AD3d 1307 [3rd Dept. 2009]; Randolph v CIBC World Markets, 219 F. Supp.2d 399 [S.D. N.Y. 2002]).

On Oct. 31, 2012, Governor Cuomo signed Executive Order No. 52 (9 NYCRR 8.52) suspending the statute of limitations, in particular, CPLR 201, due to Superstorm Sandy. It was held, by various lower courts, that Executive Order No. 52 was not a "blanket toll." Instead, Executive Order 52 suspended those actions whose limitation period would have ended during the period from when the disaster emergency was declared through the date of its

conclusion. It was a grace period, not an additional time period, to be tacked-on to the expiration date of the statute of limitations.

So, under those prior executive orders, the courts concluded that it was only where the limitation period would have ended during the suspension period, that relief was afforded from the ordinary limitation period by commencing an action when the suspension period ended. The articles mentioned above, offer that the COVID-19 Executive Orders not only stop the statute of limitations clock, but tack-on to the end date of the final executive order, for statute of limitations purposes, the entire time period that the executive orders were in place. However, statutory construction should be interpreted to suspend the running of the period during the COVID-19 crisis, and no more.

The Moore and Gaier Medical Malpractice column fails to address Executive Law §29-a and advances the analogy to the tolls established by the continuous treatment doctrine in medical malpractice actions and in motions seeking leave to file a late notice of claim. Tolls do exist in the law (*see* CPLR 204[a]).

For instance, the statute of limitations is tolled during the pendency of a petition to seeking leave to file a late notice of claim under General Municipal Law §50-i(1) and recommences only for the period of time remaining to file the action (*see Bayne v City of New York*, 137 AD3d 428 [1st Dept. 2016] [13 days to file]; *Doddy v City of New York*, 45 AD3d 431 [1st Dept. 2007] [8 days to file]; *Barchet v New York City Tr. Auth.*, 20 NY2d 1[1967] [5 days to commence action]). The continuous treatment doctrine serves as a toll because the patient is not compelled to initiate judicial proceedings so long as

the physician continues to treat the injury (*see McDermott v Torre*, 56 NY2d 399 [1982]).

However, these are very distinct and separate situations from the statutory construction of Executive Law §29-a. Moreover, this column offers examples that appear to be flawed. At the time of publication of the column, the authors argue that the executive orders covered the 78-day period starting on March 20, 2020 and ending on June 6, 2020.

The column then argues, as follows: "If a statute of limitations was set to expire on March 25, 2020, the plaintiff will now have until 78 days later, June 11, 2020 to timely commence the action...The same applies where the statute of limitations would have expired after the toll ended. If it was to expire on June 30, 2020, it is extended by the toll until Sept. 16, 2020." The authors reject the simple extension of the statute of limitations until the emergency is over, for what they say is practical reasons.

The Connors New York Practice column renames the various executive orders as "the COVID-19 Toll." The column acknowledges that the 9/11 and Superstorm Sandy executive orders did not "toll" the statute of limitations, but rather extended those time periods to a date certain. As of the time of publication of this column, the author argues that the executive orders covered the 138-day period starting on March 20, 2020 and ending on August 5, 2020. Two hypotheticals are offered. Although worded differently than the Moore and Gaier column, the end result is the same.

In the first hypothetical, the three-year statute of limitations expires on April 1, 2020, with just 12 days remaining on the statute when Executive Order 202.8

was issued on March 20, 2020. Therefore, plaintiff has just "12 days from Aug. 6, 2020, the first day the COVID-19 Toll is no longer in effect." The second hypothetical involves a six-year breach of contract claim that accrued on April 1, 2019. Such would normally expire on April 1, 2025, "yet it was tolled for 138 days in 2020 during the COVID-19 Toll. The statute of limitations will expire on Aug. 17, 2025."

The column does not examine Executive Law §29-a in detail. However, in section 33 of the July 2020 Supplement to the New York Practice treatise, Professor Connors notes that "[o]ne may question whether the COVID-19 Toll created by the COVID-19 executive orders exceeds the Governor's power...".

So, what does it mean to suspend time limits under Executive Law §29-a? While sometimes in decisions the words "toll" and "suspend" are used interchangeably, appellate courts that have considered Executive Order 202.8 have held, for instance, that it "temporarily suspends the operation of CPL 180.80" (*see, e.g., People v Franchi*, 182 AD3d 563 [2d Dept. 2020]) and does not denote it as a toll.

The Court of Appeals has rejected attempts to utilize the COVID-19 pandemic and, in particular, Executive Order 202.8, to suspend Election Law deadlines during the health crisis, for claimed practical reasons (*see Seawright v Board of Elections in City of New York*, 35 NY3d 227 [2020] ["During the most difficult and trying of times, consistent enforcement and strict adherence to legislative judgment should be reinforced - not undermined"]; *see also Echevarria v Board of Elections in City of New York*, 183 AD3d 857 [2d Dept. 2020]).

Where, as here, one is asked to resolve "a question of statutory interpretation, our primary consideration is to ascertain and give effect to the intent of the Legislature," with "[t]he statutory text [being] the clearest indicator of legislative intent" (*Matter of DaimlerChysler Corp. v Spitzer*, 7 NY3d 653 [2006]; *see also Chisholm v Georgia*, 2 U.S. [2 Dall] 419 [1793]). If "the statutory language is clear and unambiguous," one must "construe it so as to give effect to the plain meaning of the words used" (*Patrolmen's Benevolent Assn. of City of N.Y. v City of New York*, 41 NY2d 205 [1976]).

Here, Executive Law §29-a could not be any clearer—the governor, during an emergency, has the power to "temporarily suspend" statute of limitation laws. Any contrary view, that the governor can "toll" the statute of limitations, is rewriting the law, which, as noted by the Court of Appeals, is not the function of the courts.

With the issuance of Executive Order No. 202.8—and its successors—in total, the statute of limitations has been "temporarily suspended" by 198 days—the number of days between March 20 and Oct. 4. According to the examples offered in the columns discussed above, on some actions, if the emergency orders were to end on October 4, 198 days should be added to the existing 198 day suspension, for an almost 400 day toll. Such runs counter to the plain definition of the word. Black's Law Dictionary (11th ed. 2019) defines "suspend" as "1. to interrupt; postpone; defer (the fire alarm suspended the prosecutor's opening statement). 2. To temporarily keep (a person) from performing a function, occupying an office, holding a job, or exercising a right or privilege (the attorney's law license was suspended for violating the Model Rules of Professional Conduct)."

Such is unlike a toll which stops the running of a limitation period, just to be restarted with a tacked-on time period. The suspension in Executive Law §29-a is consistent with the suspension for local government emergency orders found in Executive Law §24. As currently existing, the executive orders provide for a grace period of up until Oct. 5, 2020, the date after the last suspension order, to satisfy the statute of limitations. Counsel should be forewarned and be prepared to act appropriately if they intend to rely upon the suspension provisions.

Thomas F. Whelan *is a Supreme Court Justice sitting in Riverhead, N.Y.*

Toll on Statutes of Limitations During the COVID-19 Emergency

In their Medical Malpractice column, Thomas A. Moore and Matthew Gaier review pertinent executive orders that tolled statutes of limitations and analyze them in relation to the decisional law and prior executive orders issued in response to different emergencies.

By **Thomas A. Moore and Matthew Gaier** June 01, 2020 at 12:30 PM

Due to the shutdown of the court system brought about by the COVID-19 pandemic, the Governor has issued a series of executive orders that toll the statutes of limitations on actions in New York, as well as filing deadlines applicable to litigation in the state court system. The original executive order was issued on March 20, 2020, and has twice been extended by subsequent executive orders, the most recent of which extends this toll to June 6, 2020—and it is possible that the toll may yet be extended further. Despite the clear language of the executive order and the equally clear intent in issuing it to facilitate a shutdown of businesses to cope with the COVID-19 emergency, there has been a degree of confusion and trepidation about its impact. In this column, we therefore review the pertinent executive orders and analyze them in relation to the decisional law and prior executive orders issued in response to different emergencies.

On March 7, 2020, Governor Cuomo issued Executive Order 202, declaring a disaster emergency for the entire state to remain in effect until Sept. 7, 2020. The Governor has since issued numerous further executive orders, which have collectively effected the statewide shutdown and imposed measures to accommodate that shutdown. Executive Order 202.8, issued on March 20, 2020, provides in pertinent part:

In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020.

Subsequently, Executive Order 202.14 extended the provisions Executive Order 202.8 to May 7, 2020, and Executive Order 202.28 extended them to June 6, 2020. Hence, as it currently stands, the tolling provision of Executive Order 202.8 runs 78 days from March 20, 2020 through June 6, 2020.

For the purpose of analyzing the impact of these executive orders on statutes of limitations, the focus is on the language that "any specific time limit for the commencement, filing, or service of any legal action ... is hereby tolled from the date of this executive order until April 19, 2020." That is because the word "toll" means that the running of the clock is stayed during that time period.

In *McDermott v. Torre*, 56 N.Y.2d 399, 407 (1982), in determining whether the three-year statute of limitations applicable to medical malpractice actions that accrued before July 1, 1975 or the two and one half years statute of limitations applicable to malpractice actions accruing after that date applied to a case that accrued before that date but was tolled by continuous treatment, the Court of Appeals distinguished between a toll and a delay of accrual, and held that continuous treatment is a toll of the statute of limitations and that the statutory period does not begin to run until the toll ends. The court stated:

The action having accrued in 1974, the three-year Statute of Limitations then in effect attached. Torre's continuing treatment of plaintiff, if any, served to toll the running of the statute, but not to truncate it by imposing the lesser time limit of section 214-a. Thus, whenever treatment of plaintiff is found to have ended, a three-year time period for bringing suit should be imposed.

Further elucidation of the impact of a toll is gleaned from decisions addressing the impact on statutes of limitations of motions seeking permission to file late notices of claim. In *Barchet v New York City Tr. Auth.*, 20 N.Y.2d 1 (1967), the court held that "the statute was tolled from the time the plaintiff commenced the proceeding to obtain leave of the court to file a late notice of claim until the order of Special Term granting that relief appeared in the *New York Law Journal*, the date upon which it was to take effect." The court explained the impact of the toll in that case, as follows:

On December 18, 1964, when the proceeding to file a late notice of claim was commenced, there remained five days in which to commence the action. The order of Special Term granting leave to file a late notice of claim took effect on February 19, 1965. The Statute of Limitations then commenced to run again.

Similarly, in *Doddy v. City of New York*, 45 A.D.3d 431 (1st Dept. 2007), the court held:

Plaintiffs moved to file a late notice of claim on July 10, 1991, 8 days before the year–and–90–day statute of limitations expired. A decision granting the motion, deeming the notice of claim timely served, was entered on March 31, 1992. The statute of limitations, tolled for 265 days, ran anew as of that date, and plaintiffs were required to serve their summons and complaint upon defendants on or before April 8, 1992.

It is therefore clear that the effect of a toll is to stay the running of the statute of limitations during the time that the toll is in effect, and that the statutory period resumes running upon the termination of the toll. The toll effected by Executive Order 202.8 and its subsequent extensions, as it currently stands, covers the 78-day period starting on March 20, 2020 and ending on June 6, 2020. That means that any cause of action that accrued prior to March 20, 2020 is extended by 78 days. If a statute of limitations was set to expire on March 25, 2020, the plaintiff will now have until 78 days later, June 11, 2020 to timely commence the action. If a statute of limitations was set to expire on May 28, 2020, the plaintiff will have until Aug. 14, 2020. The same applies where the statute of limitations would have expired after the toll ended. If it was to expire on June 30, 2020, it is extended by the toll until Sept. 16, 2020.

By its terms, the toll provided for in the executive orders also applies to causes of action that accrue during the period that it is in effect. However, the duration of the toll in those case will only be in effect for the period from the time it accrued until the toll ends. Therefore, a prospective plaintiff cannot simply tack on 78 days. Instead, the statute of limitations for any cause of

action that accrues during the period of the toll will commence running on June 6, 2020.

There is an important practical impact of tolling statutes of limitations during this period rather than simply extending them until the emergency is over—it eliminates the impetus for a run on the courts in a rush to file as soon as the emergency is over. The courts would be overwhelmed by new filings that had accumulated during the shutdown. The tolling provision permits business to return to normal and new litigation to proceed as if the shutdown had not occurred.

The concerns that have been raised regarding the impact of Executive Order 202.8 stem largely from the impact of prior executive orders addressing statutes of limitations during prior state-wide emergencies, particularly during the Hurricane Sandy and 9/11 emergencies. However, the provisions and language of those executive orders were fundamentally different than that provided in Executive Order 202.8. For instance, Executive Order No. 113.7, issued on Sept. 12, 2001, provided, in pertinent part:

I hereby temporarily suspend, from the date the disaster emergency was declared, pursuant to Executive Order Number 113, issued on September 11, 2001 until further notice, the following laws:

Section 201 of the Civil Practice Law and Rules, so far as it bars actions whose limitation period concludes during the period commencing from the date that the disaster emergency was declared pursuant to Executive Order Number 113, issued on September 11, 2001, until further notice, and so far as it limits a courts authority to extend such time, whether or not the time to

commence such an action is specified in Article 2 of the Civil Practice Law and Rules ... .

Thus, by its express terms, the executive order suspended statutes of limitations only to the extent that they expired during the period of the emergency. Executive Order 52, issued on Oct. 31, 2012 in response to Hurricane Sandy, employed identical language. Neither of those executive orders stated that the statutes of limitations were tolled during a specified period.

The Second Department's decision addressing Executive Order 113.7 of 2011 and attendant executive orders in *Scheja v. Sosa*, 4 A.D.3d 410, 411-12 (2d Dept. 2004), sheds light on the distinctions between Executive Order 202.8 and the executive orders issued to address those earlier emergencies. It observed:

On September 12, 2001, the Governor issued Executive Order No. 113.7, continuing Executive Order No. 113 and amending it to suspend temporarily, until further notice, CPLR 201 insofar as it barred actions the limitations period of which concluded during the period from the date that the disaster emergency was declared (Sept. 11, 2001) pursuant to Executive Order No. 113, until further notice (see 9 NYCRR 5.113). By Executive Order No. 113.28, the Governor provided a cutoff date of October 12, 2001, for the general suspension of the statute of limitations contained in Executive Order No. 113.7 (see 9 NYCRR 5.113). The order provided an exception for those litigants or their attorneys who had been directly affected by the terrorist attack and temporarily suspended, until November 8, 2001, CPLR 201 insofar as it barred an action, by or on behalf of such person, if the limitations period with

respect to a particular action concluded during the period the Executive Order was in effect (see 9 NYCRR 5.113).

In rejecting the argument of the plaintiff, who filed his complaint on March 19, 2002, that he should qualify for the extension of the statute of limitations under the executive orders, the court stated:

The plain meaning of these Executive Orders is that any litigant who was affected by the World Trade Center attacks and whose statute of limitations period expired between September 11, 2001 and November 8, 2001, was given a grace period of up until November 8, 2001, to satisfy the statute (*see Randolph v. CIBC World Markets*, 219 F Supp 2d 399, 401). The plaintiff urges an extraordinary interpretation of the Governor's Executive Orders as a tolling provision. According to his argument, any litigant who was affected by the disaster emergency could have their period of limitations tolled for the number of days from September 11, 2001, to November 8, 2001, no matter when the statute of limitations expired. This could not have been the intent of the Governor's Executive Orders. The state of emergency caused by the attacks on September 11, 2001, no longer existed at the time the plaintiff was required to commence his action in February 2002 and thus could not have interfered with his ability to meet the statute of limitations.

While the court noted that the emergency no longer existed when the plaintiff's statute of limitations expired in that case, that was in the context of its rejection of the plaintiff's interpretation of the executive orders "as a tolling provision." That it was not a toll is patently clear from (1) its express language suspending CPLR 201 only "so far as it bars actions whose limitation period concludes during the period commencing from the date that the disaster

emergency was declared"; and (2) the absence of language that statutes of limitations were "tolled" from the date of the executive order until a specific date in the future. Executive Order 202.8 of 2020 was not limited to the former circumstance and it expressly used the language specifying the latter.

The tolling provision of Executive Order 202.08 was analyzed in the context of criminal proceedings by the court in *People ex rel Badillo v. Brann*, 2020 WL 1878094 (Sup. Ct., Queens Co. 2020, Zayas, J.), who compared the language of that executive order to those issued in response to Hurricane Sandy, and concluded that the "combined effect" of the 2012 executive orders "did not sweep as broadly as Executive Order 202.8—which makes sense, since, despite the immense scope of the disaster caused by Hurricane Sandy, that crisis did not result in the sort of unprecedented statewide shutdown of an as-yet-unknown duration caused by COVID-19—and thus explains why they were drafted differently."

There appears little basis for disputing that Executive Order 202.8 imposes a toll on all statutes of limitations for the duration of the period specified therein and in the subsequent executive orders extending it. It is a logical and practical remedy for an emergency that has effectively led to a time-out in litigation, in the courts and in society in general, and it will enable the practice of law to resume where it left off once the emergency abates.

Thomas A. Moore *is senior partner and* **Matthew Gaier** *is a partner of Kramer, Dillof, Livingston & Moore.*

The COVID-19 Toll: Time Periods and the Courts During Pandemic

In his New York Practice, Patrick Connors writes: "Despite a global pandemic lockdown, New York's procedural world refuses to rest, and numerous important developments have taken place to grapple with the problems caused by the spread of COVID-19."

By **Patrick M. Connors** July 17, 2020 at 12:49 PM

So much has changed in the world since our last piece appeared in the March 16 edition of the Law Journal. At that time, in the middle of the presidential primary season, we were concerned about pleading and preserving affirmative defenses. Fast forward four months and we are now in the midst of the COVID-19 disaster emergency. Like so many parts of New York state, our courts were effectively locked down at the end of March and filings, even in e-filed actions, were prohibited in all but "essential matters."

Despite a global pandemic lockdown, New York's procedural world refuses to rest, and numerous important developments have taken place to grapple with the problems caused by the spread of COVID-19. Too many, in fact, to discuss in this limited space. Therefore, we will focus on some of the basics

and refer the reader to the July 2020 Supplement to Siegel and Connors, New York Practice, which is now available on Westlaw. The July 2020 Supplement contains an expanded discussion of the issues addressed here, and coverage of many other procedural issues arising during the COVID-19 disaster emergency.

Executive Orders Creating the COVID-19 Toll

On March 7, Gov. Andrew Cuomo issued Executive Order 202 declaring a disaster emergency for the entire state of New York due to the transmission of COVID-19 (COVID-19 Disaster Emergency). On March 20, he issued Executive Order 202.8, which states:

Any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020 ...

Among other things, Executive Order 202.8 essentially tolled any statute of limitations contained in the CPLR and other "procedural laws of the state" until April 19, 2020, (the COVID-19 Toll). Then, in a series of executive orders issued approximately every 30 days, the governor extended the COVID-19 Toll "through Aug. 5, 2020." See Executive Order 202.14 (April 7, 2020) (continuing the toll in Executive Order 202.8 until May 7, 2020); Executive Order 202.28 (May 7, 2020) (continuing the tolls in Executive Orders 202.8 and 202.14 until June 6, 2020); Executive Order 202.38 (June 6, 2020)

(continuing the tolls in Executive Orders 202.8, 202.14, and 202.28 until July 6, 2020); Executive Order 202.48 (July 6, 2020) (continuing the tolls in Executive Orders 202.8, 202.14, 202.28, and 202.38 "through Aug. 5, 2020").

Executive Law Section 29-a(2)(a) prohibits the governor from suspending laws "for a period in excess of 30days," but permits extensions of the suspensions. Therefore, the governor may issue additional executive orders after we go to press that affect the COVID-19 Toll, and readers should check for those.

'Toll' v. 'Extension'

While the courts possess broad powers to extend most deadlines contained in the CPLR and court rules, see, e.g., CPLR 2004, CPLR 201 provides that "[n]o court shall extend the time limited by law for the commencement of an action." That prohibition, and two others discussed below, is what makes the above executive orders and the COVID-19 Toll necessary. Without them, the New York state courts are powerless to extend the statute of limitations and a few other important time periods, regardless of how compelling the plaintiff's hardship may be.

Unfortunately, this is the third time in recent memory that New York's governor has needed to issue executive orders addressing the statute of limitations and certain other time periods. In September and October 2001, in the wake of the 9/11 attacks, Gov. George Pataki issued executive orders affecting various time periods and in October and November 2012, Gov. Cuomo issued similar executive orders in the wake of Superstorm Sandy. See Siegel & Connors, New York Practice § 33 (July 2020 Supplement).

The 9/11 and Superstorm Sandy executive orders did not "toll" time periods, such as the statute of limitations. Rather, they extended those time periods to a date certain. Furthermore, the extension in the 9/11 executive orders was only extended to those "directly affected by the disaster emergency" and appeared to contemplate a court application to obtain the extension. *See* 9 N.Y.C.R.R. § 5.113.28; Siegel & Connors, New York Practice § 33 (July 2020 Supplement).

By contrast, the COVID-19 executive orders do not simply extend statutes of limitations periods that expire during the disaster emergency, but rather toll all statutes of limitations on claims that accrued on or before March 20, 2020, and which were not time-barred on that date. The COVID-19 Toll is the equivalent of a pause or a time-out of sorts, stopping the clock on March 20, and then turning it on again on Aug. 6, at least under the most recent executive order. Furthermore, the COVID-19 Toll applies to numerous time periods in addition to the statute of limitations and does not require a party relying on the toll to demonstrate that they were directly affected by the COVID-19 Disaster Emergency. See Siegel & Connors, New York Practice § 33 (July 2020 Supplement).

Hypotheticals Applying the COVID-19 Toll

The COVID-19 Toll, as it currently exists, amounts to a period of 138 days from March 20 "through Aug. 5, 2020." Two hypotheticals help to demonstrate the effect of the COVID-19 Toll:

Hypo #1: The three-year statute of limitations on plaintiff's negligence claim for personal injuries was to expire on April 1, 2020. That means there were 12 days remaining on the statute when Executive Order 202.8 was issued on

March 20, 2020. Therefore, plaintiff has until Aug. 18, 2020, to commence her action, i.e., 12 days from Aug. 6, 2020, the first day the COVID-19 Toll is no longer in effect. Plaintiff will not get the benefit of the full 138-day COVID-19 Toll in this hypothetical because she only had 12 days left on the statute of limitations when the COVID-19 Toll took effect.

Hypo #2: Plaintiff's breach of contract claim accrues on April 1, 2019. The statute of limitations on the plaintiff's breach of contract claim is six years, and would normally expire on April 1, 2025, yet it was tolled for 138 days in 2020 during the COVID-19 Toll. The statute of limitations will expire on Aug. 17, 2025.

There are additional hypotheticals in section 33 of the July 2020 Supplement to the New York Practice treatise, but as we can see from the above examples, the COVID-19 Toll will likely be with us for a long time. Its application will almost certainly be debated in numerous cases.

Time Periods Outside the CPLR

Both actions and special proceedings are now commenced by filing in New York State courts. *See* Siegel & Connors, New York Practice § 45. The language in Executive Order 202.8 tolling "any specific time limit for the commencement [or] filing ... of any legal action" covers statutes of limitations in CPLR Article 2 and elsewhere in the "procedural laws of the state." This would include the 2-year statute of limitations for wrongful death actions in the EPTL, the one-year and 90-day period in the General Municipal Law, and the four-year statute of limitations for breach of contract or warranty with respect to the sale of goods. *See* Siegel & Connors, New York Practice § 35 ("Statutes of Limitations Periods Outside the CPLR"). It should also be read to

cover statutes of limitations in special proceedings, including CPLR Article 78 proceedings, as "[t]he word 'action' includes a special proceeding." CPLR 105(b).

Time to Serve Initiatory Papers

After interposing a claim in an action by filing, the plaintiff must serve the initiatory papers within 120 days of the filing. CPLR 306-b. In a special proceeding, the petitioner must serve the initiatory papers within 15 days after the expiration of the statute of limitations. CPLR 306-b; *see* Siegel & Connors, New York Practice §§ 63, 553. The courts already have the power to extend these service periods for "good cause shown or in the interest of justice." Nonetheless, the language in Executive Order 202.8 tolls "any specific time limit for the ... *service* of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state" (emphasis added). Therefore, if the time periods to make service under CPLR 306-b were still running on the date Executive Order 202.8 was issued (March 20, 2020), or are running at any time during the COVID-19 Toll, they are tolled. The plaintiff or petitioner can also seek an extension of time to serve under CPLR 306-b if the COVID-19 Toll is not sufficient, and will likely be able to establish that "good cause" or "the interest of justice" will be served by granting at least some extension due to the COVID-19 disaster emergency.

Time to Appeal, Contest Arbitration, and Seek Arbitration

In addition to the statute of limitations, two additional time periods are deemed sacred in New York Practice and generally cannot be extended by the courts: the time to take an appeal, *see* Siegel & Connors, New York Practice §§ 533-

34; and the time to commence a special proceeding to stay arbitration after being served with a demand for arbitration. Executive Order 202.8 tolls "any specific time limit for the ... filing, or service of any ... notice [or] motion ... as prescribed by the procedural laws of the state." That language tolls the running of the 30-day period in CPLR 5513(a) to serve and file the notice of appeal. It also tolls the 30-day period to move for permission to appeal contained in CPLR 5513(b), which applies to situations in which the appeal is not as of right. *See* § 533. The language in Executive Order 202.8 noted above tolling "any specific time limit for the commencement [or] filing ... of any legal action" will toll the running of the 20-day period in CPLR 7503(c) to commence a special proceeding to stay arbitration. *See* Siegel & Connors, New York Practice § 33 (July 2020 Supplement).

The proponent of arbitration can also face statute of limitations issues. *See* Siegel & Connors, New York Practice § 590. The claim in an arbitration proceeding is deemed interposed for statute of limitations purposes upon the service of "a demand for arbitration or a notice of intention to arbitrate." CPLR 7503(c). A strong argument can be made that the language in Executive Order 202.8 tolling "any specific time limit for the ... service of any legal ... notice ... or other process ... as prescribed by the procedural laws of the state" tolls the service of a demand for arbitration under CPLR 7503(c), but it is highly recommended that one avoid establishing law on the point by promptly serving the demand.

Time to Serve Notice of Claim

Section 50-e of the General Municipal Law, which applies to tort claims against municipal entities, ordinarily requires service of a notice of claim on

the entity within 90 days after the claim arises. See Siegel & Connors, New York Practice § 32. In that Executive Order 202.8 tolls "any specific time limit for the ... service of any ... notice ... as prescribed by the procedural laws of the state," it tolls the running of the 90-day period to serve a notice of claim. As noted above, the one-year and 90 days statute of limitations in General Municipal Law section 50-i is also the beneficiary of the COVID-19 Toll. The court has the power on an application under General Municipal Law section 50-e(5) to stretch the 90-day notice of claim period up to the one-year and 90 days statute of limitations in section 50-i, plus any applicable tolls. See Siegel & Connors, New York Practice § 32 ("Application for Leave to Serve Late Notice of Claim"). Therefore, the COVID-19 Toll will serve to toll the period within which the court can extend the time to serve a late notice of claim. Nonetheless, any extension of time to serve the notice of claim is always within the discretion of the court and should be promptly sought.

Various Other Time Periods Covered by COVID-19 Toll

The broad language in the COVID-19 executive orders covers a large number of time periods, even those that can be extended by the courts without the benefit of the COVID-19 Toll. These include, among others, certain periods governing a defendant's time to appear in an action and CPLR 3212(a)'s deadline for summary judgment motions. Defendants need to be careful here. While the COVID-19 Toll applies to the service of a notice of appearance under CPLR 320(a), a CPLR 3211(a) pre-answer motion to dismiss, and a CPLR 3024 corrective motion, it does not apply to toll the defendant's time to serve an answer! This is all addressed in further detail in the July 2020 Supplement to Siegel and Connors, New York Practice.

Patrick M. Connors *is the Albert and Angela Farone Distinguished Professor in New York Civil Practice at Albany Law School. He is the author of Siegel & Connors, New York Practice (Thomson, 6th ed. 2018), which is supplemented biannually in January and July.*

Section 29-A

Suspension of other laws

Executive (EXC)

1. Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster or if necessary to assist or aid in coping with such disaster. The governor, by executive order, may issue any directive during a state disaster emergency declared in the following instances: fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, epidemic, disease outbreak, air contamination, terrorism, cyber event, blight, drought, infestation, explosion, radiological accident, nuclear, chemical, biological, or bacteriological release, water contamination, bridge failure or bridge collapse. Any such directive must be necessary to cope with the disaster and may provide for procedures reasonably necessary to enforce such directive.

2. Suspensions pursuant to subdivision one of this section shall be subject to the following standards and limits, which shall apply to any directive where specifically indicated:

a. no suspension or directive shall be made for a period in excess of thirty days,

provided, however, that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each;

b. no suspension or directive shall be made which is not in the interest of the health or welfare of the public and which is not reasonably necessary to aid the disaster effort;

c. any such suspension order shall specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension;

d. the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such statute, local law, ordinance, order, rule or regulation suspended, and may include other terms and conditions;

e. any such suspension order or directive shall provide for the minimum deviation from the requirements of the statute, local law, ordinance, order, rule or regulation suspended consistent with the goals of the disaster action deemed necessary; and

f. when practicable, specialists shall be assigned to assist with the related emergency actions to avoid needless adverse effects resulting from such suspension.

3. Such suspensions or directives shall be effective from the time and in the manner prescribed in such orders and shall be published as soon as practicable in the state bulletin.

4. The legislature may terminate by concurrent resolution executive orders issued under this section at any time.

* NB Effective until April 30, 2021

* § 29-a. Suspension of other laws. 1. Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.

2. Suspensions pursuant to subdivision one of this section shall be subject to the following standards and limits:

a. no suspension shall be made for a period in excess of thirty days, provided, however, that upon reconsideration of all of the relevant facts and circumstances, the governor may extend the suspension for additional periods not to exceed thirty days each;

b. no suspension shall be made which does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;

c. any such suspension order shall specify the statute, local law, ordinance, order, rule or regulation or part thereof to be suspended and the terms and conditions of the suspension;

d. the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such statute, local law, ordinance, order, rule or regulation suspended, and may include other terms and conditions;

e. any such suspension order shall provide for the minimum deviation from the requirements of the statute, local law, ordinance, order, rule or regulation suspended consistent with the disaster action deemed necessary; and

f. when practicable, specialists shall be assigned to assist with the related emergency actions to avoid needless adverse effects resulting from such suspension.

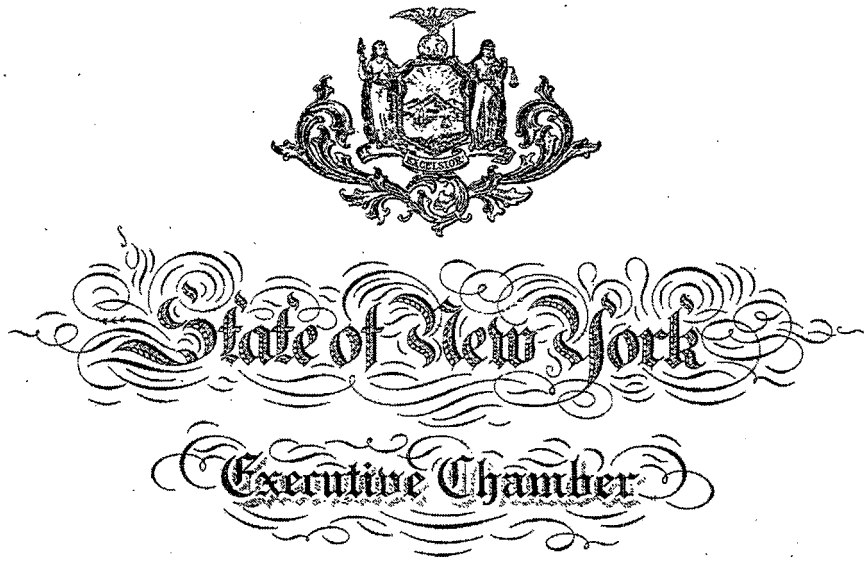
3. Such suspensions shall be effective from the time and in the manner prescribed in such orders and shall be published as soon as practicable in the state bulletin.

4. The legislature may terminate by concurrent resolution executive orders issued under this section at any time.

* NB Effective April 30, 2021

PREV
SECTION 29
Direction Of State Agency Assistance In A Disaster Emergency (/Legislation/Laws/EXC/29/)

NEXT
SECTION 29-B
Use Of Disaster Emergency Response Personnel In Disasters (/Legislation/Laws/EXC/29-B/)



No. 202

EXECUTIVE ORDER

Declaring a Disaster Emergency in the State of New York

WHEREAS, on January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern;

WHEREAS, on January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and more are expected to continue; and

WHEREAS, New York State is addressing the threat that COVID-19 poses to the health and welfare of its residents and visitors.

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster is impending in New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York. This Executive Order shall be in effect until September 7, 2020; and

IN ADDITION, this declaration satisfies the requirements of 49 C.F.R. 390.23(a)(I)(A), which provides relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR). Such relief from the FMCSR is necessary to ensure that crews are available as needed.

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize all necessary State agencies to take appropriate action to assist local governments and individuals in containing, preparing for, responding to and recovering from this state disaster emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 6, 2020 the following:

Section 112 of the State Finance Law, to the extent consistent with Article V, Section 1 of the State Constitution, and to the extent necessary to add additional work, sites, and time to State contracts or to award emergency contracts, including but not limited to emergency contracts or leases for relocation and support of State operations under Section 3 of the Public Buildings Law; or emergency contracts under Section 9 of the Public Buildings Law; or emergency contracts for professional services under Section 136-a of the State Finance Law; or emergency contracts for commodities, services, and technology under Section 163 of the State Finance Law; or design-build or best value contracts under and Part F of Chapter 60 of the Laws of 2015 and Part RRR of Chapter 59 of the Laws of 2017; or emergency contracts for purchases of commodities, services, and technology through any federal GSA schedules, federal 1122 programs, or other state, regional, local, multi-jurisdictional, or cooperative contract vehicles;

Section 163 of the State Finance Law and Article 4-C of the Economic Development Law, to the extent necessary to allow the purchase of necessary commodities, services, technology, and materials without following the standard notice and procurement processes;

Section 97-G of the State Finance Law, to the extent necessary to purchase food, supplies, services, and equipment or furnish or provide various centralized services, including but not limited to, building design and construction services to assist affected local governments, individuals, and other non-State entities in responding to and recovering from the disaster emergency;

Section 359-a, Section 2879, and 2879-a of the Public Authorities Law to the extent necessary to purchase necessary goods and services without following the standard procurement processes;

Sections 375, 385 and 401 of the Vehicle and Traffic Law to the extent that exemption for vehicles validly registered in other jurisdictions from vehicle registration, equipment and dimension requirements is necessary to assist in preparedness and response to the COVID-19 outbreak;

Sections 6521 and 6902 of the Education Law, to the extent necessary to permit unlicensed individuals, upon completion of training deemed adequate by the Commissioner of Health, to collect throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse;

Subdivision 6 of section 2510 and section 2511 of the Public Health Law, to the extent necessary to waive or revise eligibility criteria, documentation requirements, or premium contributions; modify covered health care services or the scope and level of such services set forth in contracts; increase subsidy payments to approved organizations, including the maximum dollar amount set forth in contracts; or provide extensions for required reports due by approved organizations in accordance with contracts;

Section 224-b and subdivision 4 of section 225 of the Public Health Law, to the extent necessary to permit the Commissioner of Health to promulgate emergency regulations and to amend the State Sanitary Code;

Subdivision 2 of section 2803 of the Public Health Law, to the extent necessary to permit the Commissioner to promulgate emergency regulations concerning the facilities licensed pursuant to Article 28 of the Public Health Law, including but not limited to the operation of general hospitals;

Subdivision 3 of section 273 of the Public Health Law and subdivisions 25 and 25-a of section 364-j of the Social Services Law, to the extent necessary to allow patients to receive prescribed drugs without delay;

Section 400.9 and paragraph 7 of subdivision f of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law ("Article 28 facilities") that are treating patients during the disaster emergency to rapidly discharge, transfer, or receive such patients, as authorized by the Commissioner of Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd) and any associated regulations;

Section 400.11 of Title 10 of the NYCRR, to the extent necessary to permit Article 28 facilities receiving patients as a result of the disaster emergency to complete patient review instruments as soon as practicable;

Section 405 of Title 10 of the NYCRR, to the extent necessary to maintain the public health with respect to treatment or containment of individuals with or suspected to have COVID-19;

Subdivision d and u of section 800.3 of Title 10 of the NYCRR, to the extent necessary to permit emergency medical service personnel to provide community paramedicine, transportation to destinations other than hospitals or health care facilities, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Commissioner of Health;

Paragraph 3 of subdivision f of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit nursing supervision visits for personal care services provided to individuals affected by the disaster emergency be made as soon as practicable;

Sections 8602 and 8603 of the Education Law, and section 58-1.5 of Title 10 of the NYCRR, to the extent necessary to permit individuals who meet the federal requirements for high complexity testing to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection;

Subdivision 4 of section 6909 of the Public Health Law, subdivision 6 of section 6527 of the Education Law, and section 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by this executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection;

Section 596 of Title 14 of the NYCRR to the extent necessary to allow for rapid approval of the use of the telemental health services, including the requirements for in-person initial assessment prior to the delivery of telemental health services, limitations on who can deliver telemental health services, requirements for who must be present while telemental health services are delivered, and a recipient's right to refuse telemental health services;

Section 409-i of the Education Law, section 163-b of the State Finance Law with associated OGS guidance, and Executive Order No. 2 are suspended to the extent necessary to allow elementary and secondary schools to procure and use cleaning and maintenance products in schools; and sections 103 and 104-b of the General Municipal Law are suspended to the extent necessary to allow schools to do so without the usual advertising for bids and offers and compliance with existing procurement policies and procedures;

Article 7 of the Public Officers Law, section 41 of the General Construction Law, and section 3002 of the Public Health Law, to the extent necessary to permit the Public Health and Health Planning Council and the State Emergency Medical Services Council to meet and take such actions as authorized by law, as may be necessary to respond to the COVID-19 outbreak, without meeting quorum requirements or permitting the public in-person access to meetings, provided that any such meetings must be webcast and means for effective public comment must be made available; and

FURTHER, I hereby temporarily modify, for the period from the date of this Executive Order through April 6, 2020, the following laws:

Section 24 of the Executive Law; Sections 104 and 346 of the Highway Law; Sections 1602, 1630, 1640, 1650, and 1660 of the Vehicle and Traffic Law; Section 14(16) of the Transportation Law; Sections 6-602 and 17-1706 of the Village Law; Section 20(32) of the General City Law; Section 91 of Second Class Cities Law; Section 19-107(ii) of the New York City Administrative Code; and Section 107.1 of Title 21 of the New York Codes, Rules and Regulations, to the extent necessary to provide the Governor with the authority to regulate traffic and the movement of vehicles on roads, highways, and streets.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this seventh day of March in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

State of New York

Executive Chamber

No. 202.29

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law, do hereby continue the suspensions and modifications of law, and any directives, not superseded by a subsequent directive, made by Executive Order 202.15, 202.16, 202.17, 202.18, 202.19, 202.20, and 202.21, for thirty days until June 7, 2020; and

IN ADDITION, I hereby temporarily modify, beginning on the date of this Executive Order, the following:

- Section 214-g of the Civil Practice Law and Rules, to the extent it allows an action to be commenced not later than one year and six months after the effective date of such section, is hereby modified to allow an action commenced pursuant to such section to be commenced not later than one year and eleven months after the effective date of such section.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this eighth day of May in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

Section 214-G

Certain child sexual abuse cases

Civil Practice Law & Rules (CVP)

Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age, which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than one year and six months after the effective date of this section. In any such claim or action: (a) in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law,

to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such sections of the penal law shall apply; and (b) dismissal of a previous action, ordered before the effective date of this section, on grounds that such previous action was time barred, and/or for failure of a party to file a notice of claim or a notice of intention to file a claim, shall not be grounds for dismissal of a revival action pursuant to this section.

PREV
SECTION 214-F
Action To Recover Damages For Personal Injury Caused By Contact With Or Exposure To Any Substance Or Combination Of Substances Found With... (/Legislation/Laws/CVP/214-F/)

NEXT
SECTION 214-H
Certain Actions By Public Water Suppliers To Recover Damages For Injury To Property (/Legislation/Laws/CVP/214-H/)

CHAPTER 130

AN ACT to amend the civil practice law and rules, in relation to extending the statute of limitations for certain child sexual abuse cases

Became a law August 3, 2020, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

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

Section 1. Section 214-g of the civil practice law and rules, as added by chapter 11 of the laws of 2019, is amended to read as follows:

§ 214-g. Certain child sexual abuse cases. Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against a child less than eighteen years of age, which is barred as of the effective date of this section because the applicable period of limitation has expired, and/or the plaintiff previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than [~~one year~~] two years and six months after the effective date of this section. In any such claim or action: (a) in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such sections of the penal law shall apply; and (b) dismissal of a previous action, ordered before the effective date of this section, on grounds that such previous action was time barred, and/or for failure of a party to file a notice of claim or a notice of intention to file a claim, shall not be grounds for dismissal of a revival action pursuant to this section.

§ 2. This act shall take effect immediately.

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

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS
Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly

Appellate Division of the Supreme Court
First Judicial Department

AD1 2.0 – First Department Operations During the November and December Terms

Updated November 16, 2020

Appeals – Oral Arguments

In light of the continuing public health emergency in New York State, recent adverse trends in coronavirus transmission rates, and the Governor's most recent directive limiting congregation of groups in public and private locations, **commencing on November 25, 2020**, the Appellate Division, First Department will hold **all oral arguments remotely via Microsoft Teams. There will be no in-person oral arguments until further notice**. The Court will be holding oral argument three days per week, on Tuesdays, Wednesdays, and Thursdays at 2:00 p.m. If necessary, arguments will also be held at 10:00 a.m. on Friday mornings.

The online oral argument survey is suspended until further notice.

Please note that once a matter has been calendared, there will be no adjournments. If a party cannot appear for oral argument as scheduled on the calendar, the matter will be taken on submission as far as that party is concerned.

Requests for Oral Argument. Once a matter is calendared, the parties are required to make requests for oral argument by email. (This directive is in addition to the rule requirement that argument requests be stated on the briefs). The requests for oral argument shall be made in advance, no later than one week prior to the calendar date, by emailing the Court at AD1OralArgument@nycourts.gov, with an e-mailed copy to opposing counsel or self-represented litigant. A completed notice of appearance with the contact information, including e-mail address, of the attorney who will appear remotely, shall be attached to the request.

If an out-of-state attorney has been granted leave to appear pro hac vice, a notice of appearance is required for both the New York attorney of record and the out-of-state attorney, together with a copy of the letter from the Court granting the pro hac vice application.

When a request for oral argument is made in a non-enumerated matter, the request should be accompanied by a letter specifying the reasons why oral argument should be granted.

When making an oral argument request, please indicate the name of the matter, the argument date, the appellate case number and the **time needed** for oral argument, **not the time desired**. Parties will be advised as to whether the Court has granted oral argument. The request should not be made until a matter has been calendared for a particular term and date. Failure to timely and properly request oral argument will result in the matter being heard on submission.

As customary, oral arguments will be livestreamed on the Court's website. Only counsel and self-represented litigants who are arguing will be permitted attend the remote oral arguments.

Screening Before Entering Courthouse

Prior to entering the courthouse, all persons will be subject to COVID-19 screening and temperature checks. Persons (a) subject to the quarantine restrictions on travelers contained in Governor Cuomo's Executive Order No. 205; or (b) experiencing symptoms associated with COVID-19, including fever, a new cough, difficulty breathing, sore throat, muscle or body aches, vomiting and diarrhea, or a new loss of taste or smell; or (c) who have tested positive or had close contact with anyone who has tested positive for COVID-19 in the last 14 days will not be permitted to enter the courthouse.

Facial Covering: All persons who enter the courthouse are required to (a) wear a mask or facial covering at all times and (b) comply with social distancing guidelines and directives of the court officers. Please note that vented masks (masks with exhalation valves or vents) may not be worn in the courthouse.

Filing Deadlines Reinstated

By order entered May 8, 2020, the Court rescinded its prior order which suspended filing deadlines and reinstated the filing deadlines for the remaining 2020 terms.

Hard Copy Filing

The requirement that hard copy records, appendices, briefs and motions be filed continues to be suspended until further notice.

Electronic Filing

Matters Subject to Mandatory E-filing

Effective July 27, 2020, all matters before the First Department, except original proceedings and attorney matters, are subject to mandatory e-filing via NYSCEF in accordance with the procedural and electronic filing rules of the Court. For additional information on the e-filing requirements, please click here.

Original Proceedings and Attorney Matters

All filings, including petitions, motions and applications, made in connection with original proceedings and attorney matters shall be submitted electronically via the Digital Submission portal in NYSCEF. For additional information on the Digital Submission portal, please click here.

Admission of Attorneys to the Bar

The Court's Committee on Character and Fitness is processing admission applications. Applications and other documents shall be transmitted electronically until further notice. Candidates for admission will be interviewed and the admission ceremonies will be held remotely via Microsoft Teams until further notice.

The Court has resumed the issuance of certificates of good standing. Instructions for obtaining a certificate of good standing are posted on the webpage of the Committee on Character and Fitness.

Effective July 22, 2020, the Court of Appeals established the Temporary Authorization Program which allows eligible graduates of ABA-approved law schools to apply for the temporary authorization to practice law. Additional information is posted on the website of the Committee on Character and Fitness.

Attorney Grievance Matters

The Attorney Grievance Committee is fully operational. Complaints, pleadings and all other submissions shall be transmitted electronically to the Committee until further notice. Additional information is posted on the Attorney Grievance Committee webpage.

Pre-argument Conference Program

The pre-argument conference program has resumed operations and remote conferences are being held via Microsoft Teams and other virtual platforms.

Roberta Scoll, Esq.

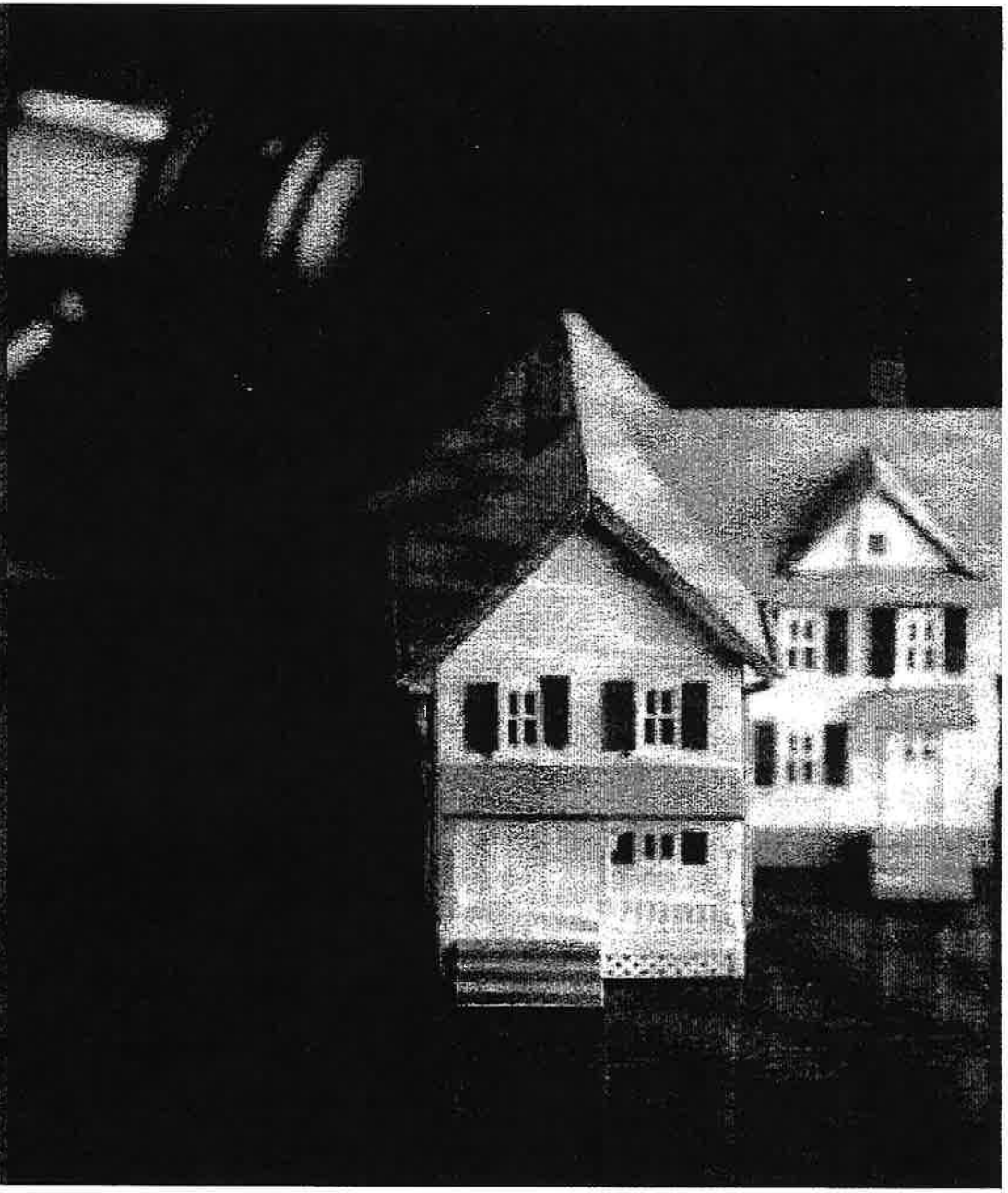
New York State Landlord/Tenant Law and Evictions During the COVID-19 Pandemic

MARISSA LUCHS KINDLER

SENIOR STAFF ATTORNEY

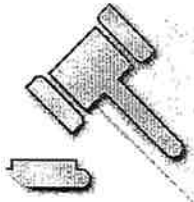
NASSAU SUFFOLK LAW SERVICES COMMITTEE, INC.

NOVEMBER 9, 2020



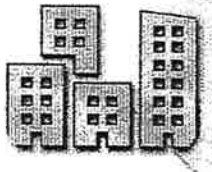
About Nassau Suffolk Law Services

Over 6,000 legal cases each year. All services are free.



Direct representation, phone consultations,

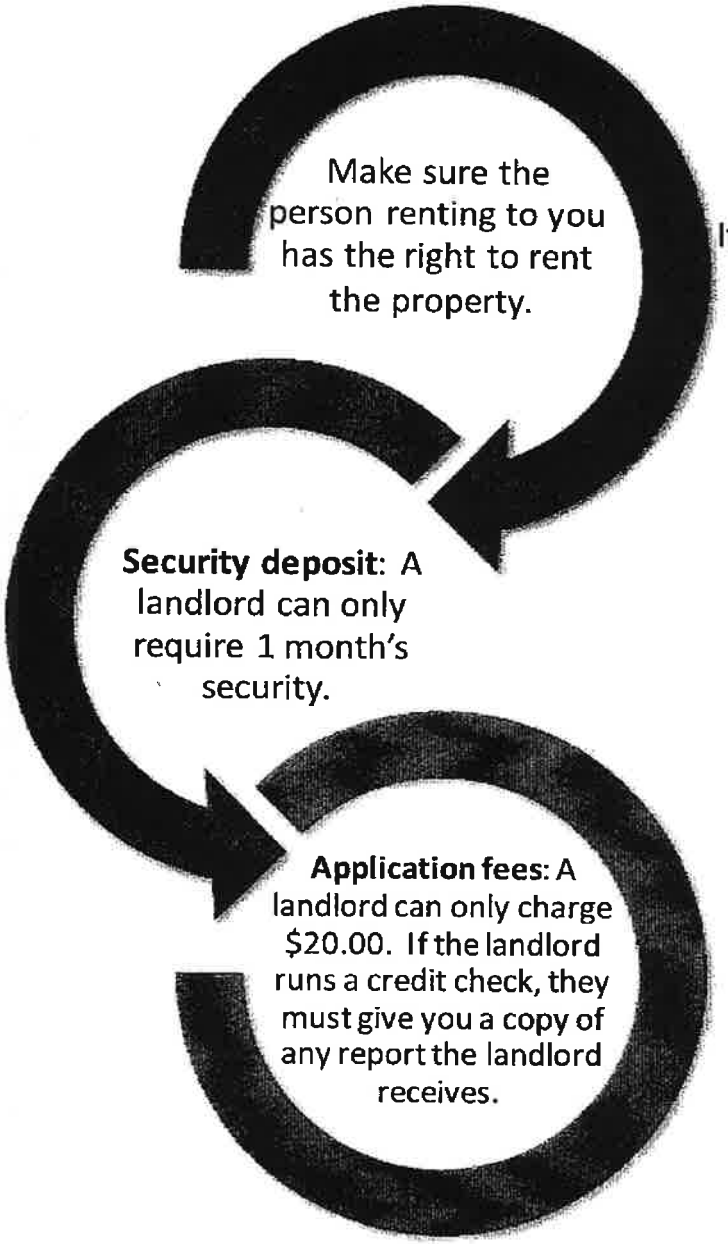
Brief service or referral



Offices in Hempstead, Islandia, Riverhead

Before You Rent:

Protect yourself from fraud



NASSAU SUFFOLK LAW SERVICES

If the landlord doesn't have a rental permit that is a red flag.

- Some towns prohibit a landlord from collecting rent without a valid rental permit.
- In most towns, a tenant is required to pay the rent even if the landlord does not have a permit. While an owner could be fined for renting without a permit, a tenant can be fined for living in an illegal apartment too.

Before You Rent:

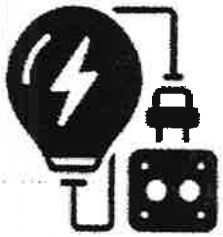
What is a lease?

A lease is an agreement between the landlord and tenant to rent the property. It can be in writing or oral.

1. <u>Written leases</u>
   - Specific Length of time
     - If a lease is for a specific length of time, it must be in writing.
     - That length of time is called the "term" of the lease.
   - A written lease should describe the landlord's responsibilities and the tenants' responsibilities.
   - It must contain the rent amount.
   - May include late fees, but the maximum amount is $50 OR 5% of the rent, whichever is less.

2. <u>Oral Leases</u>
   - Generally, the parties' actions show their agreement.

What to Expect From your Landlord



1. Who pays the utilities?
   - Unless there is a written lease that says the tenant will pay the utilities (heat, water, electricity), a court will presume that the landlord is responsible.
   - BUT If the lease doesn't say anything about utilities and the tenant puts the utilities in their name this is evidence that the tenant is responsible for those utilities.

2. Rent Receipts
   - The landlord must give you a rent receipt unless you pay by personal check.
   - If you pay by check and ask for a receipt, your landlord must give you one.

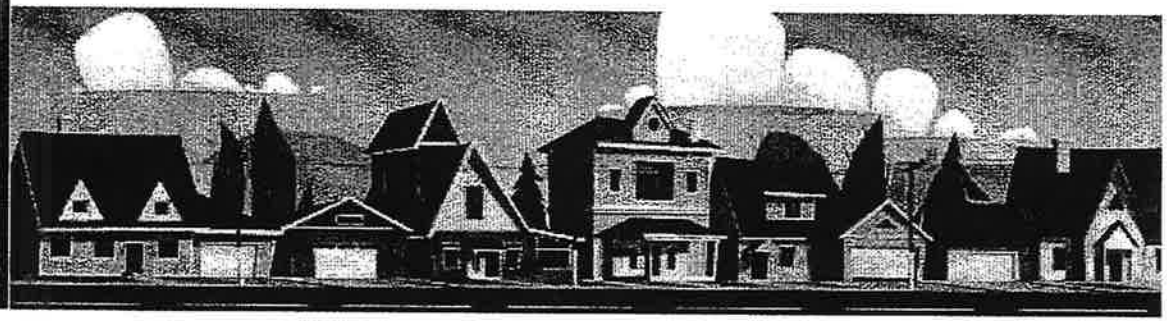
When Something Goes Wrong:

Eviction Proceedings

1. A landlord can only make you leave your home by bringing an eviction proceeding in court.

2. The courts have been accepting new eviction cases for filing since June 2020, but have only begun to schedule them in November 2020.

3. **Landlords can now bring tenants to court for new eviction cases.**



Summary Eviction Proceedings:

Non-payment Proceedings

Nonpayment Proceedings
RPAPL 711 (2)

Based on a landlord-tenant relationship.

- Generally, if the tenant pays the overdue rent, they will not be evicted.
- Before starting the proceeding, the Landlord must:
  - Send tenant a notice by certified mail that the rent has not been received within 5 days of the due date (RPL 235-e); and
  - Serve a 14-day rent demand following the same rules for **serving** a petition (RPAPL 711 and 735)
  - "Serving" a document means delivering a document in a special way.

Summary Eviction Proceedings:

Holdover Proceedings Where a landlord/ tenant relationship exists RPAPL 711(1)

Based on nonrenewal of tenancy or violation of lease.

- If lease expired, or if there is a month-to-month tenancy, Landlord must give written notice of nonrenewal
- Amount of notice is based on how long the tenant has lived at the premises (RPL 226(c):
  - 30 days if tenant has lived at the unit or has a lease for less than 1 year
  - 60 days if the tenant has lived there between 1-2 years
  - 90 days if the tenant has lived there more than 2 years
- If the holdover proceeding is based on violation of lease, then the notice rules in the lease apply.

Summary Eviction Proceedings:

Holdover Proceedings with no landlord/ tenant relationship (RPAPL 713)

- 10-day notice must be served before starting the proceeding.
- Post-foreclosure proceedings RPAPL 1305
- 10-day notice or 90 days if the tenant resided at the premises as a bona fide tenant before the foreclosure started.

Eviction Process

IT IS ALWAYS BEST TO SPEAK WITH AN ATTORNEY BEFORE COURT.

1. The tenant must be **served** a notice between 10-17 days before the first court date.
   - Anyone other than the landlord can serve the notice
   - Notice does not have to be delivered directly to the tenant
2. On the first court date, the tenant can request, and the court **must** grant, a two-week **adjournment**.
   - "Adjournment" means that the court date will be rescheduled.
   - After the first adjournment, the judge does not have to reschedule again.
   - Most judges do not to grant further adjournments unless there are exceptional circumstances.

Eviction Process (continued)

IT IS ALWAYS BEST TO SPEAK WITH AN ATTORNEY BEFORE COURT.

Most cases are **settled** between the parties without going to trial.

- A settlement is a formal agreement between the parties.
- The court may direct you to a mediator.
- A mediator is a person who tries to settle cases.

Tenant Protections during the COVID-19 Pandemic

- Executive Orders 202.8; 202.28; 202.48; 202.55; 202.55.1; 202.64; 202.66; 202.72
- Tenant Safe Harbor Act (Laws of New York 2020, Chapter 127)

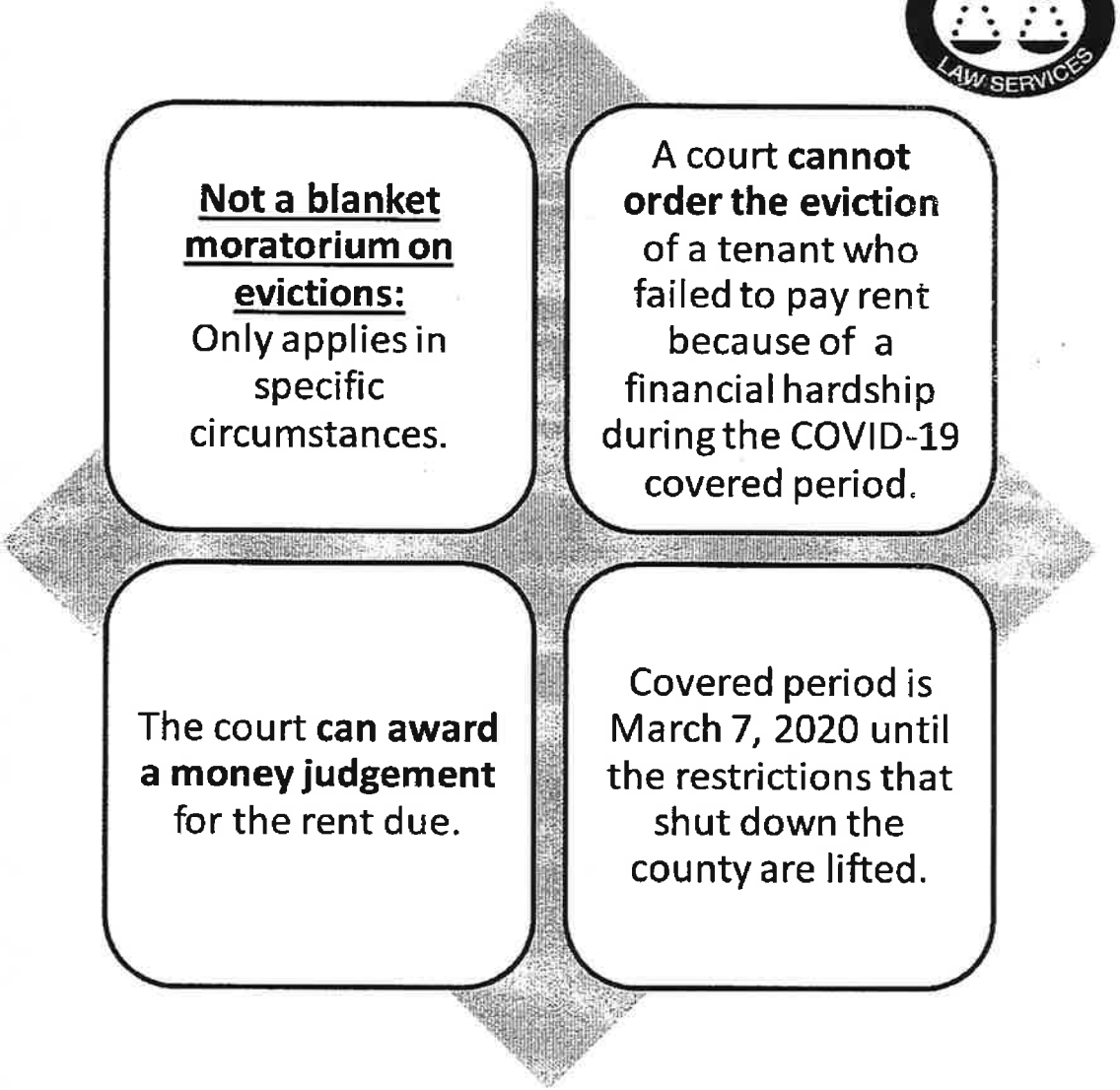
New York State

- CARES Act (expired)
- Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

  CDC and HHS Order under Section 361 of the Public Health Services Act 42 U.S.C. 264 and 42 CFR 70.2

Federal

New York Tenant Safe Harbor Act



Chapter 127, Laws of New York. June 30, 2020.

New York Tenant Safe Harbor Act

The protections are not automatic.

A tenant can raise financial hardship during the covered period as a **defense** in a summary proceeding.

To decide whether the law protects a tenant, a court may consider:

1. The tenant's income before the COVID-19 covered period;
2. The tenant's income during the COVID-19 covered period;
3. The tenant's savings;
4. The tenant's eligibility for public assistance, SSI, disability, HEAP, or unemployment benefits.

Executive Order 202.66

1. Executive Order 202.66 extends the Tenant Safe Harbor Act to more people.
    - The extension prevents: "for any residential tenant suffering financial hardship during the COVID-19 state disaster emergency declared by Executive Order 202, the execution or enforcement of such judgment or warrant, including those cases where a judgment or warrant of eviction for a residential property was granted prior to March 7, 20202 through January 1, 2021."
2. In other words, evictions cannot be carried out until after January 1, 2021 if the tenant suffered financial hardship during the pandemic.

CDC Orders:

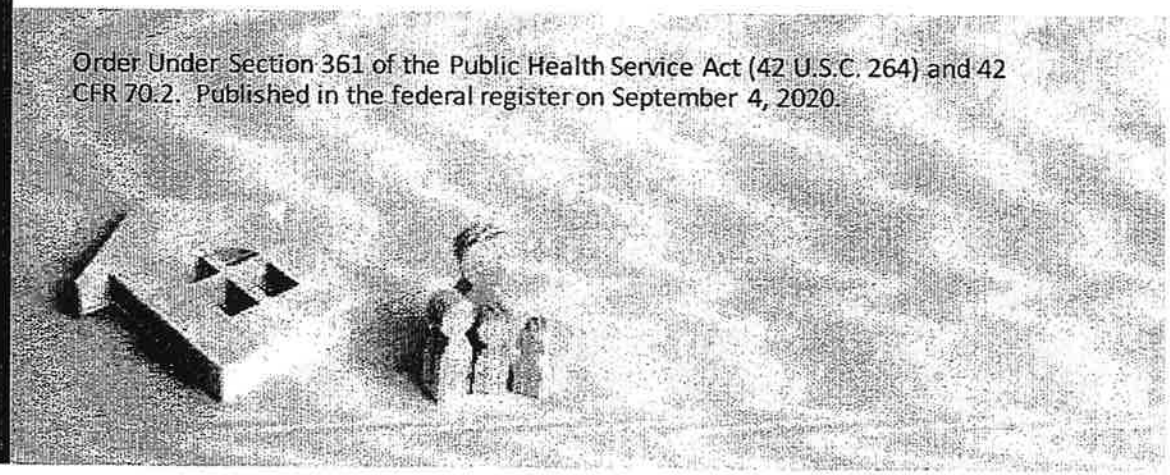
Temporary Halt in Residential Evictions to Reduce the Spread of COVID-19

Order from Federal Center for Disease Control and Health and Human Services.

Effective September 4, 2020 through December 31, 2020.

Intent is to stop the spread of COVID-19.

Does not apply anyplace with a moratorium on evictions that provides the same or greater public-health protection.



CDC Orders:

Limitations

Tenants are still required to pay the rent and follow the other rules in their lease.

The order does not stop evictions based on:

- Engaging in criminal activity at the premises;
- Threatening the health and safety of other residents;
- Damaging or posing an immediate and significant risk of damage to the property;
- Violating building code, health ordinance or regulations relating to health and safety; or
- Violating any other contractual obligation.

CDC Orders:

Declarations

All adults listed on the lease/ rental agreement must sign the Declaration.

The Declaration must be sent to the landlord.

In the Declaration, the tenant swears under the penalty of perjury that:

1. Best efforts to obtain government assistance for rent or housing;

2. Expect to earn less than $99,000 ($198,000 for joint tax returns) in 2020, had no reportable income in 2019, or received a CARES Act Economic Impact Payment (stimulus check);

3. Unable to pay full rent due to
   - Loss of income;
   - Loss of work hours; or
   - Extraordinary medical expenses

CDC Orders:

Declarations (...continued)

4. Best efforts to make partial payments

5. If evicted would become homeless or move into shared housing.

6. Understand they must pay rent or make a housing payment and comply with other tenant obligations.

7. ***Understand that they may be subject to fees, penalties, or interest for not paying rent on time.***

8. Understand that on December 31, 2020 may be subject to eviction if rent is not paid in full.

False or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages or imprisonment.

CDC Orders:

Penalties

Criminal Penalties for violating the order:

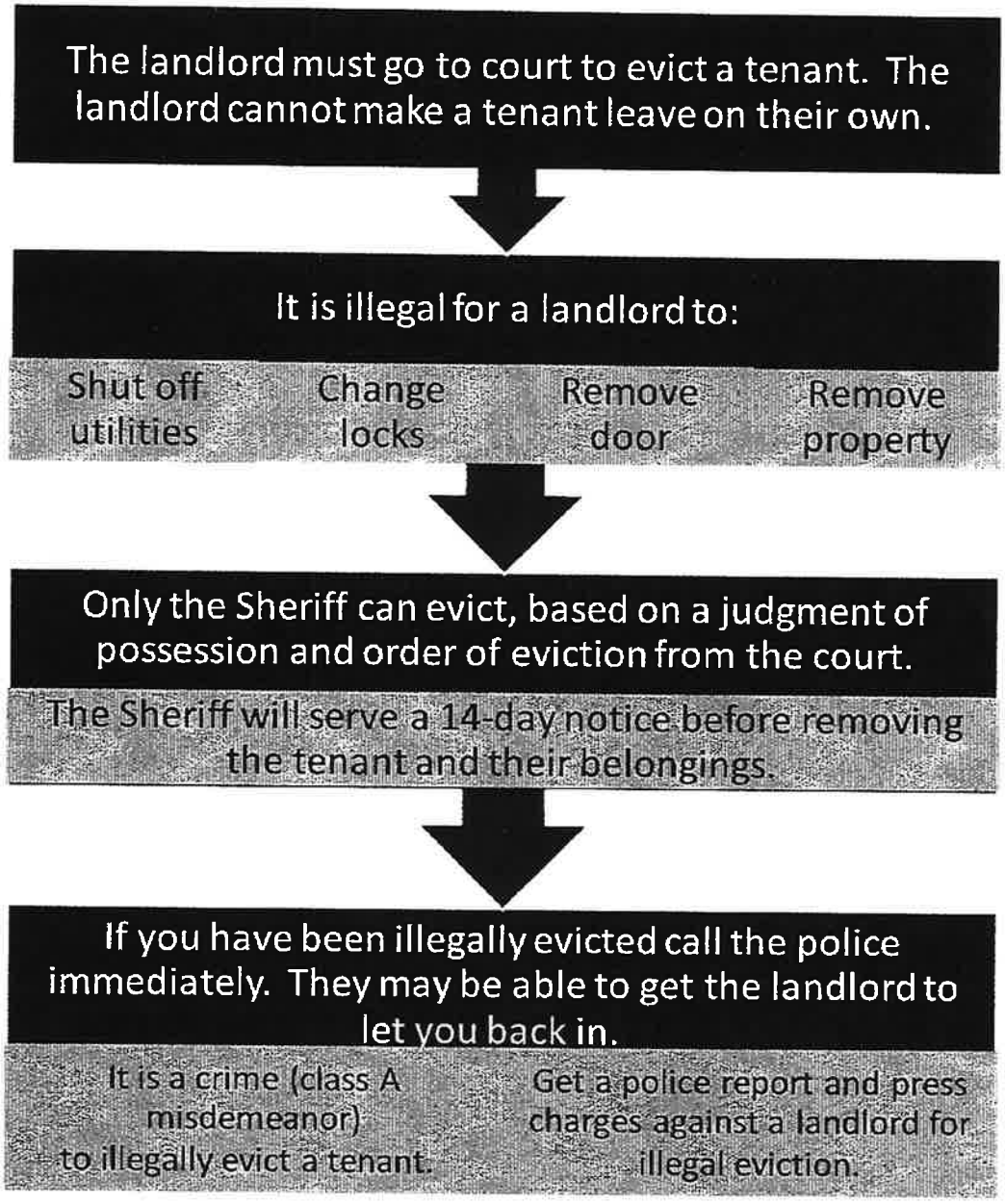
- Fine of no more than $100,000 if the violation does not result in a death or 1 year in jail, or both.
- Fine of no more than $250,000 if violation results in a death or one year in jail, or both, or as otherwise provided by law.

An organization violating this order may be subject to a fine of no more than $200,000 per event if the violation does not result in a death or $500,000 per event if the violation results in death or as otherwise provided by law.

U.S. Department of Justice enforces.

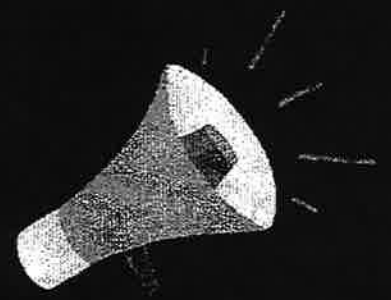
Illegal Evictions:

Legal Eviction Process



Illegal Evictions:

Getting help



1. A landlord who has illegally evicted a tenant can be charged a civil penalty of $1,000 to $10,000 for each violation.

2. A tenant who has been illegally evicted can go to the District Court in their town and file an **Order to Show Cause** asking to be **restored to possession**.

   - This is an order from the court telling the landlord to show why the tenant should not be allowed back into their home.

   - If a tenant wants to sue for money damages, they have to bring a separate court case.

3. File Complaint with the Attorney General

   - If a tenant fees that they are being harassed, and the police aren't helping contact the New York State Attorney General's Office at https://ag.ny.gov and follow the links to file a complaint online or call the OAG Helpline at (800) 771-7755.

Thank you for your attention.

If you have any questions please call us at 631-232-2400.

Thank you for attending!

Suffolk County Residents Facing Eviction
May Be Eligible for
FREE LEGAL HELP OR HOUSING COUNSELING

FREE LEGAL REPRESENTATION

Nassau Suffolk Law Services
631-232-2400
Look for NSLS staff in court: Attorneys and intake staff available to meet prospective clients in court most days.

Empire Justice Center
631-650-2306
Services for tenants who are not eligible for Nassau Suffolk Law Services.

Touro Law School, Senior Citizens Law Program
631-761-7470
Services for Suffolk residents age 60+.

FREE HOUSING COUNSELING

Housing Help
631-754-0373

Haven House/ Bridges, Homeless Prevention Program
631-231-3619

Long Island Housing Services
631-567-5111

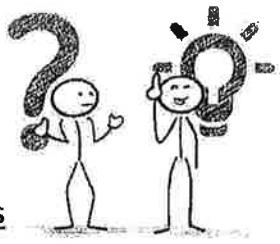
Bellport, Hagerman, East Patchogue Alliance
631-286-9236, ext. 13

Family Service League
631-650-146

Eligibility criteria apply for free services.

Contact the Suffolk County Bar Association for a referral to a private attorney (fees apply): (631) 234-5577 or www.scba.community.lawyer

Have more questions?
Visit our website for more resources:
www.nslawservices.org/housing-law
www.nslawservices.org/covid-19
www.nslawservices.org/community-resources



OFFICE OF THE ADMINISTRATIVE JUDGE

10TH Judicial District - Nassau County

MEMORANDUM

To: Nassau County Legal Community

From: Hon. Norman St. George, District Administrative Judge

Date: November 18, 2020

Re: Updated Operating Protocols for Nassau County Courts

For the past many months, the Unified Court System, and by extension, the Nassau County Courts, has permitted the gradual increase of in-person proceedings in conjunction with the Governor's un-Pause New York Plan. The courts have re-opened in different phases that mirrored the Governor's plan. Foot traffic in the courthouses was gradually increased to correspond with an improvement in the metrics measuring the spread of Coronavirus. In recent weeks, however, those metrics have changed, demonstrating an increased spread of the virus and indicating the need to once again reduce foot traffic in the courthouses to protect the health and safety of litigants, lawyers, courts staff and judges.

As you may be aware, Chief Administrative Judge Lawrence Marks signaled the start of this process with his November 13, 2020 memorandum suspending new Jury Trials and new Grand Juries throughout New York State effective Monday, November 16, 2020. Judge Marks further directed that all future Bench Trials and Evidentiary Hearings (excluding Family Court) will be conducted virtually unless otherwise approved. The November 13, 2020 memo is incorporated by reference herein. This memorandum is intended to provide enhanced guidance on the implementation of that memo and the updating Operating Protocols for the Courts in Nassau County.

Please be aware that the Administrative Judge may, based on local conditions, enact more restrictive operational protocols deemed appropriate by the Administrative Judge.

This Plan should be considered an update to the Return to In-Person Operations Plan effective October 19, 2020 and to Judge Marks' Memorandum "Revised Pandemic Procedures in

the Trial Courts" dated November 13, 2020. Commencing Monday, November 23, 2020 all court operations in the Tenth Judicial District, Nassau County shall be conducted pursuant to this Plan.

I. Courthouse Operations
   A. Scheduling
      1. Any "In-Person" calendar times shall be staggered where possible and appropriate.
      2. No more than 50% of the number of courtrooms in a facility will be in use at the same time. Any conflict will be resolved by the Chief Clerk working with the Chambers of the Supervising Judge.
      3. No more than 50% of the Judges/referees/magistrates of one court type may hold In-Person calendars at any one time.
      4. In each court, there shall be a maximum of 10 cases/proceedings scheduled in-person per hour.
   B. Occupancy of all courtrooms shall be limited to the lesser of 10 people or ½ the posted room occupancy per code. An exception shall be granted for ongoing Jury Trials, ongoing Bench Trials, or ongoing Grand Juries currently in progress (in those instances, occupancy shall be limited to the lesser of 25 people or ½ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.
   C. The number of non-judicial staff reporting to the Courthouse shall be reduced at the discretion of the Administrative Judge to the minimum number necessary to ensure safe operation and to ensure sufficient "remote" staff is available to replace the staff reporting to the courthouse in the event there is a workplace Coronavirus exposure. All staff not reporting to the courthouse shall work remotely.
   D. All current safety measures and protocols will continue. Court managers and PPE Compliance Coordinators shall take steps to enhance monitoring and compliance with all safety measures including social distancing at all times.

II. Court Proceedings
   A. No new prospective Trial Jurors (criminal or civil) will be summoned for jury service until further notice. Pending Criminal and Civil jury trials will continue to conclusion.
   B. No new prospective Grand Jurors will be summoned for Grand Jury service until further notice. Existing grand juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue until completion of their term or work. Thereafter, only upon application of the appropriate District Attorney to the Administrative Judge.
   C. Notwithstanding any other provision herein, where an In-Person proceeding involves an incarcerated individual, that individual shall appear virtually utilizing electronic means unless the presiding Judge orders otherwise after appropriate application is made.
   D. Matters that may be heard In-Person (or a hybrid of In-Person and virtual) provided that the Presiding Judge first finds that it is unlawful or impractical to conduct the proceeding virtually:
      1. Matters as designated in Exhibit A
      2. Family Court Act Article 10 Evidentiary Hearings

3. Permanency Hearings
4. Criminal Preliminary Hearings
5. Pleas and Sentences
6. Arraignments

E. Matters that may be heard In-Person (or a hybrid of In-Person and virtual)
   1. Treatment Court and Judicial Diversion appearances where the presiding Judge determines, in consultation with Supervising Judge, that an appearance in an acute case is necessary to protect the health and safety of a defendant.
   2. Any proceeding involving a self-represented litigant(s) where the presiding Judge determines that holding the proceeding via Microsoft Teams denies the self-represented litigant(s) meaningful access to the proceeding and where the presiding Judge determines that the matter can be heard In-Person consistent with all OCA safety protocols.

F. All other matters must be heard virtually using Microsoft Teams, including but not limited to:
   1. Bench Trials in Civil and Criminal cases. (For compelling reasons, the presiding Judge may forward a request for permission to conduct a Bench Trial In-Person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held In-Person.)
   2. Evidentiary Hearings in Civil and Criminal Cases. (For compelling reasons, the presiding Judge may forward a request for permission to conduct a hearing In-Person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held In-Person.)
   3. Motion arguments
   4. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20)
   5. ADR where both parties are represented by counsel and counsel will be present.
   6. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program
   7. Small Claims Assessment Review proceedings.

Thank you for your continued cooperation, patience and flexibility. Stay Safe and Healthy.

Exhibit A

A. Criminal matters
   1. arraignments
   2. bail applications, reviews and writs
   3. temporary orders of protection
   4. resentencing of retained and incarcerated defendants
   5. essential sex offender registration act (SORA) matters

B. Family Court
   1. child protection intake cases involving removal applications
   2. juvenile delinquency cases involving remand placement applications, or modification thereof
   3. emergency family offense petitions/temporary orders of protection
   4. orders to show cause

C. Supreme Court
   1. MHL applications for an assisted outpatient treatment (AOT) plan
   2. emergency applications in guardianship matters
   3. temporary orders of protection (including but not limited to matters involving domestic violence)
   4. emergency applications related to the coronavirus
   5. emergency Election Law applications
   6. extreme risk protection orders (ERPO)

D. Civil/Housing matters
   1. applications addressing landlord lockouts (including reductions in essential services)
   2. applications addressing serious code violations
   3. applications addressing serious repair orders
   4. applications for post-eviction relief

E. Surrogate's Court - Any matter involving an individual who passed away due to COVID-related causes.

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

November 13, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso

From: Lawrence K. Marks LM

Subject: Revised Pandemic Procedures in the Trial Courts

In light of recent adverse trends in coronavirus transmission rates in New York State, discussions with our consultants and Governor Cuomo's most recent directives limiting congregation of groups of people in public and private locations, we are revising certain UCS statewide operational practices in the trial courts, **commencing Monday, November 16,** as follows:

- No new prospective trial jurors (criminal or civil) will be summoned for jury service until further notice. Pending criminal and civil jury trials will continue to conclusion.
- No new prospective grand jurors will be summoned for grand jury service until further notice. Pending grand juries will continue to conclusion.
- All future bench trials and hearings will be conducted virtually unless the respective Deputy Chief Administrative Judge permits otherwise. Pending bench trials will continue to conclusion.

Please note that socially-distanced in-person court conferences will continue. All coronavirus health and safety procedures should continue to be closely followed. Decisions about possible adjustment of staffing levels in the trial courts will be addressed in the coming days.

These practices may be further amended as the public health situation evolves.

Please distribute this memorandum and attachments to judges and non-judicial staff as appropriate.

c: Administrative Judges

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and in light of the ongoing public health and commercial concerns raised by the COVID-19 health emergency, I hereby direct that:

(1) petitions in eviction proceedings pursuant to Article 7 of the Real Property Actions and Proceedings Law shall include a Notice to Respondent Tenant in the form attached as Exh. 1 (if filing within the City of New York) or Exh. 2 (if filing outside the City of New York), printed on colored paper to enhance its distinctiveness and effectiveness; and

(2) filing and service of process in eviction proceedings shall be governed by AO/267/20.

This order shall take effect immediately, and shall supersede the provisions of any prior administrative order inconsistent with its terms.

Chief Administrative Judge

Dated: November 17, 2020

AO/268/20

EXHIBIT 1

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO SPECIAL DEFENSES AND PROTECTIONS RELATING TO EVICTIONS.

PLEASE CONTACT YOUR ATTORNEY IMMEDIATELY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY, PLEASE CALL

718-557-1379

OR VISIT

www.nycourts.gov/evictions/nyc/

AVISO A INQUILINO DEMANDADO

DURANTE LA EMERGENCIA POR CORONA VIRUS, PUEDA QUE POR LEY USTED TENGA DERECHO A DEFENSAS Y PROTECCIONES ESPECIALES RELACIONADAS CON DESALOJOS.

POR FAVOR COMUNIQUESE CON SU ABOGADO INMEDIATAMENTE PARA OBTENER MAS INFORMACIÓN.

SI NO TIENE ABOGADO, LLAME AL

718-557-1379

O VISITE

www.nycourts.gov/evictions/nyc/

EXHIBIT 2

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO SPECIAL DEFENSES AND PROTECTIONS RELATING TO EVICTIONS.

PLEASE CONTACT YOUR ATTORNEY IMMEDIATELY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY, PLEASE

VISIT

www.nycourts.gov/evictions/outside-nyc/

AVISO A INQUILINO DEMANDADO

DURANTE LA EMERGENCIA POR CORONA VIRUS, PUEDA QUE POR LEY USTED TENGA DERECHO A DEFENSAS Y PROTECCIONES ESPECIALES RELACIONADAS CON DESALOJOS.

POR FAVOR COMUNIQUESE CON SU ABOGADO INMEDIATAMENTE PARA OBTENER MAS INFORMACIÓN.

SI NO TIENE ABOGADO, VISITE

www.nycourts.gov/evictions/outside-nyc/

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and in light of the ongoing public health and commercial concerns raised by the COVID-19 health emergency, I hereby direct that, effective November 4, 2020, unless otherwise prohibited by gubernatorial Executive Order:

1. Parties may commence new matters and proceed in pending matters by any means of filing and service normally permitted under statute and court rule.

2. Notwithstanding the foregoing, in-person filing by represented parties shall not be permitted in courts and locations where the appropriate Deputy Chief Administrative Judge has concluded that such filing is inconsistent with the health and safety needs of the public and court personnel. In-person filing by unrepresented parties (other than those who have expressly "opted in" to participate electronically in a NYSCEF matter) shall be permitted at all times. COVID-related health and safety protocols will continue to be followed in all court facilities.

3. Also notwithstanding the foregoing, all parties are strongly urged to avoid in-person filing and service wherever possible during the ongoing COVID-19 health emergency, and to rely instead on NYSCEF, EDDS, and mail filing and/or service, where permitted.

4. The court shall not request working copies of documents filed electronically.

5. This order supersedes Administrative Orders AO/121/20 and AO/115/20, which shall have no further force or effect. It further supersedes the terms of any other Administrative Order inconsistent with its provisions.

Chief Administrative Judge

Dated: November 6, 2020

AO/267/20

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

October 9, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso
Hon. Anthony Cannataro

From: Lawrence K. Marks LM

Subject: Revised Procedure for Addressing Residential Eviction Proceedings

Continuing our progress towards the fuller resumption of court operations, attached please find a copy of AO/231/20 (Attachment A), which amends the protocol for handling residential eviction proceedings in several significant respects.

1. Effective October 12, 2020, all residential eviction matters – nonpayment and holdover, without regard to the date of commencement – may resume statewide, with certain important caveats:

   (a) Suspension of Statutory Time Limits: At this time, all proceedings continue to be governed by the suspension of "any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as described by the procedural laws of the state," set forth in Executive Orders 202.8, 202.14, 202.28, 202.38, 202.48, 202.55, 202.60, and 202.67 (Attachment B).[1] So long as this suspension of time limits continues, no default judgment may be entered upon the failure of a respondent to answer a petition in an eviction matter.

   (b) Scheduling Once Issue Has Been Joined: Once a matter has been filed and answered, the further hearing of an eviction proceeding remains subject to local court circumstances and health/safety assessments for courthouse use. The safety of judges, non-judicial personnel, and court visitors remains the paramount concern in all court operations. Given the ongoing need to restrict foot traffic in courthouses for reasons of health and safety, we anticipate that the scheduling, hearing and issuance of decisions in

[1] Executive Order 202.67 extended this suspension to November 3, 2020.

eviction matters will often require far lengthier time periods than anticipated in statutes and prevalent under pre-COVID conditions.

(c) Pre-March 17 Residential Matters: The requirement of a status or settlement conference set forth in AO/160A/20 remains in effect for residential eviction matters commenced prior to March 17 – including matters in which judgments and warrants of eviction have issued and been delivered to enforcement agents (but not yet executed). Post-March 16 eviction matters are to be handled in the normal course.

(d) Alternative Dispute Resolution: While mediation of eviction matters can be a highly useful practice and is strongly encouraged, it may be inadvisable in cases where one party is represented by counsel and another (generally the tenant) is unrepresented.

(e) Remedies- Prohibition of Evictions – State Law and Executive Order: Evictions of residential tenants who meet criteria set forth in the Tenant Safe Harbor Act (L. 2020, c. 127), as modified by Executive Order 202.66 (Attachment C), are prohibited through January 1, 2021 (the date specified in EO 202.66). This prohibition now bars the execution or enforcement of residential warrants of eviction or judgments of possession without regard to their date of issuance.

Two aspects of the Executive Order's modification of the Act are noteworthy: the scope of the Tenant Safe Harbor Act is limited to nonpayment cases, while EO 202.66 applies to "any residential tenant;" and the Act prohibits issuance of warrants of eviction and judgments of possession, while the EO prohibits "execution or enforcement" of such judgments and warrants. This terminology may require future judicial interpretation.

(f) Remedies - Prohibition of Evictions – CDC Order: The Centers for Disease Control order of September 4, 2020 (Attachment D) prohibits eviction of any "covered person" from residential property for nonpayment of rent through December 31, 2020. The CDC order defines covered persons as tenants or residents who file a declaration with their landlord affirming that they meet specified income limits and other financial and COVID-related requirements. The order allows eviction for reasons other than nonpayment, including damaging the premises, threatening the health and safety of others, violating building codes, and the like.

3. Filing and service of documents in eviction proceedings continue to be governed by AO/121/20. Consequently, initiating documents by represented petitioners must be filed through NYSCEF or mail only at this time. (Unrepresented parties may file papers in person.)

4. Commencement papers in residential eviction proceedings must continue to include a notice indicating that respondent-tenants may be eligible for an extension of time to respond to the complaint (Attachment A, Exh. 1).

Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate.

Attachments

c: Administrative Judges

Attachment A

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and consistent with the Governor's determination approving the easing of restrictions on commerce imposed due to the COVID-19 health emergency, I hereby direct that, effective October 12, 2020:

1. Resumption of Residential Eviction Matters: All residential eviction matters, both nonpayment and holdover, may proceed in the normal course, subject to (1) current or future federal and state emergency relief provisions governing time limits for the commencement and prosecution of matters, limitation of eviction-related remedies, and similar issues, and (2) individual court scheduling requirements occasioned by health and safety concerns arising from the coronavirus health emergency.

2. Residential Eviction Matters Commenced Prior to March 17, 2020: The conference requirement applicable to residential eviction matters commenced prior to March 17, 2020, set forth in AO/160A/20, shall continue for those matters.

3. Filing and Service: Filing and service of process in eviction proceedings shall continue as set forth in Administrative Order AO/121/20.

4. Notice to Respondent Tenant: Petitions in eviction proceedings pursuant to Article 7 of the Real Property Actions and Proceedings Law shall include a Notice to Respondent Tenant in the form attached as Exh. 1a (if filing within the City of New York) or Exh. 1b (if filing outside the City of New York).

5. Remote Proceedings: Eviction proceedings should be conducted remotely whenever appropriate.

6. Alternative Dispute Resolution: Mediation and other forms of alternative dispute resolution are encouraged, particularly in matters where (1) all parties are represented by counsel, or (2) all parties are unrepresented by counsel.

This order supersedes the provisions of any other Administrative Order inconsistent with its terms.

Chief Administrative Judge of the Courts

Dated: October 9, 2020

AO/231/20

Exhibit 1a

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO TAKE ADDITIONAL DAYS OR WEEKS TO FILE AN ANSWER TO THIS PETITION.

PLEASE CONTACT YOUR ATTORNEY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY, PLEASE CALL

718-557-1379

OR VISIT

www.nycourts.gov/evictions/nyc/

Exhibit 1b

NOTICE TO RESPONDENT TENANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO TAKE ADDITIONAL DAYS OR WEEKS TO FILE AN ANSWER TO THIS PETITION.

PLEASE CONTACT YOUR ATTORNEY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY, PLEASE VISIT

www.nycourts.gov/evictions/outside-nyc/

FOR MORE INFORMATION.

AVISO A INQUILINO DEMANDADO

DURANTE LA EMERGENCIA DEL CORONAVIRUS,
ES POSIBLE QUE USTED TENGA DERECHO POR LEY
A TOMAR DÍAS O SEMANAS ADICIONALES
PARA PRESENTAR UNA RESPUESTA
A ESTA PETICIÓN

POR FAVOR CONTACTE A SU ABOGADO PARA MAS INFORMACIÓN.

SI USTED NO TIENE UN ABOGADO, VISITE
www.nycourts.gov/evictions/outside-nyc/

Attachment B

State of New York

Executive Chamber

No. 202.67

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that a disaster continues to exist for which affected state agencies and local governments are unable to respond adequately. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, I hereby continue the declaration of the State Disaster Emergency effective March 7, 2020, as set forth in Executive Order 202. This Executive order shall remain in effect until November 3, 2020.

IN ADDITION, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, or to provide any directive necessary to respond to the disaster, do hereby continue the suspensions and modifications of law, and any directives not superseded by a subsequent directive contained in Executive Orders 202 up to and including 202.21, and 202.27, 202.28, 202.29, 202.30, 202.38, 202.39, 202.40, 202.48, 202.49, 202.50, 202.55 and 202.55.1, as extended, and Executive Order 202.60 for another thirty days through November 3, 2020, except:

- Subdivision 1 of Section 491 of the Vehicle and Traffic law, to the extent that it provides for a period of validity and expiration of a non-driver identification card, shall no longer be suspended or modified as of November 3, 2020;

- Sections 401, 410, 2222, 2251, 2251, and 2282(4) of the Vehicle and Traffic law, to the

or regulation, or part thereof, is hereby continued, as modified by prior executive orders, provided however, for any civil case, such suspension is only effective until November 3, 2020, and after such date any such time limit will no longer be tolled, and provided further:

- The suspension and modification of Section 30.30 of the criminal procedure law, as continued and modified in EO 202.60, is hereby no longer in effect, except for felony charges entered in the counties of New York, Kings, Queens, Bronx, and Richmond, where such suspension and modification continues to be effective through October 19, 2020; thereafter for these named counties the suspension is no longer effective on such date or upon the defendant's arraignment on an indictment, whichever is later, for indicted felony matters, otherwise for these named counties the suspension and modification of Section 30.30 of the criminal procedure law for all criminal actions proceeding on the basis of a felony complaint shall no longer be effective, irrespective, 90 days from the signing of this Executive order on January 2, 2021.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this fourth day of October in the year two thousand twenty.

BY THE GOVERNOR

Secretary to the Governor

Attachment C

State of New York

Executive Chamber

No. 202.66

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue;

NOW THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby suspend the following:

- Chapter 127 of the laws of 2020 is modified only to the extent necessary to permit, for any residential tenant suffering financial hardship during the COVID-19 state disaster emergency declared by Executive Order 202, to prevent the execution or enforcement of such judgment or warrant, including those cases where a judgment or warrant of eviction for a residential property was granted prior to March 7, 2020, through January 1, 2021.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twenty-eighth day of September in the

Attachment D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID–19

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Agency Order.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the issuance of an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID–19.

DATES: This Order is effective September 4, 2020 through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Nina Witkofsky, Acting Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–10, Atlanta, GA 30329; Telephone: 404–639–7000; Email: *cdcregulations@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background

There is currently a pandemic of a respiratory disease ("COVID–19") caused by a novel coronavirus (SARS–COV–2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID–19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID–19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID–19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID–19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID–19.[1]

COVID–19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID–19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.[2] During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these best efforts, COVID–19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID–19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID–19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID–19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID–19.

Applicability

Under this Order, a landlord, owner of a residential property, or other person [3] with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order. This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. Nor does this order apply to American Samoa, which has reported no cases of COVID–19, until such time as cases are reported.

In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID–19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Renter's or Homeowner's Declaration

Attachment A is a Declaration form that tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions to prevent the further spread of COVID–19 may use. To invoke the CDC's order these persons must provide an executed copy of the Declaration form (or a similar declaration under penalty of perjury) to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live. Each adult listed on the lease, rental agreement, or housing contract should likewise complete and provide a declaration. Unless the CDC order is extended, changed, or ended, the order prevents these persons from being evicted or removed from where they are living through December 31, 2020. These persons are still required to pay rent and follow all the other terms of their lease and rules of the place where they live. These persons may also still be evicted for reasons other than not paying rent or making a housing

[1] CDC, People with Certain Medical Conditions, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html* (accessed August 26, 2020).

[2] Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID–19 and 1918 Influenza Pandemics. *JAMA New Open.* 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

[3] For purposes of this Order, "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

payment. Executed declarations should not be returned to the Federal Government.

Centers for Disease Control and Prevention, Department of Health and Human Services

Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2

Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID–19

Summary

Notice and Order; and subject to the limitations under "Applicability": Under 42 CFR 70.2, a landlord, owner of a residential property, or other person [4] with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.

Definitions

"Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

"Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

"Covered person" [5] means any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

(1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than $99,000 in annual income for Calendar Year 2020 (or no more than $198,000 if filing a joint tax return),[6] (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary [7] out-of-pocket medical expenses;

(4) the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and

(5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

"Evict" and "Eviction" means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action, to remove or cause the removal of a covered person from a residential property. This does not include foreclosure on a home mortgage.

"Residential property" means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the State, territorial, tribal, or local jurisdiction.

"State" shall have the same definition as under 42 CFR 70.1, meaning "any of the 50 states, plus the District of Columbia."

"U.S. territory" shall have the same definition as under 42 CFR 70.1, meaning "any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands."

Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Mitigating the spread of COVID–19 within congregate or shared living settings, or through unsheltered homelessness;
- mitigating the further spread of COVID–19 from one U.S. State or U.S. territory into any other U.S. State or U.S. territory; and
- supporting response efforts to COVID–19 at the Federal, State, local, territorial, and tribal levels.

Background

There is currently a pandemic of a respiratory disease ("COVID–19") caused by a novel coronavirus (SARS–COV–2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID–19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

The virus that causes COVID–19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID–19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID–19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an

[4] For purposes of this Order, "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

[5] This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. *See* Desmond, M., Gershenson, C., *Who gets evicted? Assessing individual, neighborhood, and network factors*, Social Science Research 62 (2017), 366–377, *http://dx.doi.org/10.1016/j.ssresearch.2016.08.017*, (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. *See* 2019 San Francisco Homeless Point-in-Time Count & Survey, page 22, available at: *https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf.*

[6] According to one study, the national two-bedroom housing wage in 2020 was $23.96 per hour (approximately, $49,837 annually), meaning that an hourly wage of $23.96 was needed to afford a modest two bedroom house without spending more than 30% of one's income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was $38.76 (approximately $80,621 annually). *See* National Low-Income Housing Coalition, *Out of Reach: The High Cost of Housing 2020*, available at: *https://reports.nlihc.org/oor.* As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID–19 through movement into close quarters in new congregate, shared housing settings, or though homelessness, the higher income thresholds listed here have been determined to better serve this goal.

[7] An extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID–19.[8]

COVID–19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID–19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.[9] During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the Federal, State, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these significant efforts, COVID–19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID–19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID–19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID–19.

Applicability

This Order does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. In accordance with 42 U.S.C. 264(e), this Order does not preclude State, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

Additionally, this Order shall not apply to American Samoa, which has reported no cases of COVID–19, until such time as cases are reported.

This Order is a temporary eviction moratorium to prevent the further spread of COVID–19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents;[10] (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

Eviction and Risk of COVID–19 Transmission

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID–19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding.[11] Studies show that COVID–19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an index case of COVID–19 than other close contacts.[12]

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing, and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, cognitive decline, or no access to technology, and thus may find it more difficult to take actions to protect themselves from COVID–19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for medical evaluations as needed depending on symptoms.[13] Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) to aid individuals and businesses adversely affected by COVID–19. Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID–19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020.[14] The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and local officials using emergency powers.

Researchers estimated that this temporary Federal moratorium provided relief to a material portion of the nation's roughly 43 million renters.[15]

[8] CDC, People with Certain Medical Conditions, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html* (accessed August 26, 2020).

[9] Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID–19 and 1918 Influenza Pandemics. *JAMA New Open.* 2020;3(8):e2017527. *doi:10.1001/jamanetworkopen.2020.17527.*

[10] Individuals who might have COVID–19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID–19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. See *What to Do if You are Sick,* available at *https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html.*

[11] United States Census Bureau. American Housing Survey, 2017. *https://www.census.gov/programs-surveys/ahs.html.*

[12] Bi Q, Wu Y, Mei S, et al. *Epidemiology and transmission of COVID–19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study.* Lancet Infect Dis 2020, *https://doi.org/10.1016/S1473-3099(20)30287-5.*

[13] *See* CDC COVID–19 Guidance for Shared or Congregate Housing, available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html.*

[14] Because evictions generally require 30-days' notice, the effects of housing displacement due to the expiration of the CARES act are not expected to manifest until August 27, 2020.

[15] See Congressional Research Service, *CARES Act Eviction Moratorium,* (April 7, 2020) available at: *https://crsreports.congress.gov/product/pdf/IN/IN11320.*

Approximately 12.3 million rental units have federally backed financing, representing 28% of renters. Other data show more than 2 million housing vouchers along with approximately 2 million other federally assisted rental units.[16]

The Federal moratorium, however, did not reach all renters. Many renters who fell outside the scope of the Federal moratorium were protected under State and local moratoria. In the absence of State and local protections, as many as 30–40 million people in America could be at risk of eviction.[17] A wave of evictions on that scale would be unprecedented in modern times.[18] A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus contributing to the spread of COVID–19.

The statistics on interstate moves show that mass evictions would likely increase the interstate spread of COVID–19. Over 35 million Americans, representing approximately 10% of the U.S. population, move each year.[19] Approximately 15% of moves are interstate.[20]

Eviction, Homelessness, and Risk of Severe Disease From COVID–19

Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID–19 than the general population.[21] In Seattle-King County, 5–15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless.[22] Additionally, some individuals and families who are evicted may originally stay with family or friends, but subsequently seek homeless services. Among people who entered shelters throughout the United States in 2017, 27% were staying with family or friends beforehand.[23]

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order to adhere to public health recommendations to prevent COVID–19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

Extensive outbreaks of COVID–19 have been identified in homeless shelters.[24] In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members.[25] In Boston, Massachusetts, universal COVID–19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents.[26] COVID–19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested).[27] Throughout the United States, among 208 shelters reporting universal diagnostic testing data, 9% of shelter clients have tested positive.[28]

CDC guidance recommends increasing physical distance between beds in homeless shelters.[29] To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above. The challenge of mitigating disease transmission in homeless shelters has been compounded because some organizations have chosen to stop or limit volunteer access and participation.

In the context of the current pandemic, large increases in evictions could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID–19. The other is if homeless shelters turn away the recently homeless, who could become unsheltered, and further contribute to the spread of COVID–19. Neither consequence is in the interest of the public health.

The risk of COVID–19 spread associated with unsheltered homelessness (those who are sleeping outside or in places not meant for human habitation) is of great concern to CDC. Over 35% of homeless persons are typically unsheltered.[30] The unsheltered homeless are at higher risk for infection when there is community spread of COVID–19. The risks associated with sleeping and living outdoors or in an encampment setting are different than from staying indoors in a congregate setting, such as an emergency shelter or other congregate living facility. While outdoor settings may allow people to increase physical distance between themselves and others, they may also involve exposure to the elements and inadequate access to hygiene, sanitation facilities, health care, and therapeutics. The latter factors contribute to the further spread of COVID–19.

Additionally, research suggests that the population of persons who would be evicted and become homeless would include many who are predisposed to developing severe disease from COVID–19. Five studies have shown an association between eviction and hypertension, which has been associated with more severe outcomes from COVID–19.[31] Also, the homeless

[16] See HUD, A Picture of Subsidized Households General Description of the Data and Bibliography, available at: *https://www.huduser.gov/portal/datasets/assthsg/statedata98/descript.html.*

[17] See Emily Benfer, et al., *The COVID–19 Eviction Crisis: An Estimated 30–40 Million People in America are at Risk,* available at: *https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/.*

[18] As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. National Estimates: Eviction in America. *https://evictionlab.org/national-estimates/.*

[19] See U.S. Census Bureau, CPS Historical Migration/Geographic Mobility Tables, available at: *https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html.*

[20] *Id.*

[21] See CDC, Coronavirus Disease 2019 (COVID–19), People Who Are at Increased Risk for Severe Illness, available at *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html* (accessed August 26, 2020).

[22] Seattle-King County. Point in Time Count. *https://regionalhomelesssystem.org/wp-content/uploads/2020/07/Count-Us-In-2020-Final_7.29.2020.pdf*

[23] United States Department of Housing and Urban Development. The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2. Available at: *https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf*

[24] Mositos E, et al, *Assessment of SARS-CoV–2 Infection Prevalence in Homeless Shelters—Four U.S. Cities, March 27–April 15, 2020.* MMWR 2020 May 1;69(17):521–522.

[25] Tobolowsky FA, et al. *COVID–19 Outbreak Among Three Affiliated Homeless Service Sites—King County, Washington, 2020.* MMWR 2020 May 1;69(17):523–526.

[26] Baggett TP, Keyes H, Sporn N, Gaeta JM. *Prevalence of SARS-CoV–2 Infection in Residents of a Large Homeless Shelter in Boston.* JAMA. 2020 Apr 27;323(21):2191–2. Online ahead of print.

[27] Imbert E, et al. *Coronavirus Disease 2019 (COVID–19) Outbreak in a San Francisco Homeless Shelter.* Clin Infect Dis. 2020 Aug 3.

[28] National Health Care for the Homeless Council and Centers for Disease Control and Prevention. Universal Testing Data Dashboard. Available at: *https://nhchc.org/cdc-covid-dashboard/.*

[29] Centers for Disease Control and Prevention. Interim Guidance for Homeless Service Providers to Plan and Respond to COVID–19. *https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html.*

[30] In January 2018, 552,830 people were counted as homeless in the United States. Of those, 194,467 (35 percent) were unsheltered, and 358,363 (65 percent) were sheltered. *See,* Council of Economic Advisors, *The State of Homelessness in America* (September 2019), available at *https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf.*

[31] Hugo Vasquez-Vera, et al, *The threat of home eviction and its effects on health through the equity*

Continued

often have underlying conditions that increase their risk of severe outcomes of COVID–19.[32] Among patients with COVID–19, homelessness has been associated with increased likelihood of hospitalization.[33]

These public health risks may increase seasonally. Each year, as winter approaches and the temperature drops, many homeless move into shelters to escape the cold and the occupancy of shelters increases.[34] At the same time, there is evidence to suggest that the homeless are more susceptible to respiratory tract infections,[35] which may include seasonal influenza. While there are differences in the epidemiology of COVID–19 and seasonal influenza, the potential co-circulation of viruses during periods of increased occupancy in shelters could increase the risk to occupants in those shelters.

In short, evictions threaten to increase the spread of COVID–19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID–19.

Findings and Action

Therefore, I have determined the temporary halt in evictions in this Order constitutes a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID–19 throughout the United States. I have further determined that measures by states, localities, or U.S. territories that do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID–19.[36]

Based on the convergence of COVID–19, seasonal influenza, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, all of which may be exacerbated as fall and winter approach, I have determined that a temporary halt on evictions through December 31, 2020, subject to further extension, modification, or rescission, is appropriate.

Therefore, under 42 CFR 70.2, subject to the limitations under the "Applicability" section, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any State or U.S. territory in which there are documented cases of COVID–19 that provides a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act ("APA") but rather an emergency action taken under the existing authority of 42 CFR 70.2. In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. *See* 5 U.S.C. 553(b)(3)(B). Considering the public-health emergency caused by COVID–19, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order.

A delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that could have potentially significant consequences. As discussed above, one potential consequence would be that evicted individuals would move into close quarters in congregate or shared living settings, including homeless shelters, which would put the individuals at higher risk to COVID–19. Another potential consequence would be if evicted individuals become homeless and unsheltered, and further contribute to the spread of COVID–19. A delay in the effective date of the Order that leads to such consequences would defeat the purpose of the Order and endanger the public health. Immediate action is necessary.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately.

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by Federal authorities and cooperating State and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Criminal Penalties

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than $100,000 if the violation does not result in a death or one year in jail, or both, or a fine of no more than $250,000 if the violation results in a death or one year in jail, or both, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than $200,000 per event if the violation does not result in a death or $500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate court proceedings as appropriate seeking imposition of these criminal penalties.

Notice to Cooperating State and Local Officials

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid State and local authorities in the enforcement of their quarantine and

lens: A systematic review. Social Science and Medicine. 175 (2017) 199e208.

[32] Fazel S, Geddes JR, Kushel M. *The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinical and policy recommendations.* Lancet. 2014;384(9953):1529–1540.

[33] Hsu HE, et al. *Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID–19 at an Urban Safety-Net Medical Center—Boston, Massachusetts, 2020.* MMWR 2020 Jul 10;69(27):864–869. Historically, African Americans and Hispanic Americans are disproportionately represented in evictions compared to other races. They are more likely to experience severe outcomes of COVID–19. *Id.*

[34] *See,* generally, the Annual Homeless Assessment Report to Congress (2007), available at: *https://www.huduser.gov/Publications/pdf/ahar.pdf* (acknowledging the seasonality of shelter bed use).

[35] Ly TDA, Edouard S, Badiaga S, et al. Epidemiology of respiratory pathogen carriage in the homeless population within two shelters in Marseille, France, 2015–2017: Cross sectional 1-day surveys. Clin Microbiol Infect. 2019; 25(2):249.e1–249.e6.

[36] In the United States, public health measures are implemented at all levels of government, including the Federal, State, local, and tribal levels. Publicly-available compilations of pending measures indicate that eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions. Eviction Lab, *COVID–19 Housing Policy Scorecard,* available at: *https://evictionlab.org/covid-policy-scorecard/.*

other health regulations and to accept State and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

Notice of Available Federal Resources

While this order to prevent eviction is effectuated to protect the public health, the States and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG–CV and ESG–CV funds provided by the CARES Act, all communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

HUD stands at the ready to support American communities take these steps to reduce the spread of COVID–19 and maintain economic prosperity. Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are sufficiently addressed, and utilize HUD's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit *www.hudexchange.info/program-support.* For further information on HUD resources, tools, and guidance available to respond to the COVID–19 pandemic, State and local officials are directed to visit *https://www.hud.gov/coronavirus.* These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund may be used to fund rental assistance programs to prevent eviction. Visit *https://home.treasury.gov/policy-issues/cares/state-and-local-governments* for more information.

Effective Date

This Order is effective upon publication in the **Federal Register** and will remain in effect, unless extended, modified, or rescinded, through December 31, 2020.

Attachment

Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID–19

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID–19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing; [37]
- I either expect to earn no more than $99,000 in annual income for Calendar Year 2020 (or no more than $198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary [38] out-of-pocket medical expenses;
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;
- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.[39]
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

_____
Signature of Declarant Date

_____

Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Dated: September 1, 2020.

Nina B. Witkofsky,

Acting Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2020–19654 Filed 9–1–20; 4:15 pm]

BILLING CODE 4163–18–P

[37] "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

[38] An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

[39] "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to you.

OFFICE OF THE ADMINISTRATIVE JUDGE

10TH Judicial District - Nassau County

MEMORANDUM

To: Nassau County Legal Community

From: Hon. Norman St. George, District Administrative Judge

Date: December 8, 2020

Re: Updated Operating Protocols for Nassau County Courts

Throughout the pandemic, we have provided periodic updates detailing the evolution of In-Person Operations during the Covid-19 Pandemic. Back in March and April, we discussed how In-Person Operations would be reduced to Essential and Emergency Operations in each Courthouse. With the advent of the summer months, as the virus receded, we discussed how In-Person Operations would expand. Expansion efforts were so successful that in October and November we were able to resume both Grand Juries and Jury Trials in Nassau County.

Thereafter, New York State experienced an increase in the spread of the virus, resulting in the determination that the Courts should reduce In-Person Operations. A few weeks ago, Grand Juries and Jury Trials were suspended for the foreseeable future. Many other proceedings which had been permitted to proceed In-Person were directed to be held either as a hybrid of In-Person and Virtual proceedings or exclusively Virtual proceedings.

Now, the Chief Judge and the Chief Administrative Judge have decided that the Courts throughout New York State should immediately dramatically decrease In-Person proceedings in order to protect the health and safety of all court users, court staff and Judges and to further reduce the community spread of the Coronavirus. Accordingly, these new protocols have been developed to implement that change and are intended to require that Virtual appearances are prevalent and In-Person appearances are infrequent.

The following should be considered an update to the Return to In-Person Operations Plan effective October 19, 2020; Judge Marks' Memorandum "Revised Pandemic Procedures in the

Trial Courts" dated November 13, 2020; and the Updated Operating Protocols effective November 23, 2020. Commencing December 9, 2020 all court operations in the Tenth Judicial District—Nassau County shall be conducted pursuant to this Plan.

I. Courthouse Operations

A. Scheduling

1. Calendar times shall be staggered so that different parts in the same building start at different times.
2. Each Judge may hold In-Person proceedings one day per week, unless an exception is requested and granted by the Administrative Judge. The scheduling shall be as coordinated by Supervising Judges and Chief Clerks to assure appropriate limiting of foot traffic in the Courts.
3. In each court, there shall be a maximum of 5 cases/proceedings scheduled In-Person per hour.

B. Occupancy of all courtrooms shall be limited to a maximum of the lesser of 10 people or ½ the posted room occupancy per code. An exception shall be granted for Grand Juries (in those instances, occupancy shall be limited to the lesser of 30 people or ½ the posted room occupancy per code). Any exceptions that were previously granted to the occupancy limits are rescinded until further notice.

C. The number of non-judicial staff reporting to the courthouse shall be reduced at the discretion of the Administrative Judge to the minimum number necessary to ensure safe operations. In-Person staffing at these reduced levels should be scheduled in a manner that limits the likelihood and adverse consequence of a positive COVID transmission in the Courts. All staff not reporting to the courthouse shall work remotely. Under no circumstance shall the number of non-judicial staff reporting to the courthouse exceed between 25% to 40% of normal pre-COVID staffing.

D. All current safety measures and protocols will continue. Court managers and PPE Compliance Coordinators shall take steps to enhance monitoring and compliance with all safety measures including social distancing at all times.

II. Court Proceedings

A. No new prospective Trial Jurors (Criminal or Civil) will be summoned for jury service until further notice.

B. No new prospective Grand Jurors will be summoned to report for Grand Jury service unless authorized by appropriate Administrative Order. Existing Grand Juries, pursuant to Section 190.15 of the Criminal Procedure Law, may continue until completion of their term or work and until a new Grand Jury is convened. In the event that the current Grand Jury is unable to continue, a new Grand Jury may be convened upon application of the District Attorney to the Administrative Judge.

C. Notwithstanding any other provision herein, no adult In-Custody in the Tenth Judicial District's Nassau County Correctional Center shall be produced to any Court (Supreme, County, Family, City, Town or Village), unless the Administrative Judge grants permission for an In-Person appearance. Where an In-Person proceeding involves an adult housed at a facility other than one located in the Tenth Judicial District—Nassau

County, that individual shall appear virtually utilizing electronic means unless the Presiding Judge orders otherwise after appropriate application is made.

D. Matters that may be heard In-Person (or hybrid of In-Person and Virtual) PROVIDED THAT THE PRESIDING JUDGE FIRST FINDS:
(a) THAT IT IS UNLAWFUL TO CONDUCT THE PROCEEDING VIRTUALLY OR
(b) THAT IT IS IMPRACTICAL TO CONDUCT THE PROCEEDING VIRTUALLY AND CRITICAL THAT THE MATTER PROCEED IMMEDIATELY
    1. Matters as designated in Exhibit A.
    2. Family Court Act Article 10 evidentiary hearings.
    3. Permanency Hearings.
    4. Criminal Preliminary Hearings.
    5. Pleas and Sentences.
    6. Arraignments of In-Custody defendants.
    7. Arraignments where the Court is notified of a request for an In-Person arraignment by either the prosecution or the defense.
    8. Surrogate's Court Citations.
    9. Treatment Court and Judicial Diversion appearances where the Presiding Judge determines, in consultation with Supervising Judge, that an appearance in an acute case is necessary to protect the health and safety of a defendant.
    10. Any proceeding involving a self-represented litigant(s) where the Presiding Judge determines that holding the proceeding via Microsoft Teams denies the self-represented litigant(s) meaningful access to the proceeding and where the Presiding Judge determines that the matter can be heard In-Person consistent with all OCA safety protocols.

E. ALL other matters MUST be heard virtually using Microsoft Teams video conferencing, or telephone, including but not limited to:
    1. Bench Trials in Civil and Criminal cases. (For compelling reasons, the Presiding Judge may forward a request for permission to conduct a bench trial In-Person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held In-Person.).
    2. Evidentiary Hearings in Civil and Criminal Cases. (For compelling reasons, the Presiding Judge may forward a request for permission to conduct a hearing In-Person to the Administrative Judge. If deemed appropriate, the Administrative Judge will forward the request to the Deputy Chief Administrative Judge, whose permission is required if the matter is to be held In-Person.).
    3. Motion arguments.
    4. Mental Hygiene Law Proceedings pertaining to a hospitalized adult (Chief Administrative Judge Lawrence Marks' Administrative Order AO/72/20).
    5. ADR where both parties are represented by counsel and counsel will be present.
    6. Arbitrations pursuant to the Part 137 Attorney-Client Fee Dispute Resolution Program.
    7. Small Claims Assessment Review proceedings.
    8. Desk Appearance Tickets not otherwise addressed herein.

9. Conferences.
10. Other routine court matters not expressly included in Paragraph II(D).

Exhibit A

A. Criminal matters.
   1. Arraignments.
   2. Bail applications, reviews and writs.
   3. Temporary orders of protection.
   4. Resentencing of retained and incarcerated defendants.
   5. Essential sex offender registration act (SORA) matters.

B. Family Court.
   1. Child protection intake cases involving removal applications.
   2. Juvenile delinquency cases involving remand placement applications, or modification thereof.
   3. Emergency family offense petitions/temporary orders of protection.
   4. Orders to show cause.

C. Supreme Court.
   1. MHL applications for an assisted outpatient treatment (AOT) plan
   2. Emergency applications in guardianship matters.
   3. Temporary orders of protection (including but not limited to matters involving domestic violence).
   4. Emergency applications related to the coronavirus.
   5. Emergency Election Law applications.
   6. Extreme risk protection orders (ERPO).

D. Civil/Housing matters.
   1. Applications addressing landlord lockouts (including reductions in essential services).
   2. Applications addressing serious code violations.
   3. Applications addressing serious repair orders.
   4. Applications for post-eviction relief.

E. Surrogate's Court - Any matter involving an individual who passed away due to COVID-related causes.

MESSAGE FROM CHIEF JUDGE JANET DIFIORE

December 7, 2020

Thank you for giving us a few minutes of your time for an update on the latest COVID developments affecting our courts and the justice system.

As you know, we are experiencing a resurgence of COVID-19 cases all across the state, something that was predicted by the public health authorities and an eventuality that we have been preparing for. Effective today, we are implementing a number of steps to reduce in-court operations and limit the number of people trafficking through our courthouses and, by these efforts, do our part to prevent the spread of the virus.

Starting today, and until further notice, our in-person staffing levels are being reduced to 40% or less in our courts outside New York City, and to 30% or less in our courts within the City. We are also sharply limiting the number of in-person matters we will allow to

proceed in our courts. Nonessential personal appearances in civil courts are being temporarily suspended, and only a small number of in-person essential and emergency matters will be heard in criminal, family, and housing court. By eliminating nonessential in-person appearances and encouraging virtual appearances whenever possible, we will be able to dramatically reduce the number of people coming into our buildings and thereby curtail the person-to-person contact that allows this horrific virus to spread.

Our Administrative Judges and court managers are implementing these steps within a statewide framework and an established set of protocols that enable us to have a consistent overall response to the impact of the resurgence on court operations. Baked into the protocols is sufficient discretion for each of our Administrative Judges to make operational decisions that are tailored to the specific needs of their courts and the public health conditions demanding action in their localities.

Until such time as the COVID metrics improve and we can safely return to, or move back toward, re-establishing in-person operations, we will rely on the demonstrated ability of our judges and staff to

resolve cases and deliver justice services in our virtual courts, and we will continue to focus on improving and expanding our virtual capacity, especially in the Family Court, where jurists and staff are already handling hundreds of matters remotely each day, including urgent filings involving child abuse and neglect, delinquency, support, custody, visitation and guardianship cases.

We are laser-focused on expanding the Family Court's virtual capacity and giving the judges and staff what they need to carry out the business of that very important court with as little interruption as possible. We have distributed hundreds of laptops and other remote technology statewide, and we are upgrading and improving the virtual court process by, for example, installing voice recognition software to streamline the efficiency and improve the accuracy of virtual proceedings.

Like the Family Court, our New York City Civil Court is also making outstanding use of remote technology to conduct its business. The judges and staff in Civil Court have been doing an excellent job conducting dozens of virtual bench trials and settling large numbers of cases each week. And as a result of their hard work we are seeing the

impact on our pending inventory, especially in automobile no-fault cases where medical providers seek to recover damages from insurance providers for medical services rendered to their insureds. Because the amounts in dispute are under $25,000 and witness testimony is limited, no-fault cases are especially well-suited for virtual resolution.

So we want to acknowledge our Civil Court Judges, overseen by Administrative Judge Anthony Cannataro, who have done an outstanding job of trying and settling these cases, led by the amazing effort of Queens County Civil Court Judge Tracy Catapano-Fox, who has literally tried and settled hundreds of no-fault cases even as she prepares to assume her new position, on January 1st, as a recently elected Supreme Court Justice in the 11th Judicial District. So, thank you to Judge Cannataro, Judge Catapano-Fox and all of our Civil Court Judges and their staff for their hard work and dedication.

Turning now to access to justice, I'd like to report on a new partnership between our Office for Justice Initiatives, led by Deputy Chief Administrative Judge Edwina Mendelson, the State Bar's COVID Recovery Task Force, pro bono attorneys at the law firm of Davis, Polk & Wardwell, and "Legal Information for Families Today" -- or LIFT -- a partnership that will provide remote legal assistance to the growing

number of unrepresented New Yorkers who are filing child support petitions in the wake of the pandemic.

This initiative, which is expected to launch by the end of next month, expands on LIFT's existing web-based "Family Legal Connection" platform, which links unrepresented litigants with supervised pro bono attorneys who provide limited scope advice and information to litigants and assist them in drafting child support petitions. LIFT is now recruiting volunteer attorneys from all across the state in order to expand the program in the New York City Family Court, and to many of our Family Courts in the 4th, 6th, 8th, and 9th Judicial Districts. I want to thank everyone involved with this project at LIFT, at the State Bar, in our Family Courts, at our Office for Justice Initiatives, and, of course, Sharon Katz, Dara Sheinfeld and the many generous and committed pro bono attorneys under their tutelage at David Polk who are giving selflessly of their time to ease the pain of the pandemic for vulnerable litigants.

Finally, I'd like to close with a few words on the Judiciary's budget. Last Tuesday, December 1st, as mandated by the State Constitution, we submitted our budget request for the next fiscal year that begins on April 1, 2021 to the Governor and the leaders of the New York State

Legislature. Our request, which seeks $2.25 billion in state operating funds, reflects no change from our current spending level, which as you know was reduced earlier this year by $291 million dollars -- a reduction necessitated by the unprecedented fiscal challenges facing the State.

And while this operating budget will allow our court system to carry out our constitutional functions, it has certainly called upon us to many some very difficult decisions, including the strict hiring freeze that we instituted earlier this year, deferral of certain incurred financial obligations and scheduled pay raises for nonjudicial staff, suspension of our JHO Program, and the Administrative Board's decision this year to forego certification of retired Supreme Court Justices.

As a result of our hiring freeze, our court workforce is projected to fall below 15,000 by next April, a 12% reduction from our employment levels in 2009. And if the freeze continues much longer into the next fiscal year, our workforce will be reduced even further, likely to levels not seen in many years. And while we believe that this attrition-driven approach will be less traumatic and disruptive to court operations than immediate large-scale layoffs of our professional staff, there is no

question that we will be challenged by having to operate our courts with a reduced complement of court officers, clerks, back office staff, interpreters, court reporters, specialists, managers and others.

So, at a time when the need for our services has never been greater, we find ourselves in a place where every one of us is being asked to do more with less. And while we are, of course, hopeful that the state's fiscal situation will improve with the availability of a vaccine and a return to economic normalcy, and that a program of federal aid will be enacted and funds will be available to us to mitigate the impact of COVID-19 on the courts and our justice system, we cannot sit back with our fingers crossed and our eyes closed and hope for the best. It would be imprudent and irresponsible for us to make plans based on expectations that may never come to fruition, and we have declined to take that passive approach.

But with all that said, we can be cautiously optimistic about the availability of a vaccine in the not-too-distant future and so there is real hope that the worst of this crisis will soon be behind us. If we stay strong and united, and continue to press forward with the same kind of commitment and resilience that enabled us to navigate each and every

challenge thrown our way since the beginning of this pandemic, I do believe that we may soon be back on the road to recovery.

So, today, I once again thank you for staying strong and positive in carrying out your responsibilities, and I remind you to remain disciplined, in doing all that you can and should be doing to keep yourselves and those around you safe.

Thomas O'Rourke, Esq.

775 F.3d 538 (2nd Cir. 2015), 14-2156-cv, Phillips v. City of New York

Page 538

775 F.3d 538 (2nd Cir. 2015)

NICOLE PHILLIPS, individually and on behalf of B.P. and S.P., minors, DINA CHECK, on behalf of minor M.C., FABIAN MENDOZA-VACA, individually and on behalf of M.M. and V.M., minors, Plaintiffs-Appellants,

v.

CITY OF NEW YORK, ERIC T. SCHNEIDERMAN, in his official capacity as Attorney General, State of New York, DR. NIRAV R. SHAH, in his official capacity as Commissioner, New York State Department of Health, NEW YORK CITY DEPARTMENT OF EDUCATION, Defendants-Appellees. [*]

No. 14-2156-cv

United States Court of Appeals, Second Circuit

January 7, 2015

Argued: January 5, 2015.

Page 539

Plaintiffs-appellants challenge on constitutional grounds New York State's requirement that all children be vaccinated in order to attend public school. Plaintiffs-appellants argue that the statutory vaccination requirement, which is subject to medical and religious exemptions, violates their substantive due process rights, the Free Exercise Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Ninth Amendment, and both state and municipal law. On the same grounds, plaintiffs-appellants argue that a state regulation permitting state officials to temporarily exclude students who are exempted from the vaccination requirement from school during an outbreak of a vaccine-preventable disease is unconstitutional. The district court concluded that the statute and regulation are constitutional. We agree and therefore AFFIRM.

PATRICIA FINN, Patricia Finn, Attorney, P.C., Piermont, New York, for Plaintiffs-Appellants.

JAMES ANDREW KENT, Assistant Solicitor General (Steven C. Wu, Deputy Solicitor General, on the brief) on behalf of Barbara D. Underwood, Solicitor General, for State Defendants-Appellees.

JANE L. GORDON on behalf of Zachary W. Carter, Corporation Counsel of the City of New York, for Municipal Defendants-Appellees.

Before: LYNCH and CHIN, Circuit Judges, and KORMAN, District Judge.[**]

OPINION

Page 540

PER CURIAM:

Plaintiffs brought this action challenging on constitutional grounds New York State's requirement that all children be vaccinated in order to attend public school. Plaintiffs argued that the statutory vaccination requirement, which is subject to medical and religious exemptions, violates their substantive due process rights, the Free Exercise Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Ninth Amendment, and both state and municipal law. On the same grounds, plaintiffs argued that a state regulation permitting school officials to temporarily exclude from school students who are exempted from the vaccination requirement during an outbreak of a vaccine-preventable disease is unconstitutional. Defendants moved to dismiss or for summary judgment. The district court (William F. Kuntz II, *Judge*) granted defendants' motions. Because we conclude that the statute and regulation are a constitutionally permissible exercise of the State's police power and do not infringe on the free exercise of religion, and we determine that plaintiffs' remaining arguments are either meritless or waived, we affirm.

BACKGROUND

New York requires that students in the State's public schools be immunized against various vaccine-preventable illnesses. The New York Public Health Law provides that " [n]o principal, teacher, owner or person in charge of a school shall permit any child to be admitted to such school, or to attend such school, in excess of fourteen days" without a certificate of immunization. N.Y. Pub. Health Law § 2164(7)(a). The statute provides two exemptions from the immunization mandate. First, a medical exemption is available " [i]f any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child's health." *Id.* § 2164(8). Second, the a religious exemption is available for " children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required." *Id.* § 2164(9). The State provides multiple layers of review for parents if either of these exemptions is denied.

Plaintiffs Nicole Phillips and Fabian Mendoza-Vaca, who are Catholic, received religious exemptions for their children. In November 2011 and January 2012, however, the Phillips and Mendoza-Vaca children were excluded from school when a fellow student was diagnosed with chicken

Page 541

pox, pursuant to a state regulation that provides, " in the event of an outbreak . . . of a vaccine-preventable disease in a school, the commissioner, or his or her designee, . . . may order the appropriate school officials to exclude from attendance" those students who have received exemptions from mandatory vaccination. 10 N.Y.C.R.R. § 66-1.10.

Plaintiff Dina Check applied for a religious exemption for her daughter, M.C.[1] After asking Check to clarify her basis for seeking the exemption, a Department of Education (" DOE") official ultimately denied the exemption, finding that Check's objections to vaccinating M.C. were not based on genuine and sincere religious beliefs.[2] Check then brought this lawsuit seeking a preliminary injunction to compel the DOE to allow M.C. to attend school unvaccinated.

The district court (Sandra L. Townes, *Judge*) referred the preliminary injunction application to Magistrate Judge Lois Bloom, who held a hearing at which Check testified regarding the purported religious basis for her objections to vaccines.[3] Check testified that she is Catholic and stated, " How I treat my daughter's health and her well-being is strictly by the word of God." (Joint App'x 136.) Check also testified, however, that she believed that

vaccination " could hurt my daughter. It could kill her. It could put her into anaphylactic shock. It could cause any number of things." (*Id.* at 146.) On cross-examination, Check testified that she did not know of any tenets of Catholicism that prohibited vaccinations. She also detailed several adverse reactions that M.C. had had to vaccinations before Check determined not to subject her to any further inoculation, and stated that these bad reactions led Check to ask God for guidance and protection.

The Magistrate Judge issued a Report and Recommendation recommending that the request for a preliminary injunction be denied. She found that Check's testimony demonstrated that her views on vaccination were primarily health-related and did not constitute a genuine and sincere religious belief. The Magistrate Judge noted especially that " plaintiff's testimony that she did not adopt her views opposing vaccination until she believed that immunization jeopardized her daughter's health is compelling evidence that plaintiff's refusal to immunize her child is based on medical considerations and not religious beliefs." (*Id.* at 211.) The district court adopted the Report and Recommendation and denied injunctive relief.[4]

Page 542

Check's case was subsequently consolidated with the Phillips and Mendoza-Vaca cases before Judge Kuntz. Plaintiffs thereafter jointly filed an amended complaint, alleging that the State's mandatory vaccination requirement and the regulation permitting temporary exclusion of exempted schoolchildren during a disease outbreak were unconstitutional. Specifically, plaintiffs alleged that the statute and regulation violated the Free Exercise Clause of the First Amendment, their rights to substantive due process under the Fourteenth Amendment, the Ninth Amendment, the Equal Protection Clause, and state and municipal law. The municipal defendants moved to dismiss or for summary judgment, and the State defendants moved to dismiss. The district court granted the motions on June 5, 2014. *Phillips v. City of New York, Nos.* 12-cv-98 (WFK)(LB), 12-cv-237 (WFK)(LB), 13-cv-791 (WFK)(LB), 27 F.Supp.3d 310, 2014 WL 2547584 (E.D.N.Y. June 5, 2014). Plaintiffs filed their Notice of Appeal five days later, on June 10, 2014. Nine days after that, plaintiffs moved for reconsideration in the district court. The district court denied the motion, holding that because plaintiffs had already filed their Notice of Appeal, it no longer had jurisdiction.

DISCUSSION

We review de novo the district court's grant of a motion to dismiss, accepting as true all facts alleged in the complaint and drawing all reasonable inferences in favor of the plaintiff. *Kassner v. 2nd Ave. Delicatessen, Inc.,* 496 F.3d 229, 237 (2d Cir. 2007).

I. Substantive Due Process

Plaintiffs argue that New York's mandatory vaccination requirement violates substantive due process. This argument is foreclosed by the Supreme Court's decision in *Jacobson v. Commonwealth of Massachusetts,* 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905). In that case, the plaintiff challenged Massachusetts's compulsory vaccination law under the Fourteenth Amendment. The Supreme Court held that mandatory vaccination was within the State's police power. *Id.* at 25-27; *see Zucht v. King,* 260 U.S. 174, 176, 43 S.Ct. 24, 67 L.Ed. 194, 20 Ohio L. Rep. 452 (1922) (" Jacobson . . . settled that it is within the police power of a state to provide for compulsory vaccination."). The Court rejected the claim that the individual liberty guaranteed by the Constitution overcame the State's judgment that mandatory vaccination was in the interest of the population as a whole. *Jacobson,* 197 U.S. at 38. Plaintiffs argue that a growing body of scientific evidence demonstrates that vaccines cause more harm to society than good, but as Jacobson made clear, that is a determination for the legislature, not the individual objectors. *See id.* at 37-38.[5] Plaintiffs' substantive due process challenge to the mandatory

vaccination regime is therefore no more compelling than Jacobson's was more than a century ago. *See Caviezel v. Great Neck Pub. Schs.,* 500 F.App'x 16, 19 (2d Cir. 2012)

Page 543

(summary order) (rejecting substantive due process challenge to vaccination mandate based on Jacobson).

II. Free Exercise of Religion

Plaintiffs next argue that the temporary exclusion from school of the Phillips and Mendoza-Vaca children during the chicken pox outbreak unconstitutionally burdens their free exercise of religion.[6] Jacobson did not address the free exercise of religion because, at the time it was decided, the Free Exercise Clause of the First Amendment had not yet been held to bind the states. *See Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). Therefore, Jacobson does not specifically control Phillips's and Mendoza-Vaca's free exercise claim. The Supreme Court has stated in persuasive dictum, however, that a parent " cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." *Prince v. Massachusetts,* 321 U.S. 158, 166-67, 64 S.Ct. 438, 88 L.Ed. 645 (1944). That dictum is consonant with the Court's and our precedents holding that " a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993); accord, *Leebaert v. Harrington,* 332 F.3d 134, 143-44 (2d Cir. 2003) (holding that parental claims of free exercise of religion are governed by rational basis test). Accordingly, we agree with the Fourth Circuit, following the reasoning of Jacobson and Prince, that mandatory vaccination as a condition for admission to school does not violate the Free Exercise Clause. See *Workman v. Mingo County Bd. of Educ.,* 419 F.App'x 348, 353-54 (4th Cir. 2011) (unpublished).

New York could constitutionally require that all children be vaccinated in order to attend public school. New York law goes beyond what the Constitution requires by allowing an exemption for parents with genuine and sincere religious beliefs. Because the State could bar Phillips's and Mendoza-Vaca's children from school altogether, *a fortiori*, the State's more limited exclusion during an outbreak of a vaccine-preventable disease is clearly constitutional.

III. Equal Protection

Plaintiffs argue that the mandatory vaccination provision violates their rights under the Equal Protection Clause. To the extent that plaintiffs are claiming discrimination against Catholics, that argument plainly fails because Phillips and Mendoza-Vaca are both Catholic and received religious exemptions. Plaintiffs alternatively argue that Check was treated differently than her similarly-situated co-plaintiffs. But, as discussed above, plaintiffs

Page 544

failed to challenge the district court's finding that Check's views on vaccines were not based on sincere religious beliefs. Plaintiffs have put nothing in the record to suggest that Phillips's and Mendoza-Vaca's religious beliefs are similar to Check's. Plaintiffs therefore fail adequately to allege an equal protection violation.

IV. Ninth Amendment

Plaintiffs finally seek succor in the Ninth Amendment. But, we have held, " [t]he Ninth Amendment is not an independent source of individual rights." *Jenkins v. C.I.R.*, 483 F.3d 90, 92 (2d Cir. 2007). Because plaintiffs fail plausibly to allege a violation of any other constitutional right, their effort to recast their unsuccessful claims as a violation of the Ninth Amendment also fails. *See id.* at 93.[7]

V. Claims in Plaintiffs' Motion for Reconsideration

Plaintiffs also raise numerous arguments on appeal based on a deposition of DOE official Julia Sykes and other documents that they obtained in discovery. Those arguments were raised for the first time in plaintiffs' motion for reconsideration and therefore were not properly presented to the district court. Accordingly, they are waived. *See Sompo Japan Ins. Co. of Am. v. Norfolk S. Ry. Co.*, 762 F.3d 165, 188 (2d Cir. 2014) (declining to consider arguments raised for the first time in motion for reconsideration where no reason exists to excuse untimeliness).

CONCLUSION

For the foregoing reasons, the order of the district court is **AFFIRMED.**

Notes:

[*]The Clerk of Court is respectfully directed to amend the official caption in this case to conform to the caption above.

[**]The Honorable Edward R. Korman, of the United States District Court for the Eastern District of New York, sitting by designation.

[1]According to plaintiffs, M.C. had a religious exemption while attending a private pre-school, but was required to reapply when she entered the public school system.

[2]Check appealed this denial, and, after an interview with a different DOE official, her appeal was dismissed. Although an additional appeal to the Commissioner of Education was available, Check chose not to appeal and instead commenced this litigation.

[3]M.C. had previously been denied a medical exemption, though Check stated during the preliminary injunction hearing that she never applied for a medical exemption and that the application submitted on her behalf was submitted in error.

[4]Despite Check's disavowal of the medical exemption application, after the Magistrate Judge recommended that the preliminary injunction be denied, plaintiffs sought a second preliminary injunction based on the medical exemption. The Magistrate Judge issued a second Report and Recommendation recommending that this request for a preliminary injunction be denied and the district court issued an order adopting her recommendation. As discussed further at note 6, *infra*, plaintiffs do not challenge this order on appeal.

[5]Plaintiffs argue that Jacobson requires that strict scrutiny be applied to immunization mandates. Even assuming that Jacobson does demand this level of scrutiny, which no court appears ever to have held, Jacobson addressed a law mandating that all persons over age twenty-one be vaccinated for small pox and the *criminal prosecution* of the plaintiff for refusing to submit to vaccination. 197 U.S. at 12. Here, New York's mandate requires only that children who are not otherwise exempted be vaccinated in order to attend school. Because " there is no substantive due process right to public education," *Bryant v. N.Y.S. Educ. Dep't*, 692 F.3d 202, 217 (2d Cir. 2012), plaintiffs' substantive due process claim fails even under their reading of Jacobson.

[6]Check also claims that her free exercise rights were violated. However, the district court adopted the Magistrate Judge's finding that Check's objections to vaccinations were not based on religious beliefs, and plaintiffs did not designate either of the district court's orders adopting the Magistrate Judge's Reports and Recommendations in their

Notice of Appeal. Therefore, we lack jurisdiction to review the Magistrate Judge's factfinding. See Fed. R. App. P. 3(c)(1)(B); *New Phone Co., Inc. v. City of New York*, 498 F.3d 127, 131 (2d Cir. 2007). Because Check's objections to the statute are not religious in nature, she lacks standing to challenge the mandate on free exercise grounds. See *Mason v. Gen. Brown Cent. Sch. Dist.*, 851 F.2d 47, 54 (2d Cir. 1988).

[7]Because all of plaintiffs' federal claims fail, the district court properly declined to exercise supplemental jurisdiction over their state and municipal law claims. See 28 U.S.C. § 1367; *Valencia ex rel. Franco v. Lee*, 316 F.3d 299, 304-05 (2d Cir. 2003).

Filename: F:\NEWDATA\FED\02\CASE\F3D\775\775F3D538.htm

J Law Med Ethics. Author manuscript; available in PMC 2018 Mar 1.
Published in final edited form as:
J Law Med Ethics. 2017 Mar; 45(1 Suppl): 16–19.
doi: 10.1177/1073110517703307

PMCID: PMC5503112
NIHMSID: NIHMS870080
PMID: 28661302

The Latest in Vaccine Policies: Selected Issues in School Vaccinations, Healthcare Worker Vaccinations, and Pharmacist Vaccination Authority Laws

Leila Barraza, J.D., M.P.H., Cason Schmit, J.D., and Aila Hoss, J.D.

Leila Barraza, Assistant professor in the Department of Community, Environment & Policy in the Mel and Enid Zuckerman College of Public Health at the University of Arizona;
Contributor Information.

Introduction

Vaccine policies have played a vital role in protecting the public's health through disease prevention. The Centers for Disease Control and Prevention (CDC) lists vaccination as one of the "Ten Great Public Health Achievements in the 20th Century" because of its tremendous impact on morbidity and mortality in the United States.[1] Despite these successes, recent outbreaks of certain vaccine-preventable diseases have been on the rise.[2] While measles was declared eliminated in the United States in 2000, there were 23 measles outbreaks and a reported 668 cases of the disease in the U.S. in 2014.[3] Intentionally unvaccinated individuals comprised a substantial proportion of the recent U.S. cases of measles,[4] suggesting a continued role for vaccine policies to increase vaccination rates and reduce disease outbreaks.

This paper identifies select state vaccine policies across the U.S. First, the paper discusses state legal frameworks for mandatory vaccination in the context of school and healthcare worker vaccination and corresponding litigation. The paper then turns to one policy approach to expanding vaccine access — specifically, state laws allowing pharmacists the authority to vaccinate.

Mandatory Vaccinations

School Entrance

All 50 states require children to receive certain vaccinations before attending public school, and often these requirements extend to children attending day care or private schools.[5] State laws permit exemptions from school vaccination requirements for medical (in all 50 states), religious (in 47 states), or philosophical reasons (in 18 states).[6] From late 2014 through early 2015, one measles outbreak originating from exposures at a theme park in California resulted in a total of 125 cases and spread throughout eight states.[7] California residents accounted for 110 of the 125 cases.[8] Of the California measles patients, 45% were unvaccinated for measles, and 43% had unknown vaccination status, with

other patients receiving varying doses of measles vaccine.[9] Among the unvaccinated patients, which included 18 children aged 18 years or younger who contracted measles during the outbreak, a majority (67%) of vaccine-eligible patients intentionally were unvaccinated because of personal beliefs.[10]

The 2014–2015 measles outbreak spurred policy discussions regarding vaccine requirements and exemptions. During the 2015 legislative session two states, Vermont and California, passed legislation that made it more difficult for parents to seek exemptions from mandatory vaccination requirements.[11] Vermont's legislation removed the state's philosophical exemption but retained its religious vaccination exemption.[12] California's legislation restricted vaccine exemptions only to those seeking it for medical reasons (joining Mississippi and West Virginia as the only states permitting only medical exemptions to vaccines).[13] The legislation in California (Senate Bill 277) removed the state's philosophical exemption and the religious exemption.[14] Students entering daycare or school for the first time or advancing to seventh grade, except for homeschooled students, must now receive all mandatory vaccinations in order to attend school in the state, unless they have a medical reason for not doing so.[15]

Healthcare Worker Vaccination

Healthcare facilities are an additional setting in which vaccination requirements have been established. These vaccination requirements can be found in state statutes and regulations or be established by healthcare facility policy. Healthcare worker vaccination laws vary across states but generally fall into four categories: (1) laws requiring healthcare facilities to assess the vaccination status of healthcare workers, known as assessment requirements;[16] (2) laws requiring healthcare facilities to offer vaccination to healthcare workers, known as administrative offer requirements;[17] (3) laws requiring that healthcare workers be vaccinated or have a valid medical or religious exemption or other declination statement, known as administrative ensure requirements;[18] and (4) laws requiring healthcare workers who have not been vaccinated for influenza to wear surgical masks while at the workplace.[19]

State healthcare worker vaccination laws include requirements for vaccination for various diseases, including hepatitis B, influenza, measles, mumps, pertussis, pneumonia, rubella, and varicella. However, the requirements vary by state and by applicable healthcare facility. For example, 18 states have established influenza vaccination laws for hospital healthcare workers; 8 of these states have assessment requirements, 10 have administrative offer requirements, 8 have administrative ensure requirements, and 3 have surgical mask requirements.[20]

Litigation

Laws aimed at changing the immunization requirements landscape have not been without legal challenges. As described above, California removed non-medical exemptions to vaccine requirements for school entrance. As of early September 2016, at least two lawsuits had been filed to challenge the new California law. The first lawsuit, filed in April 2016, raises several challenges to the law, including that the plaintiffs' children have a right to education regardless of vaccination status, and is still pending review by state court.[21] The second lawsuit, filed on July 1, 2016, by parents of children in California, plus additional nonprofit organizations, sought to suspend the bill's implementation.[22] The complaint included assertions that plaintiffs' children have "a right to be free from potentially dangerous medical interventions," and plaintiffs have concerns, based on their religious beliefs, about vaccines.[23] The plaintiffs' motion for a preliminary injunction to temporarily stop the law was denied on August 26, 2016,[24] and the plaintiffs voluntarily withdrew the lawsuit shortly thereafter.[25]

Mandatory healthcare worker vaccination policies have also led to litigation, with healthcare workers challenging healthcare facility policies that mandate vaccination. Although healthcare facilities generally have the authority to establish such policies, the adoption, implementation, and enforcement of these policies can be subject to various areas of law.[26] Successful challenges to these policies have arisen under various legal theories.[27]

For example, in *Virginia Mason Hospital v. Washington State Nurses Association*, a labor union representing nurses in the state of Washington challenged a hospital's mandatory vaccination policy. The union argued that adoption of the policy should not have been unilateral but instead bargained for, as required by the collective bargaining agreement between the parties.[28] An arbitrator found that the hospital could not unilaterally implement a mandatory vaccination policy, a decision that was later affirmed in federal court.[29] As demonstrated by this and other cases, healthcare facilities interested in mandatory vaccination policies might consider the impact of labor laws, as well as other areas of law including employment law, when adopting mandatory healthcare worker vaccination policies.

Expanding Vaccine Access

Pharmacist Vaccination Authority

Vaccination mandates for students and healthcare workers are not the only vaccination policy levers states have used. Many patients understand the benefits of immunization but have insufficient access to vaccination services.[30] Consequently, implementing laws that expand scopes of practice is another approach used by states to potentially expand vaccine access. Laws that authorize pharmacists to administer vaccines are one example of this approach that have achieved widespread adoption despite resistance from some physician groups.[31]

Pharmacists in all states administer vaccines, but state laws vary considerably on the scope of vaccination authority. A 2016 assessment of pharmacist vaccination authority found more than 200 distinct legal variables in state laws across 51 jurisdictions.[32] This assessment revealed three types of legal provisions that can significantly impact pharmacists' roles in vaccinations.

First, patient age restrictions can affect access to vaccination in several ways. Laws with lower patient age restrictions effectively increase the pool of patients that pharmacists can vaccinate. Additionally, certain vaccines are only effective if they are administered *before* exposure to the pathogen.[33] For example, some states permit pharmacists to administer the human papillomavirus (HPV) vaccine to adult patients; however, many adolescents become sexually active and are exposed to the virus before they turn 18.[34] In those situations, high age restrictions might limit access to *effective* vaccination.

Next, state vaccine restrictions also impact vaccination access. Pharmacists cannot provide vaccinations if the state law does not authorize their administration. Yet, the introduction of recommendations for newly licensed vaccines and changes in recommendations for existing vaccines (e.g., expanded populations, changes in dosing) can make it difficult for state policy makers to keep pace. Some states have employed a way to dynamically adapt their laws to new evidence without changing the letter of the law: authorizing pharmacists to administer vaccines recommended by the Advisory Committee on Immunization Practices (ACIP).[35] Pharmacists in these states are permitted to follow the most recent ACIP guidance without having to wait for statutory or regulatory amendments.[36]

Third-party authorization requirements are another factor that could significantly affect pharmacists' ability to improve vaccine access. In many states, pharmacists must have an authorization from a third party before administering a vaccine.[37] These third-party authorization requirements can be either patient-specific (i.e., a prescription covering a named patient),[38] or general (i.e., a standing order).[39]

Other laws go further and authorize pharmacists to administer vaccines independently without a third-party authorization.[40] Laws granting pharmacists prescriptive vaccination authority could improve access by removing administrative hurdles for certain safe vaccinations.

Conclusion

Recent outbreaks of vaccine-preventable diseases continue to keep state vaccine policy in the forefront of public health policy debates. States have implemented various vaccine policies in order to prevent these outbreaks. For example, in 2015, two states passed legislation making it more difficult for children to be exempt from mandatory childhood vaccines. Similarly, while some healthcare facilities have implemented mandatory vaccination policies for healthcare workers,[41] some states have opted to establish statutory or regulatory mandates for healthcare worker vaccination assessment, as well as offer and ensure requirements in an effort to increase vaccination rates for healthcare workers. Apart from vaccination mandates, states are expanding access to vaccination services by increasing the scope of practice for healthcare professionals, such as pharmacists. State laws show sustained expansion for pharmacist vaccination authority.[42] Many states have expanded pharmacists' prescriptive authority, the patient age-groups pharmacists may vaccinate, and the vaccines pharmacists may administer.[43] Vaccination's recognition as one of the Ten Great Public Health Achievements in the 20th Century is in part due to the state laws and policies that promote vaccination coverage and access. States have continued to deploy law and policy tools to support vaccination in the settings of school vaccination, healthcare worker vaccination, and pharmacist vaccination authority.

Acknowledgments

Disclaimer

The findings and conclusions in this article are those of the authors and do not necessarily represent the official positions of the Centers for Disease Control and Prevention.

Biographies

• **Leila Barraza, J.D., M.P.H.,** Previously, Leila served as deputy director of the Network for Public Health Law — Western Region Office. She also was a fellow and an adjunct professor in the Public Health Law and Policy Program at the Sandra Day O'Connor College of Law, Arizona State University. She received her J.D., with a Certificate in Law, Science, and Technology, from the Sandra Day O'Connor College of Law and her MPH from the Mel and Enid Zuckerman College of Public Health.

• **Schmit, J.D.,** Prior to joining Texas A&M, he worked as a contractor with Carter Consulting, Inc., for the Public Health Law Program in the Office for State, Tribal, Local and Territorial Support at the Centers for Disease Control and Prevention, where he was the principal investigator for a historical assessment of state laws on pharmacists' vaccination authority. He earned his J.D. from the Sandra Day O'Connor College of Law at Arizona State University, where he received certificates in health law, intellectual property, and genomics and biotechnology law. He received a B.A. in mathematics and psychology from Willamette University.

• **Aila Hoss, J.D.,** Aila's research portfolio includes vaccination law, public health enabling authorities, tribal public health law, and federal Indian law. She is an active member of the Indiana bar and earned her J.D. from the University of Oregon School of Law and her B.A. from Emory University.

Contributor Information

Leila Barraza, Assistant professor in the Department of Community, Environment & Policy in the Mel and Enid Zuckerman College of Public Health at the University of Arizona.

Cason Schmit, Research assistant professor at the Department of Health Policy and Management at Texas A&M University.

Aila Hoss, Public health analyst with Carter Consulting, Inc., working with the Centers for Disease Control and Prevention's Public Health Law Program in the Office for State, Tribal, Local and Territorial Support.

References

1. Centers for Disease Control and Prevention. Ten Great Public Health Achievements in the 20th Century. *available at* < http://www.cdc.gov/about/history/tengpha.htm> (last visited January 5, 2017)

2. Phadke VK, Bednarczyk RA, Salmon DA, Omer SB. Association Between Vaccine Refusal and Vaccine-Preventable Diseases in the United States: A Review of Measles and Pertussis. Journal of the American Medical Association. 2016;315(11):1149–1158. at 1150–1151, 1155. [PMC free article] [PubMed] [Google Scholar]

3. *Id.*

4. *Id.*

5. National Conference of State Legislatures. States with Religious and Philosophical Exemptions From School Immunization Requirements. *available at* < http://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx> (last visited January 5, 2016)

6. *Id.*

7. Zipprich J, Winter K, Hacker J, Xia D, Watt J, Harriman K. Measles Outbreak — California, December 2014–February 2015. Morbidity and Mortality Weekly Report. 2015;64(6):153–154. at 153. [PMC free article] [PubMed] [Google Scholar]

8. *Id.*

9. *Id.*

10. *Id.*

11. Yang YT, Barraza L, Weidenaar K. Measles Outbreak as a Catalyst for Stricter Vaccine Exemption Legislation. Journal of the American Medical Association. 2015;314(12):1229–1230. [PubMed] [Google Scholar]

12. *Id.*

13. *Id.*

14. Lindley MC, Horlick GA, Shefer AM, Shaw FE, Gorji M. Assessing State Immunization Requirements for Healthcare Workers and Patients. American Journal of Preventive Medicine. 2007;32(6):459–465. at 460. [PubMed] [Google Scholar]

15. 6 Colo. Code Regs. 1011-1:II-10; 10 N.Y. Comp. Codes R. & Regs. 2.59; 31 R.I. Code R. 1–22:5.0.

16. See Lindley, *supra* note 14.

17. *Id.*

18. *Id.*

19. See *supra* note 15.

20. Hoss A, Pepin DA. Menu of State Hospital Influenza Vaccination Laws. CDC Public Health Law Program. 2015 Nov 25; updated 2016, *available at* < http://www.cdc.gov/phlp/docs/menu-shfluvacclaws.pdf> (last visited January 5 2016)

21. *Tamara Buck v. State of California*, First Amended Compl., Superior Court of the State of California, County of Los Angeles, Case No: BC 617766 (June 28, 2016); *Tamara Buck et al. v. Karen Smith*, Civil Docket, United States District Court, Central District of California (Western Division – Los Angeles), Case No. 2:16-cv-05111-GHK-MRW.

22. *Ana Whitlow v. State of California*, Compl., United States District Court, Southern District of California, Case No. 16-cv-1715 DMS (July 1, 2016).

23. *Id.*

24. *Ana Whitlow v. State of California*, Order Den. Pl.'s Mot. Prelim. Inj., United States District Court, Southern District of California, Case No. 16-cv-1715 DMS (August 26, 2016).

25. *Ana Whitlow v. State of California*, Notice of Voluntary Dismissal, United States District Court, Southern District of California, Case No. 16-cv-1715 DMS (August 31, 2016).

26. Najera RF, Reiss DR. First Do No Harm: Protecting Patients Through Immunizing Health Care Workers. Health Matrix. 2016;26:363–402. at 380. [PubMed] [Google Scholar]

27. *Id.*

28. *Virginia Mason Hospital v. Washington State Nurses Assoc.*, 2006 WL 27203, (D.W.A. 2006), aff'd, 511 F. 3d 908 (9th Cir. 2007).

29. *Id.*

30. Rimer B, Harper H, Witte O. Accelerating HPV Vaccine Uptake: Urgency for Action to Prevent Cancer: A Report to the President of the United States from the President's Cancer Panel. National Cancer Institute; Feb, 2014. *available at* < http://deainfo.nci.nih.gov/advisory/pcp/annualReports/HPV/PDF/PCP_Annual_Report_2012-2013.pdf> (last visited January 5, 2017) [Google Scholar]

31. Hogue MD, Grabenstein JD, Foster SL, Rothholz MC. Pharmacist Involvement with Immunizations: A Decade of Professional Advancement. Journal of the American Pharmacy Association. 2005;46(2):168–179. at 170. [PubMed] [Google Scholar]Hurley LP, Bridges CB, Harpaz R, et al. US Physicians' Perspective of Adult Vaccine Delivery. Annals Internal Medicine. 2014;160(3):161–170. at 166. [PMC free article] [PubMed] [Google Scholar]

32. Schmit C, Reddick A. Pharmacist Vaccination Laws. LawAtlas.org, Centers for Disease Control and Prevention; 2017. *available at* < http://lawatlas.org/datasets/pharmacist-vaccination> (last visited March 7, 2017) [Google Scholar]

33. See Rimer et al., *supra* note 15.

34. *Id.*

35. ARIZ. REV. STAT. ANN. § 32-1974; CAL. BUS. & PROF. CODE § 4052.8; CONN. GEN. STAT. ANN. § 20-633; IDAHO ADMIN. CODE r. 27.01.01.330; IOWA CODE ANN. § 155A.44(4); LA. STAT. ANN. § 37:1218.1; ME. REV. STAT. ANN. tit. 32, § 13831; MD. CODE ANN., HEALTH OCC. § 12-508; OHIO REV. CODE ANN. § 4729.41; S.C. CODE ANN. § 40-43-190(A)(2).

36. Centers for Disease Control and Prevention. Advisory Committee on Immunization Practices. *available at* < https://www.cdc.gov/vaccines/acip/> (last accessed January 5, 2017) [PubMed]

37. See *supra* note 32.

38. ARIZ. ADMIN. CODE § R9-6-1301; IND. CODE ANN. § 25–26–13–31.2; LA. ADMIN. CODE tit. 46, pt. LIII, § 521; ME. REV. STAT. ANN. tit. 32, § 13831; N.C. GEN. STAT. ANN. § 90-85.15B; WY. R. & REGS. AI PHAR. CH. 16 s 3.

39. D.C. CODE ANN. § 3–1201.02(11)(A); FLA. STAT. ANN. § 465.189; KY. REV. STAT. ANN. § 315.010(19); OR. ADMIN. R. 855-019-0270; VT. ADMIN. CODE 20–4–1400:10.35; WIS. STAT. ANN. § 450.01(16)(k).

40. ARIZ. REV. STAT. ANN. § 32-1974; CAL. BUS. & PROF. CODE § 4052.8; IDAHO CODE ANN. § 54–1704; LA. STAT. ANN. § 37:1218; ME. REV. STAT. ANN. tit. 32, § 13831; WYO. STAT. ANN. § 33–24–157(a).

41. See Najera and Reiss, *supra* note 26.

42. See *supra* note 32.

43. *Id.*

Open Forum Infectious Diseases

Open Forum Infect Dis. 2019 Aug; 6(8): ofz295. PMCID: PMC6685817
Published online 2019 Aug 8. doi: 10.1093/ofid/ofz295 PMID: 31392326

Varicella Virus Vaccine Live: A 22-Year Review of Postmarketing Safety Data

Meredith Woodward, Ann Marko, Susan Galea, Barry Eagel, and Walter Straus

Merck & Co., Inc., Kenilworth, New Jersey
Correspondence: M. Woodward, MSN, Merck & Co., Inc., 2000 Galloping Hill Road, UG3C-54, Kenilworth, NJ 07033 (meredith_woodward@merck.com).

Received 2019 Jan 29; Accepted 2019 Jul 15.

Abstract

Background

Varicella, a contagious infectious disease caused by varicella zoster virus (VZV), can result in hospitalization and, occasionally, death. Varicella virus vaccine live (VVVL [VARIVAX]) was introduced in the United States in 1995.

Methods

This comprehensive review of the VVVL safety profile is based on 22 years of postmarketing adverse event (AE) data received through spontaneous and noninterventional study reports submitted by health care providers and on a review of the published literature (cumulatively from March 17, 1995, through March 16, 2017, during which period >212 million doses were distributed globally).

Results

The VVVL safety profile was consistent with previous publications, with common AEs including varicella, rash, and pyrexia. AE reports have decreased over time, from ~500 per million doses in 1995 to ~40 per million doses in 2016; serious AEs comprise 0.8 reports per million doses. Secondary transmission was rare (8 confirmed cases); polymerase chain reaction analysis indicated that 38 of the 66 reported potential secondary transmission cases of varicella were attributable to wild-type VZV. The prevalence of major birth defects in the Pregnancy Registry was similar to that in the general US

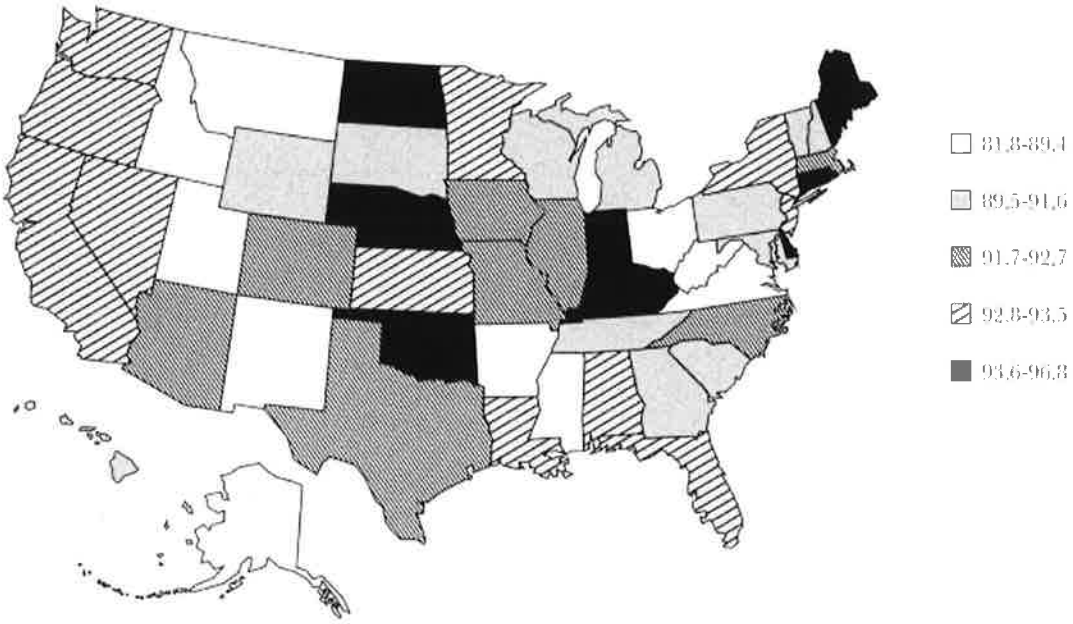
population. In total, 86 cases of death were reported after vaccination with VVVL; immunocompromised individuals appeared to be most at risk for a fatal varicella- or herpes zoster–related outcome.

Conclusions

This comprehensive 22-year review confirms the overall safety profile for VVVL, with no new safety concerns identified. Since VVVL's introduction in 1995, notable declines in varicella cases and in varicella-related deaths have occurred compared with the prevaccination period.

Keywords: postmarketing, safety, varicella, varicella vaccine, varicella zoster vaccine

Varicella (chickenpox), an acute infectious disease caused by varicella zoster virus (VZV), is extremely contagious, with secondary attack rates of up to 90% among household contacts of infected persons [1]. VZV persists as a latent infection in the sensory nerve ganglia, with reactivation causing the recurrent infection of shingles (herpes zoster [HZ]) [1]. Before vaccine introduction, the average US incidence of varicella was ~4 million cases per year, with >10 000 hospitalizations and ~145 deaths per year attributable to varicella [1–4]. Recent data indicate that >90% of US children are vaccinated against varicella (Figure 1) [5], and varicella annual incidence has declined to <350 000 cases, with <1700 hospitalizations and <20 deaths per year [3, 6].



State	Coverage, %	State	Coverage, %	State	Coverage, %	State	Coverage, %
AL	92.9	IL	91.7	NC	92.7	SC	91.0
AK	81.8	IN	94.1	ND	95.3	SD	90.3
AR	89.1	KS	92.8	NE	94.4	TN	89.7
AZ	92.7	KY	95.7	NH	89.6	TX	92.3
CA	93.4	LA	93.4	NJ	93.0	UT	88.8
CO	92.5	MA	92.0	NM	86.4	VA	84.2
CT	96.8	MD	91.5	NV	92.9	VT	91.5
DE	95.8	ME	93.8	NY	93.4	WA	92.9
FL	93.0	MI	89.5	OH	86.2	WI	90.3
GA	89.5	MN	93.4	OK	93.6	WV	85.9
HI	91.6	MO	92.4	OR	93.0	WY	91.2
IA	92.1	MS	89.2	PA	90.4		
ID	88.5	MT	89.1	RI	95.1		

Open in a separate window

Figure 1.

Varicella vaccination coverage among children aged 19–35 months by US state (2015). Modified from the Centers for Disease Control and Prevention's "2015 Childhood Varicella Vaccination Coverage Report" [5].

Varicella virus vaccine live (VVVL; VARIVAX [Oka/Merck]; Merck & Co., Inc., Kenilworth, NJ) was licensed in the United States in May 1995 [7, 8]. In 1996, a single dose of varicella vaccine for children aged 12–18 months was recommended [2], but despite vaccine effectiveness of 81%, outbreaks continued to occur in populations with high coverage rates [9]. In June 2006, the recommendation was changed to a 2-dose regimen (first dose: age 12–15 months; second dose: age 4–6 years) [2]. VVVL is currently indicated for active immunization for the prevention of varicella in individuals aged ≥12

months [7]. In common with other live, attenuated viral vaccines, use in individuals with primary or acquired immunodeficiency states, any febrile illness or active infection, or pregnancy is contraindicated [7].

The efficacy of VVVL was established in clinical trials, and its effectiveness has been based on comparisons with historical data [7]. In a study of healthy children who received 1 or 2 doses of VVVL, vaccine efficacy for the 10-year observation period was 94% for 1 dose and 98% for 2 doses ($P < .001$). Compared with historical data for wild-type VZV (WTV), there was an 80% decrease in the expected number of cases after the 2-dose vaccination [7].

A 10-year postmarketing safety review showed that VVVL was generally safe and well tolerated [8]. This report reviews 22 years of postmarketing safety data received by Merck, Sharp & Dohme (MSD).

METHODS

Resources

MSD Postmarketing Database for VVVL MSD maintains an active database of postmarketing adverse events (AEs), with most data received through spontaneous reports from health care providers and consumers. Although ideally all AEs should be reported, this is a voluntary process, with the level of detail dependent upon the individual who submits the report. Despite efforts to solicit additional facts, demographic, medical/clinical, and laboratory information may vary in completeness and accuracy. The database also includes AEs from noninterventional studies and the published literature. The National Childhood Vaccine Injury Act of 1986 [10] requires that certain AEs occurring postvaccination in the United States be reported to the Vaccine Adverse Event Reporting System.

Once received by MSD, AEs are coded using preferred terms from the Medical Dictionary for Regulatory Activities (MedDRA) [11].

This analysis includes all spontaneous postmarketing and noninterventional study reports submitted by health care providers or reported in the published literature received worldwide during the 22-year period following licensure of VVVL, from March 17, 1995, through March 16, 2017 (reports received from consumers present in the database were not included in this analysis). The available data are inadequate to reliably estimate the number of exposed individuals; therefore, reporting rates are calculated based on total doses distributed, with the assumption that each patient received 1 dose. Time to AE onset was calculated from the date of vaccination (day 1) to the date of onset of the first reported AE. AE outcome was defined as the outcome provided at the time of the report. Reports of rash (including HZ, HZ-like, varicella, and varicella-like rash) were evaluated between 1 and 42 days postvaccination. The 42-day time frame, based on twice the VZV incubation period of 21 days, represents the upper limit of time during which a vaccinee would be expected to mount an immune response.

MSD Pregnancy Registry VVVL is contraindicated during pregnancy. The company recommends that women avoid pregnancy for 3 months after vaccination; however, the Advisory Committee on Immunization Practices (ACIP) recommendation for live varicella vaccine administration advises that pregnancy be avoided for 1 month following each dose of VVVL [2]. However, it is recognized that, despite these contraindications and precautions [7], vaccination of pregnant women may occur inadvertently. A Pregnancy Registry was established (March 1995) to collect reports of and evaluate the safety and outcomes of women reported to have received VVVL within 3 months before conception or during pregnancy. On October 16, 2013, the Registry was closed to new enrollment [12]; individuals enrolled before closure were followed until after their estimated delivery date.

Definitions

The MedDRA preferred terms are listed in Supplementary Appendix 1. A report may contain ≥1 AE and includes all AEs reported by that individual. Serious AEs (SAEs) were defined per the International Conference on Harmonisation guidelines [13, 14]. Secondary transmission was defined as the documented presence of Oka/Merck vaccine strain VZV in a nonvaccinated contact of an individual vaccinated with VVVL. Based on European Medicines Agency (EMA) guidelines [15], potentially immunocompromised patients were identified based on medical histories, concurrent conditions, and concomitant therapies. Samples were analyzed using polymerase chain reaction (PCR) methodology to confirm the presence and type (vaccine strain or wild-type virus [WTV]) of VZV [16].

RESULTS

Postmarketing Surveillance Data: Overview

During the 22-year evaluation period, >212 million doses of VVVL were distributed worldwide, and 46 855 AE reports were received. Rates of the most commonly reported AEs are presented in Figure 2. From 1995 to 2000, the most common AE was varicella (peaking at 183 reports per 10^6 doses in 1997). In 2006, reports of varicella trended upward again, with 170 reports per 10^6 doses, but have subsequently decreased, with 4–5 reports per 10^6 doses in 2015 and 2016. Reports of rash also decreased, from 165 per 10^6 doses in 1995 to 10 per 10^6 in 2016.

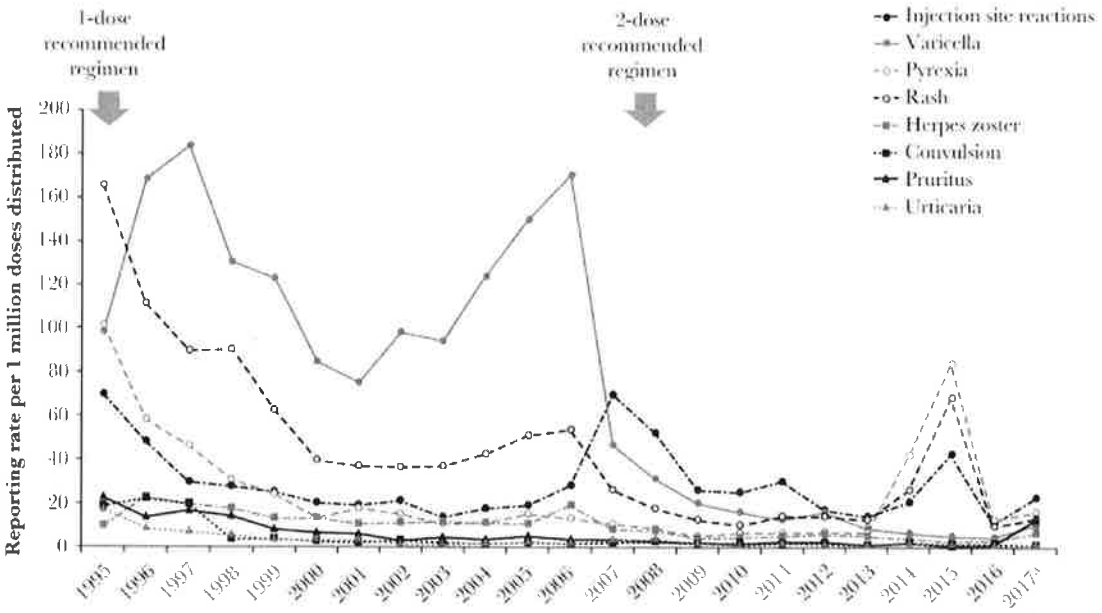


Figure 2.

VVVL global adverse event (AE) reports for the most common AEs, March 1995 to March 2017. Reported as AEs per 1 million doses distributed. See Supplementary Appendix 1 for a full breakdown of MedDRA preferred terms. [a]Includes January 1, 2017, to March 16, 2017. Abbreviation: VVVL, varicella virus vaccine live (VARIVAX [Oka/Merck]; Merck & Co., Inc., Kenilworth, NJ, USA).

Rates of SAEs fluctuated over time (Figure 3). Central nervous system (CNS) SAEs declined by approximately two-thirds during the review period, whereas the incidence of varicella SAEs remained relatively stable during that time.

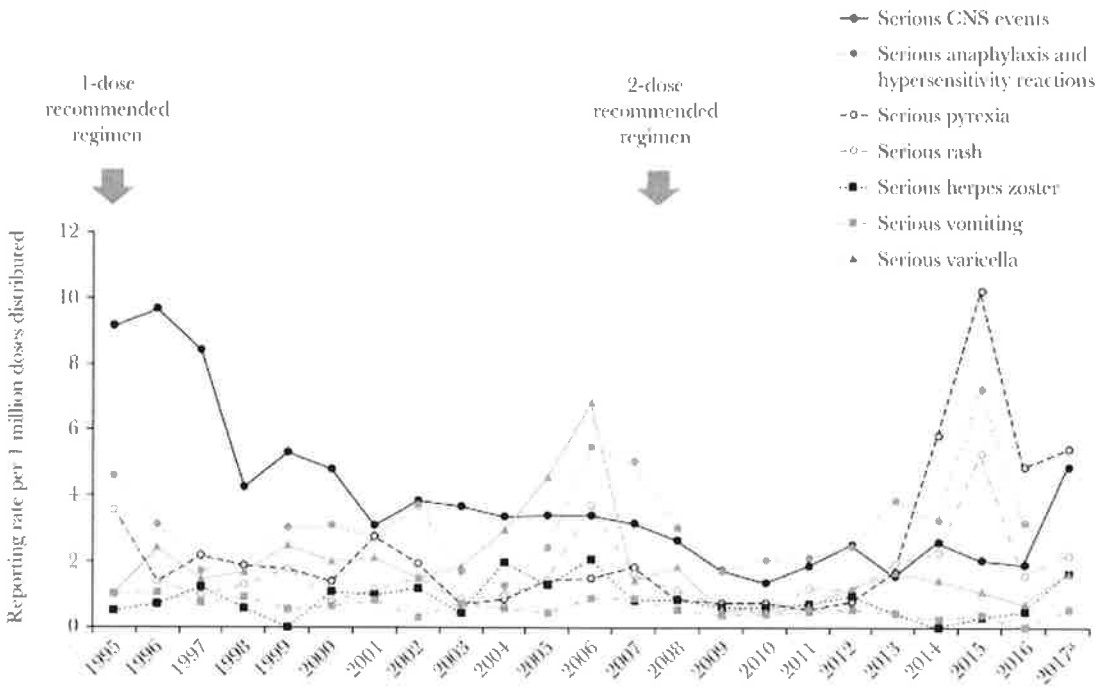


Figure 3.

VVVL global SAE reports for the most common SAEs, March 1995 to March 2017. Reported as SAEs per 1 million doses distributed. See Supplementary Appendix 1 for a full breakdown of MedDRA preferred terms. [a]Includes January 1, 2017, to March 16, 2017. Abbreviations: CNS, central nervous system; SAE, serious adverse event; VVVL, varicella virus vaccine live (VARIVAX [Oka/Merck]; Merck & Co., Inc., Kenilworth, NJ).

Reports of AEs of interest, with PCR analysis from all laboratories, are presented in Table 1. Table 2 presents AEs reported in immunocompromised patients in whom vaccine strain VZV was identified.

Table 1.

PCR Results From All Laboratories by AE of Interest[a]

AE,[b] No.	Oka/Merck Vaccine Strain VZV	Wild-Type VZV	VZV-Negative	VZV-Positive Untypable/No Strain[c]	Inadequate Sample	Total
Varicella	67	97	12	9	19	204
Herpes zoster	117	57	27	9	51	261
Rash events	25	39	33	4	27	128
Secondary transmission[d]	8	38	14	0	8	68
CNS events[e]	17[f]	7	40	11	3	78
Other AEs[g]	17	2	13	5	2	39
Total No. of samples	251	240	139	37	110	778

Abbreviations: AE, adverse event; CNS, central nervous system; CSF, cerebrospinal fluid; PCR, polymerase chain reaction; VZV, varicella zoster virus.

[a]The table includes all PCR samples received by MSD from all laboratories through March 16, 2017; 1 individual may have had more than 1 type of sample (ie, rash/lesion sample and sputum sample).

[b]See Supplementary Appendix 1 for a full breakdown of MedDRA preferred terms.

[c]Results include samples that were VZV-positive; however, strain identification was not able to identify either the wild-type virus or vaccine strain virus. Reports in which samples were found to be VZV-positive without strain identification testing are presented in this table.

[d]All samples presented were lesion samples, with the exception of 3 samples: 1 patient had 2 samples submitted for analysis (1 CSF and 1 throat swab); both were found to be negative. Another patient (a 30-year-old pregnant woman) had a lesion sample identified as vaccine strain; she elected to have a therapeutic abortion, and the products of conception were negative for VZV.

[e]Samples included cerebrospinal fluid and brain tissue.

[f]Per review of 1 disseminated varicella, CSF was identified to be VZV-positive untyped and interpreted to be vaccine strain based on Oka identified in the lesion, urine, serum, nasopharyngeal swab, and oropharyngeal swab.

[g]Samples included autopsy tissue samples, bronchoalveolar lavage, blood, esophagus tissue, gastric biopsy tissue, liver biopsy tissue, lung biopsy tissue, lymph nodes, mouth swab, nasopharyngeal swab, plasma, products of conception, saliva, serum, throat samples, and urine.

Table 2.

Summary of AE Reports in Immunocompromised Patients With Oka/Merck VZV Postvaccination

Age, Sex	Reported AEs[a]	TTO PV for Vaccination-Associated AE	Medically Significant Case Information	IS Concomitant Therapies
12 mo, male	Disseminated varicella (as reported)	NR	"Severe immunodeficiency"	NR
13 mo, male	Pulmonary hemorrhage; Cardiac failure congestive; Hematemesis; Hypophagia; Lethargy; Retching; Respiratory distress; Pneumonitis; Rash papular; Hemolytic anemia; Rash vesicular; Candida pneumonia; Hepatomegaly; Varicella zoster virus infection; Lung disorder; Lymphadenopathy	27 d	DiGeorge's syndrome (central shunt); Cardiac failure; Congestive and complex congenital heart disease; History of Fallot's tetralogy, Rastelli repair; Oral candidiasis recurrent; Immunosuppression; Concomitant vaccination with MMR on same day, CDC reported that the tracheal aspirate was positive for measles virus	None
13 mo, male	Subacute sclerosing panencephalitis; Immunodeficiency; Varicella; Diarrhea; Malnutrition; Hypogammaglobulinemia; Leukopenia; Vasculitis cerebral	21 d	Primary immune deficiency; Clinically defective antiviral T-cell function	None
13 mo, male	Pneumonia viral; Vomiting; Croup infectious; Varicella; Dermatitis bullous;	14 d	History of failure to thrive and oral candidiasis; Subsequently diagnosed with HIV	None

Open in a separate window

Abbreviations: AE, adverse event; ALT, alanine transaminase; ANCA, antineutrophil cytoplasmic antibody; AST, aspartate transaminase; BAL, bronchoalveolar lavage; CDC, Centers for Disease Control and Prevention; CMV, cytomegalovirus; CNS, central nervous system; CSF, cerebrospinal fluid; ECMO, extracorporeal membrane oxygenation; HZ, herpes zoster; IgA, immunoglobulin A; IS, immunosuppressive; MMR, measles, mumps, and rubella vaccine; MSD, Merck Sharp & Dohme; NR, not reported; PCR, polymerase chain reaction; PV, postvaccination; NR, not reported; s/p, status post; TTO, time to onset; Unk, unknown; VZV, varicella zoster virus.

[a]See Supplementary Appendix 1 for a full breakdown of MedDRA preferred terms.

Varicella After Vaccination

There were 10 677 reports of 11 095 varicella events (10 751 AEs, 344 SAEs). Time to onset was available for 6692 reports, of which 22% (1471/6692) occurred within 42 days postvaccination. Of the 56% (5927/10 677) of cases with a reported outcome, 93% (5519/5927) were recovered/recovering and 7% (403/5927) had not recovered at the time of reporting; 9 cases resulted in a fatal outcome (Supplementary Appendix 2). Most fatal outcomes occurred in immunocompromised patients, in whom VVVL is contraindicated (see below). Lesion samples (n = 204; more than 1 sample may have been submitted per patient) submitted for PCR testing included 49 from immunocompromised patients (32 vaccine strain VZV, 9 WTV, 4 untypable/no strain identified, and 4 inadequate samples).

Herpes Zoster

Over the evaluation period, 1602 reports of 1803 HZ events were submitted (1646 AEs, 157 SAEs). Of the 1602 reports with an HZ event, 1342 reports included information about patient age (median age, 4 years; range, 11 months to 84 years). Time to onset was provided in 51% (817/1602) of reports, with 9% (71/817) occurring within 14 days postvaccination and 16% (134/817) occurring within 42 days postvaccination. Of the 63% (1008/1602) of cases with a reported outcome, 91% (914/1008) recovered, whereas 2 reports listed HZ as a cause of death (Supplementary Appendix 2). There were 260 reports with 261 rash/lesion samples submitted for PCR analysis, including 26 from immunocompromised patients (17 vaccine strain VZV, 4 WTV, 2 VZV-negative, 1 untypable/no strain identified, and 2 inadequate samples).

Rash (Nonvaricella, Non-HZ)

There were 6153 reports (6887 AEs, 345 SAEs) of a rash-related AE. Of the 4668 cases of rash with a reported time to onset (range, 1–5291 days), 76% (3527/4668) occurred within 42 days postvaccination (median, 9 days). An outcome was reported in 68% of cases (4078/6153), 90% (3678/4078) of which were recovered/recovering and 10% (410/4078) had not recovered (each case could include more than 1 rash event and, therefore, more than 1 event outcome). No fatal outcomes were reported. There were 127 reports with 128 rash/lesion samples submitted for PCR analysis, including 4 from immunocompromised patients (2 vaccine strain VZV, 1 WTV, and 1 inadequate sample).

Secondary Transmission

During the review period, 357 reports containing the AE "secondary transmission" were received. Outcome was reported in 91 of 357 cases (25%), of which 84 (92%) recovered, 6 (7%) did not recover, and 1 (1%) died (Supplementary Appendix 2). PCR analysis was performed in 66 cases (with 68 samples), including 6 immunocompromised patients (5 WTV and 1 inadequate sample).

CNS Events

There were 781 reports that included CNS events, the majority of which were febrile convulsion (35%), seizure (32%), ataxia (8%), and encephalitis (7%) (Supplementary Table 1). SAEs comprised 73% (571/781) of CNS event reports. The mean time to onset was 57 days postvaccination (median [range], 9 [1–3886] days). Seventy-three cases with 78 samples (samples for PCR analysis included cerebrospinal fluid and brain tissue) submitted for PCR analysis were reported, including 9 from immunocompromised patients (7 vaccine strain VZV, 1 VZV negative, and 1 untypable/no strain identified).

Disseminated Vaccine-Strain VZV

Disseminated disease caused by the Oka/Merck vaccine strain VZV, with or without visceral involvement, was confirmed by PCR analysis in 39 cases. Eleven cases occurred in immunocompetent individuals, and 28 involved patients who had underlying immunosuppressive conditions and/or who reported concomitant use of immunosuppressant therapies (Tables 2 and 3). Among the 11 immunocompetent patients, vaccine strain VZV was identified in cerebrospinal fluid (CSF; n = 10), lesion samples (n = 2), gastric mucosa (n = 1), and saliva (n = 1); among the 28 immunocompromised patients, vaccine strain VZV was identified in lesion samples (n = 18), bronchoalveolar/sputum (n = 8), CSF (n = 6), ocular samples (n = 3), other samples (n = 3), lung biopsy (n = 1), liver biopsy (n = 1), and serum (n = 1).

Table 3.

Summary of Cases of Disseminated Disease With Confirmed Oka/Merck VZV in Immunocompetent Patients

Age, Sex	Reported AEs[a]	TTO PV for Vaccination-Associated AE	Reported Health Status	Concomitant Therapies	PCR Analysis for VZV	Rec Sta Ti R
3 y, female	Encephalitis; Vomiting; Pyrexia; Ophthalmic herpes zoster; Meningitis	1.6 y	No history of severe or frequent infections; Considered by physician to have been immunocompetent	NR	Oka/Merck vaccine strain VZV identified in CSF	Rec
4 y, male	Meningitis aseptic; Herpes zoster; Pain in extremity	2.6 y	No history of disease or immunosuppressive illness	NR	Oka/Merck vaccine strain VZV identified in CSF	NR
7 y, male	Meningitis; Herpes zoster	6 y	Previously healthy	NR	Oka/Merck vaccine strain VZV identified in CSF and skin lesion	Rec
8 y, male	Herpes zoster; Meningitis	7 y	No significant medical history; No prior atypical infections or recognized exposure to varicella; Received 1 dose of varicella vaccine at age 1 y	NR	Oka/Merck vaccine strain VZV identified in CSF and lesion sample	Rec

Open in a separate window

Abbreviations: AE, adverse event; CSF, cerebrospinal fluid; MMR, measles, mumps, and rubella vaccine; NR, not reported; PCR, polymerase chain reaction; PV, postvaccination; NR, not reported; TTO, time to onset; VVVL, varicella virus vaccine live (VARIVAX [Oka/Merck]; Merck & Co., Inc., Kenilworth, NJ); VZV, varicella zoster virus.

[a]See Supplementary Appendix 1 for a full breakdown of MedDRA preferred terms.

Pregnancy

All Pregnancy Cases Reported to MSD Between March 17, 1995, and March 16, 2017, 1216 women were exposed to VVVL during pregnancy and had pregnancy outcomes available for analysis (Table 4). Timing of exposure was available in 1066/1216 reports, including 883 pregnancies that resulted in 895 liveborn infants (1 set of triplets, 10 sets of twins). Of the 883 reports of live births with known timing of exposure, 288 (32.6%) women received VVVL vaccination before their last menstrual period (LMP), 511 (57.8%) were vaccinated in the first trimester and 84 (9.1%) were vaccinated after the first trimester. Of the women exposed to VVVL before or during pregnancy, congenital anomalies were noted in 56 reports (congenital anomalies include major birth defects as defined by the Metropolitan Atlanta Congenital Defects Program [MACDP]—a population-based tracking system for birth defects among children and infants born to mothers living in metropolitan Atlanta—and congenital anomalies that do not meet MACDP classification as major anomalies), with 14 women exposed before their LMP, 33 exposed in the first trimester, and 9 with unknown time of exposure. Utilizing ACIP recommendations to avoid pregnancy for 1 month after vaccination, 180 of the 288 women were vaccinated <30 days before LMP. Of the 14 reports of congenital anomalies in women exposed before LMP, 6 were vaccinated <30 days before LMP.

Table 4.

Pregnancy Outcomes With VVVL

Pregnancy Outcomes, No. (%)	All Reports Between March 17, 1995, and March 16, 2017 (n = 1216)	
	Prospective	Retrospective
Reports	n = 1092	n = 124
Outcomes	n = 1102[a]	n = 127[b]
Live birth	917 (83.2)	83 (65.4)
Spontaneous abortion	109 (9.9)	31 (24.4)
Elective abortion	74 (6.7)	8 (6.3)
Stillbirth/fetal death	1 (0.1)	5 (3.9)
Ectopic pregnancy	1 (0.1)	0

Pregnancy outcomes comprise all reports worldwide, including reports from health care providers, consumers, and the Pregnancy Registry.

Abbreviation: VVVL, varicella virus vaccine live (VARIVAX [Oka/Merck]; Merck & Co., Inc., Kenilworth, NJ).

[a]Includes 8 sets of twins and 1 set of triplets.

[b]Includes 3 sets of twins.

MSD Pregnancy Registry Among the 1522 prospectively enrolled women, there were 966 pregnancy outcomes with 809 live births (819 total infants), none of whom had features consistent with congenital varicella syndrome.

Twenty-two reports of major birth defects were submitted. Using the MACDP methodology [17], including pregnancies that progressed >20 weeks post-LMP, 17 defects occurred among 819 live births, giving a birth prevalence of 2.1 per 100 liveborn infants (95% confidence interval [CI], 1.2–3.3) [1]. Pregnancy outcomes in these 17 women included 16 live births and 1 elective termination at 32 weeks' gestation. The MACDP methodology was revised to include elective terminations after prenatal diagnoses of birth defects at any gestational age (minimum and maximum adjusted defect prevalences were calculated by adding definite prenatal defects and definite plus possible prenatal defects to the hospital-based cases) [18], which allowed 4 elective terminations at <20 weeks' gestation with a diagnosis of a fetal abnormality to meet the inclusion criteria; the resulting 21 major defects provided a birth defect prevalence of 2.6 per 100 liveborn infants (95% CI, 1.6–3.9). In the general US population, approximately 3% of all births (live births or stillbirths) are diagnosed with major birth defects [19]. Using either methodology, the prevalence of major birth defects in the Registry is similar to that in the general population.

Fatal Outcomes

Fatal outcomes temporally, but not necessarily causally, associated with VVVL were reported in 86 of 46 855 (0.002%) postmarketing reports, including 26 from immunocompromised patients (Figure 4). Twenty-one reports (24%) provided insufficient information for further discussion. Of the remaining 65 cases (24 in immunocompromised individuals), death was associated with the following: preexisting conditions (n = 17), complications of varicella (n = 11), complications of herpes zoster (n = 2), other infections (n = 9), pulmonary complications (n = 6), cardiac complications (n = 5), CNS (n = 4), and other causes (n = 11) (Supplementary Appendix 2).

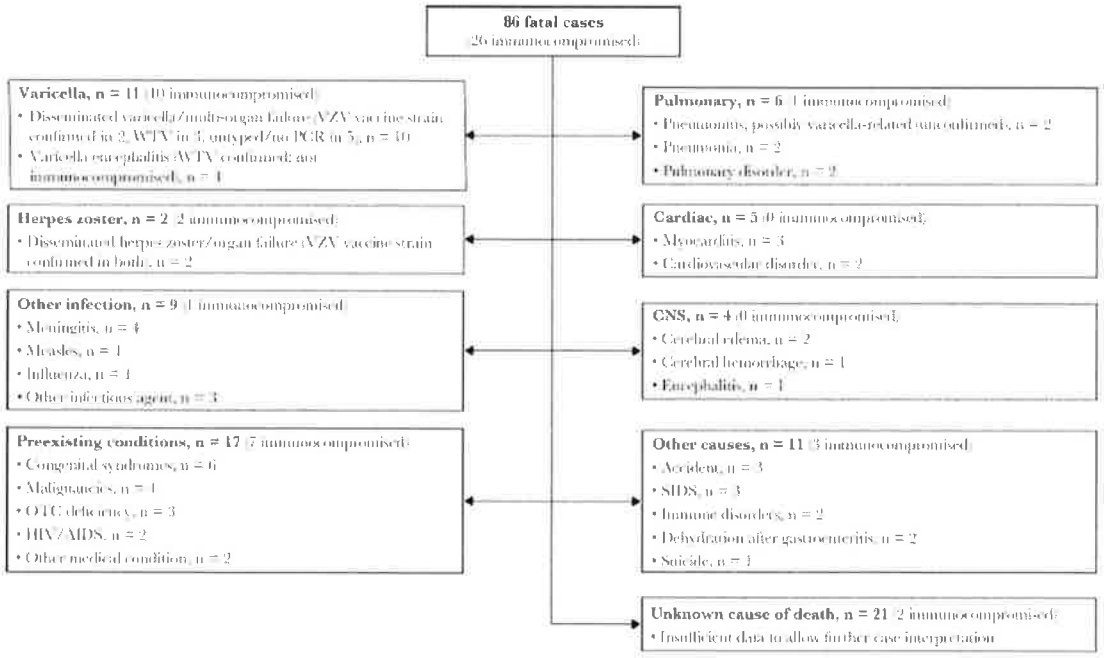


Figure 4.

Cases with fatal outcomes. [a]Full details are provided in Supplementary Appendix 2. Abbreviations: CNS, central nervous system; OTC, ornithine transcarbamylase; PCR, polymerase chain reaction; SIDS, sudden infant death syndrome; VZV, varicella zoster virus; WTV, wild-type virus.

Discussion

Although clinical trials are necessary to determine vaccine safety, immunogenicity, and efficacy, postmarketing surveillance is an essential tool to monitor safety profiles postlicensure [20]. The strength of postmarketing surveillance is that it provides information on real-world use in larger populations than is possible with clinical trials, may include populations not included in clinical trials, and identifies less common and/or rare AEs that may not be observed during clinical trials [21]. These strengths are balanced by the limitations of postmarketing surveillance, which relies heavily on voluntary, passive reporting and is often incomplete. Additionally, the number of exposed (vaccinated) persons is an estimation only [22], and thus calculation of accurate AE incidence rates is limited. Evidence included in AE reports, which includes medical information and diagnostic and laboratory data, is provided by the individual who submits the report, generally without confirmation. The data available in AE reports can be sufficient to provide temporal associations but are generally inadequate to establish causality [23]. In this review, we summarize reports and outcomes collected over >2 decades of postmarketing surveillance of VVVL, with safety surveillance further enhanced by PCR analysis.

During 22 years of routine VVVL use, rates of many AEs and SAEs have noticeably decreased, particularly those of varicella and rash. Concerning reports of varicella, most cases occurred >42 days postvaccination, and PCR data suggest that most cases resulted from infection with WTV. However, reports of pyrexia and serious pyrexia appear to have rebounded in recent years. This increase may be related to the implementation of programs—such as that undertaken in Italy between 2013 and 2014 [24], in which parents of a vaccinated child received preprinted diary cards for specific AEs (eg, injection site reactions, fever, convulsions, headache)—that have correlated with an increase in the reporting of vaccination-associated AEs [25]. Changes in coding also likely contributed to the increase in pyrexia reports. In 2016, MSD adopted the European Medicines Agency list of terms for important medical events [26]; because hyperpyrexia is included in the list, the incidence of pyrexia as an SAE increased almost 3-fold (to 6.14 per million doses between 2015 and 2017), although in the vast majority of reports, medical intervention was not required.

The shift from a 1-dose to a 2-dose vaccination regimen in 2006 was recommended to increase immunity levels, with the second dose added to improve humoral and cellular responses. The introduction of the second dose corresponds with a temporal decrease in the rate of varicella among children and adolescents and a 3.3-fold lower risk of breakthrough disease compared with the prevaccination era [4, 7, 27]. Importantly, overall AE rates did not increase following the introduction of the 2-dose regimen, and no new commonly occurring AEs have been noted in the years since then.

It has been suggested that widespread vaccination may result in decreased maintenance of community immunity, leading to a shift in infections toward older individuals owing to VZV reactivation [2, 28, 29], but to date, studies examining rates of varicella and HZ in adults in the postvaccination era have reported conflicting results [2, 30]. A recent literature review of severe breakthrough cases resulting in disseminated VZV infection suggested that most cases occurred within 5 years of vaccination—that is, in children rather than in adults [31]. Our data would support this, as the immunocompetent patients in whom disseminated disease developed were children (aged 3–16 years) who developed symptoms 2–14 years after vaccination.

Although systemic postvaccination infections are rare in immunocompetent patients, we report 11 cases of Oka/Merck vaccine strain VZV in immunocompetent patients. Secondary transmission is also an uncommon event but has the potential to cause complications in a susceptible contact, such as an immunocompromised or pregnant individual. In prevaccination-era studies, the secondary infection rate of varicella among susceptible children ranged from 61% to 100% [32–34]. In the current analysis, 357 cases (0.0001% of >212 million doses) of potential secondary transmission were recorded,

although 38/68 analyzed by PCR proved to be WTV. AEs during pregnancy were uncommon; the prevalence of major birth defects in the Pregnancy Registry was similar to that observed in the general population, and no new safety concerns among susceptible women exposed to the varicella vaccine were identified.

VZV is neurotropic, with recognized presentations including meningoencephalitis, hemiparesis, hemiplegia, myelitis, and peripheral neuritis [35, 36]; however, in general, neurologic complications reported after vaccination were rare. In this analysis, the most commonly reported CNS AEs were seizures/convulsions, which are noted as potential AEs in the VVVL prescribing information [7].

Overall, 86 deaths were reported after VVVL vaccination; however, almost 25% of reports contained insufficient data to identify the cause of death. Immunocompromised individuals are at the highest risk for a fatal varicella-related outcome, and it is important to reiterate that the potential risk of disseminated disease contraindicates VVVL (and other live viral vaccines) in immunosuppressed or immunodeficient individuals, including those on immunosuppressive therapy [7]. Overall, 13 deaths were associated with varicella or HZ, 12 of which occurred among immunocompromised patients. One varicella-associated fatality occurred in an immunocompetent patient and was confirmed by PCR as being due to WTV. Reports of HZ were uncommon (~1 report per 200 000 doses), and although most patients recovered, both cases of HZ with a fatal outcome involved immunocompromised individuals. Oka/Merck vaccine strain VZV was detected from specimens obtained from all 32 immunocompromised patients reporting disseminated disease after receiving VVVL, reinforcing the contraindication for vaccination in these individuals.

Conclusions

This 22-year analysis, the largest to date, presents the worldwide safety profile as based on spontaneous postmarketing reports for VVVL vaccine after distribution of >212 million doses of vaccine. In addition to VVVL's proven efficacy profile, these data confirm that VVVL is safe and generally well tolerated. Results were consistent with safety trends reported in previous analyses [8, 37], and the overall safety profile of VVVL is consistent with findings from pivotal clinical trials. MSD continues to conduct routine postmarketing surveillance to identify any temporal associations between VVVL vaccine and AEs in order to inform public health practice and ensure the integrity of its product.

Supplementary Data

Supplementary materials are available at *Open Forum Infectious Diseases* online. Consisting of data provided by the authors to benefit the reader, the posted materials are not copyedited and are the sole responsibility of the authors, so questions or comments should be addressed to the corresponding author.

ofz295_suppl_supplementary_appendix_1

Click here for additional data file. (16K, docx)

ofz295_suppl_supplementary_appendix_2

Click here for additional data file. (24K, docx)

ofz295_suppl_supplementary_table_1

Click here for additional data file. (14K, docx)

Acknowledgments

Medical writing and editorial assistance were provided by Sally Mitchell, PhD, of ApotheCom, Yardley, Pennsylvania. This assistance was funded by Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., Kenilworth, New Jersey.

Financial support. This work was funded by Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., Kenilworth, New Jersey.

Disclaimer. In conjunction with the external investigators, this research was designed, executed, and analyzed by the sponsor. Although the sponsor formally reviewed a penultimate draft of this manuscript, the opinions expressed are those of the authors and may not necessarily reflect those of the sponsor.

Potential conflicts of interest. All authors are employees of Merck Sharp & Dohme., a subsidiary of Merck & Co., Inc., Kenilworth, New Jersey, and hold stock in Merck & Co., Inc., Kenilworth, New Jersey. All authors have submitted the ICMJE Form for Disclosure of Potential Conflicts of Interest. Conflicts that the editors consider relevant to the content of the manuscript have been disclosed.

Author contributions. M.W., A.M., S.G., and W.S. contributed to the study concept and design, data analysis/interpretation, and manuscript preparation. B.E. conducted the data analysis and interpretation and contributed to the manuscript preparation. All co-authors approved the final version of the manuscript.

References

1. Centers for Disease Control and Prevention. Varicella. In: Hamborsky J, Kroger A, Wolfe C, eds. Epidemiology and Prevention of Vaccine-Preventable Diseases. 13th ed.Washington, DC: Public Health Foundation; 2015:1–24. [Google Scholar]

2. Marin M, Güris D, Chaves SS, et al. ; Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention (CDC) Prevention of varicella: recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR Recomm Rep 2007; 56:1–40. [PubMed] [Google Scholar]

3. Centers for Disease Control and Prevention; Chickenpox vaccine saves lives and prevents serious illness. **2014** Available at: https://www.cdc.gov/about/24–7/savinglives/chickenpox/index.html. Accessed 8 July 2018. [Google Scholar]

4. Lopez AS, Zhang J, Marin M. Epidemiology of varicella during the 2-dose varicella vaccination program - United States, 2005–2014. MMWR Morb Mortal Wkly Rep 2016; 65:902–5. [PubMed] [Google Scholar]

5. Centers for Disease Control and Prevention; 2015 childhood varicella vaccination coverage report. **2016** Available at: https://www.cdc.gov/vaccines/imz-managers/coverage/childvaxview/data-reports/varicella/reports/2015.html. Accessed 8 July 2018. [Google Scholar]

6. Leung J, Marin M. Update on trends in varicella mortality during the varicella vaccine era—United States, 1990–2016. Hum Vaccin Immunother 2018; 14: 2460–3. [PMC free article] [PubMed] [Google Scholar]

7. *Varivax* [prescribing information]. Kenilworth, NJ: Merck & Co, Inc.; 2018. [Google Scholar]

8. Galea SA, Sweet A, Beninger P, et al. . The safety profile of varicella vaccine: a 10-year review. J Infect Dis 2008; 197(Suppl 2):S165–9. [PubMed] [Google Scholar]

9. Marin M, Marti M, Kambhampati A, et al. . Global varicella vaccine effectiveness: a meta-analysis. Pediatrics 2016; 137:e20153741. [PubMed] [Google Scholar]

10. National Vaccine Information Center; The National Childhood Vaccination Injury Act of 1986. Available at: https://www.nvic.org/injury-compensation/origihanlaw.aspx. Accessed 8 July 2018. [Google Scholar]

11. MedDRA. Medical Dictionary for Regulatory Activities. Available at: https://www.meddra.org. Accessed 13 April 2016. [Google Scholar]

12. Marin M, Willis ED, Marko A, Rasmussen SA, Bialek SR, Dana A. Closure of varicella-zoster virus-containing vaccines pregnancy registry - United States, 2013. MMWR Morb Mortal Wkly Rep 2014; 63:732–3. [PMC free article] [PubMed] [Google Scholar]

13. ICH Expert Working Group. Post-approval safety data management: definitions and standards for expeditied reporting E2D. 2003. Available at: https://www.ich.org/fileadmin/Public_Web_Site/ICH_Products/Guidelines/Efficacy/E2D/Step4/E2D_Guideline.pdf. Accessed 8 July 2018. [Google Scholar]

14. European Medicines Agency; ICH Topic E2A. Clinical safety data management: definitions and standards for expedited reporting: step 5. 1995. Available at: https://www.ema.europa.eu/documents/scientific-guideline/international-conference-harmonisation-technical-requirements-registration-pharmaceuticals-human-use_en-15.pdf. Accessed 8 July 2018. [Google Scholar]

15. European Medicines Agency, Committee for Medicinal Products for Human Use (CHMP). Guideline on the conduct of pharmacovigilance for vaccines for pre- and post-exposure prophylaxis against infectious diseases. 2009. Available at: https://www.ema.europa.eu/documents/regulatory-procedural-guideline/guideline-conduct-pharmacovigilance-vaccines-pre-post-exposure-prophylaxis-against-infectious_en.pdf. Accessed 8 July 2018. [Google Scholar]

16. LaRussa P, Lungu O, Hardy I, et al. . Restriction fragment length polymorphism of polymerase chain reaction products from vaccine and wild-type varicella-zoster virus isolates. J Virol 1992; 66:1016–20. [PMC free article] [PubMed] [Google Scholar]

17. Centers for Disease Control and Prevention. Birth Defects and Genetic Diseases Branch 6-digit code for reportable congenital anomalies. 2007. Available at: https://www.cdc.gov/ncbddd/birthdefects/documents/MACDPcode0807.pdf. Accessed 8 July 2018. [Google Scholar]

18. Cragan JD, Gilboa SM. Including prenatal diagnoses in birth defects monitoring: experience of the Metropolitan Atlanta Congenital Defects Program. Birth Defects Res A Clin Mol Teratol 2009; 85:20–9. [PubMed] [Google Scholar]

19. Centers for Disease Control and Prevention. Update on overall prevalence of major birth defects—Atlanta, GA, 1978–2005. MMWR Morb Mortal Wkly Rep 2008; 57:1–5. [PubMed] [Google Scholar]

20. European Medicines Agency. EMA guideline on good pharmacovigilance practices (GVP). Module VIII - post-authorisation safety stuides (rev 3). **2017** Available at: https://www.ema.europa.eu/en/human-regulatory/post-authorisation/pharmacovigilance/good-pharmacovigilance-practices. Accessed 25 October 2018. [Google Scholar]

21. Willis ED, Woodward M, Brown E, et al. . Herpes zoster vaccine live: a 10-year review of post-marketing safety experience. Vaccine 2017; 35:7231–9. [PMC free article] [PubMed] [Google Scholar]

22. European Medicines Agency. ICH topic E2E. Pharmacovigilance planning (PVP): step 5. 2005. Available at: https://www.ema.europa.eu/documents/scientific-guideline/international-conference-harmonisation-technical-requirements-registration-pharmaceuticals-human-use_en-25.pdf. Accessed 8 July 2018. [Google Scholar]

23. Halsey NA, Edwards KM, Dekker CL, et al. ; Causality Working Group of the Clinical Immunization Safety Assessment network Algorithm to assess causality after individual adverse events following immunizations. Vaccine 2012; 30:5791–8. [PubMed] [Google Scholar]

24. Cocchio S, Zanoni G, Opri R, et al. ; Collaborative Group A postmarket safety comparison of 2 vaccination strategies for measles, mumps, rubella and varicella in Italy. Hum Vaccin Immunother 2016; 12:651–4. [PMC free article] [PubMed] [Google Scholar]

25. Alicino C, Merlano C, Zappettini S, et al. . Routine surveillance of adverse events following immunization as an important tool to monitor vaccine safety. Hum Vaccin Immunother 2015; 11:91–4. [PMC free article] [PubMed] [Google Scholar]

26. European Medicines Agency. Eudravigilance system overview. Important medical event list. Available at: http://www.ema.europa.eu/ema/index.jsp?curl=pages/regulation/q_and_a/q_and_a_detail_000166.jsp. Accessed 13 September 2017. [Google Scholar]

27. Leung J, Harpaz R. Impact of the maturing varicella vaccination program on varicella and related outcomes in the United States: 1994–2012. J Pediatr Infect Dis 2015; 5: 395–402. [PMC free article] [PubMed] [Google Scholar]

28. Duncan JR, Witkop CT, Webber BJ, Costello AA. Varicella seroepidemiology in United States Air Force recruits: a retrospective cohort study comparing immunogenicity of varicella vaccination and natural infection. Vaccine 2017; 35:2351–7. [PubMed] [Google Scholar]

29. Qi Q, Cavanagh MM, Le Saux S, et al. . Defective T memory cell differentiation after varicella zoster vaccination in older individuals. PLoS Pathog 2016; 12:e1005892. [PMC free article] [PubMed] [Google Scholar]

30. Papaloukas O, Giannouli G, Papaevangelou V. Successes and challenges in varicella vaccine. Ther Adv Vaccines 2014; 2:39–55. [PMC free article] [PubMed] [Google Scholar]

31. Leung J, Broder KR, Marin M. Severe varicella in persons vaccinated with varicella vaccine (breakthrough varicella): a systematic literature review. Expert Rev Vaccines 2017; 16:391–400. [PMC free article] [PubMed] [Google Scholar]

32. Arbeter AM, Starr SE, Plotkin SA. Varicella vaccine studies in healthy children and adults. Pediatrics 1986; 78:748–56. [PubMed] [Google Scholar]

33. Asano Y, Nakayama H, Yazaki T, et al. . Protection against varicella in family contacts by immediate inoculation with live varicella vaccine. Pediatrics 1977; 59:3–7. [PubMed] [Google Scholar]

34. SIMPSON RE. Infectiousness of communicable diseases in the household (measles, chickenpox, and mumps). Lancet 1952; 2:549–54. [PubMed] [Google Scholar]

35. Horien C, Grose C. Neurovirulence of varicella and the live attenuated varicella vaccine virus. Semin Pediatr Neurol 2012; 19:124–9. [PMC free article] [PubMed] [Google Scholar]

36. Han JY, Hanson DC, Way SS. Herpes zoster and meningitis due to reactivation of varicella vaccine virus in an immunocompetent child. Pediatr Infect Dis J 2011; 30:266–8. [PubMed] [Google Scholar]

37. Sharrar RG, LaRussa P, Galea SA, et al. . The postmarketing safety profile of varicella vaccine. Vaccine 2000; 19:916–23. [PubMed] [Google Scholar]

Shots

PUBLIC HEALTH

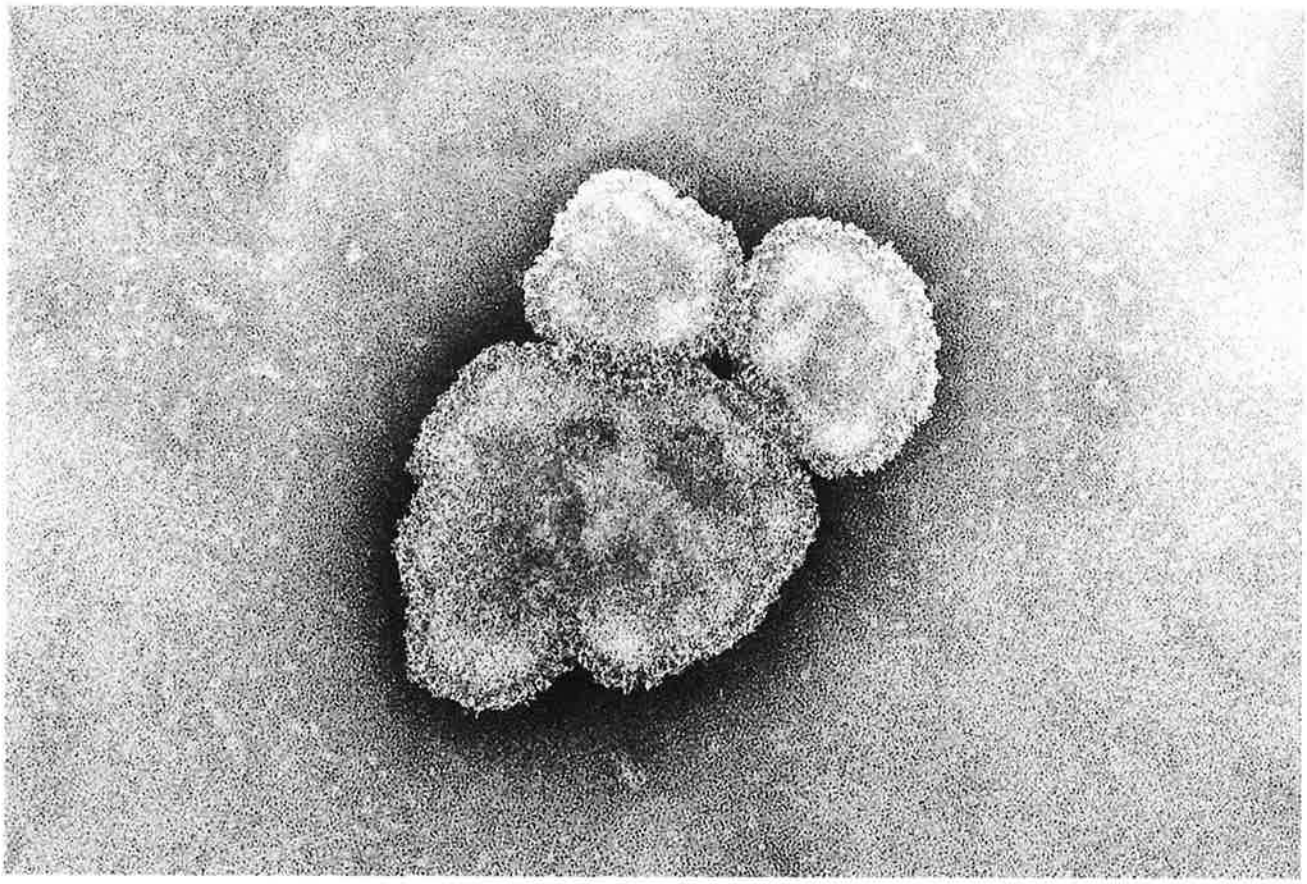
Why A Court Once Ordered Kids Vaccinated Against Their Parents' Will

February 19, 2015 · 3:23 AM ET
Heard on Morning Edition

ANDERS KELTO

4-Minute Listen

PLAYLIST Download
Transcript



Measles is highly contagious, and it produces fever and rash in susceptible people who become infected.

Hazel Appleton/Health Protection Agency Centre/Science Source

A highly contagious disease was sweeping across the United States. Thousands of children were sick and some were dying. In the midst of this outbreak, health officials did something that experts say had never been done before and hasn't been done since: They forced parents to vaccinate their children.

It sounds like something that would have happened 100 years ago. But this was 1991 — and the disease was measles.

Dr. Robert Ross was deputy health commissioner of the hardest-hit city, Philadelphia, where the outbreak was centered in the Faith Tabernacle Congregation in the northern part of town.

"This church community did not believe in either immunizations or medical care," says Ross, who is now the president of the California Endowment, a private health foundation.

The church ran a school with about 1,000 kids. Ross says that none had been vaccinated. One day, his office got a phone call from a grandparent, saying that a lot of children at the school were sick. They had developed rashes from head to toe and fevers — telltale signs of measles.

Ross and his colleagues approached the church and pleaded with the pastor to allow health officials to examine and immunize the children. But the pastor refused. So Ross and his colleagues went door to door, to church members' homes.

He says that most of the parents were pleasant and cooperative and allowed health officials to enter their homes. Many of the children they saw had measles. Ross says the majority were doing fine, but some were very sick, including an 8-year-old girl.

"[She] was lying on the couch in front of the television, ashen and pale, and with a very rapid respiratory rate. I felt that she may die within hours if we didn't get her to treatment," Ross says.

He went to the family's living room to call a judge, who was on call and ready to issue a court order, requiring any gravely ill children to be taken to a hospital. But as Ross held the phone, the girl's grandmother grabbed his arm and tried to prevent him from dialing.

"She began lecturing me about believing in the power of the Lord," Ross says. "It was a viscerally disturbing episode that left me quite shaken."

Ross eventually reached the judge, and the girl was taken to a local hospital. She survived.

But across the city, hundreds more were sick. So Ross and his colleagues did something unprecedented: They got a court order to force parents at Faith Tabernacle to have their children vaccinated.

Ross says it was the right thing to do, because it was in the best interest of the children. But it was deeply traumatizing to the parents.

"I recall we lined the children up and gave the immunizations, and many of the parents were actually weeping," he says.

The court order had taken a few weeks. By the time the vaccines were administered, the measles outbreak was subsiding in Philadelphia. Only nine children from the

church were ultimately vaccinated, and Ross says the intervention probably didn't affect the spread of the disease.

In the end, nine kids across Philadelphia died, including six from Faith Tabernacle. The church is still operating the school today but declined to comment.

Some experts say it's rather surprising that the parents were forced to have their children vaccinated.

"There was a law that protected these church members' right to refuse vaccination on religious ground," says Dr. Paul Offit, director of the Vaccine Education Center at Children's Hospital of Philadelphia.

HEALTH

Paul Offit On The Anti-Vaccine Movement

LISTEN · 17:43 PLAYLIST Download Transcript

But the U.S. Supreme Court had ruled years earlier that parents cannot deny lifesaving medical treatments to their children for religious reasons. That ruling set a precedent that made it difficult for Faith Tabernacle to find legal representation.

"Even the American Civil Liberties Union, which was perfectly willing to represent an unpopular cause, declined to take the case, because they felt that it was not [the parents'] right to martyr their children to their beliefs," Offit says.

So the question now is this: If there were a similar outbreak today, could the courts force parents to vaccinate their children?

Offit says it's possible. "Were things ever to get as bad, even approaching as bad as things were in Philadelphia in 1991, yes, there are certainly legal remedies to make sure that we can compel parents to protect their children," he says.

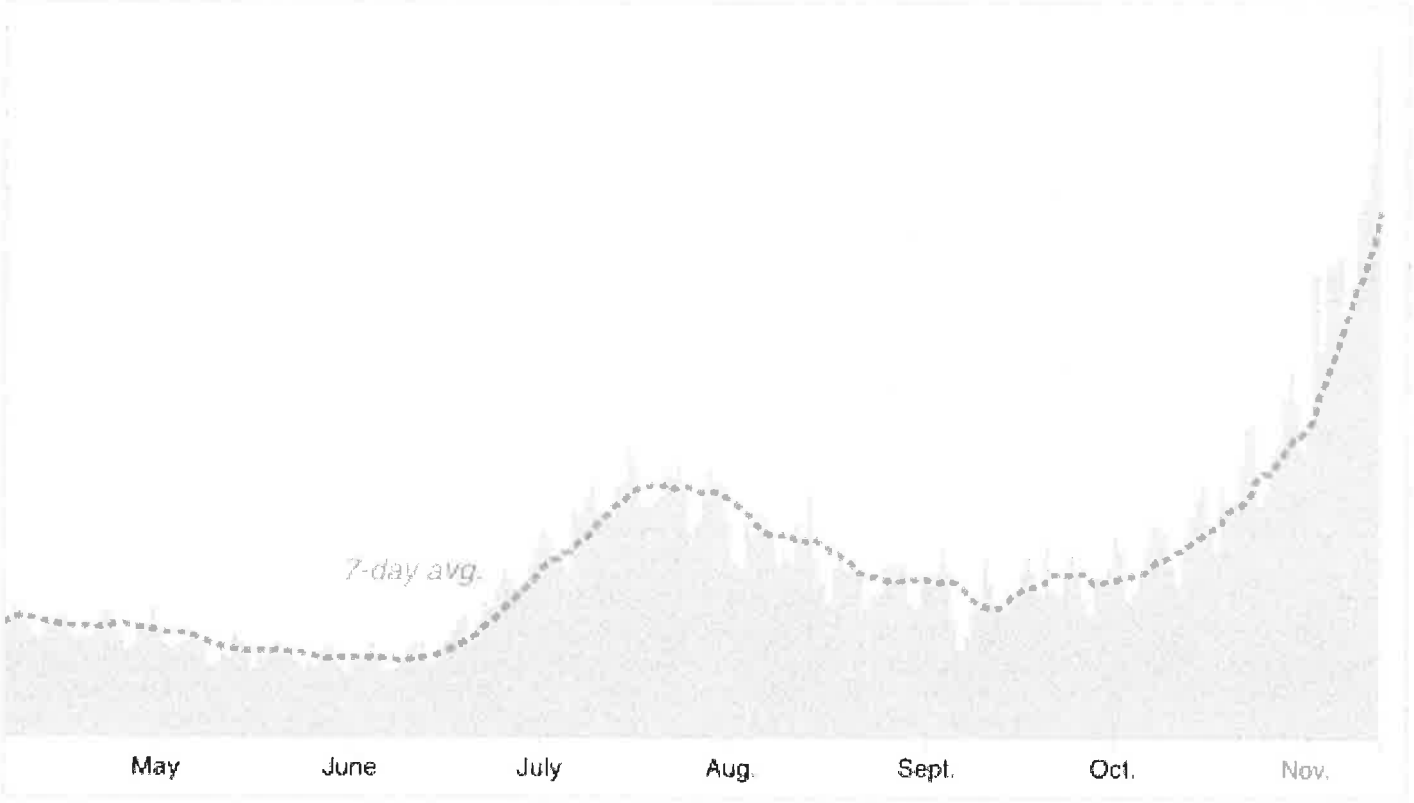
Ross, who led the fight against measles in Philadelphia, says health officials must go to great lengths to educate parents about the importance of vaccines. He believes courts

should only intervene when parents are clearly putting their children's lives at risk.

"It should be 'break glass in case of emergency,' " he says.

vaccine refusal measles philadelphia infectious disease vaccines

More Stories From NPR



HEALTH

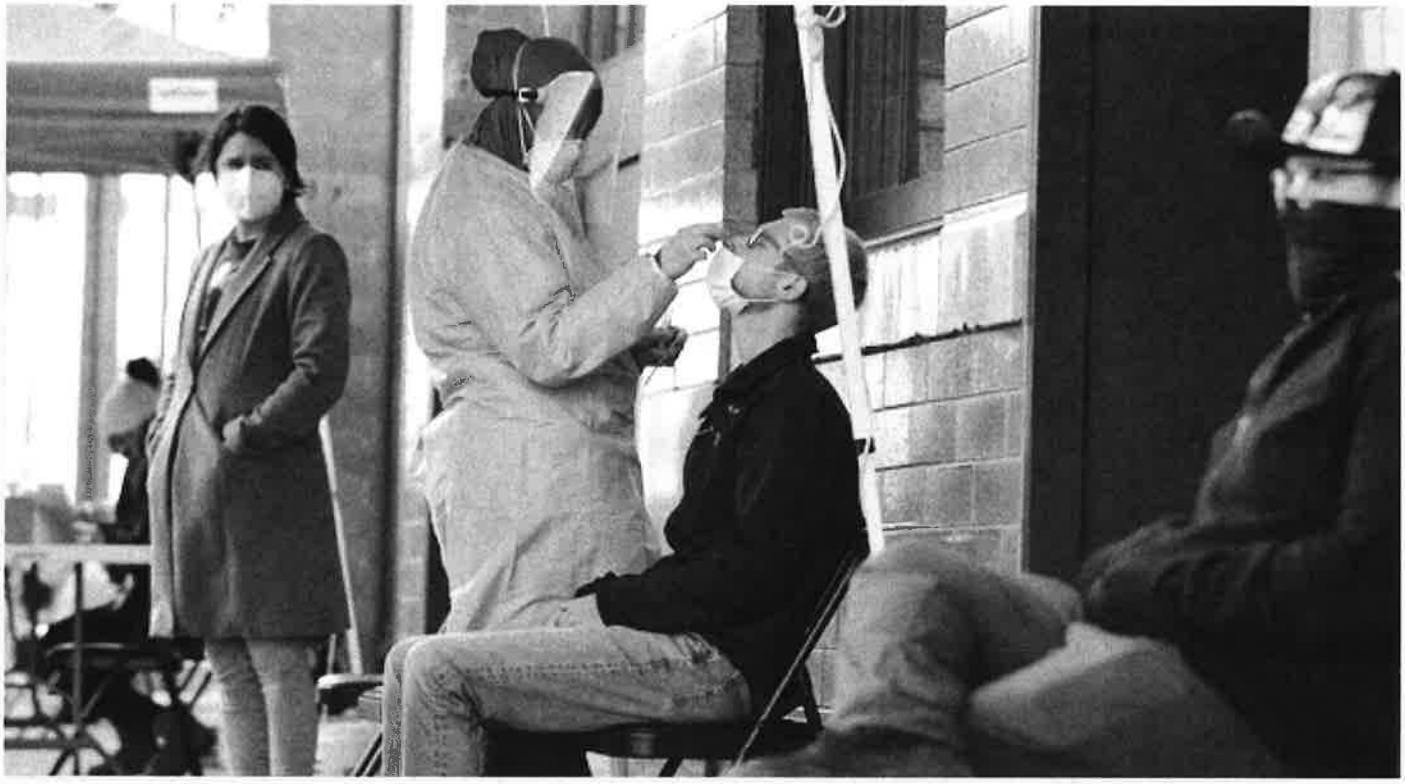
Coronavirus Is Surging: How Severe Is Your State's Outbreak?

HEALTH

Moderna's COVID-19 Vaccine Shines In Clinical Trial

HEALTH

A College Student Is Coming Home. Should The Whole Family Wear Masks?



HEALTH

COVID-19 Hospitalizations Surge In Dakotas: 'It's Like We Opened Up A Spigot'

HEALTH

The Pandemic Is Entering A Dangerous New Chapter. Here Are The Week's Big Takeaways

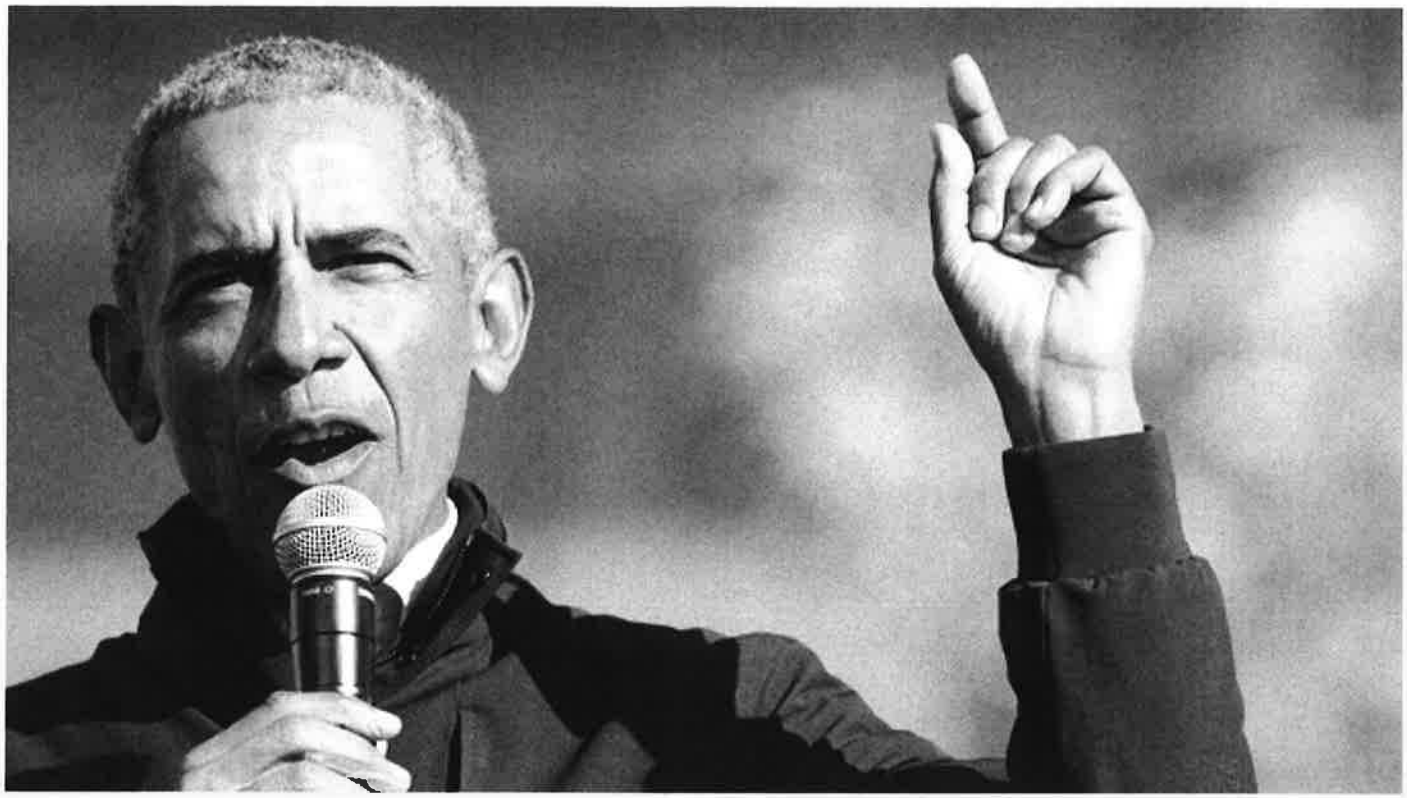
HEALTH

OPINION: To Solve The Pandemic, Biden Must Focus On Equity

Popular on NPR.org

ECONOMY

Controversial Fed Nominee Set To Prevail In Senate Confirmation Vote This Week



BOOKS

Obama Calls Trump's Refusal To Concede Another 'Breach Of Basic Democratic Norms'

ANALYSIS

A March Without Millions Is Still A Worrying Sign Of A Nation Divided

POLITICS
House Returns With 1st Widespread Coronavirus Testing Program, Lame-Duck Agenda

RELIGION
Religious Freedom Arguments Give Rise To Executive Order Battle

POLITICS
National Security Adviser Says It Looks Like Biden Has Won The Election

NPR Editors' Picks

POLITICS
'More People May Die': Biden Chides Trump For Blocking Presidential Transition

HEALTH
Navajo Nation Enters New Lockdown As Coronavirus Cases Rise

ELECTIONS
Michelle Obama Urges U.S. Leaders To 'Encourage A Smooth Transition Of Power'

WEATHER
Relief Groups Brace For Category 5 Hurricane Iota

MUSIC
Alanis Morissette's 'Jagged Little Pill' Is Like Catching Up With An Old Friend

NATIONAL
How Will Your Favorite Holiday Traditions Fare This Year? Tell Us About It

Public Health Law
TITLE VI- POLIOMYELITIS AND OTHER DISEASES

§ 2164. Definitions; immunization against poliomyelitis, mumps, measles, diphtheria, rubella, Haemophilus influenzae type b (Hib), hepatitis B and varicella.

1. As used in this section, unless the context requires otherwise:

a. The term "school" means and includes any public, private or parochial child caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate or secondary school.

b. The term "child" shall mean and include any person between the ages of two months and eighteen years.

c. The term "person in parental relation to a child" shall mean and include his father or mother, by birth or adoption, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of a child if he has assumed the charge and care of the child because the parents or legally appointed guardian of the minor have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such child or are living outside the state or their whereabouts are unknown.

d. The term "health practitioner" shall mean any person authorized by law to administer an immunization.

2. Every person in parental relation to a child in this state shall have administered to such child an adequate dose or doses of an immunizing agent against poliomyelitis, mumps, measles, diphtheria, rubella, Haemophilus influenzae type b (Hib), hepatitis B and varicella which meets the standards approved by the United States public health service for such biological products, and which is approved by the state department of health under such conditions as may be specified by the public health council.

3. The person in parental relation to any such child who has not previously received such immunization shall present the child to a health practitioner and request such health practitioner to administer the necessary immunization against poliomyelitis, mumps, measles, diphtheria. Haemophilus influenzae type b (Hib), rubella, hepatitis B and varicella as provided in subdivision two of this section.

4. If any person in parental relation to such child is unable to pay for the services of a private health practitioner, such person shall present such child to the health officer of the county in which the child resides, who shall then administer the immunizing agent without charge.

5. The health practitioner who administers such immunizing agent against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenza type b (Hib), rubella , hepatitis B and varicella to any such child shall give a certificate of such immunization to the person in parental relation to such child.

6. In the event that a person in parental relation to a child makes application for admission of such child to a school or has a child attending school and there exists no certificate or other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, hepatitis B, varicella and, where applicable, Haemophilus influenzae type b (Hib), the principal, teacher, owner or person in charge of the school shall inform such person of the necessity to have the child immunized, that such immunization may be administered by any health practitioner, or that the child may be immunized without charge by the health officer in the county where the child resides, if such person executes a consent therefor. In the event that such person does not wish to select a health practitioner to administer the immunization, he shall be provided with a form, which shall give notice that as a prerequisite to processing the application for admission to, or for continued attendance at, the school such person shall state a valid reason for withholding consent or consent shall be given for immunization to be administered by a health officer in the public employ, or by a school physician or nurse. The form shall provide for the execution of a consent by such person and it shall also state that such person need not execute such consent if subdivision eight or nine of this section apply to such child.

7. (a) No principal, teacher, owner or person in charge of a school shall permit any child to be admitted to such school, or to attend such school, in excess of fourteen days, without the certificate provided for in subdivision five of this section or some other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, hepatitis B, varicella and, where applicable, Haemophilus influenzae type b (Hib); provided, however, such fourteen day period may be extended to not more than thirty days for an individual student by the appropriate principal, teacher, owner or other person in charge where such student is transferring from out-of-state or from another country and can show a good faith effort to get the necessary certification or other evidence of immunization.

(b) A parent, a guardian or any other person in parental relationship to a child denied school entrance or attendance may appeal by petition to the commissioner of education in accordance with the provisions of section three hundred ten of the education law.

8. If any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child's health, the requirements of this section shall be inapplicable until such immunization is found no longer to be detrimental to the child's health.

8-a. Whenever a child has been refused admission to, or continued attendance at, a school as provided for in subdivision seven of this section because there exists no certificate provided for in subdivision five of this section or other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, hepatitis B, varicella and, where applicable, Haemophilus influenzae type b (Hib), the principal, teacher, owner or person in charge of the school shall:

a. forward a report of such exclusion and the name and address of such child to the local health authority and to the person in parental relation to the child together with a notification of the responsibility of such person under subdivision two of this section and a form of consent as prescribed by regulation of the commissioner, and

b. provide, with the cooperation of the appropriate local health authority, for a time and place at which an immunizing agent or agents shall be administered, as required by subdivision two of this section, to a child for whom a consent has been obtained. Upon failure of a local health authority to cooperate in arranging for a time and place at which an immunizing agent or agents shall be administered as required by subdivision two of this section, the commissioner shall arrange for such administration and may recover the cost thereof from the amount of state aid to which the local health authority would otherwise be entitled.

9. This section shall not apply to children whose parent, parents, or guardian holds genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.

10. The commissioner may adopt and amend rules and regulations to effectuate the provisions and purposes of this section.

11. Every school shall annually provide the commissioner, on forms provided by the commissioner, a summary regarding compliance with the provisions of this section.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A2371A

SPONSOR: Dinowitz (MS)

TITLE OF BILL: An act to amend the public health law, in relation to exemptions from vaccination due to religious beliefs; to repeal subdivision 9 of section 2164 of the public health law, relating to exemption from vaccination due to religious beliefs; and providing for the repeal of certain provisions upon expiration thereof

PURPOSE:

This bill would repeal all non-medical exemptions from vaccination requirements for children. SUMMARY OF PROVISIONS:

Section 1 of the bill repeals subdivision 9 of section 2164 of the public health law.

Section 2 of the bill strikes a reference in subdivision 6 of section 2164 of the public health law to the repealed subdivision 9.

Section 2 also amends subdivision 7 of section 2164 to allow unvaccinated children a grace period during which they can still attend school or day care, provided they can demonstrate that they have received at least the first dose of each required immunization series, and have age-appropriate appointments scheduled to complete such immunization series.

Section 3 strikes a reference in subdivision 5 of section 2168 of the public health law to the repealed subdivision 9 of section 2164.

JUSTIFICATION:

Existing New York State law requires all children in New York to receive certain immunizations for poliomyelitis, mumps, measles, diphtheria, rubella, HiB, hepatitis B, and varicella. The law provides an exemption from the immunization requirements where a physician certifies that the immunization may be detrimental to a child's health.

According to the Centers for Disease Control, sustaining a high vaccination rate among school children is vital to the prevention of disease outbreaks, including the reestablishment of diseases that have been largely eradicated in the United States, such as measles. According to State data from 2013-2014, there are at least 285 schools in New York with an immunization rate below 85%, including 170 schools below 70%, far below the CDC's goal of at least a 95% vaccination rate to maintain herd immunity. This bill would repeal exemptions currently found in the law for children whose parents have non-medical objections to immunizations.

PRIOR LEGISLATIVE HISTORY:

2017-18- A.1810 - Referred to Health/S.52 - Referred to Health
2015-16- A.8329 - Referred to Health/S.6017 - Referred to Health

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:
This act shall take effect immediately.

Children Vaccinated After Court Order Is Upheld

MARCH 9, 1991 | 12 AM

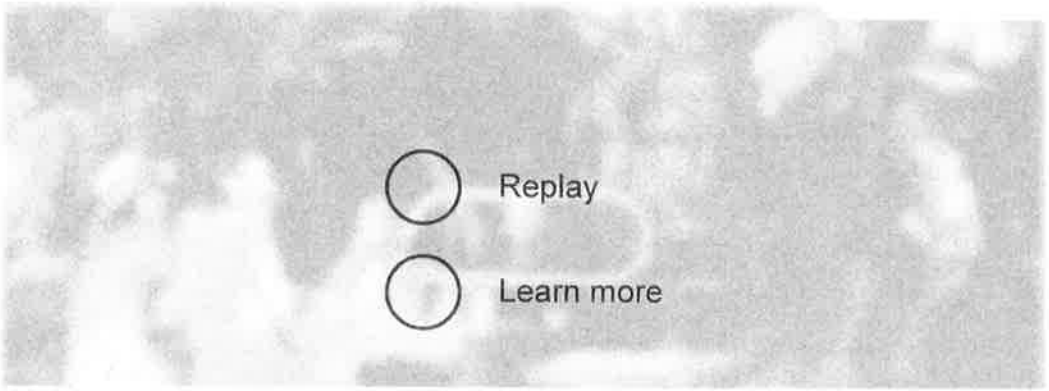
FROM ASSOCIATED PRESS

BALA CYNWYD, Pa. — Two appeals courts on Friday upheld court-ordered measles vaccinations for five children whose parents belong to a church that shuns medical care, after another child from the church died of measles.

Deputy Health Commissioner Robert Ross then administered the shots Friday night in the presence of parents, a few grandparents and elders of the Faith Tabernacle Congregation, which the families attend.

"Society does put limitations on religious rights," Superior Court Judge Vincent Cirillo said in ruling against the three families just hours before the youngsters were vaccinated.

Three families had appealed a Philadelphia Family Court ruling ordering the vaccinations, saying their religious abhorrence of medical treatment outweighed concerns about protectin



After Cirillo's decision, the families immediately appealed to the state Supreme Court, which also refused to block the vaccination order.

Jerome Balter, the families' attorney, said the vaccinations would not adversely affect his clients' standings in the church.

"It was imposed by court order and these are law-abiding people," he said. "They're not too happy. They have great belief in faith and they are really convinced that what happens is due to a higher force."

The latest victim of the epidemic--which has killed eight children and sickened more than 700 other people since December--was 19-month-old James Jones. Officials said the child contracted measles nearly two weeks ago and suffered convulsions.

He died Friday morning at a hospital, two days after his father alerted health officials. Ross said officials believed the child died from measles, but were awaiting confirmation from the Medical Examiner's Office.

His mother is a member of Faith Tabernacle, one of the families of four other victims. The family of one child w[illegible] has

The judge responded: "When that freedom interferes with the ri ›, there is the right to intervene."

LIFESTYLE

The L.A. Times holiday gift guide

SCIENCE

Super-spreading wedding party demonstrates COVID-19 risk posed by holiday gatherings

CALIFORNIA

California faces new wave of restrictions and business limitations amid coronavirus surge

Clear Answers and Smart Advice About Your Baby's Shots

By Ari Brown, MD, FAAP

Dr. Brown received her medical degree from Baylor College of Medicine in Houston, Texas; she did her pediatric residency at Harvard Medical School/Boston Children's Hospital. In private practice since 1995, Dr. Brown is perhaps best known as the coauthor of the 411 parenting book series – ***Expecting 411: Clear Answers and Smart Advice for Your Pregnancy***, ***Baby 411***, and ***Toddler 411*** (Windsor Peak Press).

In response to the recent media attention given to vaccines, autism, and other controversies concerning vaccines, the Immunization Action Coalition (IAC) offers this **special excerpt from *Baby 411*** that answers these questions and more. IAC thanks Dr. Brown for this clearly written information, but mostly we are grateful for her continued advocacy for safe and effective vaccines.

It's time to jump right into a hot topic you'll find in parent circles – vaccines. Nothing seems to stir the blood these days more than a good ol' fashion debate on vaccinating your child. And after a record-breaking surge in measles cases in 2019, of which the vast majority of cases were unvaccinated children due to parental opposition to measles vaccination, the silent majority of parents who believe in vaccinations are far from silent.

A head's up: since there is so much misinformation out there on vaccines, you need to be armed with detailed, accurate information. And like the rest of this book, that is what you will get in this chapter. The information we provide is based on scientific evidence and solid peer-reviewed research. Remember our mantra: show us the science! Your child is too precious to make such important decisions on anything less. This chapter is not based on personal anecdotes, conspiracy theories, "research" done in people's basements (we are not kidding), or the crusades of B-list celebrities.

However, before we get to our take on this debate, let's go back in time a bit. Well, more than a bit. How did the human race survive when other early humans didn't? Yes, making tools and finding food most efficiently played a big role. But here's another key element: we built civilizations. And we developed a sense of responsibility – to ourselves and to our society. Every time we respond to a tragedy in our nation – whether it be 9/11, Hurricane Sandy, or the Boston Marathon bombing – we are reminded of how we are not just individuals living in our own little worlds. It's part of our civic duty to lend a hand and take care of our neighbors.

So, what's this pontificating have to do with vaccines? Again, it is our responsibility to work together as a community...this time, the subject isn't terrorism or storms, but something that can be just as terrifying: infectious diseases. Consider a bit of history: in the 1890s, people would have seven or eight children in their families and only half of them would survive childhood. Just go to an old graveyard sometime and look at the ages listed on the headstones. Many of the diseases that killed those children are now prevented by vaccination. It's a fact: vaccinations have increased the life expectancy of our nation's children. That's why our grandparents and parents embraced vaccines.

Here's a crucial point: the key to a vaccine's success is that everyone in the community gets vaccinated. Vaccines won't work if a large number of folks just choose to opt out of the system and their responsibility. Please keep this in mind as you read about vaccinations. Your decision (and every other parent's decision) affects your child. And society as a whole. Germs are rather simple creatures...they just look for a new person to infect. They don't play politics.

REALITY CHECK

The concept of "public health" has been around since antiquity. Obviously, rulers had a vested interest in keeping their subjects healthy so they had a society to rule. Through the years, governments have been responsible for managing numerous programs. The most important advances in public health have been vaccination programs, water purification, and waste disposal/sanitation systems. The only way for public health to work, though, is for all members of the community to follow the same rules.

Who came up with the idea of vaccinations in the first place?

It took centuries of observation as well as trial and error. (And sometimes, error meant death.) The first real step was describing the disease, in this case, smallpox. Smallpox was a deadly disease that, historically, wiped out entire civilizations. The earliest descriptions can be found as far back as the ninth and tenth centuries among Turks. In fact, "inoculation," or the infecting of a person with the disease in hopes of introducing a mild form and then creating immunity, was practiced first in Asia. In the 1700s an English aristocrat, Lady Mary Wortly Montagu, was living in Constantinople and learned of the practice of inoculation (known then as variolation). She had her son inoculated and subsequently, brought the practice back to England.

At about the same time, an English country doctor, Edward Jenner, made an interesting connection: milkmaids who had been exposed to cowpox (a common disease in cattle at the time) never seemed to get smallpox infections during epidemics. He began to study the idea that vaccinating humans with cowpox virus would make them immune to smallpox. In 1798 he published a paper on his idea and called it "Vaccination." Not to say, by the way, that Dr. Jenner's idea was accepted with completely open arms. In the nineteenth century there did emerge a group opposed to vaccination led by Mary C. Hume. See, even the anti-vaccination lobby has been around a long time! Of course, in those days, you could be prosecuted for refusing to vaccinate.[1]

CONTINUED ON THE NEXT PAGE ▶

People were inoculated with a small amount of cowpox virus on their arm. It caused a localized infection at that site (hence, the scar that we forty-somethings and above bear). And true to Dr. Jenner's hypothesis, it provided protection against smallpox disease. In 1972, the United States stopped vaccinating against smallpox because it was no longer a threat to the population. In 1977, the last case of smallpox occurred in Somalia. In 1980, the World Health Organization declared the world free of smallpox, thanks to a global effort to immunize all children.

The success of the smallpox vaccine and other scientific discoveries led to the evolution of many vaccines. These new, safer vaccines are extremely effective in preventing diseases and epidemics that our grandparents and parents can still remember.

Why do you care whether I vaccinate my child or not?

For starters, I want your baby to be protected. But I also want you to realize that the decision to vaccinate your child impacts the health of other children in the community. Choosing NOT to vaccinate your child is choosing to put your child AND your community's children at risk. As a parent, you want to make the right choices for your child to protect them. I want you to ask questions. I want you to be informed. And I want you to get your child vaccinated. YOUR decision impacts ALL children. Why? There are two critical points for vaccination to work:

1. You need to be vaccinated.
2. Your neighbor needs to be vaccinated.

This concept is called herd immunity. And yes, you are a member of a herd. When 90–95% of "the herd" is protected, it is nearly impossible for a germ to cause an epidemic. Think of germs as rain. Vaccination is a raincoat. Even with a raincoat on, you can still get wet. You need an umbrella, too. The umbrella is "herd immunity." Those who don't vaccinate expect someone to share their umbrella when it rains. But society can only buy umbrellas TOGETHER. And raincoats aren't made for newborns – they need umbrellas!

As comedian Jon Stewart once put it, herd immunity is like a zombie movie. You are in an isolated farmhouse and the occupants rely on each other to board up their windows to keep the zombies (germs) out. The zombies get in when some lady from Marin County decides not to board up her windows because she read an article on a wellness blog about the potential health risks of boarding up windows. You can guess what happens!

Some parenting decisions have little or no impact on the community at large. Deciding whether or not your child eats organic baby food, goes to preschool, or sleeps in a family bed is entirely up to you – your decision only affects your child.

However, your decision whether or not to vaccinate your child affects all our kids. If you are a parent who is considering delaying or skipping vaccinations altogether, please realize the impact of your decision.

If more than 10% of American parents choose to "opt out" of vaccines, there's no question that our entire country will see these horrible diseases of bygone days return. Fortunately, very few parents decide to do this.

What is most concerning today is that there are pockets of under-vaccinated children. Birds of a feather flock together. Like-minded parents who don't vaccinate their kids tend to live in the same community and send their kids to the same schools. With lower immunization rates, there is no herd immunity. We have these "Ground Zero" areas to thank for recent measles and whooping cough outbreaks.[2]

REALITY CHECK

The Good News – While parents are asking more questions, they are still choosing to vaccinate their kids. The most recent Centers for Disease Control and Prevention (CDC) survey (2017) showed 98.9% of U.S. children aged 19 to 35 months had received 1 or more vaccinations. Yes, 98.9%. Despite all the media stories on vaccine "controversy," only a tiny fraction of parents – about 1% – are choosing to forgo vaccinations.

Some Common Vaccine Questions

What are vaccines?

Vaccines are materials that are given to a person to protect them from disease (that is, provide immunity). The word vaccine is derived from "vaccinia" (cowpox virus), which was used to create the first vaccine in history (smallpox). Modern medicine has created many vaccines. Vaccines PREVENT viral and bacteria infections that used to cause serious illness and death.

How do vaccines work?

Here is your microbiology lesson for today. Your immune system is your body's defense against foreign invaders (viruses, bacteria, parasites). Vaccines prepare your body to recognize foreigners without getting infected. A vaccine revs up your immune system to make antibodies (smart bombs with memory) for the signature of a particular germ. So, if your body sees the real germ, voila! You already know how to fight it off. There are three types of vaccinations: inactivated, live attenuated, and inactivated bacterial toxins.

- Inactivated vaccines do not contain any living germs. An immune response forms against either a dead germ, part of the germ (recombinant DNA), or a protein or sugar marker that sits on the outer layer of the germ (its signature). Very cool. These vaccines are safe to give to immune-compromised people. The only down side is that several doses of the vaccine are needed to provide full, lifelong protection against disease. Some of these types of vaccines include: influenza, hepatitis A & B, *Haemophilus influenzae* type B (Hib), pertussis (whooping cough), inactivated polio, pneumococcal.
- Live attenuated vaccines are weak forms of the germs that cause infection. An immune response occurs just as if your body had the infection. So one or two doses of vaccine gives you lifelong protection. These vaccines are not given to immune-compromised people because they can make them sick. Examples include: measles, mumps, and rubella, oral polio, smallpox, tuberculosis, varicella (chickenpox), rotavirus.
- Toxoids (inactivated bacterial toxins) are vaccines that create a defense against the toxin (poison) that a bacteria germ makes. Examples of toxoid vaccines include diphtheria and tetanus.

What are the diseases we are protected against with vaccination?

Good question. You are probably unfamiliar with most of these diseases since we don't see them much anymore in the U.S. After you hear about the many successes we've had in eradicating disease with vaccination, thank your parents for immunizing you. As you read

CONTINUED ON THE NEXT PAGE ▶

through the vaccination schedule, note that some diseases are viruses. Antibiotics kill bacteria only. Doctors have no medications to cure the viral infections. Doubt the effectiveness of vaccines? Just take a look at the sharp decline of illness and death rates from these diseases since 1950. Here is the link if you want to check it out: www.cdc.gov/vaccines/pubs/pinkbook/downloads/appendices/E/reported-cases.pdf. Rather amazing, no? Diseases that used to kill thousands (if not hundreds of thousands) now only harm a handful of people – thanks to vaccines.

How are vaccines tested to make sure they're safe?

Vaccines are researched extensively for an average of 15 years before being approved for use. A pharmaceutical company conducts medical research trials in a series of stages. Once safety is proven, the vaccine is tested in several thousand volunteers to make sure the vaccine actually works. These volunteers are followed for at least one year to be sure that no serious side effects occur.

Nothing in this world is 100% foolproof, including vaccine science. But the research trials that occur before licensing are very rigid. If you think there are a lot of vaccines on the market, imagine how many didn't make it through the research phase of development.

The Food and Drug Administration (FDA) governs this whole process. The FDA is the watchdog for any medication that is sold over-the-counter or by prescription. There are extremely high standards that must be met before any product is allowed for human use.

After a vaccine is approved for use, long-term follow-up studies are done to assess for side effects, adverse reactions, and potency over a lifetime.

■ REALITY CHECK

Given the FDA's mixed track record, you may be skeptical about trusting the government when it comes to vaccine safety. But in truth, the system is in place to protect consumers. Although conspiracy theorists might disagree, the FDA really is on our side.

To improve drug and vaccine safety, the National Academy of Medicine (formerly Institute of Medicine) called for an overhaul of how the FDA works – in the future, the FDA will do more ongoing safety reviews of medicines and make all clinical study results public. This should help boost public confidence in the FDA and vaccine safety.

Why is my child getting more shots than I did?

Simple answer: we've been successful inventing vaccines to fight more diseases. It's one of the important advances in modern medicine – vaccines prevent disease, injury, and death. More vaccines are a good thing!

An important point: many of the vaccine-preventable diseases are viruses. These viral infections cannot be treated with medicine once an infection occurs (for example, Hepatitis B).

Vaccines that protect against bacterial diseases are often serious ones, and resistant to many antibiotics (for example, Prevnar).

And even though the number of shots has gone up, the total load on the immune system has gone down. Today's vaccines are smarter and better engineered than the shots from a few decades ago. In fact, the total number of immunologic agents in the entire childhood vaccination series today is less than what was in just two vaccines in 1980!

Our children are getting smarter, safer vaccines today and better protection than we ever got as kids.

Are we giving too many shots, too soon?

This is a false mantra of the anti-vaccine crowd: they say babies are receiving too many shots (compared to say, 1980) and too soon (infants can't handle all these shots, they say).

So, let's look at this scientifically. On any given day, your baby is exposed to literally thousands of germs (it doesn't matter how spotless your house is). Exposing your child to five to eight different germs in the form of vaccines is a spit in the bucket.

Young children have better immune responses to vaccines than adults and older children. So they will form adequate immune responses to various vaccines simultaneously. (This is studied extensively before a vaccine is licensed.) Even if your baby got 11 shots at the same time, he would only need to use about 0.1% of his immune system to respond to them.[3]

Giving several vaccines at once does not damage, weaken, or overload the immune system. Vaccines boost the immune system. Also, the diseases that the vaccines protect against are the most severe in infants and young children. Your doctor wants to get those vaccinations in as safely and effectively as possible. That's why the timing is so important (and why a staggered or delayed vaccination schedule is a bad idea – more on that in the controversies section of this handout).

Can't you just give one big shot that has all the vaccines in it?

Medical science is working on it!

There have been a few combination vaccines licensed for use. The largest combination vaccines are Pediarix (DTaP, IPV, Hepatitis B) and Pentacel (DTaP, IPV, Hib). The reason there isn't just one big shot is that some vaccines are ineffective when they are sitting together in a solution. Your baby may still need more than one shot, but if your doctor uses a combo vaccine, at least it will be fewer shots than if they are all administered separately.

More combination vaccines are on the horizon.

What groups make decisions about vaccinations for children?

There are four governing panels of experts in infectious diseases that make recommendations for vaccinations. These smart folks include: American Academy of Pediatrics (AAP), American Academy of Family Physicians (AAFP), Advisory Committee on Immunization Practices (ACIP), and the Centers for Disease Control and Prevention (CDC). Because there are several groups involved in this effort, there is some variability in vaccination schedule recommendations.

My baby has a cold. Should I hold off on vaccinations?

No! This is a common misconception of parents. Even if your baby has a minor illness, he can still get his shots. We cannot stress how important it is to get your child vaccinated in a timely manner. So don't let a sniffle or two make you reschedule an office visit for shots. Your child can also get his shots even if he is on antibiotics.

CONTINUED ON THE NEXT PAGE ▶

Can I choose not to vaccinate my child?

Yes, but we wouldn't advise it. Choosing not to vaccinate is not a risk-free choice. It's choosing to expose your child to potentially serious infection. It's also choosing to expose other children in your community to serious, preventable diseases. And if you think your child will be safe because everyone else vaccinates his or her kids, you'd be wrong (and very selfish, we might add). You can also choose not to stop at a stop sign, but we wouldn't advise it!

■ REALITY CHECK

Vaccine requirements for school entry vary by state. There is no one consistent policy. As of mid-2019, all 50 states allow vaccine exemptions for medical reasons, 45 states allow exemptions for religious reasons, and 17 states allow exemptions for philosophical reasons.[4] After the 2019 measles outbreaks, several state legislatures reconsidered their existing laws for vaccine exemptions. Limiting the exemptions improves vaccination rates and thus protects more children.

I've heard that getting a disease provides immunity forever and vaccinations might not provide lifelong protection. Wouldn't it be better to get the disease? Isn't that a more "natural" way of creating immunity?

No. The diseases we prevent by vaccination are not minor illnesses (this includes chickenpox). For instance, would you rather have your child get meningitis and die or get the vaccine? Getting chickenpox or any other disease the "natural way" is a much greater health risk without any significant benefit. And just think of the discomfort, pain and perhaps serious injury that come with getting any of these diseases.

It is true that some vaccinations require a booster dose to keep antibody levels high. That is why we need a tetanus booster every ten years.

What would happen if we stopped using vaccinations?

That's an easy one. The diseases would come back.

Vaccinations keep us from getting sick from these infections. But all of the infections we protect against are alive and well in our world. As of today, the only disease we have completely eliminated is smallpox. And when it was eliminated, we stopped vaccinating for it.

Anyway, it's a simple fact: when immunization rates drop, epidemics occur. Just look at states with lower immunization rates – their rates of pertussis (whooping cough) are twice the number seen in states with higher percentages of immunization rates. Children whose parents opt out of vaccines face a 23 times greater risk of getting whooping cough.[5] In the 2019 measles outbreak, most cases occurred in communities with dangerously low measles immunization rates.

■ REALITY CHECK

In 1990, low immunization rates led to a measles epidemic of 55,000 cases and over 100 preventable deaths in the U.S. The U.S. saw a measles epidemic again in 2008 – over 90% of these cases were unvaccinated children, two-thirds of which were by parental choice. But a few of the cases were infants who were too young to be vaccinated (and exposed to an infected child in the doctor's waiting room). You would think we would have learned our lesson, but 2019 was another banner year for measles, with more cases than in the previous 30+ years. This serves as a reminder that vaccine-preventable diseases have not disappeared.

What are the typical side effects of vaccination?

Fever, fussiness, redness, or lump at the site of the injection.

Inactivated vaccines cause an immediate immune response. The body mounts a response to the foreign invader as if it were being infected. The result, typically, is a fever within 24 hours of vaccination. Babies sometimes feel like they are coming down with a cold or flu (body aches, pains). Some babies prefer to sleep through the experience; some choose to tell you how they feel (fussiness, crying). All of these symptoms resolve within 24 to 48 hours of vaccination.

Live attenuated vaccines (MMR, Varicella) cause a delayed immune response. This occurs one to four weeks after the vaccination is given. Long after the doctor's visit, your child may wake up one morning and have a fever.

This may be accompanied by a rash that looks like measles (pimples) or chickenpox (clear, fluid-filled pimples). The rash can sometimes be dramatic. Both the fever and the rash tell you that your baby is forming an immune response to the vaccination. Babies are not contagious and aren't too bothered by the rash. You don't need to call your doctor. This reaction is expected.

Redness at the injection site is common. In particular, the fifth booster dose of the DTaP (at age five years) can cause a pretty dramatic area of redness. No worries. We do get quite a few phone calls about it, though!

A firm lump may develop at the injection site if some of the fat in the arm/leg gets nicked as the needle goes into the muscle. This is called fat necrosis. It usually goes away within six to eight weeks. It doesn't hurt.

Red flag! If your baby has a fever more than 72 hours after being vaccinated, it's not from the vaccination. You need to call your doctor. The only exceptions are the MMR and chickenpox vaccines, which typically cause a fever one to four weeks afterwards.

■ REALITY CHECK

To help reduce fever and discomfort from shots, it's okay to give your baby acetaminophen (Tylenol) as long as you wait at least four hours after vaccinations are given. The dose is not listed on the package. It says to "consult a doctor." That's because doctors don't want you giving this medicine to a baby three months or younger with a fever without checking in first. Other than with shots, you need to call your doctor about fevers in this age group.

What are the worst reactions to vaccination?

These are called adverse reactions. This is the equivalent of an allergic reaction to a medication – and fortunately, they are all quite rare. With each generation of newer vaccinations, the risk of serious reactions is almost eliminated.

Adverse reactions include:
1. Death.
2. Anaphylactic reaction.
3. Encephalitis.
4. Fever-related seizure (convulsions).

Both the CDC and FDA keep close tabs on adverse reactions to vaccines via a Vaccine Adverse Event Reporting System (VAERS). Both doctors and patient families may submit a VAERS form if any adverse reaction occurs.

CONTINUED ON THE NEXT PAGE ▶

Keep in mind that medical illness reports do not prove an association of a particular illness with a specific vaccination. The job of both the CDC and FDA is to review each report that occurs and see if there is a pattern of subsequent illness after vaccination. VAERS data is publicly available at vaers.hhs.gov. To report a possible reaction, you can download a form at the same site. There is also a Clinical Immunization Safety Assessment Project comprised of six U.S. academic medical centers that evaluates adverse reactions to vaccines.

While we would be remiss if we didn't tell you that vaccinations have some risks associated with them, we want you to remember that the risk of adverse reaction is significantly lower than leaving your baby unprotected. Serious side effects, such as a severe allergic reaction, are known to occur, although very rarely.[6] It is estimated that, for every 1 million doses of vaccine, 1 to 2 people will have a severe allergic reaction. That is why you need to watch your child carefully for a few days after their shots and, if you see something that concerns you, call your doctor right away.

We agree that a serious adverse reaction only has to happen to one child for it to be heartbreaking. But if we look at the big picture, we can point to the millions of children who might have experienced illness, chronic disability, and death if diseases like smallpox or polio were not controlled by vaccinations.

Are there any reasons I should not vaccinate my child?

There are several very specific medical reasons to discontinue or hold off on certain vaccinations. These include:

1. Patient or family member is immune-compromised.
2. Patient had disease (for example, if you've had chickenpox, you don't need the vaccine).
3. Patient has encephalitis or degenerative brain disorder.
4. Patient has allergy to vaccine or to an additive in the vaccine.

If your baby has a food allergy to eggs or gelatin, or an allergy to antibiotics (such as neomycin, streptomycin, polymyxin B), notify your doctor before any vaccinations are given. Several vaccines are grown in chick embryo cells and therefore contain a small amount of egg protein: flu vaccine, MMR, rabies, and yellow fever vaccine. The MMR vaccine also includes gelatin.

Rabies, MMR, chickenpox, and polio vaccines include several different kinds of antibiotics to prevent contamination of the vaccine itself. Check with your doctor if your child is allergic to any antibiotics.

While there is a scant amount of egg protein in the MMR vaccine, it is still safe to give to a person with an egg allergy in your pediatrician's office. And, although the flu vaccine contains trace amounts of egg protein, beginning with the 2016–17 vaccination season, it is recommended that patients with an egg allergy of any severity can safely be vaccinated with any influenza vaccine product.

Who keeps a record of my child's vaccinations?

You and your doctor. Your doctor keeps a record of vaccinations in your child's records. All states but one have an immunization registry that also keeps records of vaccinations.

But ultimately, YOU need to have a copy of these in your personal medical record file. You will need proof of vaccinations for many things. Any childcare or school program requires this information. Summer camps and athletic programs want the records, too. If your child becomes a healthcare professional, joins the military, or is a food handler, he will also need this information.

HELPFUL HINT

It's a good idea to have a medical passport for your child. This should include an immunization record, growth chart, list of medical problems, list of surgeries, drug allergies, and name and dosage of any medications that are used regularly (such as asthma medicine). Some medical practices now offer a patient portal that allows you to keep track of your own records. If so, we encourage you to take advantage of it!

How do I know when my child needs booster shots?

Your doctor will remind you at each well child visit. We wish pediatricians were more like dentists or veterinarians, who long ago figured out how to send out reminders of needed visits. Sadly, only a minority of pediatric practices have electronic reminder or recall systems. Most do not usually send out reminders to let you know your child is due for shots. What most practices do is provide the schedule in an information packet at your child's first visit. Your doctor will tell you at each well check when to return. This system works pretty well unless you start missing well-child visits. Then your child gets behind on his vaccination series. You can try to catch your child up on shots when he is in for a sick visit if this happens.

REALITY CHECK

Wanted: A National Immunization Registry – There is no uniform system of tracking immunization status and sending reminder cards to patients' families. One solution: a national immunization registry. Advocates of this plan feel it will improve our country's immunization rates. Those opposed to the plan think it invades personal privacy and creates a government health care tracking system. So, like most governmental decisions, it may take years to resolve.

What vaccines are required and which ones are optional?

The answer varies state to state. It also varies depending on the frequency of disease in particular counties within a state. A table of the most recent requirements in the U.S. can be found at www.immunize.org/laws.

Can I take my baby out before she gets her first set of shots?

Yes, just be smart about it. Pediatricians usually recommend limiting human contact with babies under four weeks of life. Why? Because if your newborn gets any fever (of 100.4° or greater), that is an automatic ticket to the hospital for two days. Even if your baby has the cold that the rest of the household has, we still need to rule out a serious infection.

That said, you aren't quarantined, but use discretion when planning your outings. In cold and flu season, avoid crowded places for the first three months of life.

With respect to an unvaccinated baby, the biggest threat these days is whooping cough. Whooping cough is spread by cough and sneeze

CONTINUED ON THE NEXT PAGE ▶

droplets of an infected person. Babies get a series of four shots over the first two years of life to protect them from whooping cough. To keep everyone inside that long is crazy! But being cautious until she gets her first shot at two months isn't a bad idea.

I have a friend who does not vaccinate her child. Is it okay for our babies to play together?

Awkward, right? Well, the most politically correct thing to do would be cancel a playdate when either child is ill. This is not a foolproof solution, however. A person with measles, for instance, is contagious for three to four days before the rash erupts.

If you want to make a statement (and potentially lose the friendship), be honest and explain to her that you feel uncomfortable with your kids being together – it may give her pause to consider her choices.

Controversies

Let's face it, controversy drives TV ratings and web traffic. No one is interested in hearing about things that work as they should – and vaccines are a good example. Vaccines have been a hot topic for the last decade or so. Unfortunately, rare adverse events and theoretical concerns tend to make more headlines than the remarkable success story of vaccinations. These problems are then seized on by vaccine opponents and spread online through the web like a, well, virus.

So, let's address this head on. Here are the controversies you might hear about with vaccines:

I've heard that the MMR vaccine might cause autism. Is this true?

No. Parents also hear that vaccinations cause multiple sclerosis, diabetes, asthma, and SIDS. None of these are caused by vaccination. The government operates a safety monitoring system (VAERS, FDA, CDC) – watching for any possible adverse effects from vaccines. No one wants to increase autism rates.

One small case report of only eight patients in 1998 led a research group to feel that the combination MMR vaccine might cause autism.[7] But don't try to find the article online because the journal that published the article later retracted it when a former member of the research lab revealed that the data reported in the study was fabricated! Twelve years later, the lead author lost his license to practice medicine in England and was accused of fraud. The whole thing was a hoax.

Before this came to light, several reputable scientists tried to replicate the findings of this now discredited researcher. No one ever could – and now we know why!

Unfortunately, frightened parents chose to skip the MMR vaccine and measles epidemics occurred both in England and the U.S. as a result of these unfounded claims.

Bottom line: Don't base health decisions for your child on one research study or what the media reports! Talk to your child's doctor about any vaccine safety concerns.

If the MMR vaccine doesn't cause autism, why is the diagnosis made around the same time as the vaccination?

One of the criteria used to make a diagnosis of autism is a language delay. Because children do not have significant expressive language under a year of age, doctors have to wait until 15 to 18 months to confirm a language delay and make the diagnosis. That's about the same time as the MMR vaccination, which leads some parents to wonder about autism and vaccination.

I've heard there is mercury preservative in the vaccines. Is this true?

Not anymore. It was removed from all required childhood vaccines by 2001. This deserves repeating: YOUR baby will not be getting required vaccines that contain mercury (thimerosal) as a preservative.

Despite the fact that vaccines have been mercury preservative-free for over a decade now, speculation persists about vaccines previously containing mercury and links to autism. This speculation continues even after the Institute of Medicine (IOM), now known as the National Academy of Medicine, published a conclusive report in 2004 negating any association between vaccines and autism.[8] (The IOM spent four years studying both the mercury question and the MMR combo vaccine question and published a series of eight reports on the subject.)

Bottom line: Thimerosal will remain on blogs and anti-vaccine websites forever, but the preservative does not remain in any of the required childhood vaccines that YOUR baby will get.

Because of some remaining concerns, the next two Q&As should provide you with more than you ever wanted to know about thimerosal.

I heard that I should still ask my doctor if the vaccines for my baby are thimerosal-free. What do you suggest?

We think you should ask as many questions as you need to feel comfortable. Remember that since 2001, the entire childhood vaccine series went thimerosal (mercury) preservative-free. If your doctor has a 2001 vintage vaccine vial sitting on the shelf (which would be long expired by now), I'd have bigger concerns about your doc than his vaccine supply.

Here is the specific rule regarding thimerosal use in vaccines: the FDA requires manufacturers of routine childhood immunizations to no longer use thimerosal as a preservative. This rule does NOT apply to flu vaccine because (technically) this vaccination is optional (except in New Jersey) and not "routine."

Why does flu vaccine need thimerosal or any other preservative? First, understand the flu vaccine is reformulated every year to reflect the anticipated flu strains. Since millions of doses of flu vaccine are needed every year, the most efficient way to produce the shot is in multi-dose vials, which require a preservative.

Hence, some flu shots (not the flu nasal spray) contain the preservative thimerosal. However, there are single-dose preparations of flu vaccine that are mercury preservative-free. These can be given to young children and pregnant women. Ask your doctor for a thimerosal-free flu vaccine if you are concerned.

CONTINUED ON THE NEXT PAGE ▶

What about other vaccines? Do they contain thimerosal? There are two vaccines that use thimerosal in the production process – but neither of these vaccines is used in babies. The thimerosal is extracted before the final product is bottled. As such, these vaccines must list that TRACE amounts of thimerosal (less than 0.003mg) may exist in the vaccine. There is probably little or no thimerosal in the finished product, but the manufacturer must declare it. FYI: many vaccines such as the combination measles, mumps, and rubella vaccine (MMR) never used thimerosal in the production process or as a preservative.

If you want to learn more about thimerosal and vaccines, go to www.fda.gov/vaccines-blood-biologics/safety-availability-biologics/thimerosal-and-vaccines.

Does thimerosal cause autism?

No. The National Academy of Medicine (formerly Institute of Medicine) reached this conclusion in 2004. What proof do we have?

Thimerosal has been removed from vaccines since 2001, but the rates of autism are still skyrocketing. A 2008 survey of autism rates in California confirms that mercury is essentially out of vaccines and autism rates are still going up. If thimerosal was the cause and it was removed from vaccines seven years ago, autism rates would be going down by now. Why? Because autism spectrum disorders are usually diagnosed by three years of age. By now, any reduction in autism should have been obvious if thimerosal caused the disorder.[9]

Are there other additives in the vaccines?

Yes. And you should know about them.

As we have already discussed, vaccines contain the active ingredients that provide immunity. But there are inactive ingredients that improve potency and prevent contamination. Below is a list of additives and why they are there. These products are present in trace amounts and none have been proven harmful in animals or humans.[10]

- *Preservatives:* Prevent vaccine contamination with germs (bacteria, fungus). Example: 2-phenoxyethanol, phenol, (thimerosal, prior to 2001).
- *Adjuvants:* Improve potency/immune response. Example: aluminum salts.
- *Additives:* Prevent vaccine deterioration and sticking to the side of the vial. Examples: gelatin, albumin, sucrose, lactose, MSG, glycine.
- *Residuals:* Remains of vaccine production process. Examples: formaldehyde, antibiotics (neomycin), egg protein, yeast protein.

See our website (Baby411.com, click on "Bonus Material") for a list of ingredients for the routine childhood vaccination series.

REALITY CHECK

If vaccines contain ingredients like aluminum or formaldehyde, wouldn't it be better if vaccine makers got rid of these additives? Shouldn't vaccines be "greener"?

This is a red herring argument against vaccines – current vaccines are safe, even with tiny/trace amounts of preservatives or additives like aluminum.

And your baby is exposed to many of these ingredients every day... simply by eating or breathing.

Why is formaldehyde in vaccines?

Small amounts of formaldehyde are used to sterilize the vaccine fluid so your child doesn't get something like flesh-eating strep bacteria when he gets his shots.

We know when you think of formaldehyde, that ever-present smell wafting from the anatomy lab in high school comes to mind. But what you probably don't know is that formaldehyde is also a naturally occurring substance in your body. And if you use baby shampoo, paper towels, or mascara, or have carpeting in your home, you've been exposed to formaldehyde. The small amount used in vaccines is not a health concern.

Is it true that anti-freeze is used in vaccines?

No. There is a chemical used in some vaccines (called polyethylene glycol) that is also found in antifreeze, as well as toothpaste, lubricant eyedrops, and various skin care creams. Polyethylene glycol is used in the production process to purify vaccines.

Is it safer to delay vaccines or use an alternative vaccination schedule?

Easy answer: no. The CDC publishes a recommended vaccine schedule for American children. Many, many doctors, scientists, and researchers work together with the CDC to decide what is the best timing to give shots. The goal: protect babies as soon as it is safe and effective to do so. This schedule was not created out of thin air.

Between anti-vaccine activists shouting "too many shots, too soon" and Dr. Bob Sears hawking his book, new parents wonder if it would somehow be safer to wait on shots altogether or stagger them out on "Dr. Bob's schedule."

Here's a nasty little truth about alternative vaccination schedules: they are all fantasy. There is absolutely no research that says delaying certain shots is safer. Dr. Bob is making up "Dr. Bob's Schedule" all by himself. He even admits that. In an interview with iVillage, he commented, "My schedule doesn't have any research behind it. No one has ever studied a big group of kids using my schedule to determine if it's safe or if it has any benefits."

A 2010 study actually did study children whose vaccinations were delayed and found there was absolutely no difference in their development to children who'd received their shots on time (Smith). A 2013 study showed further evidence that giving numerous shots at the same time and giving the recommended vaccination schedule has no impact on a child's risk of autism.[11]

I'd much rather follow a schedule that has been extensively researched for both safety and effectiveness by experts in the field of infectious diseases.

What we do know about alternative vaccination schedules is that delaying shots is playing Russian Roulette with your child. The simple truth is that you are leaving your child unprotected, at a time when she is the most vulnerable.

We realize that parents who choose to delay or opt out on vaccines are not bad parents. They are scared parents. What we are trying to help you realize is that the fear you should have is for the diseases that vaccines prevent.

CONTINUED ON THE NEXT PAGE ▶

If I want to do a staggered vaccination schedule, how should I do it?

I suggest setting up a consultation with your own pediatrician to discuss what both of you feel comfortable with doing. Remember, the ultimate goal is to have your child vaccinated in a timely manner.

With the 2019 measles outbreaks on everyone's minds, more pediatricians are increasingly adamant about protecting their littlest patients. Many refuse to deviate from the recommended schedule just to appease a nervous parent. It may be difficult to find a board-certified pediatrician willing to modify or delay shots. It's our job to protect kids. Following the recommended schedule is the best way to do that.

How do I know that the CDC and FDA are on "our" side?

Ah, the government conspiracy theory – the belief by some that the government is part of a vast conspiracy to hurt children with bad vaccines...and enrich pharmaceutical makers who make vaccines.

Yes, years ago, some members of vaccine advisory committees had ties with vaccine producers. These people were invited to the table because they brought a wealth of knowledge with them (example: vaccine research scientists).

Today, no one working for the vaccine watchdogs (CDC, FDA, AAP, ACIP, or AAFP) receives any grant or research money from pharmaceutical companies. So there is no real or perceived financial incentive to allow a bad vaccine to stay on the market. If there is concern about a vaccine, it will be pulled from the market immediately.

To further ensure unbiased recommendations, the National Immunization Program (NIP) and the Vaccine Injury Compensation Program (VICP) parted ways in 2005 so there would be no perceived "conflict of interest."

Here is another consideration: why would these groups want our nation's children to suffer chronic illness, pain, or even death? Think about it. It is in nobody's interest to increase infant morbidity and mortality rates.

▶ HELPFUL HINTS – Where to get more information

Our advice: don't type in "vaccinations" in a Google search. You will end up with inaccurate information from concerned groups who do a great job of creating parental anxiety. The following sites will provide accurate information:

- Centers for Disease Control and Prevention: www.cdc.gov/vaccines/parents, (800) CDC-INFO or (800) 232-4636
- American Academy of Pediatrics: www.aap.org/immunization, (800) 433-9016
- Immunization Action Coalition at www.immunize.org and www.vaccineinformation.org
- Vaccine Education Center, Children's Hospital of Philadelphia www.vaccine.chop.edu

Here is an excellent reference book written for parents: *Vaccines and Your Child. Separating Fact from Fiction*. Offit, P. and Moser C. New York: Columbia University Press. 2011.

Citations

1. UCLA website: https://web.archive.org/web/20100710111201/http:/unitproj.library.ucla.edu/biomed/his/smallpox/. Accessed on July 10, 2019.
2. Omer SB, et al. *American Journal of Epidemiology* 2008; 168(12):1389–96.
3. Offit P. Addressing parents' concerns: Do multiple vaccines overwhelm or weaken the infants' immune system? *Pediatrics* 2002;109(1);124–9.
4. Immunization Action Coalition, www.immunize.org/laws/exemptions.pdf
5. O'Brien MA, et al. Parental refusal of pertussis vaccination is associated with an increased risk of pertussis infection in children. *Pediatrics* 2009;123(6).
6. CDC website www.vaccines.gov/basics/safety/side_effects. Accessed on July 10, 2019.
7. Wakefield AJ, et al. *Lancet*. 1998;351:637–41.
8. Institute of Medicine (now known as the National Academy of Medicine), Immunization Safety Review: Vaccines and Autism. National Academies Press. 2004. www.nationalacademies.org/hmd/reports/2004/immunization-safety-review-vaccines-and-autism.aspx
9. Schechter R, et al. *Archives of General Psychiatry* 2008;65(1):19–24.
10. Offit P. *Pediatrics* 2003;112(6):1394–1401.
11. DeStefano F, et al. Increasing exposure to antibody-stimulating proteins and polysaccharides in vaccines is not associated with risk of autism. *Journal of Pediatrics* 2013 Aug;163(2):561–7.

Case Rates of Some Diseases Preventable by Vaccines

Disease	Average Cases/Year Before Vaccine Development (20th century)	Cases in 2017 or 2016*
Diphtheria	21,053	0
Haemophilus influenzae type b	20,000 (estimated)	33
Hepatitis A	117,333 (estimated)	4,000*
Hepatitis B (acute)	66,232 (estimated)	20,900*
Measles	530,217	120
Mumps	162,344	6,109
Pertussis	200,752	18,975
Pneumococcal infection (invasive, all ages)	63,067 (estimated)	30,400*
Pneumococcal infection (invasive, < 5 years)	16,069 (estimated)	1,700*
Polio (paralytic)	16,316	0

* These numbers are from 2016.

Adapted from Appendix E: Data and statistics: Impact of vaccines in the 20th and 21st centuries. In *Epidemiology and Prevention of Vaccine-Preventable Diseases: The Pink Book*, edited by Hamborsky J, Kroger A, and Wolfe S. Centers for Disease Control and Prevention, Washington D.C. Public Health Foundation, 2015, p. E-5. Available at the Centers for Disease Control and Prevention.

Disease	Average Cases/Year Before Vaccine Development (20th century)	Cases in 2017 or 2016*
Rotavirus (hospitalizations < 3 years)	62,500 (estimated)	An estimated 30,625*
Rubella	47,745	7
Smallpox	29,005	0
Tetanus	580	33
Varicella	4,085,120 (estimated)	An estimated 102,128*

* These numbers are from 2016.

Adapted from Appendix E: Data and statistics: Impact of vaccines in the 20th and 21st centuries. In *Epidemiology and Prevention of Vaccine-Preventable Diseases: The Pink Book*, edited by Hamborsky J, Kroger A, and Wolfe S. Centers for Disease Control and Prevention, Washington D.C. Public Health Foundation, 2015, p. E-5. Available at the Centers for Disease Control and Prevention.

197 U.S. 11 (1905), 70, Jacobson v. Massachusetts

Page 11

197 U.S. 11 (1905)

25 S.Ct. 358, 49 L.Ed. 643

Jacobson

v.

Massachusetts

No. 70

United States Supreme Court

February 20, 1905

Argued December 6, 1904

ERROR TO THE SUPREME COURT

OF THE STATE OF MASSACHUSETTS

Messrs. George Fred Williams and James A. Halloran for plaintiff in error.

Messrs. Frederick H. Nash and Herbert Parker for defendant in error.

Syllabus

The United States does not derive any of its substantive powers from the Preamble of the Constitution. It cannot exert any power to secure the declared objects of the Constitution unless, apart from the Preamble, such power be found in, or can properly be implied from, some express delegation in the instrument.

While the spirit of the Constitution is to be respected not less than its letter, the spirit is to be collected chiefly from its words.

While the exclusion of evidence in the state court in a case involving the constitutionality of a state statute may not strictly present a Federal question, this court may consider the rejection of such evidence upon the ground of incompetency or immateriality under the statute as showing its scope and meaning in the opinion of the state court.

The police power of a State embraces such reasonable regulations relating to matters completely within its territory, and not affecting the people of other States, established directly by legislative enactment, as will protect the public health and safety.

While a local regulation, even if based on the acknowledged police power of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, the mode or manner of exercising its police power is wholly within the discretion of the State so long as the Constitution of the United States is not contravened, or any right granted or secured thereby is not infringed, or not exercised in such an arbitrary and oppressive manner as to justify the interference of the courts to prevent wrong and oppression.

The liberty secured by the Constitution of the United States does not import an absolute right in each person to be at all times, and in all circumstances, wholly freed from restraint, nor is it an element in such liberty that one person, or a minority of persons residing in any community and enjoying the benefits of its local government, should have power to dominate the majority when supported in their action by the authority of the State.

It is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, and not for the courts, to determine

Page 12

in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection of the public health.

There being obvious reasons for such exception, the fact that children, under certain circumstances, are excepted from the operation of the law does not deny the equal protection of the laws to adults if the statute is applicable equally to all adults in like condition.

The highest court of Massachusetts not having held that the compulsory vaccination law of that State establishes the absolute rule that an adult must be vaccinated even if he is not a fit subject at the time or that vaccination would seriously injure his health or cause his death, this court holds that, as to an adult residing in the community, and a fit subject of vaccination, the statute is not invalid as in derogation of any of the rights of such person under the Fourteenth Amendment.

This case involves the validity, under the Constitution of the United States, of certain provisions in the statutes of Massachusetts relating to vaccination.

The Revised Laws of that Commonwealth, c. 75, § 137, provide that

> the board of health of a city or town if, in its opinion, it is necessary for the public health or safety shall require and enforce the vaccination and revaccination of all the inhabitants thereof and shall provide them with the means of free vaccination. Whoever, being over twenty-one years of age and not under guardianship, refuses or neglects to comply with such requirement shall forfeit five dollars.

An exception is made in favor of "children who present a certificate, signed by a [25 S.Ct. 359] registered physician that they are unfit subjects for vaccination." § 139.

Proceeding under the above statutes, the Board of Health of the city of Cambridge, Massachusetts, on the twenty-seventh day of February, 1902, adopted the following regulation:

> Whereas, smallpox has been prevalent to some extent in the city of Cambridge and still continues to increase; and whereas it is necessary for the speedy extermination of the disease that all persons not protected by vaccination should be vaccinated, and whereas, in the opinion of the board, the public health and safety require the vaccination or revaccination of all the inhabitants of Cambridge; be it ordered, that

Page 13

> all the inhabitants of the city who have not been successfully vaccinated since March 1, 1897, be vaccinated or revaccinated.

Subsequently, the Board adopted an additional regulation empowering a named physician to enforce the vaccination of persons as directed by the Board at its special meeting of February 27.

The above regulations being in force, the plaintiff in error, Jacobson, was proceeded against by a criminal complaint in one of the inferior courts of Massachusetts. The complaint charged that, on the seventeenth day of July, 1902, the Board of Health of Cambridge, being of the opinion that it was necessary for the public health and safety, required the vaccination and revaccination of all the inhabitants thereof who had not been successfully vaccinated since the first day of March, 1897, and provided them with the means of free vaccination, and that the defendant, being over twenty-one years of age and not under guardianship, refused and neglected to comply with such requirement.

The defendant, having been arraigned, pleaded not guilty. The government put in evidence the above regulations adopted by the Board of Health, and made proof tending to show that its chairman informed the defendant that, by refusing to be vaccinated, he would incur the penalty provided by the statute, and would be prosecuted therefor; that he offered to vaccinate the defendant without expense to him, and that the offer was declined, and defendant refused to be vaccinated.

The prosecution having introduced no other evidence, the defendant made numerous offers of proof. But the trial court ruled that each and all of the facts offered to be proved by the defendant were immaterial, and excluded all proof of them.

The defendant, standing upon his offers of proof and introducing no evidence, asked numerous instructions to the jury, among which were the following:

That section 137 of chapter 75 of the Revised Laws of Massachusetts was in derogation of the rights secured to the defendant by the Preamble to the Constitution of the United

Page 14

States, and tended to subvert and defeat the purposes of the Constitution as declared in its Preamble;

That the section referred to was in derogation of the rights secured to the defendant by the Fourteenth Amendment of the Constitution of the United States, and especially of the clauses of that amendment providing that no State shall make or enforce any law abridging the privileges or immunities of citizens of the United States, nor deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws; and

That said section was opposed to the spirit of the Constitution.

Each of the defendant's prayers for instructions was rejected, and he duly excepted. The defendant requested the court, but the court refused, to instruct the jury to return a verdict of not guilty. And the court instructed the jury, in substance, that, if they believed the evidence introduced by the Commonwealth and were satisfied beyond a reasonable doubt that the defendant was guilty of the offense charged in the complaint, they would be warranted in finding a verdict of guilty. A verdict of guilty was thereupon returned.

The case was then continued for the opinion of the Supreme Judicial Court of Massachusetts. That court overruled all the defendant's exceptions, sustained the action of the trial court, and thereafter, pursuant to the verdict of the jury, he was sentenced by the court to pay a fine of five dollars. And the court ordered that he stand committed until the fine was paid.

Page 22

HARLAN, J., lead opinion

MR. JUSTICE HARLAN, after making the foregoing statement, delivered the opinion of the court.

We pass without extended discussion the suggestion that the particular section of the statute of Massachusetts now in question (§ 137, c. 75) is in derogation of rights secured by the Preamble of the Constitution of the United States. Although that Preamble indicates the general purposes for which the people

ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the Government of the United States or on any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States unless, apart from the Preamble, it be found in some express delegation of power or in some power [25 S.Ct. 360] to be properly implied therefrom. 1 Story's Const. § 462.

We also pass without discussion the suggestion that the above section of the statute is opposed to the spirit of the Constitution. Undoubtedly, as observed by Chief Justice Marshall, speaking for the court in *Sturges v. Crowninshield,* 4 Wheat. 122, 202,

> the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words.

We have no need in this case to go beyond the plain, obvious meaning of the words in those provisions of the Constitution which, it is contended, must control our decision.

What, according to the judgment of the state court, is the

Page 23

scope and effect of the statute? What results were intended to be accomplished by it? These questions must be answered.

The Supreme Judicial Court of Massachusetts said in the present case:

> Let us consider the offer of evidence which was made by the defendant Jacobson. The ninth of the propositions which he offered to prove, as to what vaccination consists of, is nothing more than a fact of common knowledge, upon which the statute is founded, and proof of it was unnecessary and immaterial. The thirteenth and fourteenth involved matters depending upon his personal opinion, which could not be taken as correct, or given effect, merely because he made it a ground of refusal to comply with the requirement. Moreover, his views could not affect the validity of the statute, nor entitle him to be excepted from its provisions. *Commonwealth v. Connelly,* 163 Massachusetts 539; *Commonwealth v. Has,* 122 Massachusetts 40; *Reynolds v. United States*, 98 U.S. 145; *Regina v. Downes,* 13 Cox C.C. 111. The other eleven propositions all relate to alleged injurious or dangerous effects of vaccination. The defendant "offered to prove and show by competent evidence" these so-called facts. Each of them, in its nature, is such that it cannot be stated as a truth, otherwise than as a matter of opinion. The only "competent evidence" that could be presented to the court to prove these propositions was the testimony of experts, giving their opinions. It would not have been competent to introduce the medical history of individual cases. Assuming that medical experts could have been found who would have testified in support of these propositions, and that it had become the duty of the judge, in accordance with the law as stated in *Commonwealth v. Anthes,* 5 Gray 185, to instruct the jury as to whether or not the statute is constitutional, he would have been obliged to consider the evidence in connection with facts of common knowledge, which the court will always regard in passing upon the constitutionality of a statute. He would have considered this testimony of experts in connection with the facts, that for nearly a century, most of the members of the medical profession

Page 24

> have regarded vaccination, repeated after intervals, as a preventive of smallpox; that, while they have recognized the possibility of injury to an individual from carelessness in the performance of it, or even, in a conceivable case, without carelessness, they generally have considered the risk of such an injury too small to be seriously weighed as against the benefits coming from the discreet and

> proper use of the preventive, and that not only the medical profession and the people generally have for a long time entertained these opinions, but legislatures and courts have acted upon them with general unanimity. If the defendant had been permitted to introduce such expert testimony as he had in support of these several propositions, it could not have changed the result. It would not have justified the court in holding that the legislature had transcended its power in enacting this statute on their judgment of what the welfare of the people demands.

Commonwealth v. Jacobson, 183 Massachusetts 242.

While the mere rejection of defendant's offers of proof does not strictly present a federal question, we may properly regard the exclusion of evidence upon the ground of its incompetency or immateriality under the statute as showing what, in the opinion of the state court, is the scope and meaning of the statute. Taking the above observations of the state court as indicating the scope of the statute -- and such is our duty, *Leffingwell v. Warren,* 2 Black 599, 603, *Morley v. Lake Shore Railway Co.,* 146 U.S. 162, 167, *Tullis v. L. E. & W. R.R. Co.,* 175 U.S. 348, *W. W. Cargill Co. v. Minnesota,* 180 U.S. 452, 466 -- we assume for the purposes of the present inquiry that its provisions require, at least as a general rule, that adults not under guardianship and remaining within the limits of the city of Cambridge must submit to the regulation adopted by the Board of Health. Is the statute, so construed, therefore, inconsistent with the liberty which the Constitution of the United States secures to every person against deprivation by the State?

The authority of the State to enact this statute is to be

Page 25

referred to what is commonly called the police power -- a power which the State did not surrender when becoming a member of the Union under the Constitution. Although this court has refrained from any attempt to define the [25 S.Ct. 361] limits of that power, yet it has distinctly recognized the authority of a State to enact quarantine laws and "health laws of every description;" indeed, all laws that relate to matters completely within its territory and which do not, by their necessary operation, affect the people of other States. According to settled principles, the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. *Gibbons v. Ogden,* 9 Wheat. 1, 203; *Railroad Company v. Husen,* 95 U.S. 465, 470; *Beer Company v. Massachusetts,* 97 U.S. 25; *New Orleans Gas Co. v. Louisiana Light Co.,* 115 U.S. 650, 661; *Lawton v. Steele,* 152 U.S. 133. It is equally true that the State may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety. The mode or manner in which those results are to be accomplished is within the discretion of the State, subject, of course, so far as Federal power is concerned, only to the condition that no rule prescribed by a State, nor any regulation adopted by a local governmental agency acting under the sanction of state legislation, shall contravene the Constitution of the United States or infringe any right granted or secured by that instrument. A local enactment or regulation, even if based on the acknowledged police powers of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, or with any right which that instrument gives or secures. *Gibbons v. Ogden,* 9 Wheat. 1, 210; *Sinnot v. Davenport,* 22 How. 227, 243; *Missouri, Kansas & Texas Ry. Co. v. Haber,* 169 U.S. 613, 626.

We come, then, to inquire whether any right given or secured by the Constitution is invaded by the statute as interpreted

Page 26

by the state court. The defendant insists that his liberty is invaded when the State subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best, and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an

absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that

> persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State, of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be, made so far as natural persons are concerned.

Railroad Co. v. Husen, 95 U.S. 465, 471; *Missouri, Kansas & Texas Ry. Co. v. Haber,* 169 U.S. 613, 628, 629; *Thorpe v. Rutland & Burlington R.R.,* 27 Vermont 140, 148. In *Crowley v. Christensen,* 137 U.S. 86, 89, we said:

> The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty

Page 27

> itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law.

In the constitution of Massachusetts adopted in 1780, it was laid down as a fundamental principle of the social compact that the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for "the common good," and that government is instituted

> for the common good, for the protection, safety, prosperity and happiness of the people, and not for the profit, honor or private interests of anyone man, family or class of men.

The good and welfare of the Commonwealth, of which the legislature is primarily the judge, is the basis on which the police power rests in Massachusetts. *Commonwealth v. Alger,* 7 Cush. 53, 84.

Applying these principles to the present case, it is to be observed that the legislature [25 S.Ct. 362] of Massachusetts required the inhabitants of a city or town to be vaccinated only when, in the opinion of the Board of Health, that was necessary for the public health or the public safety. The authority to determine for all what ought to be done in such an emergency must have been lodged somewhere or in some body, and surely it was appropriate for the legislature to refer that question, in the first instance, to a Board of Health, composed of persons residing in the locality affected and appointed, presumably, because of their fitness to determine such questions. To invest such a body with authority over such matters was not an unusual nor an unreasonable or arbitrary requirement. Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members. It is to be observed that, when the regulation in question was adopted, smallpox, according to the recitals in the regulation adopted by the Board of Health, was prevalent to some extent in the city of Cambridge, and the disease was increasing. If such was

Page 28

the situation -- and nothing is asserted or appears in the record to the contrary -- if we are to attach any value whatever to the knowledge which, it is safe to affirm, is common to all civilized peoples touching smallpox and the methods most usually employed to eradicate that disease, it cannot be adjudged that the present regulation of

the Board of Health was not necessary in order to protect the public health and secure the public safety. Smallpox being prevalent and increasing at Cambridge, the court would usurp the functions of another branch of government if it adjudged, as matter of law, that the mode adopted under the sanction of the State, to protect the people at large was arbitrary and not justified by the necessities of the case. We say necessities of the case because it might be that an acknowledged power of a local community to protect itself against an epidemic threatening the safety of all, might be exercised in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons. *Wisconsin &c. R.R. Co. v. Jacobson*, 179 U.S. 27, 301; 1 Dillon Mun. Corp., 4th ed.,§§ 319 to 325, and authorities in notes; Freund's Police Power, § 63 *et seq.* In *Railroad Company v. Husen*, 95 U.S. 465, 471-473, this court recognized the right of a State to pass sanitary laws, laws for the protection of life, liberty, heath or property within its limits, laws to prevent persons and animals suffering under contagious or infectious diseases, or convicts, from coming within its borders. But as the laws there involved went beyond the necessity of the case and under the guise of exerting a police power invaded the domain of Federal authority, and violated rights secured by the Constitution, this court deemed it to be its duty to hold such laws invalid. If the mode adopted by the Commonwealth of Massachusetts for the protection of its local communities against smallpox proved to be distressing, inconvenient or objectionable to some -- if nothing more could be reasonably

Page 29

affirmed of the statute in question -- the answer is that it was the duty of the constituted authorities primarily to keep in view the welfare, comfort and safety of the many, and not permit the interests of the many to be subordinated to the wishes or convenience of the few. There is, of course, a sphere within which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that, in every well ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand. An American citizen, arriving at an American port on a vessel in which, during the voyage, there had been cases of yellow fever or Asiatic cholera, although apparently free from disease himself, may yet, in some circumstances, be held in quarantine against his will on board of such vessel or in a quarantine station until it be ascertained by inspection, conducted with due diligence, that the danger of the spread of the disease among the community at large has disappeared. The liberty secured by the Fourteenth Amendment, this court has said, consists, in part, in the right of a person "to live and work where he will," *Allgeyer v. Louisiana*, 165 U.S. 578, and yet he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense. It is not, therefore, true that the power of the public to guard itself against imminent danger depends in every case involving the control of one's body upon his willingness [25 S.Ct. 363] to submit to reasonable regulations established by the constituted authorities, under the

Page 30

sanction of the State, for the purpose of protecting the public collectively against such danger.

It is said, however, that the statute, as interpreted by the state court, although making an exception in favor of children certified by a registered physician to be unfit subjects for vaccination, makes no exception in the case of adults in like condition. But this cannot be deemed a denial of the equal protection of the laws to adults, for the statute is applicable equally to all in like condition, and there are obviously reasons why regulations may be appropriate for adults which could not be safely applied to persons of tender years.

Looking at the propositions embodied in the defendant's rejected offers of proof, it is clear that they are more formidable by their number than by their inherent value. Those offers, in the main, seem to have had no purpose except to state the general theory of those of the medical profession who attach little or no value to vaccination as a means of preventing the spread of smallpox, or who think that vaccination causes other diseases

of the body. What everybody knows, the court must know, and therefore the state court judicially knew, as this court knows, that an opposite theory accords with the common belief and is maintained by high medical authority. We must assume that, when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of necessity, to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain. It could not properly abdicate its function to guard the public health and safety. The state legislature proceeded upon the theory which recognized vaccination as at least an effective, if not the best, known way in which to meet and suppress the

Page 31

evils of a smallpox epidemic that imperiled an entire population. Upon what sound principles as to the relations existing between the different departments of government can the court review this action of the legislature? If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that,

> if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.

Mugler v. Kansas, 123 U.S. 623, 661; *Minnesota v. Barber,* 136 U.S. 313, 320; *Atkin v. Kansas,* 191 U.S. 207, 223.

Whatever may be thought of the expediency of this statute, it cannot be affirmed to be, beyond question, in palpable conflict with the Constitution. Nor, in view of the methods employed to stamp out the disease of smallpox, can anyone confidently assert that the means prescribed by the State to that end has no real or substantial relation to the protection of the public health and the public safety. Such an assertion would not be consistent with the experience of this and other countries whose authorities have dealt with the disease of smallpox. * And the principle of vaccination [25 S.Ct. 364] as a means to

Page 32

prevent the spread of smallpox has been enforced in many States by statutes making the vaccination of children a condition of their right to enter or remain in public schools. *Blue v. Beach,* 155 Indiana 121; *Morris v. City of Columbus,* 102

Page 33

Georgia 792; *State v. Hay,* 126 N.Car. 999; *Abeel v. Clark,* 84 California 226; *Bissell v. Davidson,* 65 Connecticut 18; *Hazen v. Strong,* 2 Vermont 427; *Duffield v. Williamsport School District,* 162 Pa.St. 476.

Page 34

The latest case upon the subject of which we are aware is *Viemeister v. White, President &c.,* decided very recently by the Court of Appeals of New York, and the opinion in which has not yet appeared in the regular reports. That case involved the validity of a statute excluding from the public schools all children who had not been vaccinated. One contention was that the statute and the regulation adopted in exercise [25 S.Ct. 365] of its provisions was inconsistent with the rights, privileges and liberties of the citizen. The contention was overruled, the court saying, among other things:

> Smallpox is known of all to be a dangerous and contagious disease. If vaccination strongly tends to prevent the transmission or spread of this disease, it logically follows that children may be refused

admission to the public schools until they have been vaccinated. The appellant claims that vaccination does not tend to prevent smallpox, but tends to bring about other diseases, and that it does much harm, with no good.

It must be conceded that some laymen, both learned and unlearned, and some physicians of great skill and repute, do not believe that vaccination is a preventive of smallpox. The common belief, however, is that it has a decided tendency to prevent the spread of this fearful disease and to render it less dangerous to those who contract it. While not accepted by all, it is accepted by the mass of the people, as well as by most members of the medical profession. It has been general in our State and in most civilized nations for generations. It is

Page 35

generally accepted in theory and generally applied in practice, both by the voluntary action of the people and in obedience to the command of law. Nearly every State of the Union has statutes to encourage, or directly or indirectly to require, vaccination, and this is true of most nations of Europe.

A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts.

The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong, is not conclusive, for the legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases. In a free country, where the government is by the people, through their chosen representatives, practical legislation admits of no other standard of action; for what the people believe is for the common welfare must be accepted as tending to promote the common welfare, whether it does, in fact, or not. Any other basis would conflict with the spirit of the Constitution, and would sanction measures opposed to a republican form of government. While we do not decide and cannot decide that vaccination is a preventive of smallpox, we take judicial notice of the fact that this is the common belief of the people of the State, and, with this fact as a foundation, we hold that the statute in question is a health law, enacted in a reasonable and proper exercise of the police power.

72 N.E. 97.

Since, then, vaccination, as a means of protecting a community against smallpox, finds strong support in the experience of this and other countries, no court, much less a jury, is justified in disregarding the action of the legislature simply because, in its or their opinion, that particular method was -- perhaps or possibly -- not the best either for children or adults.

Did the offers of proof made by the defendant present a case which entitled him, while remaining in Cambridge, to

Page 36

claim exemption from the operation of the statute and of the regulation adopted by the Board of Health? We have already said that his rejected offers, in the main, only set forth the theory of those who had no faith in vaccination as a means of preventing the spread of smallpox, or who thought that vaccination, without benefiting the public, put in peril the health of the person vaccinated. But there were some offers which it is contended embodied distinct facts that might properly have been considered. Let us see how this is.

The defendant offered to prove that vaccination " quite often" caused serious and permanent injury to the health of the person vaccinated; that the operation "occasionally" resulted in death; that it was "impossible" to tell "in any particular case" what the results of vaccination would be or whether it would injure the health or

result in death; that "quite often," one's blood is in a certain condition of impurity when it is not prudent or safe to vaccinate him; that there is no practical test by which to determine "with any degree of certainty" whether one's blood is in such condition of impurity as to render vaccination necessarily unsafe or dangerous; that vaccine matter is "quite often" impure and dangerous to be used, but whether impure or not cannot be ascertained by any known practical test; that the defendant refused to submit to vaccination for the reason that he had, "when a child," been caused great and extreme suffering for a long period by a disease produced by vaccination, and that he had witnessed a similar result of vaccination not only in the case of his son, but in the cases of others.

These offers, in effect, invited the court and jury to go over the whole ground gone over by the legislature when it enacted the statute in question. The legislature assumed that some children, by reason of their condition at the time, might not be fit subjects of vaccination, and it is suggested -- and we will not say without reason -- that such is the case with some adults. But the defendant did not offer to prove that, by [25 S.Ct. 366] reason of his then condition, he was, in fact, not a fit subject of vaccination

Page 37

at the time he was informed of the requirement of the regulation adopted by the Board of Health. It is entirely consistent with his offer of proof that, after reaching full age, he had become, so far as medical skill could discover, and, when informed of the regulation of the Board of Health, was, a fit subject of vaccination, and that the vaccine matter to be used in his case was such as any medical practitioner of good standing would regard as proper to be used. The matured opinions of medical men everywhere, and the experience of mankind, as all must know, negative the suggestion that it is not possible in any case to determine whether vaccination is safe. Was defendant exempted from the operation of the statute simply because of his dread of the same evil results experienced by him when a child and had observed in the cases of his son and other children? Could he reasonably claim such an exemption because, "quite often" or "occasionally," injury had resulted from vaccination, or because it was impossible, in the opinion of some, by any practical test, to determine with absolute certainty whether a particular person could be safely vaccinated?

It seems to the court that an affirmative answer to these questions would practically strip the legislative department of its function to care for the public health and the public safety when endangered by epidemics of disease. Such an answer would mean that compulsory vaccination could not, in any conceivable case, be legally enforced in a community, even at the command of the legislature, however widespread the epidemic of smallpox, and however deep and universal was the belief of the community and of its medical advisers, that a system of general vaccination was vital to the safety of all.

We are not prepared to hold that a minority, residing or remaining in any city or town where smallpox is prevalent, and enjoying the general protection afforded by an organized local government, may thus defy the will of its constituted authorities, acting in good faith for all, under the legislative sanction of the State. If such be the privilege of a minority,

Page 38

then a like privilege would belong to each individual of the community, and the spectacle would be presented of the welfare and safety of an entire population being subordinated to the notions of a single individual who chooses to remain a part of that population. We are unwilling to hold it to be an element in the liberty secured by the Constitution of the United States that one person, or a minority of persons, residing in any community and enjoying the benefits of its local government, should have the power thus to dominate the majority when supported in their action by the authority of the State. While this court should guard with firmness every right appertaining to life, liberty or property as secured to the individual by the Supreme Law of the Land, it is of the last importance that it should not invade the domain of local authority except when it is plainly necessary to do so in order to enforce that law. The safety and the health of the people of Massachusetts are, in the first instance, for that Commonwealth to guard and protect. They are matters that do not ordinarily concern the National Government. So far as they can be reached by any government, they depend, primarily, upon such action as the

State in its wisdom may take, and we do not perceive that this legislation has invaded any right secured by the Federal Constitution.

Before closing this opinion, we deem it appropriate, in order to prevent misapprehension as to our views, to observe -- perhaps to repeat a thought already sufficiently expressed, namely -- that the police power of a State, whether exercised by the legislature or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression. Extreme cases can be readily suggested. Ordinarily such cases are not safe guides in the administration of the law. It is easy, for instance, to suppose the case of an adult who is embraced by the mere words of the act, but yet to subject whom to vaccination in a particular condition of his health

Page 39

or body, would be cruel and inhuman in the last degree. We are not to be understood as holding that the statute was intended to be applied to such a case, or, if it as so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned. "All laws," this court has said,

> should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of that character. The reason of the law in such cases should prevail over its letter.

United States v. Kirby, 7 Wall. 482; *Lau Ow Bew v. United States*, 144 U.S. 47, 58. Until otherwise informed by the highest court of Massachusetts, we are not inclined to hold that the statute establishes the absolute rule that an adult must be vaccinated if it be apparent or can be shown with reasonable [25 S.Ct. 367] certainty that he is not at the time a fit subject of vaccination or that vaccination, by reason of his then condition, would seriously impair his health or probably cause his death. No such case is here presented. It is the case of an adult who, for aught that appears, was himself in perfect health and a fit subject of vaccination, and yet, while remaining in the community, refused to obey the statute and the regulation adopted in execution of its provisions for the protection of the public health and the public safety, confessedly endangered by the presence of a dangerous disease

We now decide only that the statute covers the present case, and that nothing clearly appears that would justify this court in holding it to be unconstitutional and inoperative in its application to the plaintiff in error.

The judgment of the court below must be affirmed.

It is so ordered.

MR. JUSTICE BREWER and MR. JUSTICE PECKHAM dissent.

Notes:

[*]

> State supported facilities for vaccination began in England in 1808 with the National Vaccine Establishment. In 1840, vaccination fees were made payable out of the rates. The first compulsory act was passed in 1853, the guardians of the poor being entrusted with the carrying out of the law; in 1854, the public vaccinations under one year of age were 408,825 as against an average of 180,960 for several years before. In 1867, a new Act was passed, rather to remove some technical difficulties than to enlarge the scope of the former Act, and in 1871, the Act was passed which compelled the boards of guardians to appoint vaccination officers. The guardians also appoint a public vaccinator, who must be duly qualified to practice medicine and whose duty it is to vaccinate (for a fee of one shilling and sixpence) any child resident within his district brought to him for that purpose, to examine the same a week after, to give a certificate, and to certify to the vaccination officer the fact of vaccination or of insusceptibility. . . . Vaccination was made

compulsory in Bavaria in 1807, and subsequently in the following countries: Denmark (1810), Sweden (1814), Wurtemburg, Hesse, and other German states (1818), Prussia (1835), Roumania (1874), Hungary (1876), and Servia (1881). It is compulsory by cantonal law in ten out of the twenty-two Swiss cantons; an attempt to pass a federal compulsory law was defeated by a plebiscite in 1881. In the following countries, there is no compulsory law, but Government facilities and compulsion on various classes more or less directly under Government control, such as soldiers, state employes, apprentices, school pupils, etc.: France, Italy, Spain, Portugal, Belgium, Norway, Austria, Turkey. . . . Vaccination has been compulsory in South Australia since 1872, in Victoria since 1874, and in Western Australia since 1878. In Tasmania, a compulsory Act was passed in 1882. In New South Wales, there is no compulsion, but free facilities for vaccination. Compulsion was adopted at Calcutta in 1880, and since then at eighty other towns of Bengal, at Madras in 1884, and at Bombay and elsewhere in the presidency a few years earlier. Revaccination was made compulsory in Denmark in 1871, and in Roumania in 1874; in Holland it was enacted for all school pupils in 1872. The various laws and administrative orders which had been for many years in force as to vaccination and revaccination in the several German states were consolidated in an imperial statute of 1874.

24 Encyclopaedia Britannica (1894), Vaccination.

In 1857, the British Parliament received answers from 552 physicians to questions which were asked them in reference to the utility of vaccination, and only two of these spoke against it. Nothing proves this utility more clearly than the statistics obtained. Especially instructive are those which Flinzer compiled respecting the epidemic in Chemitz which prevailed in 1870-71. At this time in the town, there were 64,255 inhabitants, of whom 53,891, or 83.87 percent., were vaccinated, 5,712, or 8.89 percent. were unvaccinated, and 4,652, or 7.24 percent., had had the smallpox before. Of those vaccinated, 953, or 1.77 percent., became affected with smallpox, and of the uninocculated, 2,643, or 46.3 percent., had the disease. In the vaccinated, the mortality from the disease was O.73 percent., and in the unprotected it was 9.16 percent. In general, the danger of infection is six times as great, and the mortality 68 times as great, in the unvaccinated as in the vaccinated. Statistics derived from the civil population are in general not so instructive as those derived from armies, where vaccination is usually more carefully performed and where statistics can be more accurately collected. During the Franco-German war (1870-71) there was in France a widespread epidemic of smallpox, but the German army lost during the campaign only 450 cases, or 58 men to the 100,000; in the French army, however, where vaccination was not carefully carried out, the number of deaths from smallpox was 23,400.

8 Johnson's Universal Cyclopaedia (1897), Vaccination.

The degree of protection afforded by vaccination thus became a question of great interest. Its extreme value was easily demonstrated by statistical researches. In England, in the last half of the eighteenth century, out of every 1,000 deaths, 96 occurred from smallpox; in the first half of the present century, out of every 1,000 deaths, but 35 were caused by that disease. The amount of mortality in a country by smallpox seems to bear a fixed relation to the extent to which vaccination is carried out. In all England and Wales, for some years previous to 1853, the proportional mortality by smallpox was 21.9 to 1,000 deaths from causes; in London, it was but 16 to 1,000; in Ireland, where vaccination was much less general, it was 49 to 1,000, while in Connaught it was 60 to 1,000. On the other hand, in a number of European countries where vaccination was more or less compulsory, the proportionate number of deaths from smallpox about the same time varied from 2 per 1,000 of causes in Bohemia, Lombardy, Venice, and Sweden, to 8.33 per 1,000 in Saxony. Although in many instances persons who had been vaccinated were attacked with smallpox in a more or less modified form, it was noticed that the persons so attacked had been commonly vaccinated many years previously.

16 American Cyclopedia, Vaccination (1883).

"Dr. Buchanan, the medical officer of the London Government Board, reported [1881] as the result of statistics that the smallpox death rate among adult persons vaccinated was 90 to a million, whereas, among those unvaccinated, it was 3,350 to a million; whereas among vaccinated children under 5 years of age, 42 per million; whereas among unvaccinated children of the same age it was 5,950 per million." Hardway's Essentials of Vaccination (1881). The same author reports that among other conclusions reached by the Academie de Medicine of France, was one that, "without vaccination, hygienic measures (isolation, disinfection, etc.) are of themselves insufficient for preservation from smallpox."

Ib.

The Belgian Academy of Medicine appointed a committee to make an exhaustive examination of the whole subject, and among the conclusions reported by them were:

1. Without vaccination, hygienic measures and means, whether public or private, are powerless in preserving mankind from smallpox. . . . 3. Vaccination is always an inoffensive operation when practiced with proper care on healthy subjects. . . . 4. It is highly desirable, in

the interests of the health and lives of our countrymen, that vaccination should be rendered compulsory.

Edwards' Vaccination (1882).

The English Royal Commission, appointed with Lord Herschell, the Lord Chancellor of England, at its head, to inquire, among other things, as to the effect of vaccination in reducing the prevalence of, and mortality from, smallpox, reported, after several years of investigation:

> We think that it diminishes the liability to be attacked by the disease; that it modifies the character of the disease and renders it less fatal, of a milder and less severe type; that the protection it affords against attacks of the disease is greatest during the years immediately succeeding the operation of vaccination.

Filename: F:\NEWDATA\FED\SC\CASE\SCT\SCT\25\25SCT358.HTM

Measles: Questions and Answers Q&A

INFORMATION ABOUT THE DISEASE AND VACCINES

What causes measles?

Measles is caused by a virus.

How does measles spread?

Measles is spread from person to person through the air by infectious droplets; it is highly contagious.

How long does it take to show signs of measles after being exposed?

It takes an average of 10–12 days from exposure to the first symptom, which is usually fever. The measles rash doesn't usually appear until approximately 14 days after exposure, 2–3 days after the fever begins.

What are the symptoms of measles?

Symptoms include fever, runny nose, cough, loss of appetite, "pink eye," and a rash. The rash usually lasts 5–6 days and begins at the hairline, moves to the face and upper neck, and proceeds down the body.

How serious is measles?

Measles can be a serious disease, with 30% of reported cases experiencing one or more complications. Death from measles occurs in 2 to 3 per 1,000 reported cases in the United States. Complications from measles are more common among very young children (younger than five years) and adults (older than 20 years).

What are possible complications from measles?

Diarrhea is the most common complication of measles (occurring in 8% of cases), especially in young children. Ear infections occur in 7% of reported cases. Pneumonia, occurring in 6% of reported cases, accounts for 60% of measles-related deaths. Approximately one out of one thousand cases will develop acute encephalitis, an inflammation of the brain. This serious complication can lead to permanent brain damage.

Measles during pregnancy increases the risk of premature labor, miscarriage, and low-birth-weight infants, although birth defects have not been linked to measles exposure.

Measles can be especially severe in persons with compromised immune systems. Measles is more severe in malnourished children, particularly those with vitamin A deficiency. In developing countries, the fatality rate may be as high as 25%.

How is measles diagnosed?

Measles is diagnosed by a combination of the patient's symptoms and by laboratory tests.

Is there a treatment for measles?

There is no specific treatment for measles. People with measles need bed rest, fluids, and control of fever. Patients with complications may need treatment specific to their problem.

How long is a person with measles contagious?

Measles is highly contagious and can be transmitted from four days before the rash becomes visible to four days after the rash appears.

What should be done if someone is exposed to measles?

Notification of the exposure should be communicated to a doctor. If the person has not been vaccinated, measles vaccine may prevent disease if given within 72 hours of exposure. Immune globulin (a blood product containing antibodies to the measles virus) may prevent or lessen the severity of measles if given within six days of exposure.

How common is measles in the United States?

Before the vaccine was licensed in 1963, there were an estimated 3–4 million cases each year. In the years following 1963, the number of measles cases dropped dramatically with only 1,497 cases in 1983, the lowest annual total reported up to that time. By 2004, only 37 cases were reported – a record low. However, new cases continued to be reported, primarily in populations that have refused vaccination for religious or personal belief reasons. From 2001 through 2011, an average of 63 measles cases (range, 37 to 220) and four outbreaks were reported each

CONTINUED ON THE NEXT PAGE ▶

immunization action coalition
IAC
immunize.org

Saint Paul, Minnesota • 651-647-9009 • www.immunize.org • www.vaccineinformation.org

www.immunize.org/catg.d/p4209.pdf • Item #P4209 (11/18)

year in the United States. Of the 911 cases, a total of 372 (41%) were imported from outside the U.S. and an additional 432 (47%) were associated with importations. Hospitalization was reported for 225 (25%) cases. Two deaths were reported. Most cases occur among people who declined vaccination because of a religious, or personal objection.

The U.S. experienced a record number of measles cases during 2014, with 644 cases reported from 27 states. This is the greatest number of cases since measles elimination was documented in the U.S. in 2000. In 2015, the U.S. experienced a large, multi-state outbreak of measles linked to an amusement park; for up-to-date case counts and outbreak information, visit CDC's Measles Cases and Outbreaks web page at www.cdc.gov/measles/cases-outbreaks.html.

Can someone get measles more than once?

No.

When did vaccines for measles, mumps, and rubella become available?

The first measles vaccines (an inactivated and a live virus product) became available in 1963, both of which were largely replaced by a further attenuated live virus vaccine that was licensed in 1968. The mumps vaccine first became available in 1967, followed by the rubella vaccine in 1969. These three vaccines were combined in 1971 to form the measles-mumps-rubella (MMR) vaccine. A vaccine that combines both MMR and varicella (chickenpox) vaccines, known as MMRV, became available in 2005. Single antigen measles, mumps, and rubella vaccines are no longer available in the U.S.

What kind of vaccine is it?

MMR vaccine contains live, attenuated (or weakened) strains of the measles, mumps, and rubella viruses.

How is this vaccine given?

This vaccine is a shot given subcutaneously (in the fatty layer of tissue under the skin).

Who should get this vaccine?

All children, adolescents, and adults born in 1957 or later without a valid contraindication should have documentation of vaccination or other evidence of immunity. Additionally, some healthcare personnel who were born before 1957 may also need proof of vaccination or other evidence of immunity.

What kind of "evidence of immunity" can substitute for MMR vaccination?

Evidence of immunity can be shown by having laboratory evidence of immunity to measles, mumps, and/or rubella or laboratory confirmation of disease. However, if a person doesn't have evidence of immunity to all three diseases (e.g., measles, mumps, and rubella), they would still need to get vaccinated with MMR since the vaccine is not available as a single antigen product in the U.S.

At what age should the first dose of MMR be given?

The first dose of MMR should be given on or after the child's first birthday; the recommended age range is from 12–15 months. A dose given before 12 months of age will not be counted, so the child's medical appointment should be scheduled with this in mind.

When should children get the second MMR shot?

The second dose is usually given when the child is 4–6 years old, or before he or she enters kindergarten or first grade. However, the second dose can be given earlier as long as there has been an interval of at least 28 days since the first dose.

How effective is this vaccine?

The first dose of MMR produces immunity to measles and rubella in 90% to 95% of recipients. The second dose of MMR is intended to produce immunity in those who did not respond to the first dose, but a very small percentage of people may not be protected even after a second dose.

Which adolescents and adults should receive the MMR vaccine?

All unvaccinated adolescents without a valid contraindication to the vaccine should have documentation of two doses of MMR. All adults born in or after 1957 should also have documentation of vaccination or other evidence of immunity.

CONTINUED ON THE NEXT PAGE ▶

Adults born before 1957 are likely to have had measles and/or mumps disease as a child and are generally (but not always) considered not to need vaccination.

Which adults need two doses of MMR vaccine?

Certain adults are at higher risk of exposure to measles, mumps, and/or rubella and may need a second dose of MMR unless they have other evidence of immunity; this includes adults who are:

- students in postsecondary educational institutions (for measles and mumps)
- healthcare personnel (for measles and mumps)
- living in a community experiencing an outbreak or recently exposed to the disease (for measles and mumps)
- planning to travel internationally (for measles and mumps)
- people who received inactivated (killed) measles vaccine or measles vaccine of unknown type during 1963–1967 should be revaccinated with two doses of MMR vaccine.
- people vaccinated before 1979 with either killed mumps vaccine or mumps vaccine of unknown type who are at high risk for mumps infection (e.g., persons who are working in a healthcare facility) should be considered for revaccination with 2 doses of MMR vaccine.

Why do healthcare personnel need vaccination or other evidence of immunity to measles, mumps, and rubella?

People who work in medical facilities are at much higher risk for being exposed to disease than is the general population. Making sure that all employees are immune to these diseases protects both the employee and the patients with whom he or she may have contact. All people working in a healthcare facility in any capacity should have documentation of vaccination or evidence of immunity, including full- or part-time employees, medical or non-medical, paid or volunteer, students, and those with or without direct patient responsibilities.

Facilities should consider vaccinating with MMR vaccine healthcare personnel born before 1957 who lack laboratory evidence of measles, mumps, and rubella immunity or laboratory confirmation of previous disease. These facilities should vaccinate healthcare personnel with MMR during an outbreak of any of the diseases, regardless of birth year.

Who recommends this vaccine?

The Centers for Disease Control and Prevention (CDC), the American Academy of Pediatrics (AAP), the American Academy of Family Physicians (AAFP), the American College of Obstetricians and Gynecologists, and the American College of Physicians (ACP) have all recommended this vaccine.

How safe is this vaccine?

Hundreds of millions of doses of measles, mumps, and rubella vaccine prepared either as separate vaccines or as the combined MMR have been given in the United States, and its safety record is excellent.

What side effects have been reported with this vaccine?

Fever is the most common side effect, occurring in 5%–15% of vaccine recipients. About 5% of people develop a mild rash. When they occur, fever and rash usually appear 7–12 days after vaccination. About 25% of adult women receiving MMR vaccine develop temporary joint pain, a symptom related to the rubella component of the combined vaccine. Joint pain only occurs in women who are not immune to rubella at the time of vaccination. MMR vaccine may cause thrombocytopenia (low platelet count) at the rate of about 1 case per 30,000–40,000 vaccinated people. Cases are almost always temporary and not life-threatening. More severe reactions, including allergic reactions, are rare. Other severe problems (e.g., deafness, permanent brain damage) occur so rarely that experts cannot be sure whether they are caused by the vaccine or not.

If a child develops a rash after getting the MMR vaccine, is he contagious?

Transmission of the vaccine viruses does not occur from a vaccinated person, including those who develop a rash. No special precautions (e.g., exclusion from school or work) need be taken.

CONTINUED ON THE NEXT PAGE ▶

Who should NOT receive MMR vaccine?

Anyone who had a severe allergic reaction (e.g., generalized hives, swelling of the lips, tongue, or throat, difficulty breathing) following the first dose of MMR should not receive a second dose. Anyone knowing they are allergic to an MMR component (e.g., gelatin, neomycin) should not receive this vaccine.

As with all live virus vaccines, women known to be pregnant should not receive the MMR vaccine, and pregnancy should be avoided for four weeks following vaccination with MMR. Children and other household contacts of pregnant women should be vaccinated according to the recommended schedule. Women who are breast-feeding can be vaccinated.

Severely immunocompromised people should not be given MMR vaccine. This includes people with conditions such as congenital immunodeficiency, AIDS, leukemia, lymphoma, generalized malignancy, and those receiving treatment for cancer with drugs, radiation, or large doses of corticosteroids. Household contacts of immunocompromised people should be vaccinated according to the recommended schedule.

Although people with AIDS or HIV infection with signs of serious immunosuppression should not be given MMR, people with HIV infection who do not have laboratory evidence of severe immunosuppression can and should be vaccinated against measles.

Can individuals with egg allergy receive MMR vaccine?

In the past it was believed that people who were allergic to eggs would be at risk of an allergic reaction from the vaccine because the vaccine is grown in tissue from chick embryos. However, recent studies have shown that this is not the case. MMR may be given to egg-allergic individuals without prior testing or use of special precautions.

Does the MMR vaccine cause autism?

There is no scientific evidence that measles, MMR, or any other vaccine causes autism. The question about a possible link between MMR vaccine and autism has been extensively reviewed by independent groups of experts in the U.S. including the National Academy of Sciences' Institute of Medicine. These reviews have concluded that there is no association between MMR vaccine and autism.

For a summary of the issues on this topic, please read "Do Vaccines Cause Autism?" on the website of the Vaccine Education Center at Children's Hospital of Philadelphia. This discussion can be accessed at www.chop.edu/centers-programs/vaccine-education-center/vaccines-and-other-conditions/vaccines-autism.html

Dr. Ari Brown has written a good piece for parents questioning the safety of vaccines. To access "Clear Answers & Smart Advice about Your Baby's Shots," go to: www.immunize.org/catg.d/p2068.pdf.

For more information, visit CDC's web page about vaccines and autism at www.cdc.gov/vaccinesafety/concerns/autism/index.html

Can the live virus in the vaccine cause measles, mumps, and/or rubella?

Because the measles, mumps, and rubella viruses in the MMR vaccine are weak versions of the disease viruses, they may cause a very mild case of the disease they were designed to prevent; however, it is usually much milder than the natural disease and is referred to as an adverse reaction to the vaccine.

What if a pregnant woman inadvertently got the MMR vaccine?

Women are advised not to receive any live virus vaccine during pregnancy as a safety precaution based on the theoretical possibility of a live vaccine causing disease (e.g., rubella virus leading to congenital rubella syndrome [CRS]).

Because a number of women have inadvertently received this vaccine while pregnant or soon before conception, the Centers for Disease Control and Prevention has collected data about the outcomes of their births. From 1971–1989, no evidence of CRS occurred in the 324 infants born to 321 women who received rubella vaccine while pregnant and continued pregnancy to term. As any risk to the fetus from rubella vaccine appears to be extremely low or zero, individual counseling of women in this situation is recommended, rather than routine termination of pregnancy.

Case Rates of Some Diseases Preventable by Vaccines

Disease	Average Cases/Year Before Vaccine Development (20th century)	Cases in 2017 or 2016*
Diphtheria	21,053	0
Haemophilus influenzae type b	20,000 (estimated)	33
Hepatitis A	117,333 (estimated)	4,000*
Hepatitis B (acute)	66,232 (estimated)	20,900*
Measles	530,217	120
Mumps	162,344	6,109
Pertussis	200,752	18,975
Pneumococcal infection (invasive, all ages)	63,067 (estimated)	30,400*
Pneumococcal infection (invasive, < 5 years)	16,069 (estimated)	1,700*
Polio (paralytic)	16,316	0

* These numbers are from 2016.

Adapted from Appendix E: Data and statistics: Impact of vaccines in the 20th and 21st centuries. In *Epidemiology and Prevention of Vaccine-Preventable Diseases: The Pink Book*, edited by Hamborsky J, Kroger A, and Wolfe S. Centers for Disease Control and Prevention, Washington D.C. Public Health Foundation, 2015, p. E-5. Available at the Centers for Disease Control and Prevention.

Disease	Average Cases/Year Before Vaccine Development (20th century)	Cases in 2017 or 2016*
Rotavirus (hospitalizations < 3 years)	62,500 (estimated)	An estimated 30,625*
Rubella	47,745	7
Smallpox	29,005	0
Tetanus	580	33
Varicella	4,085,120 (estimated)	An estimated 102,128*

* These numbers are from 2016.

Adapted from Appendix E: Data and statistics: Impact of vaccines in the 20th and 21st centuries. In *Epidemiology and Prevention of Vaccine-Preventable Diseases: The Pink Book*, edited by Hamborsky J, Kroger A, and Wolfe S. Centers for Disease Control and Prevention, Washington D.C. Public Health Foundation, 2015, p. E-5. Available at the Centers for Disease Control and Prevention.

Lisa Casa, Esq.

REASONABLE ACCOMMODATION AND WORK FROM HOME REQUESTS IN THE TIME OF COVID-19

I. Americans with Disability Act & NYS Executive Law
   a. Employees Who are Entitled to Protection under the ADA and NYS Executive Law
   b. Who is a Qualified Individual?
   c. What is a Reasonable Accommodation?
   d. The Interactive Process
   e. Factors to Consider for a Work from Home Request

II. Individuals at an Increased Risk for Severe Illness from COVID-19
   a. Requests for Accommodations from Employees at an Increased Risk for Severe Illness from COVID-19
      i. Reasonable Accommodations for Employees Who Must Perform Their Job at the Worksite
      ii. Reasonable Accommodations in the Workplace to Limit COVID-19 Exposure
      iii. Reasonable Accommodation in a Dynamic Public Health Emergency
      iv. Employees Must Perform the Essential Functions of the Job
   b. Pregnancy and COVID-19
   c. Mental Illness and COVID-19
   d. Reasonable Accommodations and Telework
   e. Age and COVID-19

III. Caretaker Responsibilities and the Need for a Modified Work Schedule
   a. Families First Coronavirus Response Act and Childcare Leave
   b. FFCRA and Hybrid Learning Model
   c. FFCRA and Employees Who Opt Out of In School Instruction

IV. Wage and Hour Considerations for Remote Workers
   a. Wage and Hour Considerations for Business Expenses

V. Agency Guidance

Reasonable Accommodation and Work From Home Requests in the Time of COVID-19

Theodore Roosevelt Inns of Court

Presented by:

Lisa M. Casa, Esq.

December 17, 2020

FDT FIRM ADVANTAGE

FORCHELLI DEEGAN TERRANA

TODAY'S DISCUSSION

I. **Americans with Disability Act & NYS Executive Law**
   a. Employees Who are Entitled to Protection under the ADA and NYS Executive Law
   b. Who is a Qualified Individual?
   c. What is a Reasonable Accommodation?
   d. The Interactive Process
   e. Factors to Consider for a Work from Home Request

II. **Individuals at an Increased Risk for Severe Illness from COVID-19**
   a. Requests for Accommodations from Employees at an Increased Risk for Severe Illness from COVID-19
      i. Reasonable Accommodations for Employees Who Must Perform Their Job at the Worksite
      ii. Reasonable Accommodations in the Workplace to Limit COVID-19 Exposure
      iii. Reasonable Accommodation in a Dynamic Public Health Emergency
      iv. Employees Must Perform the Essential Functions of the Job
   b. Pregnancy and COVID-19
   c. Mental Illness and COVID-19
   d. Reasonable Accommodations and Telework
   e. Age and COVID-19

III. **Caretaker Responsibilities and the Need for a Modified Work Schedule**
   a. Families First Coronavirus Response Act and Childcare Leave
   b. FFCRA and Hybrid Learning Model
   c. FFCRA and Employees Who Opt Out of In School Instruction

IV. **Wage and Hour Considerations for Remote Workers**
   a. Wage and Hour Considerations for Business Expenses

V. **Agency Guidance**

Americans With Disability Act (ADA) & NYS Executive Law

- ADA applies to businesses with 15 or more employees, and provides:
  - No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. 42 U.S.C.A. § 12112.
- NY Executive Law applies to all businesses in New York, and provides:
  - (a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.
  - (b) For an employment agency to discriminate against any individual because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, or marital status, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

EMPLOYEES WHO ARE ENTITLED TO PROTECTION UNDER THE ADA AND NYS EXECUTIVE LAW

- The ADA covers employees who have a disability, which is defined as:
  A. a physical or mental impairment that substantially limits one or more major life activities of such individual;
  B. a record of such an impairment; or
  C. being regarded as having such an impairment. 42 USC 12102(1).
- For purposes of the ADA, major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. 42 USC 12102(2).
- The NY Exec. L. is "limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job ... held." Exec. L. 292(21).

WHO IS A QUALIFIED INDIVIDUAL?

- A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation.
- Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation.
- Factors to consider in determining if a function is essential include:
  - whether the reason the position exists is to perform that function,
  - the number of other employees available to perform the function or among whom the performance of the function can be distributed, and
  - the degree of expertise or skill required to perform the function.

WHAT IS A REASONABLE ACCOMODATION?

- Under Title I of the Americans with Disabilities Act (ADA), a reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done during the hiring process. These modifications enable an individual with a disability to have an equal opportunity not only to get a job, but successfully perform their job tasks to the same extent as people without disabilities.
- The ADA requires reasonable accommodations as they relate to three aspects of employment: 1) ensuring equal opportunity in the application process; 2) enabling a qualified individual with a disability to perform the essential functions of a job; and 3) making it possible for an employee with a disability to enjoy equal benefits and privileges of employment.
- An employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation.

THE INTERACTIVE PROCESS

- Once an accommodation is requested, the employer and employee must engage in the interactive process.
- The employer may request medical documentation to substantiate that the employee suffers from a disability covered by the ADA.
- Questions an employer may ask to facilitate the interactive process, which include, but are not limited to:
    1. how the disability creates a limitation,
    2. how the requested accommodation will effectively address the limitation,
    3. whether another form of accommodation could effectively address the issue, and
    4. how a proposed accommodation will enable the employee to continue performing the "essential functions" of his position (that is, the fundamental job duties).

FACTORS TO CONSIDER FOR A WORKFROM HOME REQUEST

- Several factors should be considered in determining the feasibility of working at home, including
  - the employer's ability to supervise the employee adequately and whether any duties require use of certain equipment or tools that cannot be replicated at home.
  - whether there is a need for face-to-face interaction and coordination of work with other employees;
  - whether in-person interaction with outside colleagues, clients, or customers is necessary; and
  - whether the position in question requires the employee to have immediate access to documents or other information located only in the workplace.
- An employer should not, however, deny a request to work at home as a reasonable accommodation solely because a job involves some contact and coordination with other employees. Meetings can be conducted effectively by telephone and information can be exchanged quickly through e-mail.

INDIVIDUALS AT AN INCREASED RISK FOR SEVERE ILLNESS FROM COVID-19

- The CDC has identified the following underlying medical conditions as placing an individual at a higher risk for severe illness from COVID-19
  - Cancer
  - Chronic kidney disease
  - COPD (chronic obstructive pulmonary disease)
  - Immunocompromised state (weakened immune system) from solid organ transplant
  - Obesity (body mass index [BMI] of 30 or higher)
  - Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
  - Sickle cell disease
  - Type 2 diabetes mellitus

INDIVIDUALS WHO MIGHT BE AT AN INCREASED RISK FOR SEVERE ILLNESS FROM COVID-19

- **The CDC has identified certain underlying health conditions that might place individuals at an increased risk for severe illness from COVID-19**
  - Asthma (moderate-to-severe)
  - Cerebrovascular disease (affects blood vessels and blood supply to the brain)
  - Cystic fibrosis
  - Hypertension or high blood pressure
  - Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines
  - Neurologic conditions, such as dementia
  - Liver disease
  - Pregnancy
  - Pulmonary fibrosis (having damaged or scarred lung tissues)
  - Smoking
  - Thalassemia (a type of blood disorder)
  - Type 1 diabetes mellitus

REQUESTS FOR ACCOMMODATIONS FROM EMPLOYEES AT INCREASED RISK FOR SEVERE ILLNESS FROM COVID-19

- A request by an individual placed at an increased risk for severe illness from COVID-19 must be treated as a request for a reasonable accommodation.
- The employer and employee must engage in the interactive process once the request has been raised.
- The employee must request the accommodation, the employer cannot mandate an employee at higher risk for COVID-19 complications work from home.
- Having a spouse/living with someone who is at an increased risk is not enough to obtain an accommodation.

Reasonable Accommodations for Employees Who Must Perform Their Job At the Worksite

- Permitting employees to work from home is not the only reasonable accommodation recognized by the EEOC to help limit COVID-19 exposure.
- The EEOC has explained that accommodations may include additional or enhanced protective gowns, masks, gloves, or other gear beyond what the employer may generally provide to employees returning to its workplace.
- Accommodations also may include additional or enhanced protective measures, for example, erecting a barrier that provides separation between an employee with a disability and coworkers/the public or increasing the space between an employee with a disability and others.

REASONABLE ACCOMMODATIONS IN THE WORKPLACE TO LIMIT COVID-19 EXPOSURE

- Another possible reasonable accommodation may be elimination or substitution of particular "marginal" functions (less critical or incidental job duties as distinguished from the "essential" functions of a particular position).
- In addition, accommodations may include temporary modification of work schedules (if that decreases contact with coworkers and/or the public when on duty or commuting) or moving the location of where one performs work (for example, moving a person to the end of a production line rather than in the middle of it if that provides more social distancing).

REASONABLE ACCOMMODATIONS IN THIS DYNAMIC PUBLIC HEALTH EMERGENCY

- The last six months have demonstrated that the COVID-19 pandemic is a dynamic and ever evolving public health emergency. Information about COVID-19 and its effects changes frequently. Also, the rate of transmission and risk is constantly changing.
- Recognizing this changing situation, the EEOC provides that when government restrictions change, or are partially or fully lifted, the need for accommodations may also change. This may result in more requests for short-term accommodations. Employers may wish to adapt the interactive process - and devise end dates for the accommodation - to suit changing circumstances based on public health directives.
- EEOC also recognizes that just because an employee's job duties may have been modified and the employee permitted to work from home, the employer is not required to continue to allow the employee to continue to work from home as local restrictions lift and employees return to work.

Employees Must Perform the Essential Functions of the Job

- During the shutdown(s), when employees were required to telework, many employers may have excused employees from performing one or more essential functions of the job, particularly functions that could only be conducted in-person.
- As employers return to in-person operations, the EEOC has remarked that the employer does not have to continue to excuse these essential functions, and continue to offer telework.
- As employers resume in-person operations, all reasonable accommodation requests to continue to telework should be considered on a case-by-case basis.

PREGNANCY AND COVID-19

- Pregnancy-related medical conditions may themselves be disabilities under the ADA, even though pregnancy itself is not an ADA disability. If an employee makes a request for reasonable accommodation due to a pregnancy-related medical condition, the employer must consider it under the usual ADA rules.
- Title VII as amended by the Pregnancy Discrimination Act specifically requires that women affected by pregnancy, childbirth, and related medical conditions be treated the same as others who are similar in their ability or inability to work. This means that a pregnant employee may be entitled to job modifications, including telework, changes to work schedules or assignments, and leave to the extent provided for other employees who are similar in their ability or inability to work.

MENTAL ILLNESS AND COVID-19

- The EEOC has recognized that employees with certain mental illnesses, such as, anxiety disorder, obsessive compulsive disorder, or post-traumatic stress disorder may have more difficulty handling the disruptions to daily life that has accompanied the COVID-19 pandemic.
- For employees with these mental illnesses who have requested an accommodation the employers may:
  - ask questions to determine whether the condition is a disability;
  - discuss with the employee how the requested accommodation would assist him and enable him to keep working;
  - explore alternative accommodations that may effectively meet his needs; and
  - request medical documentation if needed.

REASONABLE ACCOMMODATIONS AND TELEWORK

- An employee who was already receiving a reasonable accommodation prior to the COVID-19 pandemic, or who has a qualifying disability, may be entitled to an additional or altered accommodation, absent undue hardship.
- For example, an employee who is teleworking because of the pandemic may need a different type of accommodation than what he uses in the workplace. The employer may discuss with the employee whether the same or a different disability is the basis for this new request and why an additional or altered accommodation is needed.

AGE AND COVID-19

- Age, on its own, is not a disability.
- The Age Discrimination Employment Act does not have a reasonable accommodation requirement.
- Accordingly, an employer is not required to provide an accommodation to permit an employee to work from home simply due to the employee's age.
- Additionally, the employer may not treat older workers differently or only require older workers to work from home.

CARETAKER RESPONSIBILITIES AND THE NEED FOR A MODIFIED WORK SCHEDULE

- While being a parent/caretaker is not a disability covered by the ADA, with the ever changing school schedules, many parents/caretakers may request a flexible work schedule or the ability to work from home while having increased childcare responsibilities.
- The EEOC advises that employers may (but are not required) to provide flexibility to employees with caretaking responsibilities.
- However, employers may not treat employees differently based on sex or other protected characteristics. For example, under Title VII, female employees cannot be given more favorable treatment than male employees because of a gender-based assumption about who may have caretaking responsibilities for children.
- Employers should be aware that providing flexibility to one employee, while necessary for employee relations, maybe a slippery slope and employers must be careful to avoid treating employees differently due to any protected characteristic.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT AND CHILDCARE LEAVE

- Employers also must be cognizant of the childcare leave provided under the Families First Coronavirus Response Act ("FFCRA").
- The FFCRA provides for 12 weeks of paid leave (up to $200 per day) for an employee to care for his/her own son or daughter whose school or place of care was closed, or whose child care provider was unavailable.
- To be eligible for this leave, the employee must be unable to work remotely.
- The FFCRA covers any employers with 500 employees or less.
- However, health care providers and emergency first responders are exempt.
- The FFCRA leave entitlements expire on December 31, 2020.

FFCRA CHILD CARE LEAVE

- The 80 hours of paid sick leave provided in the FFCRA for child care purposes is in addition to any existing paid time off provided by the employer.
- However, the 10 weeks of expanded Family Medical Leave coverage for child care leave is an expanded reason to use FMLA leave, and not in addition to any FMLA leave rights that the employee may have already been entitled to receive.
- Accordingly, employees are not entitled to any additional FMLA leave rights under the FFCRA.

FFCRA AND CHILD CARE LEAVE

- A school that provides instruction online and/or remotely is considered "closed" under the FFCRA.
- A "place of care" is a physical location in which care is provided for your child.
- A "child care provider" is someone who cares for your child. This includes individuals paid to provide child care, like nannies, au pairs, and babysitters. It also includes individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.
- An employee may take paid sick leave or expanded family and medical leave to care for his/her child only when they need to, and actually are, caring for his/her child if the employee is unable to work or telework as a result of providing care.

FFCRA AND HYBRID LEARNING MODEL

- My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances? (added 08/27/2020)

- Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively "closed" to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child's remote-learning days.

FFCRA AND EMPLOYEES WHO OPT OUT OF IN SCHOOL INSTRUCTION

- My child's school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances? (added 08/27/2020)
- No, you are not eligible to take paid leave under the FFCRA because your child's school is not "closed" due to COVID–19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her.

WAGE AND HOUR CONSIDERATION FOR REMOTE WORKERS

- The FLSA and NYLL wage and hour regulations extends to non-exempt remote workers.
- On August 24, 2020, the Federal Department of Labor sent out a Field Assistance Bulletin reminding employers of their obligations to pay for all hours worked that it knows or has reason to believe it was performed.
- An employer is required to pay its employees for all hours worked, including work not requested but suffered or permitted, including work performed at home. See 29 C.F.R. § 785.11-12. If the employer knows or has reason to believe that work is being performed, the time must be counted as hours worked.
- An employer may have actual or constructive knowledge of additional unscheduled hours worked by their employees, and courts consider whether the employer should have acquired knowledge of such hours worked through reasonable diligence, which includes having effective reporting procedures and policies.

WAGE AND HOUR CONSIDERATION FOR BUSINESS EXPENSES

11. Are businesses and other employers required to cover any additional costs that employees may incur if they work from home (internet access, computer, additional phone line, increased use of electricity, etc.)?

- Employers may not require employees who are covered by the FLSA to pay or reimburse the employer for such items that are business expenses of the employer if doing so reduces the employee's earnings below the required minimum wage or overtime compensation. (See the U.S. Department of Labor Wage and Hour Division for additional information or call 1-866-487-9243 if you have questions.)
- Employers may not require employees to pay or reimburse the employer for such items if telework is being provided to a qualified individual with a disability as a reasonable accommodation under the Americans with Disabilities Act. (See the U.S. Equal Employment Opportunity Commission's publication, Work at Home/Telework as a Reasonable Accommodation, for additional information.)

AGENCY GUIDANCE PROVIDED ON ADA REASONABLE ACCOMMODATION REQUESTS AND COVID-19 AND THE FFCRA

- EEOC presented a webinar on March 27, 2020 that outlined employer's obligations under the ADA in the time of COVID-19. A copy of this transcript is available at: https://www.eeoc.gov/transcript-march-27-2020-outreach-webinar.
- EEOC published updated guidance on employers' obligations under the ADA on September 8, 2020, which is available here: https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws
- EEOC has also published a "Pandemic Preparedness In the Workplace and the Americans with Disability Act" https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act
- Department Of Labor has a FAQ on the FFCRA: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#39

Q&A

FDT FIRM ADVANTAGE

FORCHELLI DEEGAN TERRANA

LISA M. CASA, ESQ.

LCASA@FORCHELLILAW.COM

Lisa M. Casa is an associate in Forchelli Deegan Terrana LLP's Employment and Labor practice group. She concentrates her practice in the areas of management side labor and employment law. Ms. Casa defends and advises clients on issues relating to sexual harassment, discrimination, wage and hour issues, union/management issues and leave requests.

Ms. Casa routinely writes articles on a variety of labor and employment topics. Her articles, "The Cost of Silence: Sexual Harassment Claims in the #MeToo Era," "Ban the Box: An Equal Playing Field but More Regulations for Employers," and "EEOC v. McDonald's: Reasonable Accommodations under ADA for Job Applicants," were published in the Nassau Lawyer. Her article, "New York Family Leave is Here – What Employers Need to Know," was published in The Suffolk Lawyer and most recently, her article, "Are Agents, Brokers and Salespersons Independent Contractors?" was published in the New York Real Estate Journal.

Previously, Ms. Casa was an associate at a commercial litigation law firm located on Long Island and a boutique matrimonial law firm. Prior to working at those firms, Ms. Casa served as a law clerk to the Hon. David J. Issenman, Superior Court of New Jersey. As a law student, Ms. Casa interned for Hon. Esther Salas, United States Magistrate Judge, and with the United States Postal Service Employment Law Division.

Ms. Casa is a graduate of Brooklyn Law School, cum laude, 2011, and The George Washington University, B.S. & B.A., summa cum laude, 2008.

Ms. Casa is admitted to the New York and New Jersey Bar, the United States District Courts in the Eastern and Southern Districts of New York and the United States Circuit Court for the Second Circuit.

Professional Affiliations:

- Nassau County Women's Bar Foundation, President of the Board (previously served as Treasurer 2017-2019)
- Nassau County Bar Association
- Nassau County Women's Bar Association
- Melville Chamber of Commerce (NexGen Board Member)

FDT
FIRM OVERVIEW

Founded in 1976, Forchelli Deegan Terrana LLP is one of Long Island's largest and most distinguished law firms.

The Firm represents a broad range of clients, including national, regional and local businesses, public, private and family-owned companies, major real estate developers, property owners and operators, contractors, banks, municipalities, educational institutions, not-for-profits and foundations, and individuals. Personal attention and quality representation that is both practical and cost-effective are hallmarks of the Firm.

With over 60 attorneys, the Firm is able to provide expertise in nearly 20 different practice areas, with the talent, skill and experience necessary to meet the legal needs of virtually any client. These attorneys are supported by a dedicated team of paralegals, law clerks, and administrative and support staff, and cutting-edge office and communications technology. Headquartered in Uniondale, NY, in one of Long Island's premier office buildings, the Firm is conveniently located for clients in Nassau and Suffolk counties, as well as those in New York City.

Russell G. Tisman, Esq.

FORCHELLI DEEGAN TERRANA

RUSSELL G. TISMAN
PARTNER
RTISMAN@FORCHELLILAW.COM
PERSONAL FAX: (866) 522-7819

EMPLOYMENT LAW DURING COVID-19

ISSUES, BUT UNANSWERED QUESTIONS

PRESENTATION FOR THE THEODORE ROOSEVELT INN OF COURT

Russell G. Tisman. Esq. December 17, 2020

As a result of mandatory business closures, and voluntary safety measures taken by employers and employees, working remotely has now become the norm. The pandemic, executive orders, legislation, and society's response has brought fundamental changes to the way Americans and New Yorkers are working as we address the health crisis. These adaptations have created various legal issues, both new and variants of "historical" issues for employers, most of which remain to be answered or decided. The purpose of this outline, and the accompanying materials, is to identify the areas where employment-related issues arise, and the potential risks they pose. Because this situation is new and evolving, these issues, for the most part, are unsettled. Discrimination, including reasonable accommodation issues under the Americans with Disabilities Act and similar state and local legislation, is being addressed by another speaker, and is beyond the scope of this outline.

I. Employer Obligations for Reopening Workplace

Principally by Executive Order, New York has imposed constraints and requirements prior to allowing businesses to reopen. With the "second surge" restrictions, such as number of permitted diners inside restaurants, continue to be changed. New York has an online tool that allows searches to be made by specific industries for current requirements which can be found at: https://www.businessexpress.ny.gov/app/nyforward.

In addition to when and under what conditions businesses can open, employers need to be aware of requirements for safe workplace openings, including social distancing, temperature checks, government mandated forms and reporting requirements, and

personal protective equipment requirements. If an employer does not follow government requirements or guidance there may be a liability risk (see next section).

II. Employer Liability for Workplace Exposure

Does an employer that requires its employees to return to the workplace has an employee contract COVID, does the employer face tort liability (assuming no worker's compensation bar)?

This is an unresolved issue.

A. **New York Assembly Bill 10349** proposed in April 2020 would amend the New York Labor Law to impose a duty on New York's employers to warn employees of potential hazardous environmental and health conditions in the workplace, take necessary steps to mitigate risks, and refrain from retaliating against employees who refuse to work in an environment containing such hazards. The bill remains in the Assembly with no similar action in the Senate.

B. In contrast, ongoing discussions in the United States Senate with respect to stimulus payments for workers have been bogged down by a deadlock between Republicans and Democrats as to whether to include a liability shield for employers *See e.g.,* **Safe to Work Act S. 4317**;

C. Other states have taken different approaches. For example, Michigan has enacted a liability shield. (**House Bill 6032**).

D. OSHA requirements to maintain a safe workplace remain in place. In light of COVID exposure concerns, employers should assume a heightened duty to warn, including the possibility of warning about the use and storage of hazardous cleaning materials.

E. The trend appears be to relegate employees to workers' compensation claims and benefits. New York's bill is aberrational;

F. Assuming no liability shield, and no worker's compensation exclusive remedy bar, employees still will face causation issues to meet their burden of proof. Did they contract COVID through a workplace exposure or elsewhere?

III. Remote Workplace Increased Risks to an Employer and Employee

Does an employer face increased risks when hourly (and exempt) employees workplace become their home, vacation home or other remote location?

Yes – but certain steps can be taken to mitigate some of those risks. Many issues remain unaddressed or unresolved.

A. Payment Issues – It is an employer's obligation to accurately record hours worked and to pay hourly employees for all hours worked. Inherent in remote work is the issue of recording when an employee is on or off the clock. Employers should issue policies requiring employees to somehow record all hours, and implement a system to record when the employee is working. The system could be as simple as an email to a time keeper to record time in and out, or something more elaborate, but spell it out in the policy. Under traditional wage and hour case law an employee's record of hours is presumptively accurate if the employer does not have its own records which are regularly prepared and maintained in the ordinary course of business. From an employer's perspective, the key will be good record keeping, coupled with policies that require employees to be on the clock when they work.

B. Mandatory Posting Requirements – Wage and hour laws, anti-discrimination laws and worker's compensation laws, for example, have mandatory posting requirements in conspicuous places in an office. While it remains unclear whether this extends to remote locations not owned or leased by the business, the safest course is for copies of any required information postings to be aggregated on a company website, with communication to employees advising them that required government postings are available through a provided link.

C. Cybersecurity Risks – not an employment issue *per se*, but an issue which is magnified with remote work. This is two-fold: 1) hacking or intrusion from external sources; and 2) risk of loss of proprietary information because remote workers often will be working through own devices. To minimize risks of loss of information to faithless employees, employers should update Information Technology policies to require that any company work be done by remoting in, storing and saving to company platforms. Companies should consider supplying hardware rather than allowing employees to bring (use) their own devices as a way to try to protect data.

D. Equipment Costs - There is a potential issue as to whether an employer may be liable for the cost of the equipment and supplies an employee needs to accomplish their

work remotely. To address this concern, some large employers have given allowances to their employees to purchase equipment and supplies.

E. Tax Issues – Remote work raises "doing business" issues in multiple jurisdictions. If a significant number of employees are working remotely from New York City rather than reverse commuting is an employer now doing business in New York City such that they become exposed to franchise or other taxes due to their "presence" though employees? The same issue arises where employees work remotely from out-of-state. If a New York resident employee goes to his/her vacation home in another state for the pandemic and works remotely, does the employer have to withhold applicable state income tax? Employees working from vacation homes, for example, also need to be aware of the possible risk that the state where they work from could consider their income as sourced from that state. There is little guidance on these issues. However, the fact that states have not been attempting to tax either business or employees who are working remotely suggests that this may be a theoretical exposure. This could change as remote work becomes more of a norm post-pandemic.

F. Licensing Issues – If a lawyer works remotely from an out-of-state location which does not have bar reciprocity with New York, is the employee practicing law in a state without a license? Does a law firm face exposure for practicing in a state where its lawyers aren't admitted?

IV. Employee Leave Issues

A. Families First Coronavirus Response Act (FFCRA) -- **PUBLIC LAW 116–127 -- MAR. 18, 2020**

Division E of the FFCRA, "The Emergency Paid Sick Leave Act" (EPSLA), entitles certain employees of covered employers to take up to two weeks of paid sick leave if the employee is unable to work for specific qualifying reasons related to COVID-19. These qualifying reasons are: (1) Being subject to a Federal, state, or local quarantine or isolation order related to COVID-19; (2) being advised by a health care provider to self-quarantine due to COVID-19 concerns; (3) experiencing COVID-19 symptoms and seeking a medical diagnosis; (4) caring for another individual who is either subject to a Federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to COVID-19 concerns; (5) caring for the employee's son or daughter whose school, place of

care, or child care provider is closed or unavailable due to COVID-19 related reasons; and (6) experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services (HHS).

FFCRA section 5102(a)(1)-(6). Division C of the FFCRA, "The Emergency Family and Medical Leave Expansion Act" (EFMLEA), which amends Title I of the Family and Medical Leave Act, 29 U.S.C. 2601 et seq. (FMLA), permits certain employees of covered employers to take up to 12 weeks of expanded family and medical leave, ten of which are paid, if the employee is unable to work due to a need to care for his or her son or daughter whose school, place of care, or child care provider is closed or unavailable due to COVID-19 related reasons. FFCRA section 3012, adding FMLA section 110(a)(2)(A). These paid sick leave and expanded family and medical leave requirements will expire on December 31, 2020. (Federal Register September 16, 2020).

B. New York COVID Paid Leave -- **S 8091**

On March 18, 2020 the New York legislature also passed an act providing requirements for sick leave and the provision of certain employee benefits when such employee is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. The employee must be unable to work due to the quarantine or isolation order. Employees may not be eligible for benefits if they are able to telecommute or otherwise work remotely while under quarantine.

Benefit eligibility is based on the size and revenue of employers. Employers with 10 or fewer employees on January 1, and a 2019 net income of less than $1,000,000 must provide unpaid sick leave and any other benefit consistent with any other provision of law applicable to an employee under quarantine or isolation until the termination of any order of quarantine or isolation. Those employees are eligible for New York State Paid Family Leave (PFL) and short-term disability benefits.

If the employer's 2019 net income exceeds $1,000,000,or if the employer has between 11 and 99 employees as of January 1, 2020 (regardless of net income) the employer must provide at least five days of paid sick leave, and unpaid leave until the termination of any order of quarantine or isolation. After five days, the employee is eligible for PFL and short-term disability benefits.
Employers with 100 or more employees as of January 1, 2020 must provide at least 14 days of paid sick leave.

Sick leave required by this new law must be provided without loss of an employee's accrued sick leave and is in addition to sick leave otherwise available from the employer. This also extends to caring for minor children who are under quarantine.

Employees returning from a leave covered by this law must be restored to the position they held prior to taking the leave with the same pay and other terms of employment. Discrimination or retaliation based on any employee's taking of or requesting a leave is prohibited.

C. New York Paid Sick Leave Act - **S4883**

On September 30, 2020, covered, private sector, employees in New York State began to accrue leave at a rate of one hour for every 30 hours worked up to a maximum of 56 hours per year for employers with more than 100 employees, and 40 hours for smaller private sector employees. On January 1, 2021, employees may start using accrued leave. This is pursuant to legislation enacted April 30.2020 establishing the right to paid leave for New Yorkers. New York's paid sick leave law requires employers with five or more employees or net income of more than $1 million to provide paid sick leave to employees and for employers with fewer than five employees and a net income of $1 million or less to provide unpaid sick leave to employees. This new law is in addition to the New York State provisions already in effect providing emergency paid sick time due to COVID-19. Unlike the federal law this New York statute doesn't sunset at the end of the year.

Leave must be accrued at a rate not less than one hour for every thirty hours worked which applies to all employees, including part timers. (This raises issues with respect to exempt employees, whose hours don't need to be tracked). The statute, however, provides an alternate accrual system allowing employers to elect to the full amount of sick leave required by this law at *the beginning of each calendar year*. A business would provide the full amount of hours of sick leave to each employee starting January 1 of each year or at the beginning of a twelve month period as determined by the employer. Such up-front sick leave is not subject to later revocation or reduction if, for instance, the employee works fewer hours than anticipated by the employer). Employers can require that the leave be used in specified increments, up to 4 hours, which must be compensated at normal rates of pay. This leave, per statute, may be used as sick leave or safe leave.

D. Earned Safe and Sick Time Act – **NYC Code § 20-911**

In September, 2020 the New York City Council enacted, and the City's Mayor signed legislation analogous to the New York State Paid Leave Act applicable to employers in New York City.

Aside from mandating paid leave, the City's act imposes on employers the obligation to provide written disclosure to employees of accrued and used sick time. The act permits employers to require employees out for more than 3 days to provide a doctor's note to be allowed to return to work (but the employee has seven days after returning to provide the note). An employer in New York City that requires a note is responsible for the cost of the note if it is not defrayed by insurance. The act prohibits employers from requiring "second opinions." There are anti-retaliation and administrative enforcement provisions.

V. Business Closure Issues

Businesses that close due to the pandemic remain subject to the WARN act, which requires employers, generally to give 60-day notice prior to closing. A WARN notice is required when a business with 100 or more full-time workers (not counting workers who have less than 6 months on the job and workers who work fewer than 20 hours per week) is laying off at least 50 people at a single site of employment), or employs 100 or more workers who work at least a combined 4,000 hours per week, and is a private for-profit business, private non-profit organization, or quasi-public entity separately organized from regular government.

There are failing company and unforeseen business circumstances defenses to the failure to give the required notice. The United States Department of Labor has issued FAQ guidance regarding the applicability of WARN during COVID.

STATE OF NEW YORK

10349

IN ASSEMBLY

April 29, 2020

Introduced by M. of A. FRONTUS -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to requiring employers to warn employees of potential hazardous environmental and health conditions in the workplace

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

Section 1. The labor law is amended by adding a new section 200-b to read as follows:

<§ 200-b. Duty to warn employees of potential hazardous environmental and health conditions in the workplace. 1. In addition to the requirements of employers set forth in section two hundred of this article, employers shall be required to warn their employees and/or contract workers of any known hazardous environmental and health risks that such employees and/or contract workers may encounter during the course of their employment. Such information shall be provided to employees and/or contract workers prior to the commencement of employment, or as soon as practicable, and employers shall ensure that employees and/or contract workers are continually updated as soon as possible of any additional environmental and health risks that may arise.>

<2. Employers shall take necessary measures to mitigate any risk to employees and/or contract workers arising from potential hazardous environmental and health risks, including, but not limited to, providing appropriate protective equipment.>

<3. No employee or contract worker shall face retaliation of any kind from an employer if such employee or contract worker refuses to work in or around hazardous conditions because such employer has failed to mitigate potentially hazardous conditions or provide appropriate protective equipment pursuant to subdivision two of this section.>

<4. The commissioner shall establish procedures to allow for employees or contract workers to contact and inform the department of any potential hazardous environmental and health conditions in the workplace not yet identified by an employer, or of any employers who are in violation of this section.>

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

LBD16156-03-0

<5. The department shall share any known violations of the procedures established by this section with the appropriate public health or environmental authorities, if necessary to protect public health.>

§ 2. Section 212-d of the labor law is amended by adding a new subdivision 1-a to read as follows:

<1-a. Every grower or processor who employs or uses paid farm hand workers, farm field workers or farm food processing workers, whether or not he or she uses the services of a farm labor contractor, shall, at his or her own expense, provide or make available to such workers appropriate field sanitation procedures and materials to prevent the spread of infectious diseases, including, but not limited to, COVID-19.>

§ 3. This act shall take effect immediately.

116th CONGRESS, 2nd Session

United States Library of Congress

S 4317

Introduced in Senate

July 27, 2020

S.4317

To lessen the burdens on interstate commerce by discouraging insubstantial lawsuits relating to COVID-19 while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

IN THE SENATE OF THE UNITED STATES

July 27, 2020

Mr. Cornyn (for himself and Mr. McConnell) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To lessen the burdens on interstate commerce by discouraging insubstantial lawsuits relating to COVID-19 while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title. This Act may be cited as the 'Safeguarding America's Frontline Employees To Offer Work Opportunities Required to Kickstart the Economy Act' or the '**SAFE TO WORK Act**'.

(b) Table of Contents. The table of contents for this Act is as follows:

TITLE III GENERAL PROVISIONS

Sec 301 Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings. Congress finds the following:

(1) The SARS-CoV-2 virus that originated in China and causes the disease COVID-19 has caused untold misery and devastation throughout the world, including in the United States.

(2) For months, frontline health care workers and health care facilities have fought the virus with courage and resolve. They did so at first with very little information about how to treat the virus and developed strategies to save lives of the people of the United States in real time. They risked their personal health and wellbeing to protect and treat their patients.

(3) Businesses in the United States kicked into action to produce and procure personal protective equipment, such as masks, gloves, face shields, and hand sanitizer, and other necessary medical supplies, such as ventilators, at unprecedented rates.

(4) To halt the spread of the disease, State and local governments took drastic measures. They shut down small and large businesses, schools, colleges and universities, religious, philanthropic and other nonprofit institutions, and local government agencies. They ordered people to remain in their homes.

(5) This standstill was needed to slow the spread of the virus. But it devastated the economy of the United States. The sum of hundreds of local-level and State-level decisions to close nearly every space in which people might gather brought interstate commerce nearly to a halt.

(6) This halt led to the loss of millions of jobs. These lost jobs were not a natural consequence of the economic environment, but rather the result of a drastic, though temporary, response to the unprecedented nature of this global pandemic.

(7) Congress passed a series of statutes to address the health care and economic crises the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (Public Law 116-123; 134 Stat. 146), the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178), the Coronavirus Aid, Relief, and Economic Security Act or the CARES Act (Public Law 116-136), and the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116-139; 134 Stat. 620). In these laws Congress exercised its power under the Commerce and Spending Clauses of the Constitution of the United States to direct trillions of taxpayer dollars toward efforts to aid workers, businesses, State and local governments, health care workers, and patients.

(8) This legislation provided short-term insulation from the worst of the economic storm, but these laws alone cannot protect the United States from further devastation. Only reopening the economy so that workers can get back to work and students can get back to school can accomplish that goal.

(9) The Constitution of the United States specifically enumerates the legislative powers of Congress. One of those powers is the regulation of interstate commerce. The Government is not a substitute for the economy, but it has the authority and the duty to act when interstate commerce is threatened and damaged. As applied to the present crisis, Congress can deploy its power over interstate commerce to promote a prudent reopening of businesses and other organizations that serve as the foundation and backbone of the national economy and of commerce among the States. These include small and large businesses, schools (which are substantial employers in their own right and provide necessary services to enable parents and other caregivers to return to work), colleges and universities (which are substantial employers and supply the interstate market for higher-education services), religious, philanthropic and other nonprofit institutions (which are substantial employers and provide necessary services to their communities), and local government agencies.

(10) Congress must also ensure that the Nation's health care workers and health care facilities are able to act fully to defeat the virus.

(11) Congress must also safeguard its investment of taxpayer dollars under the CARES Act and other coronavirus legislation. Congress must ensure that those funds are used to help businesses and workers survive and recover from the economic crisis, and to help health care workers and health care facilities defeat the virus. CARES Act funds cannot be diverted from these important purposes to line the pockets of the trial bar.

(12) One of the chief impediments to the continued flow of interstate commerce as this public-health crisis has unfolded is the risk of litigation. Small and large businesses, schools, colleges and universities, religious, philanthropic and other nonprofit institutions, and local government agencies confront the risk of a tidal wave of lawsuits accusing them of exposing employees, customers, students, and worshipers to coronavirus. Health care workers face the threat of lawsuits arising from their efforts to fight the virus.

(13) They confront this litigation risk even as they work tirelessly to comply with the coronavirus guidance, rules, and regulations issued by local governments, State governments, and the Federal Government. They confront this risk notwithstanding equipment and staffing shortages. And they confront this risk while also grappling with constantly changing information on how best to protect employees, customers, students, and worshipers from the virus, and how best to treat it.

(14) These lawsuits pose a substantial risk to interstate commerce because they threaten to keep small and large businesses, schools, colleges and universities, religious, philanthropic and other nonprofit institutions, and local government agencies from reopening for fear of expensive litigation that might prove to be meritless. These lawsuits further threaten to undermine the Nation's fight against the virus by exposing our health care workers and health care facilities to liability for difficult medical decisions they have made under trying and uncertain circumstances.

(15) These lawsuits also risk diverting taxpayer money provided under the CARES Act and other coronavirus legislation from its intended purposes to the pockets of opportunistic trial lawyers.

(16) This risk is not purely local. It is necessarily national in scale. A patchwork of local and State rules governing liability in coronavirus-related lawsuits creates tremendous unpredictability for everyone participating in interstate commerce and acts as a significant drag on national recovery. The aggregation of each individual potential liability risk poses a substantial and unprecedented threat to interstate commerce.

(17) The accumulated economic risks for these potential defendants directly and substantially affects interstate commerce. Individuals and entities potentially subject to coronavirus-related liability will structure their decisionmaking to avoid that liability. Small and large businesses, schools, colleges and universities, religious, philanthropic and other nonprofit institutions, and local government agencies may decline to reopen because of the risk of litigation. They may limit their output or engagement with customers and communities to avoid the risk of litigation. These individual economic decisions substantially affect interstate commerce because, as a whole, they will prevent the free and fair exchange of goods and services across State lines. Such economic activity that, individually and in the aggregate, substantially affects interstate commerce is precisely the sort of conduct that should be subject to congressional regulation.

(18) Lawsuits against health care workers and facilities pose a similarly dangerous risk to interstate commerce. Interstate commerce will not truly rebound from this crisis until the virus is defeated, and that will not happen unless health care workers and facilities are free to combat vigorously the virus and treat patients with coronavirus and those otherwise impacted by the response to coronavirus.

(19) Subjecting health care workers and facilities to onerous litigation even as they have done their level best to combat a virus about which very little was known when it arrived in the United States would divert important health care resources from hospitals and providers to courtrooms.

(20) Such a diversion would substantially affect interstate commerce by degrading the national capacity for combating the virus and saving patients, thereby substantially elongating the period before interstate commerce could fully re-engage.

(21) Congress also has the authority to determine the jurisdiction of the courts of the United States, to set the standards for

causes of action they can hear, and to establish the rules by which those causes of action should proceed. Congress therefore must act to set rules governing liability in coronavirus-related lawsuits.

(22) These rules necessarily must be temporary and carefully tailored to the interstate crisis caused by the coronavirus pandemic. They must extend no further than necessary to meet this uniquely national crisis for which a patchwork of State and local tort laws are ill-suited.

(23) Because of the national scope of the economic and health care dangers posed by the risks of coronavirus-related lawsuits, establishing temporary rules governing liability for certain coronavirus-related tort claims is a necessary and proper means of carrying into execution Congress's power to regulate commerce among the several States.

(24) Because Congress must safeguard the investment of taxpayer dollars it made in the CARES Act and other coronavirus legislation, and ensure that they are used for their intended purposes and not diverted for other purposes, establishing temporary rules governing liability for certain coronavirus-related tort claims is a necessary and proper means of carrying into execution Congress's power to provide for the general welfare of the United States.

(b) Purposes. Pursuant to the powers delegated to Congress by article I, section 8, clauses 1, 3, 9, and 18, and article III, section 2, clause 1 of the Constitution of the United States, the purposes of this Act are to-

(1) establish necessary and consistent standards for litigating certain claims specific to the unique coronavirus pandemic;

(2) prevent the overburdening of the court systems with undue litigation;

(3) encourage planning, care, and appropriate risk management by small and large businesses, schools, colleges and universities, religious, philanthropic and other nonprofit institutions, local government agencies, and health care providers;

(4) ensure that the Nation's recovery from the coronavirus economic crisis is not burdened or slowed by the substantial risk of litigation;

(5) prevent litigation brought to extract settlements and enrich trial lawyers rather than vindicate meritorious claims;

(6) protect interstate commerce from the burdens of potentially meritless litigation;

(7) ensure the economic recovery proceeds without artificial and unnecessary delay;

(8) protect the interests of the taxpayers by ensuring that emergency taxpayer support continues to aid businesses, workers, and health care providers rather than enrich trial lawyers; and

(9) protect the highest and best ideals of the national economy, so businesses can produce and serve their customers, workers can work, teachers can teach, students can learn, and believers can worship.

SEC. 3. DEFINITIONS.

In this Act:

(1) Applicable government standards and guidance. The term 'applicable government standards and guidance' means-

(A) any mandatory standards or regulations specifically concerning the prevention or mitigation of the transmission of coronavirus issued by the Federal Government, or a State or local government with jurisdiction over an individual or entity, whether provided by executive, judicial, or legislative order; and

(B) with respect to an individual or entity that, at the time of the actual, alleged, feared, or potential for exposure to coronavirus is not subject to any mandatory standards or regulations described in subparagraph (A), any guidance, standards, or regulations specifically concerning the prevention or mitigation of the transmission of coronavirus issued by the Federal

Government, or a State or local government with jurisdiction over the individual or entity.

(2) Businesses, services, activities, or accommodations. The term 'businesses, services, activities, or accommodations' means any act by an individual or entity, irrespective of whether the act is carried on for profit, that is interstate or foreign commerce, that involves persons or things in interstate or foreign commerce, that involves the channels or instrumentalities of interstate or foreign commerce, that substantially affects interstate or foreign commerce, or that is otherwise an act subject to regulation by Congress as necessary and proper to carry into execution Congress's powers to regulate interstate or foreign commerce or to spend funds for the general welfare.

(3) Coronavirus. The term 'coronavirus' means any disease, health condition, or threat of harm caused by the SARS-CoV-2 virus or a virus mutating therefrom.

(4) Coronavirus exposure action.-

(A) In general. The term 'coronavirus exposure action' means a civil action-

(i) brought by a person who suffered personal injury or is at risk of suffering personal injury, or a representative of a person who suffered personal injury or is at risk of suffering personal injury;

(ii) brought against an individual or entity engaged in businesses, services, activities, or accommodations; and

(iii) alleging that an actual, alleged, feared, or potential for exposure to coronavirus caused the personal injury or risk of personal injury, that-

(I) occurred in the course of the businesses, services, activities, or accommodations of the individual or entity; and

(II) occurred-

(aa) on or after December 1, 2019; and

(bb) before the later of-

(AA) October 1, 2024; or

(BB) the date on which there is no declaration by the Secretary of Health and Human Services under section 319F-3(b) of the Public Health Service Act (42 U.S.C. 247d-6d(b)) (relating to medical countermeasures) that is in effect with respect to coronavirus, including the Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 (85 Fed. Reg. 15198) issued by the Secretary of Health and Human Services on March 17, 2020.

(B) Exclusions. The term 'coronavirus exposure action' does not include-

(i) a criminal, civil, or administrative enforcement action brought by the Federal Government or any State, local, or Tribal government; or

(ii) a claim alleging intentional discrimination on the basis of race, color, national origin, religion, sex (including pregnancy), disability, genetic information, or age.

(5) Coronavirus-related action. The term 'coronavirus-related action' means a coronavirus exposure action or a coronavirus-related medical liability action.

(6) Coronavirus-related health care services. The term 'coronavirus-related health care services' means services provided by a health care provider, regardless of the location where the services are provided, that relate to-

(A) the diagnosis, prevention, or treatment of coronavirus;

(B) the assessment or care of an individual with a confirmed or suspected case of coronavirus; or

(C) the care of any individual who is admitted to, presents to, receives services from, or resides at, a health care provider for any purpose during the period of a Federal emergency declaration concerning coronavirus, if such provider's decisions or activities with respect to such individual are impacted as a result of coronavirus.

(7) Coronavirus-related medical liability action.-

(A) In general. The term 'coronavirus-related medical liability action' means a civil action-

(i) brought by a person who suffered personal injury, or a representative of a person who suffered personal injury;

(ii) brought against a health care provider; and

(iii) alleging any harm, damage, breach, or tort resulting in the personal injury alleged to have been caused by, be arising out of, or be related to a health care provider's act or omission in the course of arranging for or providing coronavirus-related health care services that occurred-

(I) on or after December 1, 2019; and

(II) before the later of-

(aa) October 1, 2024; or

(bb) the date on which there is no declaration by the Secretary of Health and Human Services under section 319F-3(b) of the Public Health Service Act (42 U.S.C. 247d-6d(b)) (relating to covered countermeasures) that is in effect with respect to coronavirus, including the Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 (85 Fed. Reg. 15198) issued by the Secretary of Health and Human Services on March 17, 2020.

(B) Exclusions. The term 'coronavirus-related medical liability action' does not include-

(i) a criminal, civil, or administrative enforcement action brought by the Federal Government or any State, local, or Tribal government; or

(ii) a claim alleging intentional discrimination on the basis of race, color, national origin, religion, sex (including pregnancy), disability, genetic information, or age.

(8) Employer. The term 'employer'-

(A) means any person serving as an employer or acting directly in the interest of an employer in relation to an employee;

(B) includes a public agency; and

(C) does not include any labor organization (other than when acting as an employer) or any person acting in the capacity of officer or agent of such labor organization.

(9) Government. The term 'government' means an agency, instrumentality, or other entity of the Federal Government, a State government (including multijurisdictional agencies, instrumentalities, and entities), a local government, or a Tribal government.

(10) Gross negligence. The term 'gross negligence' means a conscious, voluntary act or omission in reckless disregard of-

(A) a legal duty;

(B) the consequences to another party; and

(C) applicable government standards and guidance.

(11) Harm. The term 'harm' includes-

(A) physical and nonphysical contact that results in personal injury to an individual; and

(B) economic and noneconomic losses.

(12) Health care provider.-

(A) In general. The term 'health care provider' means any person, including an agent, volunteer (subject to subparagraph (C)), contractor, employee, or other entity, who is-

(i) required by Federal or State law to be licensed, registered, or certified to provide health care and is so licensed, registered, or certified (or is exempt from any such requirement);

(ii) otherwise authorized by Federal or State law to provide care (including services and supports furnished in a home or community-based residential setting under the State Medicaid program or a waiver of that program); or

(iii) considered under applicable Federal or State law to be a health care provider, health care professional, health care institution, or health care facility.

(B) Inclusion of administrators, supervisors, etc. The term 'health care provider' includes a health care facility administrator, executive, supervisor, board member or trustee, or another individual responsible for directing, supervising, or monitoring the provision of coronavirus-related health care services in a comparable role.

(C) Inclusion of volunteers. The term 'health care provider' includes volunteers that meet the following criteria:

(i) The volunteer is a health care professional providing coronavirus-related health care services.

(ii) The act or omission by the volunteer occurs-

(I) in the course of providing health care services;

(II) in the health care professional's capacity as a volunteer;

(III) in the course of providing health care services that-

(aa) are within the scope of the license, registration, or certification of the volunteer, as defined by the State of licensure, registration, or certification; and

(bb) do not exceed the scope of license, registration, or certification of a substantially similar health professional in the State in which such act or omission occurs; and

(IV) in a good-faith belief that the individual being treated is in need of health care services.

(13) Individual or entity. The term 'individual or entity' means-

(A) any natural person, corporation, company, trade, business, firm, partnership, joint stock company, educational institution, labor organization, or similar organization or group of organizations;

(B) any nonprofit organization, foundation, society, or association organized for religious, charitable, educational, or other

purposes; or

(C) any State, Tribal, or local government.

(14) Local government. The term 'local government' means any unit of government within a State, including a-

(A) county;

(B) borough;

(C) municipality;

(D) city;

(E) town;

(F) township;

(G) parish;

(H) local public authority, including any public housing agency under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(I) special district;

(J) school district;

(K) intrastate district;

(L) council of governments, whether or not incorporated as a nonprofit corporation under State law; and

(M) agency or instrumentality of-

(i) multiple units of local government (including units of local government located in different States); or

(ii) an intra-State unit of local government.

(15) Mandatory. The term 'mandatory', with respect to standards or regulations, means the standards or regulations are themselves enforceable by the issuing government through criminal, civil, or administrative action.

(16) Personal injury. The term 'personal injury'-

(A) means actual or potential physical injury to an individual or death caused by a physical injury; and

(B) includes mental suffering, emotional distress, or similar injuries suffered by an individual in connection with a physical injury.

(17) State. The term 'State'-

(A) means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision or instrumentality thereof; and

(B) includes any agency or instrumentality of 2 or more of the entities described in subparagraph (A).

(18) Tribal government.-

(A) In general. The term 'Tribal government' means the recognized governing body of any Indian tribe included on the list published by the Secretary of the Interior pursuant to section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131(a)).

(B) Inclusion. The term 'Tribal government' includes any subdivision (regardless of the laws and regulations of the jurisdiction in which the subdivision is organized or incorporated) of a governing body described in subparagraph (A) that-

(i) is wholly owned by that governing body; and

(ii) has been delegated the right to exercise 1 or more substantial governmental functions of the governing body.

(19) Willful misconduct. The term 'willful misconduct' means an act or omission that is taken-

(A) intentionally to achieve a wrongful purpose;

(B) knowingly without legal or factual justification; and

(C) in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

TITLE I LIABILITY RELIEF

Subtitle A Liability Limitations for Individuals and Entities Engaged in Businesses, Services, Activities, or Accommodations

SEC. 121. APPLICATION OF SUBTITLE.

(a) Cause of Action; Tribal Sovereign Immunity.-

(1) Cause of action.-

(A) In general. This subtitle creates an exclusive cause of action for coronavirus exposure actions.

(B) Liability. A plaintiff may prevail in a coronavirus exposure action only in accordance with the requirements of this title.

(C) Application. The provisions of this subtitle shall apply to-

(i) any cause of action that is a coronavirus exposure action that was filed before the date of enactment of this Act and that is pending on such date of enactment; and

(ii) any coronavirus exposure action filed on or after such date of enactment.

(2) Preservation of liability limits and defenses. Except as otherwise explicitly provided in this subtitle, nothing in this subtitle expands any liability otherwise imposed or limits any defense otherwise available under Federal, State, or Tribal law.

(3) Immunity. Nothing in this subtitle abrogates the immunity of any State, or waives the immunity of any Tribal government. The limitations on liability provided under this subtitle shall control in any action properly filed against a State or Tribal government pursuant to a duly executed waiver by the State or Tribe of sovereign immunity and stating claims within the scope of this subtitle.

(b) Preemption and Supersedure.-

(1) In general. Except as described in paragraphs (2) through (6), this subtitle preempts and supersedes any Federal, State, or Tribal law, including statutes, regulations, rules, or standards that are enacted, promulgated, or established under common law, related to recovery for personal injuries caused by actual, alleged, feared, or potential for exposure to coronavirus.

(2) Stricter laws not preempted or superseded. Nothing in this subtitle shall be construed to affect the applicability of any provision of any Federal, State, or Tribal law that imposes stricter limits on damages or liabilities for personal injury caused by, arising out of, or related to an actual, alleged, feared, or potential for exposure to coronavirus, or otherwise affords greater protection to defendants in any coronavirus exposure action, than are provided in this subtitle. Any such provision of Federal, State, or Tribal law shall be applied in addition to the requirements of this subtitle and not in lieu thereof.

(3) Workers' compensation laws not preempted or superseded. Nothing in this subtitle shall be construed to affect the applicability of any State or Tribal law providing for a workers' compensation scheme or program, or to preempt or supersede an exclusive remedy under such scheme or program.

(4) Enforcement actions. Nothing in this subtitle shall be construed to impair, limit, or affect the authority of the Federal Government, or of any State, local, or Tribal government, to bring any criminal, civil, or administrative enforcement action against any individual or entity.

(5) Discrimination claims. Nothing in this subtitle shall be construed to affect the applicability of any provision of any Federal, State, or Tribal law that creates a cause of action for intentional discrimination on the basis of race, color, national origin, religion, sex (including pregnancy), disability, genetic information, or age.

(6) Maintenance and cure. Nothing in this subtitle shall be construed to affect a seaman's right to claim maintenance and cure benefits.

(c) Statute of Limitations. A coronavirus exposure action may not be commenced in any Federal, State, or Tribal government court later than 1 year after the date of the actual, alleged, feared, or potential for exposure to coronavirus.

SEC. 122. LIABILITY; SAFE HARBOR.

(a) Requirements for Liability for Exposure to Coronavirus. Notwithstanding any other provision of law, and except as otherwise provided in this section, no individual or entity engaged in businesses, services, activities, or accommodations shall be liable in any coronavirus exposure action unless the plaintiff can prove by clear and convincing evidence that-

(1) in engaging in the businesses, services, activities, or accommodations, the individual or entity was not making reasonable efforts in light of all the circumstances to comply with the applicable government standards and guidance in effect at the time of the actual, alleged, feared, or potential for exposure to coronavirus;

(2) the individual or entity engaged in gross negligence or willful misconduct that caused an actual exposure to coronavirus; and

(3) the actual exposure to coronavirus caused the personal injury of the plaintiff.

(b) Reasonable Efforts To Comply.-

(1) Conflicting applicable government standards and guidance.-

(A) In general. If more than 1 government to whose jurisdiction an individual or entity is subject issues applicable government standards and guidance, and the applicable government standards and guidance issued by 1 or more of the governments conflicts with the applicable government standards and guidance issued by 1 or more of the other governments, the individual or entity shall be considered to have made reasonable efforts in light of all the circumstances to comply with the applicable government standards and guidance for purposes of subsection (a)(1) unless the plaintiff establishes by clear

and convincing evidence that the individual or entity was not making reasonable efforts in light of all the circumstances to comply with any of the conflicting applicable government standards and guidance issued by any government to whose jurisdiction the individual or entity is subject.

(B) Exception. If mandatory standards and regulations constituting applicable government standards and guidance issued by any government with jurisdiction over the individual or entity conflict with applicable government standards and guidance that are not mandatory and are issued by any other government with jurisdiction over the individual or entity or by the same government that issued the mandatory standards and regulations, the plaintiff may establish that the individual or entity did not make reasonable efforts in light of all the circumstances to comply with the applicable government standards and guidance for purposes of subsection (a)(1) by establishing by clear and convincing evidence that the individual or entity was not making reasonable efforts in light of all the circumstances to comply with the mandatory standards and regulations to which the individual or entity was subject.

(2) Written or published policy.-

(A) In general. If an individual or entity engaged in businesses, services, activities, or accommodations maintained a written or published policy on the mitigation of transmission of coronavirus at the time of the actual, alleged, feared, or potential for exposure to coronavirus that complied with, or was more protective than, the applicable government standards and guidance to which the individual or entity was subject, the individual or entity shall be presumed to have made reasonable efforts in light of all the circumstances to comply with the applicable government standards and guidance for purposes of subsection (a)(1).

(B) Rebuttal. The plaintiff may rebut the presumption under subparagraph (A) by establishing that the individual or entity was not complying with the written or published policy at the time of the actual, alleged, feared, or potential for exposure to coronavirus.

(C) Absence of a written or published policy. The absence of a written or published policy shall not give rise to a presumption that the individual or entity did not make reasonable efforts in light of all the circumstances to comply with the applicable government standards and guidance for purposes of subsection (a)(1).

(3) Timing. For purposes of subsection (a)(1), a change to a policy or practice by an individual or entity before or after the actual, alleged, feared, or potential for exposure to coronavirus, shall not be evidence of liability for the actual, alleged, feared, or potential for exposure to coronavirus.

(c) Third Parties. No individual or entity shall be held liable in a coronavirus exposure action for the acts or omissions of a third party, unless-

(1) the individual or entity had an obligation under general common law principles to control the acts or omissions of the third party; or

(2) the third party was an agent of the individual or entity.

(d) Mitigation. Changes to the policies, practices, or procedures of an individual or entity for complying with the applicable government standards and guidance after the time of the actual, alleged, feared, or potential for exposure to coronavirus, shall not be considered evidence of liability or culpability.

Subtitle B Liability Limitations for Health Care Providers

SEC. 141. APPLICATION OF SUBTITLE.

(a) In General.-

(1) Cause of action.-

(A) In general. This subtitle creates an exclusive cause of action for coronavirus-related medical liability actions.

(B) Liability. A plaintiff may prevail in a coronavirus-related medical liability action only in accordance with the requirements of this title.

(C) Application. The provisions of this subtitle shall apply to-

(i) any cause of action that is a coronavirus-related medical liability action that was filed before the date of enactment of this Act and that is pending on such date of enactment; and

(ii) any coronavirus-related medical liability action filed on or after such date of enactment.

(2) Preservation of liability limits and defenses. Except as otherwise explicitly provided in this subtitle, nothing in this subtitle expands any liability otherwise imposed or limits any defense otherwise available under Federal, State, or Tribal law.

(3) Immunity. Nothing in this subtitle abrogates the immunity of any State, or waives the immunity of any Tribal government. The limitations on liability provided under this subtitle shall control in any action properly filed against a State or Tribal government pursuant to a duly executed waiver by the State or Tribe of sovereign immunity and stating claims within the scope of this subtitle.

(b) Preemption and Supersedure.-

(1) In general. Except as described in paragraphs (2) through (6), this subtitle preempts and supersedes any Federal, State, or Tribal law, including statutes, regulations, rules, or standards that are enacted, promulgated, or established under common law, related to recovery for personal injuries caused by, arising out of, or related to an act or omission by a health care provider in the course of arranging for or providing coronavirus-related health care services.

(2) Stricter laws not preempted or superseded. Nothing in this subtitle shall be construed to affect the applicability of any provision of any Federal, State, or Tribal law that imposes stricter limits on damages or liabilities for personal injury caused by, arising out of, or related to an act or omission by a health care provider in the course of arranging for or providing coronavirus-related health care services, or otherwise affords greater protection to defendants in any coronavirus-related medical liability action than are provided in this subtitle. Any such provision of Federal, State, or Tribal law shall be applied in addition to the requirements of this subtitle and not in lieu thereof.

(3) Enforcement actions. Nothing in this subtitle shall be construed to impair, limit, or affect the authority of the Federal Government, or of any State, local, or Tribal government to bring any criminal, civil, or administrative enforcement action against any health care provider.

(4) Discrimination claims. Nothing in this subtitle shall be construed to affect the applicability of any provision of any Federal, State, or Tribal law that creates a cause of action for intentional discrimination on the basis of race, color, national origin, religion, sex (including pregnancy), disability, genetic information, or age.

(5) Public readiness and emergency preparedness. Nothing in this subtitle shall be construed to affect the applicability of section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) to any act or omission involving a covered countermeasure, as defined in subsection (i) of such section in arranging for or providing coronavirus-related health care services. Nothing in this subtitle shall be construed to affect the applicability of section 319F-4 of the Public Health Service Act (42 U.S.C. 247d-6e).

(6) Vaccine injury. To the extent that title XXI of the Public Health Service Act (42 U.S.C. 300aa-1 et seq.) establishes a Federal rule applicable to a civil action brought for a vaccine-related injury or death, this subtitle does not affect the application of that rule to such an action.

(c) Statute of Limitations. A coronavirus-related medical liability action may not be commenced in any Federal, State, or Tribal government court later than 1 year after the date of the alleged harm, damage, breach, or tort, unless tolled for-

(1) proof of fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

SEC. 142. LIABILITY FOR HEALTH CARE PROFESSIONALS AND HEALTH CARE FACILITIES DURING CORONAVIRUS PUBLIC HEALTH EMERGENCY.

(a) Requirements for Liability for Coronavirus-related Health Care Services. Notwithstanding any other provision of law, and except as provided in subsection (b), no health care provider shall be liable in a coronavirus-related medical liability action unless the plaintiff can prove by clear and convincing evidence-

(1) gross negligence or willful misconduct by the health care provider; and

(2) that the alleged harm, damage, breach, or tort resulting in the personal injury was directly caused by the alleged gross negligence or willful misconduct.

(b) Exceptions. For purposes of this section, acts, omissions, or decisions resulting from a resource or staffing shortage shall not be considered willful misconduct or gross negligence.

Subtitle C Substantive and Procedural Provisions for Coronavirus-related Actions Generally

SEC. 161. JURISDICTION.

(a) Jurisdiction. The district courts of the United States shall have concurrent original jurisdiction of any coronavirus-related action.

(b) Removal.-

(1) In general. A coronavirus-related action of which the district courts of the United States have original jurisdiction under subsection (a) that is brought in a State or Tribal government court may be removed to a district court of the United States in accordance with section 1446 of title 28, United States Code, except that-

(A) notwithstanding subsection (b)(2)(A) of such section, such action may be removed by any defendant without the consent of all defendants; and

(B) notwithstanding subsection (b)(1) of such section, for any cause of action that is a coronavirus-related action that was filed in a State court before the date of enactment of this Act and that is pending in such court on such date of enactment, and of which the district courts of the United States have original jurisdiction under subsection (a), any defendant may file a notice of removal of a civil action or proceeding within 30 days of the date of enactment of this Act.

(2) Procedure after removal. Section 1447 of title 28, United States Code, shall apply to any removal of a case under paragraph (1), except that, notwithstanding subsection (d) of such section, a court of appeals of the United States shall accept an appeal from an order of a district court granting or denying a motion to remand the case to the State or Tribal government court from which it was removed if application is made to the court of appeals of the United States not later than 10 days after the entry of the order.

SEC. 162. LIMITATIONS ON SUITS.

(a) Joint and Several Liability Limitations.-

(1) In general. An individual or entity against whom a final judgment is entered in any coronavirus-related action shall be liable solely for the portion of the judgment that corresponds to the relative and proportionate responsibility of that individual or entity. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all individuals or entities, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(2) Proportionate liability.-

(A) Determination of responsibility. In any coronavirus-related action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all individuals or entities who caused or contributed to the loss incurred by the plaintiff.

(B) Factors for consideration. In determining the percentage of responsibility under this subsection, the trier of fact shall consider-

(i) the nature of the conduct of each individual or entity found to have caused or contributed to the loss incurred by the plaintiff; and

(ii) the nature and extent of the causal relationship between the conduct of each such individual or entity and the damages incurred by the plaintiff.

(3) Joint liability for specific intent or fraud. Notwithstanding paragraph (1), in any coronavirus-related action the liability of a defendant is joint and several if the trier of fact specifically determines that the defendant-

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

(4) Right to contribution not affected. Nothing in this subsection affects the right, under any other law, of a defendant to contribution with respect to another defendant determined under paragraph (3) to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(b) Limitations on Damages. In any coronavirus-related action-

(1) the award of compensatory damages shall be limited to economic losses incurred as the result of the personal injury, harm, damage, breach, or tort, except that the court may award damages for noneconomic losses if the trier of fact determines that the personal injury, harm, damage, breach, or tort was caused by the willful misconduct of the individual or entity;

(2) punitive damages-

(A) may be awarded only if the trier of fact determines that the personal injury to the plaintiff was caused by the willful misconduct of the individual or entity; and

(B) may not exceed the amount of compensatory damages awarded; and

(3) the amount of monetary damages awarded to a plaintiff shall be reduced by the amount of compensation received by the plaintiff from another source in connection with the personal injury, harm, damage, breach, or tort, such as insurance or reimbursement by a government.

(c) Preemption and Supersedure.-

(1) In general. Except as described in paragraphs (2) and (3), this section preempts and supersedes any Federal, State, or Tribal law, including statutes, regulations, rules, or standards that are enacted, promulgated, or established under common law, related to joint and several liability, proportionate or contributory liability, contribution, or the award of damages for any coronavirus-related action.

(2) Stricter laws not preempted or superseded. Nothing in this section shall be construed to affect the applicability of any provision of any Federal, State, or Tribal law that-

(A) limits the liability of a defendant in a coronavirus-related action to a lesser degree of liability than the degree of liability determined under this section;

(B) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section; or

(C) limits the damages that can be recovered from a defendant in a coronavirus-related action to a lesser amount of damages than the amount determined under this section.

(3) Public readiness and emergency preparedness. Nothing in this subtitle shall be construed to affect the applicability of section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) to any act or omission involving a covered countermeasure, as defined in subsection (i) of such section in arranging for or providing coronavirus-related health care services. Nothing in this subtitle shall be construed to affect the applicability of section 319F-4 of the Public Health Service Act (42 U.S.C. 247d-6e).

SEC. 163. PROCEDURES FOR SUIT IN DISTRICT COURTS OF THE UNITED STATES.

(a) Pleading With Particularity. In any coronavirus-related action filed in or removed to a district court of the United States-

(1) the complaint shall plead with particularity-

(A) each element of the plaintiff's claim; and

(B) with respect to a coronavirus exposure action, all places and persons visited by the person on whose behalf the complaint was filed and all persons who visited the residence of the person on whose behalf the complaint was filed during the 14-day-period before the onset of the first symptoms allegedly caused by coronavirus, including-

(i) each individual or entity against which a complaint is filed, along with the factual basis for the belief that such individual or entity was a cause of the personal injury alleged; and

(ii) every other person or place visited by the person on whose behalf the complaint was filed and every other person who visited the residence of the person on whose behalf the complaint was filed during such period, along with the factual basis for the belief that these persons and places were not the cause of the personal injury alleged; and

(2) the complaint shall plead with particularity each alleged act or omission constituting gross negligence or willful misconduct that resulted in personal injury, harm, damage, breach, or tort.

(b) Separate Statements Concerning the Nature and Amount of Damages and Required State of Mind.-

(1) Nature and amount of damages. In any coronavirus-related action filed in or removed to a district court of the United States in which monetary damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(2) Required state of mind. In any coronavirus-related action filed in or removed to a district court of the United States in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

(c) Verification and Medical Records.-

(1) Verification requirement.-

(A) In general. The complaint in a coronavirus-related action filed in or removed to a district court of the United States shall include a verification, made by affidavit of the plaintiff under oath, stating that the pleading is true to the knowledge of the deponent, except as to matters specifically identified as being alleged on information and belief, and that as to those matters the plaintiff believes it to be true.

(B) Identification of matters alleged upon information and belief. Any matter that is not specifically identified as being alleged upon the information and belief of the plaintiff, shall be regarded for all purposes, including a criminal prosecution, as having been made upon the knowledge of the plaintiff.

(2) Materials required. In any coronavirus-related action filed in or removed to a district court of the United States, the plaintiff shall file with the complaint-

(A) an affidavit by a physician or other qualified medical expert who did not treat the person on whose behalf the complaint was filed that explains the basis for such physician's or other qualified medical expert's belief that such person suffered the personal injury, harm, damage, breach, or tort alleged in the complaint; and

(B) certified medical records documenting the alleged personal injury, harm, damage, breach, or tort.

(d) Application With Federal Rules of Civil Procedure. This section applies exclusively to any coronavirus-related action filed in or removed to a district court of the United States and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal civil procedure.

(e) Civil Discovery for Actions in District Courts of the United States.-

(1) Timing. Notwithstanding any other provision of law, in any coronavirus-related action filed in or removed to a district court of the United States, no discovery shall be allowed before-

(A) the time has expired for the defendant to answer or file a motion to dismiss; and

(B) if a motion to dismiss is filed, the court has ruled on the motion.

(2) Standard. Notwithstanding any other provision of law, the court in any coronavirus-related action that is filed in or removed to a district court of the United States-

(A) shall permit discovery only with respect to matters directly related to material issues contested in the coronavirus-related action; and

(B) may compel a response to a discovery request (including a request for admission, an interrogatory, a request for production of documents, or any other form of discovery request) under rule 37 of the Federal Rules of Civil Procedure, only if the court finds that-

(i) the requesting party needs the information sought to prove or defend as to a material issue contested in such action; and

(ii) the likely benefits of a response to such request equal or exceed the burden or cost for the responding party of providing such response.

(f) Interlocutory Appeal and Stay of Discovery. The courts of appeals of the United States shall have jurisdiction of an appeal from a motion to dismiss that is denied in any coronavirus-related action in a district court of the United States. The district court shall stay all discovery in such a coronavirus-related action until the court of appeals has disposed of the appeal.

(g) Class Actions and Multidistrict Litigation Proceedings.-

(1) Class actions. In any coronavirus-related action that is filed in or removed to a district court of the United States and is maintained as a class action or multidistrict litigation-

(A) an individual or entity shall only be a member of the class if the individual or entity affirmatively elects to be a member; and

(B) the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include-

(i) a concise and clear description of the nature of the action;

(ii) the jurisdiction where the case is pending; and

(iii) the fee arrangements with class counsel, including-

(I) the hourly fee being charged; or

(II) if it is a contingency fee, the percentage of the final award which will be paid, including an estimate of the total amount that would be paid if the requested damages were to be granted; and

(III) if the cost of the litigation is being financed, a description of the financing arrangement.

(2) Multidistrict litigations.-

(A) Trial prohibition. In any coordinated or consolidated pretrial proceedings conducted pursuant to section 1407(b) of title 28, United States Code, the judge or judges to whom coronavirus-related actions are assigned by the Judicial Panel on Multidistrict Litigation may not conduct a trial in a coronavirus-related action transferred to or directly filed in the proceedings unless all parties to that coronavirus-related action consent.

(B) Review of orders. The court of appeals of the United States having jurisdiction over the transferee district court shall permit an appeal to be taken from any order issued in the conduct of coordinated or consolidated pretrial proceedings conducted pursuant to section 1407(b) of title 28, United States Code, if the order is applicable to 1 or more coronavirus-related actions and an immediate appeal from the order may materially advance the ultimate termination of 1 or more coronavirus-related actions in the proceedings.

SEC. 164. DEMAND LETTERS; CAUSE OF ACTION.

(a) Cause of Action. If any person transmits or causes another to transmit in any form and by any means a demand for remuneration in exchange for settling, releasing, waiving, or otherwise not pursuing a claim that is, or could be, brought as part of a coronavirus-related action, the party receiving such a demand shall have a cause of action for the recovery of damages occasioned by such demand and for declaratory judgment in accordance with chapter 151 of title 28, United States Code, if the claim for which the letter was transmitted was meritless.

(b) Damages. Damages available under subsection (a) shall include-

(1) compensatory damages including costs incurred in responding to the demand; and

(2) punitive damages, if the court determines that the defendant had knowledge or was reckless with regard to the fact that the claim was meritless.

(c) Attorney's Fees and Costs. In an action commenced under subsection (a), if the plaintiff is a prevailing party, the court

shall, in addition to any judgment awarded to a plaintiff, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

(d) Jurisdiction. The district courts of the United States shall have concurrent original jurisdiction of all claims arising under subsection (a).

(e) Enforcement by the Attorney General.-

(1) In general. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of transmitting demands for remuneration in exchange for settling, releasing, waiving, or otherwise not pursuing a claim that is, or could be, brought as part of a coronavirus-related action and that is meritless, the Attorney General may commence a civil action in any appropriate district court of the United States.

(2) Relief. In a civil action under paragraph (1), the court may, to vindicate the public interest, assess a civil penalty against the respondent in an amount not exceeding $50,000 per transmitted demand for remuneration in exchange for settling, releasing, waiving or otherwise not pursuing a claim that is meritless.

(3) Distribution of civil penalties. If the Attorney General obtains civil penalties in accordance with paragraph (2), the Attorney General shall distribute the proceeds equitably among those persons aggrieved by the respondent's pattern or practice of transmitting demands for remuneration in exchange for settling, releasing, waiving or otherwise not pursuing a claim that is meritless.

Subtitle D Relation to Labor and Employment Laws

SEC. 181. LIMITATION ON VIOLATIONS UNDER SPECIFIC LAWS.

(a) In General.-

(1) Definition. In this subsection, the term 'covered Federal employment law' means any of the following:

(A) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (including any standard included in a State plan approved under section 18 of such Act (29 U.S.C. 667)).

(B) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(C) The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.).

(D) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.).

(E) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

(F) Title II of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff et seq.).

(G) Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.).

(2) Limitation. Notwithstanding any provision of a covered Federal employment law, in any action, proceeding, or investigation resulting from or related to an actual, alleged, feared, or potential for exposure to coronavirus, or a change in working conditions caused by a law, rule, declaration, or order related to coronavirus, an employer shall not be subject to any enforcement proceeding or liability under any provision of a covered Federal employment law if the employer-

(A) was relying on and generally following applicable government standards and guidance;

(B) knew of the obligation under the relevant provision; and

(C) attempted to satisfy any such obligation by-

(i) exploring options to comply with such obligations and with the applicable government standards and guidance (such as through the use of virtual training or remote communication strategies);

(ii) implementing interim alternative protections or procedures; or

(iii) following guidance issued by the relevant agency with jurisdiction with respect to any exemptions from such obligation.

(b) Public Accommodation Laws.-

(1) Definitions. In this subsection-

(A) the term 'auxiliary aids and services' has the meaning given the term in section 4 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12103);

(B) the term 'covered public accommodation law' means-

(i) title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181 et seq.); or

(ii) title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.);

(C) the term 'place of public accommodation' means-

(i) a place of public accommodation, as defined in section 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a); or

(ii) a public accommodation, as defined in section 301 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181); and

(D) the term 'public health emergency period' means a period designated a public health emergency period by a Federal, State, or local government authority.

(2) Actions and measures during a public health emergency.-

(A) In general. Notwithstanding any other provision of law or regulation, during any public health emergency period, no person who owns, leases (or leases to), or operates a place of public accommodation shall be liable under, or found in violation of, any covered public accommodation law for any action or measure taken regarding coronavirus and that place of public accommodation, if such person-

(i) has determined that the significant risk of substantial harm to public health or the health of employees cannot be reduced or eliminated by reasonably modifying policies, practices, or procedures, or the provision of an auxiliary aid or service; or

(ii) has offered such a reasonable modification or auxiliary aid or service but such offer has been rejected by the individual protected by the covered law.

(B) Required waiver prohibited. For purposes of this subsection, no person who owns, leases (or leases to), or operates a place of public accommodation shall be required to waive any measure, requirement, or recommendation that has been adopted in accordance with a requirement or recommendation issued by the Federal Government or any State or local government with regard to coronavirus, in order to offer such a reasonable modification or auxiliary aids and services.

SEC. 182. LIABILITY FOR CONDUCTING TESTING AT WORKPLACE.

Notwithstanding any other provision of Federal, State, or local law, an employer, or other person who hires or contracts with other individuals to provide services, conducting testing for coronavirus at the workplace shall not be liable for any action or

personal injury directly resulting from such testing, except for those personal injuries caused by the gross negligence or intentional misconduct of the employer or other person.

SEC. 183. JOINT EMPLOYMENT AND INDEPENDENT CONTRACTING.

Notwithstanding any other provision of Federal or State law, including any covered Federal employment law (as defined in section 181(a)), the Labor Management Relations Act, 1947 (29 U.S.C. 141 et seq.), the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), and the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), it shall not constitute evidence of a joint employment relationship or employment relationship for any employer to provide or require, for an employee of another employer or for an independent contractor, any of the following:

(1) Coronavirus-related policies, procedures, or training.

(2) Personal protective equipment or training for the use of such equipment.

(3) Cleaning or disinfecting services or the means for such cleaning or disinfecting.

(4) Workplace testing for coronavirus.

(5) Temporary assistance due to coronavirus, including financial assistance or other health and safety benefits.

SEC. 184. EXCLUSION OF CERTAIN NOTIFICATION REQUIREMENTS AS A RESULT OF THE COVID-19 PUBLIC HEALTH EMERGENCY.

(a) Definitions. Section 2(a) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101(a)) is amended-

(1) in paragraph (2), by adding before the semicolon at the end the following: 'and the shutdown, if occurring during the covered period, is not a result of the COVID-19 national emergency';

(2) in paragraph (3)-

(A) in subparagraph (A), by striking 'and' at the end;

(B) in subparagraph (B), by adding 'and' at the end; and

(C) by adding at the end the following:

'(C) if occurring during the covered period, is not a result of the COVID-19 national emergency;';

(3) in paragraph (7), by striking 'and';

(4) in paragraph (8), by striking the period at the end and inserting a semicolon; and

(5) by adding at the end the following:

'(9) the term 'covered period' means the period that-

'(A) begins on January 1, 2020; and

'(B) ends 90 days after the last date of the COVID-19 national emergency; and

'(10) the term 'COVID-19 national emergency' means the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID-19).'.

(b) Exclusion From Definition of Employment Loss. Section 2(b) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101(b)) is amended by adding at the end the following:

'(3) Notwithstanding subsection (a)(6), during the covered period an employee may not be considered to have experienced an employment loss if the termination, layoff exceeding 6 months, or reduction in hours of work of more than 50 percent during each month of any 6-month period involved is a result of the COVID-19 national emergency.'.

TITLE II PRODUCTS

SEC. 201. APPLICABILITY OF THE TARGETED LIABILITY PROTECTIONS FOR PANDEMIC AND EPIDEMIC PRODUCTS AND SECURITY COUNTERMEASURES WITH RESPECT TO COVID-19.

(a) In General. Section 319F-3(i)(1) of the Public Health Service Act (42 U.S.C. 247d-6d(i)(1)) is amended-

(1) in subparagraph (C), by striking '; or' and inserting a semicolon;

(2) in subparagraph (D), by striking the period and inserting '; or'; and

(3) by adding at the end the following:

'(E) a drug (as such term is defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act), biological product (including a vaccine) (as such term is defined in section 351(i)), or device (as such term is defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act) that-

'(i) is the subject of a notice of use of enforcement discretion issued by the Secretary if such drug, biological product, or device is used-

'(I) when such notice is in effect;

'(II) within the scope of such notice; and

'(III) in compliance with other applicable requirements of the Federal Food, Drug, and Cosmetic Act that are not the subject of such notice;

'(ii) in the case of a device, is exempt from the requirement under section 510(k) of the Federal Food, Drug, and Cosmetic Act; or

'(iii) in the case of a drug-

'(I) meets the requirements for marketing under a final administrative order under section 505G of the Federal Food, Drug, and Cosmetic Act; or

'(II) is marketed in accordance with section 505G(a)(3) of such Act.'.

(b) Clarifying Means of Distribution. Section 319F-3(a)(5) of the Public Health Service Act (42 U.S.C. 247d-6d(a)(5)) is amended by inserting 'by, or in partnership with, Federal, State, or local public health officials or the private sector' after 'distribution' the first place it appears.

(c) No Change to Administrative Procedure Act Application to Enforcement Discretion Exercise. Section 319F-3 of the Public Health Service Act (42 U.S.C. 247d-6d) is amended by adding at the end the following:

'(j) Rule of Construction. Nothing in this section shall be construed-

'(1) to require use of procedures described in section 553 of title 5, United States Code, for a notice of use of enforcement discretion for which such procedures are not otherwise required; or

'(2) to affect whether such notice constitutes final agency action within the meaning of section 704 of title 5, United States Code.'.

TITLE III GENERAL PROVISIONS

SEC. 301. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such a provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act, as well as the application of such provision or amendment to any person other than the parties to the action holding the provision or amendment to be unconstitutional, or to any circumstances other than those presented in such action, shall not be affected thereby.

2019 CONG US S 4317

End of Document

HOUSE BILL NO. 6032

July 23, 2020, Introduced by Reps. Filler, Albert, Brann, Allor, Webber, Bellino, Steven Johnson, Paquette, Alexander, Meerman, Slagh, Calley, Lower, Marino, LaFave, Wozniak, Rendon, Markkanen, Maddock, VanSingel, Bollin, Miller, Vaupel, Farrington and Frederick and referred to the Committee on Judiciary.

A bill to prohibit an employer from taking certain actions against an employee who does not report to work under certain circumstances related to COVID-19; to prohibit an employee from reporting to work under certain circumstances related to COVID-19; to prohibit discrimination and retaliation for engaging in certain activities; to provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. As used in this act:

(a) "Adverse employment action" includes, but is not limited to, any of the following:

(*i*) Disciplinary action.

(*ii*) Termination of employment.

(*iii*) A demotion or a failure to provide a promotion.

(*iv*) An involuntary change in a work shift.

(*v*) An involuntary reduction of work hours.

(*vi*) A reduction of employment benefits.

(*vii*) A reduction in salary or wage.

(*viii*) Any other changes in the terms or conditions of employment.

(b) "Close contact" means being within approximately 6 feet of an individual for a prolonged period of time.

(c) "COVID-19" means the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2.

(d) "Damages" means any of the following:

(*i*) Actual injury or loss.

(*ii*) Reasonable attorney fees.

(*iii*) Reasonable court costs.

(e) "Employee" means an individual employed by an employer and whose primary workplace is not the individual's residence.

(f) "Employer" means a person or a state or local governmental entity that employs 1 or more individuals.

(g) "First responder" means any of the following:

(*i*) A law enforcement officer.

(*ii*) A firefighter.

(*iii*) A paramedic.

(h) "Health care facility" means the following facilities,

including those that may operate under shared or joint ownership, and a facility used as surge capacity by any of the following facilities:

(*i*) An entity listed in section 20106(1) of the public health code, 1978 PA 368, MCL 333.20106.

(*ii*) A state-owned hospital or surgical center.

(*iii*) A state-operated outpatient facility.

(*iv*) A state-operated veterans' facility.

(i) "Person" means an individual, partnership, corporation, association, or other legal entity.

(j) "Principal symptoms of COVID-19" means any of the following:

(*i*) Fever.

(*ii*) Atypical cough.

(*iii*) Atypical shortness of breath.

Sec. 3. (1) Except as provided in subsections (2) and (3), an employer shall not take adverse employment action or otherwise discriminate or retaliate against an employee who does either of the following:

(a) Complies with section 5.

(b) Opposes a violation of this act.

(2) An employer may discharge or discipline an employee if 1 or more of the following apply:

(a) The employee is not prohibited from reporting to work under this act but the employee does not report to work. This subdivision does not apply if the employee's failure to report to work is otherwise protected by law.

(b) The employee consents to the discharge or discipline.

(c) There is any other lawful basis to discipline or discharge

the employee.

(3) Subsection (1) does not apply to either of the following:

(a) An employee described in section 5 who reports to work before the end of the applicable period specified in section 5.

(b) An employee described in section 5 who fails to be tested for COVID-19 within 3 days of displaying 1 or more of the principal symptoms of COVID-19.

Sec. 5. (1) An employee who tests positive for COVID-19 or displays 1 or more of the principal symptoms of COVID-19 shall not report to work until the employee receives a negative COVID-19 test result or until both of the following conditions are met:

(a) Three days have passed since the employee's symptoms have ended.

(b) Seven days have passed since either of the following, whichever is later:

(*i*) The date the employee's symptoms first appeared.

(*ii*) The date the employee received the test that yielded a positive result for COVID-19.

(2) Except as provided in subsection (3), an employee who has close contact with an individual who tests positive for COVID-19 or with an individual who displays 1 or more of the principal symptoms of COVID-19 shall not report to work until 1 of the following conditions is met:

(a) Fourteen days have passed since the employee last had close contact with the individual.

(b) The individual with whom the employee had close contact receives a negative COVID-19 test result.

(3) Subsection (2) does not apply to an employee who is any of the following:

(a) A health care professional.

(b) A worker at a health care facility.

(c) A first responder.

(d) A child protective service employee.

(e) A worker at a child caring institution, as that term is defined in section 1 of 1973 PA 116, MCL 722.111.

(f) A worker at a correctional facility.

Sec. 7. (1) An employee aggrieved by a violation of this act may bring a civil action for appropriate injunctive relief or damages, or both, in the circuit court for the county where the alleged violation occurred or for the county where the employer against whom the action is filed is located or has its principal place of business.

(2) A court shall award to a plaintiff who prevails in an action brought under this act damages of not less than $5,000.00.

Sec. 9. (1) This act applies to public employers and public employees, except to the extent that it is inconsistent with section 5 of article XI of the state constitution of 1963.

(2) If a collective bargaining agreement or other contract that is inconsistent with this act is in effect for an employee on the effective date of this act, this act applies to that employee beginning on the date the collective bargaining agreement or other contract expires or is amended, extended, or renewed.

Sec. 11. This act is repealed effective March 31, 2021.

Enacting section 1. This act does not take effect unless all of the following bills of the 100th Legislature are enacted into law:

(a) Senate Bill No.____ or House Bill No.____ (request no. 06557'20 ****).

(b) Senate Bill No.____ or House Bill No.____ (request no. 06751'20 **).

PUBLIC LAW 116–127—MAR. 18, 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Public Law 116–127
116th Congress

An Act

Mar. 18, 2020
[H.R. 6201]

Making emergency supplemental appropriations for the fiscal year ending September 30, 2020, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Families First Coronavirus Response Act. 29 USC 2601 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Families First Coronavirus Response Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

1 USC 1 note.

SEC. 3. REFERENCES.

Except as expressly provided otherwise, any reference to "this Act" contained in any division of this Act shall be treated as referring only to the provisions of that division.

Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020.

DIVISION A—SECOND CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL APPROPRIATIONS ACT, 2020

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2020, and for other purposes, namely:

TITLE I

DEPARTMENT OF AGRICULTURE

FOOD AND NUTRITION SERVICE

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For an additional amount for the "Special Supplemental Nutrition Program for Women, Infants, and Children", $500,000,000, to remain available through September 30, 2021: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

COMMODITY ASSISTANCE PROGRAM

For an additional amount for the "Commodity Assistance Program" for the emergency food assistance program as authorized by section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) and section 204(a)(1) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 7508(a)(1)), $400,000,000, to remain available through September 30, 2021: *Provided*, That of the funds made available, the Secretary may use up to $100,000,000 for costs associated with the distribution of commodities: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS—THIS TITLE

SEC. 1101. (a) PUBLIC HEALTH EMERGENCY.—During fiscal year 2020, in any case in which a school is closed for at least 5 consecutive days during a public health emergency designation during which the school would otherwise be in session, each household containing at least 1 member who is an eligible child attending the school shall be eligible to receive assistance pursuant to a state agency plan approved under subsection (b). Time periods. 7 USC 2011 note.

(b) ASSISTANCE.—To carry out this section, the Secretary of Agriculture may approve State agency plans for temporary emergency standards of eligibility and levels of benefits under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) for households with eligible children. Plans approved by the Secretary shall provide for supplemental allotments to households receiving benefits under such Act, and issuances to households not already receiving benefits. Such level of benefits shall be determined by the Secretary in an amount not less than the value of meals at the free rate over the course of 5 school days for each eligible child in the household. Plans. Determination.

(c) MINIMUM CLOSURE REQUIREMENT.—The Secretary of Agriculture shall not provide assistance under this section in the case of a school that is closed for less than 5 consecutive days. Time period.

(d) USE OF EBT SYSTEM.—A State agency may provide assistance under this section through the EBT card system established under section 7 of the Food and Nutrition Act of 2008 (7 U.S.C. 2016).

(e) RELEASE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary of Agriculture may authorize State

educational agencies and school food authorities administering a school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to release to appropriate officials administering the supplemental nutrition assistance program such information as may be necessary to carry out this section.

(f) WAIVERS.—To facilitate implementation of this section, the Secretary of Agriculture may approve waivers of the limits on certification periods otherwise applicable under section 3(f) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(f)), reporting requirements otherwise applicable under section 6(c) of such Act (7 U.S.C. 2015(c)), and other administrative requirements otherwise applicable to State agencies under such Act.

(g) AVAILABILITY OF COMMODITIES.—During fiscal year 2020, the Secretary of Agriculture may purchase commodities for emergency distribution in any area of the United States during a public health emergency designation.

(h) DEFINITIONS.—In this section:

(1) The term "eligible child" means a child (as defined in section 12(d) or served under section 11(a)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d), 1759(a)(1)) who, if not for the closure of the school attended by the child during a public health emergency designation and due to concerns about a COVID–19 outbreak, would receive free or reduced price school meals under the Richard B. Russell National School Lunch Act (42 U.S.C. 175l et seq.) at the school.

(2) The term "public health emergency designation" means the declaration of a public health emergency, based on an outbreak of SARS–CoV–2 or another coronavirus with pandemic potential, by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d).

(3) The term "school" has the meaning given the term in section 12(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)).

(i) FUNDING.—There are hereby appropriated to the Secretary of Agriculture such amounts as are necessary to carry out this section: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Grants.
Territories.

SEC. 1102. In addition to amounts otherwise made available, $100,000,000, to remain available through September 30, 2021, shall be available for the Secretary of Agriculture to provide grants to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance in response to a COVID–19 public health emergency: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE II

DEPARTMENT OF DEFENSE

DEFENSE HEALTH PROGRAM

For an additional amount for "Defense Health Program", $82,000,000, to remain available until September 30, 2022, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in section 6006(a) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE III

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TAXPAYER SERVICES

For an additional amount for "Taxpayer Services", $15,000,000, to remain available until September 30, 2022, for the purposes of carrying out the Families First Coronavirus Response Act: *Provided*, That amounts provided under this heading in this Act may be transferred to and merged with "Operations Support": *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE IV

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

INDIAN HEALTH SERVICES

For an additional amount for "Indian Health Services", $64,000,000, to remain available until September 30, 2022, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in section 6007 of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amounts shall be allocated at the discretion of the Director of the Indian Health Service: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE V

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATION FOR COMMUNITY LIVING

AGING AND DISABILITY SERVICES PROGRAMS

For an additional amount for "Aging and Disability Services Programs", $250,000,000, to remain available until September 30, 2021, for activities authorized under subparts 1 and 2 of part C, of title III, and under title VI, of the Older Americans Act of 1965 ("OAA"), of which $160,000,000 shall be for Home-Delivered Nutrition Services, $80,000,000 shall be for Congregate Nutrition Services, and $10,000,000 shall be for Nutrition Services for Native Americans: *Provided*, That State matching requirements under sections 304(d)(1)(D) and 309(b)(2) of the OAA shall not apply to funds made available under this heading in this Act: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OFFICE OF THE SECRETARY

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

Coordination.

For an additional amount for "Public Health and Social Services Emergency Fund", $1,000,000,000, to remain available until expended, for activities authorized under section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11), in coordination with the Assistant Secretary for Preparedness and Response and the Administrator of the Centers for Medicare & Medicaid Services, to pay the claims of providers for reimbursement, as described in subsection (a)(3)(D) of such section 2812, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in paragraph (1) of section 6001(a) of division F of the Families First Coronavirus Response Act (or the administration of such products) or visits described in paragraph (2) of such section for uninsured individuals: *Provided*, That the term "uninsured individual" in this paragraph means an individual who is not enrolled in—

Definition.

(1) a Federal health care program (as defined under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f)), including an individual who is eligible for medical assistance only because of subsection (a)(10)(A)(ii)(XXIII) of Section 1902 of the Social Security Act; or

(2) a group health plan or health insurance coverage offered by a health insurance issuer in the group or individual market (as such terms are defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91)), or a health plan offered under chapter 89 of title 5, United States Code:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE VI

DEPARTMENT OF VETERANS AFFAIRS

VETERANS HEALTH ADMINISTRATION

MEDICAL SERVICES

For an additional amount for "Medical Services", $30,000,000, to remain available until September 30, 2022, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

MEDICAL COMMUNITY CARE

For an additional amount for "Medical Community Care", $30,000,000, to remain available until September 30, 2022, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in section 6006(b) of division F of the Families First Coronavirus Response Act (or the administration of such products): *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE VII

GENERAL PROVISIONS—THIS ACT

SEC. 1701. Not later than 30 days after the date of enactment of this Act, the head of each executive agency that receives funding in this Act shall provide a report detailing the anticipated uses of all such funding to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That each report shall include estimated personnel and administrative costs, as well as the total amount of funding apportioned, allotted, obligated, and expended, to date: *Provided further*, That each such plan shall be updated and submitted to such Committees every 60 days until all funds are expended or expire.

Reports.

Cost estimates.

Plan.
Time period.

SEC. 1702. States and local governments receiving funds or assistance pursuant to this division shall ensure the respective State Emergency Operations Center receives regular and real-time reporting on aggregated data on testing and results from State and local public health departments, as determined by the Director of the Centers for Disease Control and Prevention, and that such data is transmitted to the Centers for Disease Control and Prevention.

State and local government.
Data.
Determination.

SEC. 1703. Each amount appropriated or made available by this Act is in addition to amounts otherwise appropriated for the fiscal year involved.

SEC. 1704. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 1705. Unless otherwise provided for by this Act, the additional amounts appropriated by this Act to appropriations accounts shall be available under the authorities and conditions applicable to such appropriations accounts for fiscal year 2020.

President.

SEC. 1706. Each amount designated in this Act by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

SEC. 1707. Any amount appropriated by this Act, designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 and subsequently so designated by the President, and transferred pursuant to transfer authorities provided by this Act shall retain such designation.

This division may be cited as the "Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020".

DIVISION B—NUTRITION WAIVERS

Maintaining Essential Access to Lunch for Students Act.

TITLE I—MAINTAINING ESSENTIAL ACCESS TO LUNCH FOR STUDENTS ACT

42 USC 1751 note.

SEC. 2101. SHORT TITLE.

This title may be cited as the "Maintaining Essential Access to Lunch for Students Act" or the "MEALS Act".

42 USC 1760 note.

SEC. 2102. WAIVER EXCEPTION FOR SCHOOL CLOSURES DUE TO COVID–19.

(a) IN GENERAL.—The requirements under section 12(l)(1)(A)(iii) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)(1)(A)(iii)) shall not apply to a qualified COVID–19 waiver.

(b) ALLOWABLE INCREASE IN FEDERAL COSTS.—Notwithstanding paragraph (4) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), the Secretary of Agriculture may grant a qualified COVID–19 waiver that increases Federal costs.

(c) TERMINATION AFTER PERIODIC REVIEW.—The requirements under section 12(l)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)(5)) shall not apply to a qualified COVID–19 waiver.

(d) QUALIFIED COVID–19 WAIVER.—In this section, the term "qualified COVID–19 waiver" means a waiver—

(1) requested by a State (as defined in section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8))) or eligible service provider under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)); and

(2) to waive any requirement under such Act (42 U.S.C. 1751 et seq.) or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), or any regulation issued under either such Act, for purposes of providing meals and meal supplements under such Acts during a school closure due to COVID–19.

TITLE II—COVID—19 CHILD NUTRITION RESPONSE ACT

COVID–19 Child Nutrition Response Act.

SEC. 2201. SHORT TITLE.

42 USC 1751 note.

This title may be cited as the "COVID–19 Child Nutrition Response Act".

SEC. 2202. NATIONAL SCHOOL LUNCH PROGRAM REQUIREMENT WAIVERS ADDRESSING COVID–19.

42 USC 1760 note.

(a) NATIONWIDE WAIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may establish a waiver for all States under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), for purposes of—

(A) providing meals and meal supplements under a qualified program; and

(B) carrying out subparagraph (A) with appropriate safety measures with respect to COVID–19, as determined by the Secretary.

(2) STATE ELECTION.—A waiver established under paragraph (1) shall—

(A) notwithstanding paragraph (2) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)), apply automatically to any State that elects to be subject to the waiver without further application; and

(B) not be subject to the requirements under paragraph (3) of such section.

(b) CHILD AND ADULT CARE FOOD PROGRAM WAIVER.—Notwithstanding any other provision of law, the Secretary may grant a waiver under section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) to allow non-congregate feeding under a child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766) if such waiver is for the purposes of—

(1) providing meals and meal supplements under such child and adult care food program; and

(2) carrying out paragraph (1) with appropriate safety measures with respect to COVID–19, as determined by the Secretary.

(c) MEAL PATTERN WAIVER.—Notwithstanding paragraph (4)(A) of section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) the Secretary may grant a waiver under such section that relates to the nutritional content of meals served if the Secretary determines that—

(1) such waiver is necessary to provide meals and meal supplements under a qualified program; and

(2) there is a supply chain disruption with respect to foods served under such a qualified program and such disruption is due to COVID–19.

(d) REPORTS.—Each State that receives a waiver under subsection (a), (b), or (c), shall, not later than 1 year after the date such State received such waiver, submit a report to the Secretary that includes the following:

(1) A summary of the use of such waiver by the State and eligible service providers. Summary.

(2) A description of whether such waiver resulted in improved services to children.

(e) SUNSET.—The authority of the Secretary to establish or grant a waiver under this section shall expire on September 30, 2020.

(f) DEFINITIONS.—In this section:

(1) QUALIFIED PROGRAM.—The term "qualified program" means the following:

(A) The school lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

(B) The school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).

(C) The child and adult care food program under section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766).

(D) The summer food service program for children under section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761).

(2) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(3) STATE.—The term "State" has the meaning given such term in section 12(d)(8) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(d)(8)).

42 USC 1786 note.

SEC. 2203. PHYSICAL PRESENCE WAIVER UNDER WIC DURING CERTAIN PUBLIC HEALTH EMERGENCIES.

(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may grant a request described in paragraph (2) to—

(A) waive the requirement under section 17(d)(3)(C)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)(C)(i)); and

(B) defer anthropometric and bloodwork requirements necessary to determine nutritional risk.

Effective date.

(2) REQUEST.—A request described in this paragraph is a request made to the Secretary by a State agency to waive, on behalf of the local agencies served by such State agency, the requirements described in paragraph (1) during any portion of the emergency period (as defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) (beginning on or after the date of the enactment of this section).

(b) REPORTS.—

(1) LOCAL AGENCY REPORTS.—Each local agency that uses a waiver pursuant to subsection (a) shall, not later than 1 year after the date such local agency uses such waiver, submit a report to the State agency serving such local agency that includes the following:

Summary.

(A) A summary of the use of such waiver by the local agency.

(B) A description of whether such waiver resulted in improved services to women, infants, and children.

(2) STATE AGENCY REPORTS.—Each State agency that receives a waiver under subsection (a) shall, not later than 18 months after the date such State agency received such

waiver, submit a report to the Secretary that includes the following:

(A) A summary of the reports received by the State agency under paragraph (1). Summary.

(B) A description of whether such waiver resulted in improved services to women, infants, and children.

(c) SUNSET.—The authority under this section shall expire on September 30, 2020.

(d) DEFINITIONS.—In this section:

(1) LOCAL AGENCY.—The term "local agency" has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(2) NUTRITIONAL RISK.—The term "nutritional risk" has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(3) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(4) STATE AGENCY.— The term "State agency" has the meaning given the term in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

SEC. 2204. ADMINISTRATIVE REQUIREMENTS WAIVER UNDER WIC.

(a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Agriculture may, if requested by a State agency (as defined in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), modify or waive any qualified administrative requirement with respect to such State agency.

(2) QUALIFIED ADMINISTRATIVE REQUIREMENT.—In this section, the term "qualified administrative requirement" means a regulatory requirement issued under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) that the Secretary of Agriculture determines— Definition. Determination.

(A) cannot be met by a State agency due to COVID–19; and

(B) the modification or waiver of which is necessary to provide assistance under such section.

(b) STATE AGENCY REPORTS.—Each State agency that receives a waiver under subsection (a)(1) shall, not later than 1 year after the date such State agency received such waiver, submit a report to the Secretary of Agriculture that includes the following:

(1) A summary of the use of such waiver by the State agency. Summary.

(2) A description of whether such waiver resulted in improved services to women, infants, and children.

(c) SUNSET.—The authority under this section shall expire on September 30, 2020.

TITLE III—SNAP WAIVERS

SEC. 2301. SNAP FLEXIBILITY FOR LOW-INCOME JOBLESS WORKERS. Effective date. Time period. 7 USC 2011 note.

(a) Beginning with the first month that begins after the enactment of this Act and for each subsequent month through the end of the month subsequent to the month a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak

of coronavirus disease 2019 (COVID–19) is lifted, eligibility for supplemental nutrition assistance program benefits shall not be limited under section 6(o)(2) of the Food and Nutrition Act of 2008 unless an individual does not comply with the requirements of a program offered by the State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that meets the standards of subparagraphs (B) or (C) of such section 6(o)(2).

Effective date.

(b) Beginning on the month subsequent to the month the public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of COVID–19 is lifted for purposes of section 6(o) of the Food and Nutrition Act of 2008, such State agency shall disregard any period during which an individual received benefits under the supplemental nutrition assistance program prior to such month.

7 USC 2011 note.

SEC. 2302. ADDITIONAL SNAP FLEXIBILITIES IN A PUBLIC HEALTH EMERGENCY.

(a) In the event of a public health emergency declaration by the Secretary of Health and Human Services under section 319 of the Public Health Service Act based on an outbreak of coronavirus disease 2019 (COVID–19) and the issuance of an emergency or disaster declaration by a State based on an outbreak of COVID–19, the Secretary of Agriculture—

Determination.

(1) shall provide, at the request of a State agency (as defined in section 3 of the Food and Nutrition Act of 2008) that provides sufficient data (as determined by the Secretary through guidance) supporting such request, for emergency allotments to households participating in the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 to address temporary food needs not greater than the applicable maximum monthly allotment for the household size; and

Consultation.

(2) may adjust, at the request of State agencies or by guidance in consultation with one or more State agencies, issuance methods and application and reporting requirements under the Food and Nutrition Act of 2008 to be consistent with what is practicable under actual conditions in affected areas. (In making this adjustment, the Secretary shall consider the availability of offices and personnel in State agencies, any conditions that make reliance on electronic benefit transfer systems described in section 7(h) of the Food and Nutrition Act of 2008 impracticable, any disruptions of transportation and communication facilities, and any health considerations that warrant alternative approaches.)

Deadline.
Web posting.

(b) Not later than 10 days after the date of the receipt or issuance of each document listed in paragraphs (1), (2), or (3) of this subsection, the Secretary of Agriculture shall make publicly available on the website of the Department the following documents:

(1) Any request submitted by State agencies under subsection (a).

(2) The Secretary's approval or denial of each such request.

(3) Any guidance issued under subsection (a)(2).

Reports.
Recommendations.

(c) The Secretary of Agriculture shall, within 18 months after the public health emergency declaration described in subsection (a) is lifted, submit a report to the House and Senate Agriculture Committees with a description of the measures taken to address

the food security needs of affected populations during the emergency, any information or data supporting State agency requests, any additional measures that States requested that were not approved, and recommendations for changes to the Secretary's authority under the Food and Nutrition Act of 2008 to assist the Secretary and States and localities in preparations for any future health emergencies.

DIVISION C—EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Emergency Family and Medical Leave Expansion Act.

SEC. 3101. SHORT TITLE.

29 USC 2601 note.

This Act may be cited as "Emergency Family and Medical Leave Expansion Act".

SEC. 3102. AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.

(a) PUBLIC HEALTH EMERGENCY LEAVE.—

(1) IN GENERAL.—Section 102(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) is amended by adding at the end the following:

"(F) During the period beginning on the date the Emergency Family and Medical Leave Expansion Act takes effect, and ending on December 31, 2020, because of a qualifying need related to a public health emergency in accordance with section 110.".

Time period.

(2) PAID LEAVE REQUIREMENT.—Section 102(c) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(c)) is amended by striking "under subsection (a)" and inserting "under subsection (a) (other than certain periods of leave under subsection (a)(1)(F))".

(b) REQUIREMENTS.—Title I of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611 et seq.) is amended by adding at the end the following:

"SEC. 110. PUBLIC HEALTH EMERGENCY LEAVE.

29 USC 2620.

"(a) DEFINITIONS.—The following shall apply with respect to leave under section 102(a)(1)(F):

Applicability.

"(1) APPLICATION OF CERTAIN TERMS.—The definitions in section 101 shall apply, except as follows:

"(A) ELIGIBLE EMPLOYEE.—In lieu of the definition in sections 101(2)(A) and 101(2)(B)(ii), the term 'eligible employee' means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under section 102(a)(1)(F).

"(B) EMPLOYER THRESHOLD.—Section 101(4)(A)(i) shall be applied by substituting 'fewer than 500 employees' for '50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year'.

"(2) ADDITIONAL DEFINITIONS.—In addition to the definitions described in paragraph (1), the following definitions shall apply with respect to leave under section 102(a)(1)(F):

"(A) QUALIFYING NEED RELATED TO A PUBLIC HEALTH EMERGENCY.—The term 'qualifying need related to a public health emergency', with respect to leave, means the

employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

"(B) PUBLIC HEALTH EMERGENCY.—The term 'public health emergency' means an emergency with respect to COVID–19 declared by a Federal, State, or local authority.

"(C) CHILD CARE PROVIDER.—The term 'child care provider' means a provider who receives compensation for providing child care services on a regular basis, including an 'eligible child care provider' (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n)).

"(D) SCHOOL.—The term 'school' means an 'elementary school' or 'secondary school' as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

"(3) REGULATORY AUTHORITIES.—The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

"(A) to exclude certain health care providers and emergency responders from the definition of eligible employee under section 110(a)(1)(A); and

"(B) to exempt small businesses with fewer than 50 employees from the requirements of section 102(a)(1)(F) when the imposition of such requirements would jeopardize the viability of the business as a going concern.

"(b) RELATIONSHIP TO PAID LEAVE.—

"(1) UNPAID LEAVE FOR INITIAL 10 DAYS.—

"(A) IN GENERAL.—The first 10 days for which an employee takes leave under section 102(a)(1)(F) may consist of unpaid leave.

"(B) EMPLOYEE ELECTION.—An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave under section 102(a)(1)(F) in accordance with section 102(d)(2)(B).

"(2) PAID LEAVE FOR SUBSEQUENT DAYS.—

"(A) IN GENERAL.—An employer shall provide paid leave for each day of leave under section 102(a)(1)(F) that an employee takes after taking leave under such section for 10 days.

"(B) CALCULATION.—

"(i) IN GENERAL.—Subject to clause (ii), paid leave under subparagraph (A) for an employee shall be calculated based on—

"(I) an amount that is not less than two-thirds of an employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)); and

"(II) the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)).

"(ii) CLARIFICATION.—In no event shall such paid leave exceed $200 per day and $10,000 in the aggregate.

"(C) VARYING SCHEDULE HOURS CALCULATION.—In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave under section 102(a)(1)(F), the employer shall use the following in place of such number:

"(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type. Time period.

"(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

"(c) NOTICE.—In any case where the necessity for leave under section 102(a)(1)(F) for the purpose described in subsection (a)(2)(A)(iii) is foreseeable, an employee shall provide the employer with such notice of leave as is practicable.

"(d) RESTORATION TO POSITION.—

"(1) IN GENERAL.—Section 104(a)(1) shall not apply with respect to an employee of an employer who employs fewer than 25 employees if the conditions described in paragraph (2) are met.

"(2) CONDITIONS.—The conditions described in this paragraph are the following:

"(A) The employee takes leave under section 102(a)(1)(F).

"(B) The position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the employer—

"(i) that affect employment; and

"(ii) are caused by a public health emergency during the period of leave.

"(C) The employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment.

"(D) If the reasonable efforts of the employer under subparagraph (C) fail, the employer makes reasonable efforts during the period described in paragraph (3) to contact the employee if an equivalent position described in subparagraph (C) becomes available.

"(3) CONTACT PERIOD.—The period described under this paragraph is the 1-year period beginning on the earlier of—

"(A) the date on which the qualifying need related to a public health emergency concludes; or

"(B) the date that is 12 weeks after the date on which the employee's leave under section 102(a)(1)(F) commences.".

29 USC 2620 note.

SEC. 3103. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.

(a) EMPLOYERS.—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under section 110(b)(2) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act, by making contributions to a multiemployer fund, plan, or program based on the paid leave each of its employees is entitled to under such section while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

(b) EMPLOYEES.—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for paid leave taken under section 102(a)(1)(F) of title I of the Family and Medical Leave Act of 1993, as added by the Families First Coronavirus Response Act.

29 USC 2620 note.

SEC. 3104. SPECIAL RULE FOR CERTAIN EMPLOYERS.

An employer under 110(a)(B) shall not be subject to section 107(a) for a violation of section 102(a)(1)(F) if the employer does not meet the definition of employer set forth in Section 101(4)(A)(i).

29 USC 2620 note.

SEC. 3105. SPECIAL RULE FOR HEALTH CARE PROVIDERS AND EMERGENCY RESPONDERS.

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of section 3102 of this Act.

29 USC 2620 note.

SEC. 3106. EFFECTIVE DATE.

This Act shall take effect not later than 15 days after the date of enactment of this Act.

Emergency Unemployment Insurance Stabilization and Access Act of 2020.

DIVISION D—EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION AND ACCESS ACT OF 2020

42 USC 1305 note.

SEC. 4101. SHORT TITLE.

This division may be cited as the "Emergency Unemployment Insurance Stabilization and Access Act of 2020".

SEC. 4102. EMERGENCY TRANSFERS FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION.

(a) IN GENERAL.—Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

"Emergency Transfers in Fiscal Year 2020 for Administration

"(h)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of emergency administration grants in fiscal year 2020 to the accounts of the States in the Unemployment Trust Fund, in accordance with succeeding provisions of this subsection. Grants.

"(B) The amount of an emergency administration grant with respect to a State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying $1,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2019, under the provisions of subsection (a). Determination.

"(C) Of the emergency administration grant determined under subparagraph (B) with respect to a State— Certifications.

"(i) not later than 60 days after the date of enactment of this subsection, 50 percent shall be transferred to the account of such State upon a certification by the Secretary of Labor to the Secretary of the Treasury that the State meets the requirements of paragraph (2); and Deadline.

"(ii) only with respect to a State in which the number of unemployment compensation claims has increased by at least 10 percent over the same quarter in the previous calendar year, the remainder shall be transferred to the account of such State upon a certification by the Secretary of Labor to the Secretary of the Treasury that the State meets the requirements of paragraph (3).

"(2) The requirements of this paragraph with respect to a State are the following:

"(A) The State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment. Such notification may be based on model notification language issued by the Secretary of Labor. Requirements. Notification.

"(B) The State ensures that applications for unemployment compensation, and assistance with the application process, are accessible in at least two of the following: in-person, by phone, or online.

"(C) The State notifies applicants when an application is received and is being processed, and in any case in which an application is unable to be processed, provides information about steps the applicant can take to ensure the successful processing of the application.

"(3) The requirements of this paragraph with respect to a State are the following: Requirements.

"(A) The State has expressed its commitment to maintain and strengthen access to the unemployment compensation system, including through initial and continued claims.

"(B) The State has demonstrated steps it has taken or will take to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week, and non-charging employers directly impacted by COVID–19 due to an illness in the workplace or direction from a public health official to isolate or quarantine workers.

"(4) Any amount transferred to the account of a State under this subsection may be used by such State only for the administration of its unemployment compensation law, including by taking such steps as may be necessary to ensure adequate resources in periods of high demand.

Reports. "(5) Not later than 1 year after the date of enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020, each State receiving emergency administration grant funding under paragraph (1)(C)(i) shall submit to the Secretary of Labor, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, a report that includes—

Analysis. "(A) an analysis of the recipiency rate for unemployment compensation in the State as such rate has changed over time;

"(B) a description of steps the State intends to take to increase such recipiency rate.

"(6)(A) Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account (as established by section 901 of the Social Security Act) such sums as the Secretary of Labor estimates to be necessary for purposes of making the transfers described in paragraph (1)(C).

"(B) There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.".

26 USC 3304 note. (b) EMERGENCY FLEXIBILITY.—Notwithstanding any other law, if a State modifies its unemployment compensation law and policies with respect to work search, waiting week, good cause, or employer experience rating on an emergency temporary basis as needed to respond to the spread of COVID–19, such modifications shall be disregarded for the purposes of applying section 303 of the Social Security Act and section 3304 of the Internal Revenue Code of 1986 to such State law.

42 USC 1103 note. (c) REGULATIONS.—The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

Time period. **SEC. 4103. TEMPORARY ASSISTANCE FOR STATES WITH ADVANCES.**

Section 1202(b)(10)(A) of the Social Security Act (42 U.S.C. 1322(b)(10)(A)) is amended by striking "beginning on the date of enactment of this paragraph and ending on December 31, 2010" and inserting "beginning on the date of enactment of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 and ending on December 31, 2020".

26 USC 3306 note. **SEC. 4104. TECHNICAL ASSISTANCE AND GUIDANCE FOR SHORT-TIME COMPENSATION PROGRAMS.**

The Secretary of Labor shall assist States in establishing, implementing, and improving the employer awareness of short-time compensation programs (as defined in section 3306(v) of the Internal Revenue Code of 1986) to help avert layoffs, including by providing technical assistance and guidance.

SEC. 4105. FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD.

26 USC 3304 note.

(a) IN GENERAL.—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section and before December 31, 2020 (and only with respect to States that receive emergency administration grant funding under clauses (i) and (ii) of section 903(h)(1)(C) of the Social Security Act (42 U.S.C. 1102(h)(1)(C))), section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall be applied by substituting "100 percent of" for "one-half of".

Applicability.

(b) TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.—With respect to weeks of unemployment beginning after the date of the enactment of this Act and ending on or before December 31, 2020, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall not apply.

(c) DEFINITIONS.—For purposes of this section—

(1) the terms "sharable extended compensation" and "sharable regular compensation" have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(2) the term "week" has the meaning given such term under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(d) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section.

DIVISION E—EMERGENCY PAID SICK LEAVE ACT

Emergency Paid Sick Leave Act.

SEC. 5101. SHORT TITLE.

29 USC 2601 note.

This Act may be cited as the "Emergency Paid Sick Leave Act".

SEC. 5102. PAID SICK TIME REQUIREMENT.

29 USC 2601 note.

(a) IN GENERAL.—An employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.

(3) The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.

(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter

has been closed, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions.

Consultation.

(6) The employee is 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.

Except that an employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of this subsection.

(b) DURATION OF PAID SICK TIME.—

(1) IN GENERAL.—An employee shall be entitled to paid sick time for an amount of hours determined under paragraph (2).

(2) AMOUNT OF HOURS.—The amount of hours of paid sick time to which an employee is entitled shall be as follows:

(A) For full-time employees, 80 hours.

(B) For part-time employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period.

(3) CARRYOVER.—Paid sick time under this section shall not carry over from 1 year to the next.

(c) EMPLOYER'S TERMINATION OF PAID SICK TIME.—Paid sick time provided to an employee under this Act shall cease beginning with the employee's next scheduled workshift immediately following the termination of the need for paid sick time under subsection (a).

(d) PROHIBITION.—An employer may not require, as a condition of providing paid sick time under this Act, that the employee involved search for or find a replacement employee to cover the hours during which the employee is using paid sick time.

(e) USE OF PAID SICK TIME.—

(1) IN GENERAL.—The paid sick time under subsection (a) shall be available for immediate use by the employee for the purposes described in such subsection, regardless of how long the employee has been employed by an employer.

(2) SEQUENCING.—

(A) IN GENERAL.—An employee may first use the paid sick time under subsection (a) for the purposes described in such subsection.

(B) PROHIBITION.—An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under subsection (a).

29 USC 2601 note.

SEC. 5103. NOTICE.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements described in this Act.

Public information.

(b) MODEL NOTICE.—Not later than 7 days after the date of enactment of this Act, the Secretary of Labor shall make publicly available a model of a notice that meets the requirements of subsection (a).

29 USC 2601 note.

SEC. 5104. PROHIBITED ACTS.

It shall be unlawful for any employer to discharge, discipline, or in any other manner discriminate against any employee who—

(1) takes leave in accordance with this Act; and

(2) has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act (including a proceeding that seeks enforcement of this Act), or has testified or is about to testify in any such proceeding.

SEC. 5105. ENFORCEMENT.

29 USC 2601 note.

(a) UNPAID SICK LEAVE.—An employer who violates section 5102 shall—

(1) be considered to have failed to pay minimum wages in violation of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206); and

(2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

(b) UNLAWFUL TERMINATION.—An employer who willfully violates section 5104 shall—

(1) be considered to be in violation of section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)); and

(2) be subject to the penalties described in sections 16 and 17 of such Act (29 U.S.C. 216; 217) with respect to such violation.

SEC. 5106. EMPLOYMENT UNDER MULTI-EMPLOYER BARGAINING AGREEMENTS.

29 USC 2601 note.

(a) EMPLOYERS.—An employer signatory to a multiemployer collective bargaining agreement may, consistent with its bargaining obligations and its collective bargaining agreement, fulfill its obligations under this Act by making contributions to a multiemployer fund, plan, or program based on the hours of paid sick time each of its employees is entitled to under this Act while working under the multiemployer collective bargaining agreement, provided that the fund, plan, or program enables employees to secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement and for the uses specified under section 5102(a).

(b) EMPLOYEES.—Employees who work under a multiemployer collective bargaining agreement into which their employers make contributions as provided in subsection (a) may secure pay from such fund, plan, or program based on hours they have worked under the multiemployer collective bargaining agreement for the uses specified in section 5102(a).

SEC. 5107. RULES OF CONSTRUCTION.

29 USC 2601 note.

Nothing in this Act shall be construed—

(1) to in any way diminish the rights or benefits that an employee is entitled to under any—

(A) other Federal, State, or local law;

(B) collective bargaining agreement; or

(C) existing employer policy; or

(2) to require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for paid sick time under this Act that has not been used by such employee.

29 USC 2601 note.

SEC. 5108. EFFECTIVE DATE.

This Act, and the requirements under this Act, shall take effect not later than 15 days after the date of enactment of this Act.

29 USC 2601 note.

SEC. 5109. SUNSET.

This Act, and the requirements under this Act, shall expire on December 31, 2020.

29 USC 2601 note.

SEC. 5110. DEFINITIONS.

For purposes of the Act:

(1) EMPLOYEE.—The terms "employee" means an individual who is—

(A)(i) an employee, as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)), who is not covered under subparagraph (E) or (F), including such an employee of the Library of Congress, except that a reference in such section to an employer shall be considered to be a reference to an employer described in clauses (i)(I) and (ii) of paragraph (5)(A); or

(ii) an employee of the Government Accountability Office;

(B) a State employee described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(C) a covered employee, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301), other than an applicant for employment;

(D) a covered employee, as defined in section 411(c) of title 3, United States Code;

(E) a Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code; or

(F) any other individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code).

(2) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person who is—

(i)(I) a covered employer, as defined in subparagraph (B), who is not covered under subclause (V);

(II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(IV) an employing office, as defined in section 411(c) of title 3, United States Code; or

(V) an Executive Agency as defined in section 105 of title 5, United States Code, and including the U.S. Postal Service and the Postal Regulatory Commission; and

(ii) engaged in commerce (including government), or an industry or activity affecting commerce (including government), as defined in subparagraph (B)(iii).

(B) COVERED EMPLOYER.—

(i) IN GENERAL.—In subparagraph (A)(i)(I), the term "covered employer"—

(I) means any person engaged in commerce or in any industry or activity affecting commerce that—

(aa) in the case of a private entity or individual, employs fewer than 500 employees; and

(bb) in the case of a public agency or any other entity that is not a private entity or individual, employs 1 or more employees;

(II) includes—

(aa) includes any person acting directly or indirectly in the interest of an employer in relation to an employee (within the meaning of such phrase in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)); and

(bb) any successor in interest of an employer;

(III) includes any "public agency", as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)); and

(IV) includes the Government Accountability Office and the Library of Congress.

(ii) PUBLIC AGENCY.—For purposes of clause (i)(IV), a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(iii) DEFINITIONS.—For purposes of this subparagraph:

(I) COMMERCE.—The terms "commerce" and "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce", as defined in paragraphs (1) and (3) of section 501 of the Labor Management Relations Act of 1947 (29 U.S.C. 142 (1) and (3)).

(II) EMPLOYEE.—The term "employee" has the same meaning given such term in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)).

(III) PERSON.—The term "person" has the same meaning given such term in section 3(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(a)).

(3) FLSA TERMS.—The terms "employ" and "State" have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(4) FMLA TERMS.—The terms "health care provider" and "son or daughter" have the meanings given such terms in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611).

(5) PAID SICK TIME.—

(A) IN GENERAL.—The term "paid sick time" means an increment of compensated leave that—

(i) is provided by an employer for use during an absence from employment for a reason described in any paragraph of section 2(a); and

(ii) is calculated based on the employee's required compensation under subparagraph (B) and the number of hours the employee would otherwise be normally scheduled to work (or the number of hours calculated under subparagraph (C)), except that in no event shall such paid sick time exceed—

(I) $511 per day and $5,110 in the aggregate for a use described in paragraph (1), (2), or (3) of section 5102(a); and

(II) $200 per day and $2,000 in the aggregate for a use described in paragraph (4), (5), or (6) of section 5102(a).

(B) REQUIRED COMPENSATION.—

(i) IN GENERAL.—Subject to subparagraph (A)(ii), the employee's required compensation under this subparagraph shall be not less than the greater of the following:

(I) The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)).

(II) The minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(III) The minimum wage rate in effect for such employee in the applicable State or locality, whichever is greater, in which the employee is employed.

(ii) SPECIAL RULE FOR CARE OF FAMILY MEMBERS.—Subject to subparagraph (A)(ii), with respect to any paid sick time provided for any use described in paragraph (4), (5), or (6) of section 5102(a), the employee's required compensation under this subparagraph shall be two-thirds of the amount described in clause (B)(i).

(C) VARYING SCHEDULE HOURS CALCULATION.—In the case of a part-time employee described in section 5102(b)(2)(B) whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken paid sick time under section 2(a), the employer shall use the following in place of such number:

Time period.

(i) Subject to clause (ii), a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick time, including hours for which the employee took leave of any type.

(ii) If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

(D) GUIDELINES.—Not later than 15 days after the date of the enactment of this Act, the Secretary of Labor

shall issue guidelines to assist employers in calculating the amount of paid sick time under subparagraph (A).

(E) REASONABLE NOTICE.—After the first workday (or portion thereof) an employee receives paid sick time under this Act, an employer may require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.

SEC. 5111. REGULATORY AUTHORITIES.

29 USC 2601 note.

The Secretary of Labor shall have the authority to issue regulations for good cause under sections 553(b)(B) and 553(d)(A) of title 5, United States Code—

(1) to exclude certain health care providers and emergency responders from the definition of employee under section 5110(1) including by allowing the employer of such health care providers and emergency responders to opt out;

(2) to exempt small businesses with fewer than 50 employees from the requirements of section 5102(a)(5) when the imposition of such requirements would jeopardize the viability of the business as a going concern; and

(3) as necessary, to carry out the purposes of this Act, including to ensure consistency between this Act and Division C and Division G of the Families First Coronavirus Response Act.

DIVISION F—HEALTH PROVISIONS

SEC. 6001. COVERAGE OF TESTING FOR COVID–19.

42 USC 1320b–5 note.
Effective date.

(a) IN GENERAL.—A group health plan and a health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan (as defined in section 1251(e) of the Patient Protection and Affordable Care Act)) shall provide coverage, and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements, for the following items and services furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act:

(1) In vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products.

(2) Items and services furnished to an individual during health care provider office visits (which term in this paragraph includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product described in paragraph (1), but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such individual for such product.

Application.

(b) ENFORCEMENT.—The provisions of subsection (a) shall be applied by the Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury to group health plans and health insurance issuers offering group or individual health insurance coverage as if included in the provisions of part A of title XXVII of the Public Health Service Act, part 7 of the Employee Retirement Income Security Act of 1974, and subchapter B of chapter 100 of the Internal Revenue Code of 1986, as applicable.

(c) IMPLEMENTATION.—The Secretary of Health and Human Services, Secretary of Labor, and Secretary of the Treasury may implement the provisions of this section through sub-regulatory guidance, program instruction or otherwise.

(d) TERMS.—The terms "group health plan"; "health insurance issuer"; "group health insurance coverage", and "individual health insurance coverage" have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), and section 9832 of the Internal Revenue Code of 1986, as applicable.

SEC. 6002. WAIVING COST SHARING UNDER THE MEDICARE PROGRAM FOR CERTAIN VISITS RELATING TO TESTING FOR COVID–19.

(a) IN GENERAL.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended—

(1) in subsection (a)(1)—

(A) by striking "and" before "(CC)"; and

(B) by inserting before the period at the end the following: ", and (DD) with respect to a specified COVID–19 testing-related service described in paragraph (1) of subsection (cc) for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection, the amounts paid shall be 100 percent of the payment amount otherwise recognized under such respective specified outpatient payment provision for such service,";

(2) in subsection (b), in the first sentence—

(A) by striking "and" before "(10)"; and

(B) by inserting before the period at the end the following: ", and (11) such deductible shall not apply with respect to any specified COVID–19 testing-related service described in paragraph (1) of subsection (cc) for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection"; and

(3) by adding at the end the following new subsection:

"(cc) SPECIFIED COVID–19 TESTING-RELATED SERVICES.—For purposes of subsection (a)(1)(DD):

"(1) DESCRIPTION.—

"(A) IN GENERAL.—A specified COVID–19 testing-related service described in this paragraph is a medical visit that—

"(i) is in any of the categories of HCPCS evaluation and management service codes described in subparagraph (B);

Effective date.

"(ii) is furnished during any portion of the emergency period (as defined in section 1135(g)(1)(B))

(beginning on or after the date of enactment of this subsection);

"(iii) results in an order for or administration of a clinical diagnostic laboratory test described in section 1852(a)(1)(B)(iv)(IV); and

"(iv) relates to the furnishing or administration of such test or to the evaluation of such individual for purposes of determining the need of such individual for such test.

"(B) CATEGORIES OF HCPCS CODES.—For purposes of subparagraph (A), the categories of HCPCS evaluation and management services codes are the following:

"(i) Office and other outpatient services.

"(ii) Hospital observation services.

"(iii) Emergency department services.

"(iv) Nursing facility services.

"(v) Domiciliary, rest home, or custodial care services.

"(vi) Home services.

"(vii) Online digital evaluation and management services.

"(2) SPECIFIED OUTPATIENT PAYMENT PROVISION.—A specified outpatient payment provision described in this paragraph is any of the following:

"(A) The hospital outpatient prospective payment system under subsection (t).

"(B) The physician fee schedule under section 1848.

"(C) The prospective payment system developed under section 1834(o).

"(D) Section 1834(g), with respect to an outpatient critical access hospital service.

"(E) The payment basis determined in regulations pursuant to section 1833(a)(3) for rural health clinic services.".

(b) CLAIMS MODIFIER.—The Secretary of Health and Human Services shall provide for an appropriate modifier (or other identifier) to include on claims to identify, for purposes of subparagraph (DD) of section 1833(a)(1), as added by subsection (a), specified COVID–19 testing-related services described in paragraph (1) of section 1833(cc) of the Social Security Act, as added by subsection (a), for which payment may be made under a specified outpatient payment provision described in paragraph (2) of such subsection. 42 USC 1395*l* note.

(c) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, including amendments made by, this section through program instruction or otherwise. 42 USC 1395*l* note.

SEC. 6003. COVERAGE OF TESTING FOR COVID–19 AT NO COST SHARING UNDER THE MEDICARE ADVANTAGE PROGRAM.

(a) IN GENERAL.—Section 1852(a)(1)(B) of the Social Security Act (42 U.S.C. 1395w–22(a)(1)(B)) is amended—

(1) in clause (iv)—

(A) by redesignating subclause (IV) as subclause (VI); and

(B) by inserting after subclause (III) the following new subclauses:

Effective date.

"(IV) Clinical diagnostic laboratory test administered during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of the Families First Coronavirus Response Act for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 and the administration of such test.

"(V) Specified COVID–19 testing-related services (as described in section 1833(cc)(1)) for which payment would be payable under a specified outpatient payment provision described in section 1833(cc)(2).";

(2) in clause (v), by inserting ", other than subclauses (IV) and (V) of such clause," after "clause (iv)"; and

(3) by adding at the end the following new clause:

Effective date.

"(vi) PROHIBITION OF APPLICATION OF CERTAIN REQUIREMENTS FOR COVID–19 TESTING.—In the case of a product or service described in subclause (IV) or (V), respectively, of clause (iv) that is administered or furnished during any portion of the emergency period described in such subclause beginning on or after the date of the enactment of this clause, an MA plan may not impose any prior authorization or other utilization management requirements with respect to the coverage of such a product or service under such plan.".

42 USC 1395w–22 note.

(b) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the amendments made by this section by program instruction or otherwise.

SEC. 6004. COVERAGE AT NO COST SHARING OF COVID–19 TESTING UNDER MEDICAID AND CHIP.

(a) MEDICAID.—

(1) IN GENERAL.—Section 1905(a)(3) of the Social Security Act (42 U.S.C. 1396d(a)(3)) is amended—

(A) by striking "other laboratory" and inserting "(A) other laboratory";

(B) by inserting "and" after the semicolon; and

(C) by adding at the end the following new subparagraph:

Effective date.

"(B) in vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) administered during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subparagraph for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products;".

(2) NO COST SHARING.—

(A) IN GENERAL.—Subsections (a)(2) and (b)(2) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended—

(i) in subparagraph (D), by striking "or" at the end;

(ii) in subparagraph (E), by striking "; and" and inserting a comma; and

(iii) by adding at the end the following new subparagraphs:

"(F) any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such product), or Effective date.

"(G) COVID–19 testing-related services for which payment may be made under the State plan; and".

(B) APPLICATION TO ALTERNATIVE COST SHARING.—Section 1916A(b)(3)(B) of the Social Security Act (42 U.S.C. 1396o–1(b)(3)(B)) is amended by adding at the end the following new clause:

"(xi) Any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this clause (and the administration of such product) and any visit described in section 1916(a)(2)(G) that is furnished during any such portion.". Effective date.

(C) CLARIFICATION.—The amendments made this paragraph shall apply with respect to a State plan of a territory in the same manner as a State plan of one of the 50 States. Applicability. 42 USC 1396o note.

(3) STATE OPTION TO PROVIDE COVERAGE FOR UNINSURED INDIVIDUALS.—

(A) IN GENERAL.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(i) in subparagraph (A)(ii)—

(I) in subclause (XXI), by striking "or" at the end;

(II) in subclause (XXII), by adding "or" at the end; and

(III) by adding at the end the following new subclause:

"(XXIII) during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) beginning on or after the date of the enactment of this subclause, who are uninsured individuals (as defined in subsection (ss));"; and Effective date.

(ii) in the matter following subparagraph (G)—

(I) by striking "and (XVII)" and inserting ", (XVII)"; and

(II) by inserting after "instead of through subclause (VIII)" the following: ", and (XVIII) the medical assistance made available to an uninsured individual (as defined in subsection (ss)) who is eligible for medical assistance only because of subparagraph (A)(ii)(XXIII) shall be limited to medical assistance for any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or Effective date.

after the date of the enactment of this subclause (and the administration of such product) and any visit described in section 1916(a)(2)(G) that is furnished during any such portion".

(B) RECEIPT AND INITIAL PROCESSING OF APPLICATIONS AT CERTAIN LOCATIONS.—Section 1902(a)(55) of the Social Security Act (42 U.S.C. 1396a(a)(55)) is amended, in the matter preceding subparagraph (A), by striking "or (a)(10)(A)(ii)(IX)" and inserting "(a)(10)(A)(ii)(IX), or (a)(10)(A)(ii)(XXIII)".

(C) UNINSURED INDIVIDUAL DEFINED.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(ss) UNINSURED INDIVIDUAL DEFINED.—For purposes of this section, the term 'uninsured individual' means, notwithstanding any other provision of this title, any individual who is—

"(1) not described in subsection (a)(10)(A)(i); and

"(2) not enrolled in a Federal health care program (as defined in section 1128B(f)), a group health plan, group or individual health insurance coverage offered by a health insurance issuer (as such terms are defined in section 2791 of the Public Health Service Act), or a health plan offered under chapter 89 of title 5, United States Code.".

(D) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence of this subsection, the Federal medical assistance percentage shall be 100 per centum with respect to (and, notwithstanding any other provision of this title, available for) medical assistance provided to uninsured individuals (as defined in section 1902(ss)) who are eligible for such assistance only on the basis of section 1902(a)(10)(A)(ii)(XXIII) and with respect to expenditures described in section 1903(a)(7) that a State demonstrates to the satisfaction of the Secretary are attributable to administrative costs related to providing for such medical assistance to such individuals under the State plan.".

(b) CHIP.—

(1) IN GENERAL.—Section 2103(c) of the Social Security Act (42 U.S.C. 1397cc(c)) is amended by adding at the end the following paragraph:

"(10) CERTAIN IN VITRO DIAGNOSTIC PRODUCTS FOR COVID–19 TESTING.—The child health assistance provided to a targeted low-income child shall include coverage of any in vitro diagnostic product described in section 1905(a)(3)(B) that is administered during any portion of the emergency period described in such section beginning on or after the date of the enactment of this subparagraph (and the administration of such product).".

Effective date.

(2) COVERAGE FOR TARGETED LOW-INCOME PREGNANT WOMEN.—Section 2112(b)(4) of the Social Security Act (42 U.S.C. 1397ll(b)(4)) is amended by inserting "under section 2103(c)" after "same requirements".

(3) PROHIBITION OF COST SHARING.—Section 2103(e)(2) of the Social Security Act (42 U.S.C. 1397cc(e)(2)) is amended—

(A) in the paragraph header, by inserting ", COVID–19 TESTING," before "OR PREGNANCY-RELATED ASSISTANCE"; and

(B) by striking "category of services described in subsection (c)(1)(D) or" and inserting "categories of services described in subsection (c)(1)(D), in vitro diagnostic products described in subsection (c)(10) (and administration of such products), visits described in section 1916(a)(2)(G), or".

SEC. 6005. TREATMENT OF PERSONAL RESPIRATORY PROTECTIVE DEVICES AS COVERED COUNTERMEASURES.

Section 319F–3(i)(1) of the Public Health Service Act (42 U.S.C. 247d–6d(i)(1)) is amended—

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new subparagraph:

"(D) a personal respiratory protective device that is—

"(i) approved by the National Institute for Occupational Safety and Health under part 84 of title 42, Code of Federal Regulations (or successor regulations);

"(ii) subject to the emergency use authorization issued by the Secretary on March 2, 2020, or subsequent emergency use authorizations, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (authorizing emergency use of personal respiratory protective devices during the COVID–19 outbreak); and

"(iii) used during the period beginning on January 27, 2020, and ending on October 1, 2024, in response to the public health emergency declared on January 31, 2020, pursuant to section 319 as a result of confirmed cases of 2019 Novel Coronavirus (2019-nCoV).". Time period.

SEC. 6006. APPLICATION WITH RESPECT TO TRICARE, COVERAGE FOR VETERANS, AND COVERAGE FOR FEDERAL CIVILIANS. Effective date.

(a) TRICARE.—The Secretary of Defense may not require any copayment or other cost sharing under chapter 55 of title 10, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act. 10 USC 1074 note.

(b) VETERANS.—The Secretary of Veterans Affairs may not require any copayment or other cost sharing under chapter 17 of title 38, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act. 38 USC 1701 note.

(c) FEDERAL CIVILIANS.—No copayment or other cost sharing may be required for any individual occupying a position in the civil service (as that term is defined in section 2101(1) of title 5, United States Code) enrolled in a health benefits plan, including 5 USC 8904 note.

any plan under chapter 89 of title 5, United States Code, or for any other individual currently enrolled in any plan under chapter 89 of title 5 for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) beginning on or after the date of the enactment of this Act.

Effective date. 25 USC 1621q note.

SEC. 6007. COVERAGE OF TESTING FOR COVID–19 AT NO COST SHARING FOR INDIANS RECEIVING PURCHASED/REFERRED CARE.

The Secretary of Health and Human Services shall cover, without the imposition of any cost sharing requirements, the cost of providing any COVID–19 related items and services as described in paragraph (1) of section 6001(a) (or the administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 320b–5(g)) beginning on or after the date of the enactment of this Act to Indians (as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) receiving health services through the Indian Health Service, including through an Urban Indian Organization, regardless of whether such items or services have been authorized under the purchased/referred care system funded by the Indian Health Service or is covered as a health service of the Indian Health Service.

Time periods. 42 USC 1396d note.

SEC. 6008. TEMPORARY INCREASE OF MEDICAID FMAP.

(a) IN GENERAL.—Subject to subsection (b), for each calendar quarter occurring during the period beginning on the first day of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) and ending on the last day of the calendar quarter in which the last day of such emergency period occurs, the Federal medical assistance percentage determined for each State, including the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands, under section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) shall be increased by 6.2 percentage points.

(b) REQUIREMENT FOR ALL STATES.—A State described in subsection (a) may not receive the increase described in such subsection in the Federal medical assistance percentage for such State, with respect to a quarter, if—

(1) eligibility standards, methodologies, or procedures under the State plan of such State under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or section 1115 of such Act (42 U.S.C. 1315)) are more restrictive during such quarter than the eligibility standards, methodologies, or procedures, respectively, under such plan (or waiver) as in effect on January 1, 2020;

(2) the amount of any premium imposed by the State pursuant to section 1916 or 1916A of such Act (42 U.S.C. 1396o, 1396o–1) during such quarter, with respect to an individual enrolled under such plan (or waiver), exceeds the amount of such premium as of January 1, 2020;

(3) the State fails to provide that an individual who is enrolled for benefits under such plan (or waiver) as of the date of enactment of this section or enrolls for benefits under

such plan (or waiver) during the period beginning on such date of enactment and ending the last day of the month in which the emergency period described in subsection (a) ends shall be treated as eligible for such benefits through the end of the month in which such emergency period ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State; or

(4) the State does not provide coverage under such plan (or waiver), without the imposition of cost sharing, during such quarter for any testing services and treatments for COVID–19, including vaccines, specialized equipment, and therapies.

(c) REQUIREMENT FOR CERTAIN STATES.—Section 1905(cc) of the Social Security Act (42 U.S.C. 1396d(cc)) is amended by striking the period at the end of the subsection and inserting "and section 6008 of the Families First Coronavirus Response Act, except that in applying such treatments to the increases in the Federal medical assistance percentage under section 6008 of the Families First Coronavirus Response Act, the reference to 'December 31, 2009' shall be deemed to be a reference to 'March 11, 2020'.".

SEC. 6009. INCREASE IN MEDICAID ALLOTMENTS FOR TERRITORIES.

Section 1108(g) of the Social Security Act (42 U.S.C. 1308(g)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B)—

(i) in clause (i), by striking "and" at the end;

(ii) in clause (ii), by striking "for each of fiscal years 2020 through 2021, $126,000,000;" and inserting "for fiscal year 2020, $128,712,500; and"; and

(iii) by adding at the end the following new clause: "(iii) for fiscal year 2021, $127,937,500;";

(B) in subparagraph (C)—

(i) in clause (i), by striking "and" at the end;

(ii) in clause (ii), by striking "for each of fiscal years 2020 through 2021, $127,000,000;" and inserting "for fiscal year 2020, $130,875,000; and"; and

(iii) by adding at the end the following new clause: "(iii) for fiscal year 2021, $129,712,500;";

(C) in subparagraph (D)—

(i) in clause (i), by striking "and" at the end;

(ii) in clause (ii), by striking "for each of fiscal years 2020 through 2021, $60,000,000; and" and inserting "for fiscal year 2020, $63,100,000; and"; and

(iii) by adding at the end the following new clause: "(iii) for fiscal year 2021, $62,325,000; and"; and

(D) in subparagraph (E)—

(i) in clause (i), by striking "and" at the end;

(ii) in clause (ii), by striking "for each of fiscal years 2020 through 2021, $84,000,000." and inserting "for fiscal year 2020, $86,325,000; and"; and

(iii) by adding at the end the following new clause: "(iii) for fiscal year 2021, $85,550,000."; and

(2) in paragraph (6)(A)—

(A) in clause (i), by striking "$2,623,188,000" and inserting "$2,716,188,000"; and

(B) in clause (ii), by striking "$2,719,072,000" and inserting "$2,809,063,000".

SEC. 6010. CLARIFICATION RELATING TO SECRETARIAL AUTHORITY REGARDING MEDICARE TELEHEALTH SERVICES FURNISHED DURING COVID–19 EMERGENCY PERIOD.

Paragraph (3)(A) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b–5(g)) is amended to read as follows:

Time period.

"(A) furnished to such individual, during the 3-year period ending on the date such telehealth service was furnished, an item or service that would be considered covered under title XVIII if furnished to an individual entitled to benefits or enrolled under such title; or".

DIVISION G—TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE

26 USC 3111 note.

SEC. 7001. PAYROLL CREDIT FOR REQUIRED PAID SICK LEAVE.

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified sick leave wages taken into account under subsection (a) with respect to any individual shall not exceed $200 ($511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

(2) OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.—The aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

(A) 10, over

(B) the aggregate number of days so taken into account for all preceding calendar quarters.

(3) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(4) REFUNDABILITY OF EXCESS CREDIT.—

(A) IN GENERAL.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any amounts due to an employer under this paragraph shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(c) QUALIFIED SICK LEAVE WAGES.—For purposes of this section, the term "qualified sick leave wages" means wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act. Definition.

(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified sick leave wages for which such credit is so allowed.

(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term "qualified health plan expenses" means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code.

(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified sick leave wages in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) SPECIAL RULES.—

(1) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

(3) CERTAIN TERMS.—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act.

Time periods.

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

26 USC 1401 note.

SEC. 7002. CREDIT FOR SICK LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS.

(a) CREDIT AGAINST SELF-EMPLOYMENT TAX.—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for any taxable year an amount equal to the qualified sick leave equivalent amount with respect to the individual.

Definition.

(b) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—For purposes of this section, the term "eligible self-employed individual" means an individual who—

(1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and

(2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer (other than himself or herself).

Definitions.

(c) QUALIFIED SICK LEAVE EQUIVALENT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The term "qualified sick leave equivalent amount" means, with respect to any eligible self-employed individual, an amount equal to—

(A) the number of days during the taxable year (but not more than the applicable number of days) that the individual is unable to perform services in any trade or business referred to in section 1402 of such Code for a

reason with respect to which such individual would be entitled to receive sick leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) $200 ($511 in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act), or

(ii) 67 percent (100 percent in the case of any day of paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act) of the average daily self-employment income of the individual for the taxable year.

(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME.—For purposes of this subsection, the term "average daily self-employment income" means an amount equal to—

(A) the net earnings from self-employment of the individual for the taxable year, divided by

(B) 260.

(3) APPLICABLE NUMBER OF DAYS.—For purposes of this subsection, the term "applicable number of days" means, with respect to any taxable year, the excess (if any) of 10 days over the number of days taken into account under paragraph (1)(A) in all preceding taxable years.

(d) SPECIAL RULES.—

(1) CREDIT REFUNDABLE.—

(A) IN GENERAL.—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(2) DOCUMENTATION.—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary's delegate) may prescribe to establish such individual as an eligible self-employed individual.

(3) DENIAL OF DOUBLE BENEFIT.—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Paid Sick Leave Act, the qualified sick leave equivalent amount otherwise determined under subsection (c) shall be reduced (but not below zero) to the extent that the sum of the amount described in such subsection and in section 7001(b)(1) exceeds $2,000 ($5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act).

(4) CERTAIN TERMS.—Any term used in this section which is also used in chapter 2 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

Time periods.

(e) APPLICATION OF SECTION.—Only days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020, may be taken into account under subsection (c)(1)(A).

(f) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary of the Treasury (or the Secretary's delegate) based on information provided by the government of the respective possession.

Determination.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury (or the Secretary's delegate) as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury (or the Secretary's delegate), under which such possession will promptly distribute such payments to its residents.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(g) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to effectuate the purposes of this Act, and

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

26 USC 3111 note.

SEC. 7003. PAYROLL CREDIT FOR REQUIRED PAID FAMILY LEAVE.

(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

(b) LIMITATIONS AND REFUNDABILITY.—

(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified family leave wages taken into account under subsection (a) with respect to any individual shall not exceed—

(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, $200, and

(B) in the aggregate with respect to all calendar quarters, $10,000.

(2) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the tax imposed by section 3111(a) or 3221(a) of such Code for such calendar quarter (reduced by any credits allowed under subsections (e) and (f) of section 3111 of such Code, and section 7001 of this Act, for such quarter) on the wages paid with respect to the employment of all employees of the employer.

(3) REFUNDABILITY OF EXCESS CREDIT.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b) of such Code.

(c) QUALIFIED FAMILY LEAVE WAGES.—For purposes of this section, the term "qualified family leave wages" means wages (as defined in section 3121(a) of such Code) and compensation (as defined in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act). Definition.

(d) ALLOWANCE OF CREDIT FOR CERTAIN HEALTH PLAN EXPENSES.—

(1) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be increased by so much of the employer's qualified health plan expenses as are properly allocable to the qualified family leave wages for which such credit is so allowed.

(2) QUALIFIED HEALTH PLAN EXPENSES.—For purposes of this subsection, the term "qualified health plan expenses" means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1) of the Internal Revenue Code of 1986), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a) of such Code. Definition.

(3) ALLOCATION RULES.—For purposes of this section, qualified health plan expenses shall be allocated to qualified family leave wages in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) SPECIAL RULES.—

(1) DENIAL OF DOUBLE BENEFIT.—For purposes of chapter 1 of such Code, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under

this section shall not be taken into account for purposes of determining the credit allowed under section 45S of such Code.

(2) ELECTION NOT TO HAVE SECTION APPLY.—This section shall not apply with respect to any employer for any calendar quarter if such employer elects (at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) may prescribe) not to have this section apply.

(3) CERTAIN TERMS.—Any term used in this section which is also used in chapter 21 of such Code shall have the same meaning as when used in such chapter.

(4) CERTAIN GOVERNMENTAL EMPLOYERS.—This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(f) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a), and

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act).

Time periods.

(g) APPLICATION OF SECTION.—This section shall apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.

(h) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

SEC. 7004. CREDIT FOR FAMILY LEAVE FOR CERTAIN SELF-EMPLOYED INDIVIDUALS. 26 USC 1401 note.

(a) CREDIT AGAINST SELF-EMPLOYMENT TAX.—In the case of an eligible self-employed individual, there shall be allowed as a credit against the tax imposed by subtitle A of the Internal Revenue Code of 1986 for any taxable year an amount equal to 100 percent of the qualified family leave equivalent amount with respect to the individual.

(b) ELIGIBLE SELF-EMPLOYED INDIVIDUAL.—For purposes of this section, the term "eligible self-employed individual" means an individual who— Definition.

(1) regularly carries on any trade or business within the meaning of section 1402 of such Code, and

(2) would be entitled to receive paid leave during the taxable year pursuant to the Emergency Family and Medical Leave Expansion Act if the individual were an employee of an employer (other than himself or herself).

(c) QUALIFIED FAMILY LEAVE EQUIVALENT AMOUNT.—For purposes of this section— Definition.

(1) IN GENERAL.—The term "qualified family leave equivalent amount" means, with respect to any eligible self-employed individual, an amount equal to the product of—

(A) the number of days (not to exceed 50) during the taxable year that the individual is unable to perform services in any trade or business referred to in section 1402 of such Code for a reason with respect to which such individual would be entitled to receive paid leave as described in subsection (b), multiplied by

(B) the lesser of—

(i) 67 percent of the average daily self-employment income of the individual for the taxable year, or

(ii) $200.

(2) AVERAGE DAILY SELF-EMPLOYMENT INCOME.—For purposes of this subsection, the term "average daily self-employment income" means an amount equal to—

(A) the net earnings from self-employment income of the individual for the taxable year, divided by

(B) 260.

(d) SPECIAL RULES.—

(1) CREDIT REFUNDABLE.—

(A) IN GENERAL.—The credit determined under this section shall be treated as a credit allowed to the taxpayer under subpart C of part IV of subchapter A of chapter 1 of such Code.

(B) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, any refund due from the credit determined under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(2) DOCUMENTATION.—No credit shall be allowed under this section unless the individual maintains such documentation as the Secretary of the Treasury (or the Secretary's delegate) may prescribe to establish such individual as an eligible self-employed individual.

(3) DENIAL OF DOUBLE BENEFIT.—In the case of an individual who receives wages (as defined in section 3121(a) of the Internal Revenue Code of 1986) or compensation (as defined

in section 3231(e) of the Internal Revenue Code) paid by an employer which are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act, the qualified family leave equivalent amount otherwise described in subsection (c) shall be reduced (but not below zero) to the extent that the sum of the amount described in such subsection and in section 7003(b)(1) exceeds $10,000.

(4) CERTAIN TERMS.—Any term used in this section which is also used in chapter 2 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such chapter.

(5) REFERENCES TO EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT.—Any reference in this section to the Emergency Family and Medical Leave Expansion Act shall be treated as including a reference to the amendments made by such Act.

Time periods.

(e) APPLICATION OF SECTION.—Only days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020, may be taken into account under subsection (c)(1)(A).

(f) APPLICATION OF CREDIT IN CERTAIN POSSESSIONS.—

(1) PAYMENTS TO POSSESSIONS WITH MIRROR CODE TAX SYSTEMS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which has a mirror code tax system amounts equal to the loss (if any) to that possession by reason of the application of the provisions of this section. Such amounts shall be determined by the Secretary of the Treasury (or the Secretary's delegate) based on information provided by the government of the respective possession.

(2) PAYMENTS TO OTHER POSSESSIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury (or the Secretary's delegate) as being equal to the aggregate benefits (if any) that would have been provided to residents of such possession by reason of the provisions of this section if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply unless the respective possession has a plan, which has been approved by the Secretary of the Treasury (or the Secretary's delegate), under which such possession will promptly distribute such payments to its residents.

Definition.

(3) MIRROR CODE TAX SYSTEM.—For purposes of this section, the term "mirror code tax system" means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

(4) TREATMENT OF PAYMENTS.—For purposes of section 1324 of title 31, United States Code, the payments under this section shall be treated in the same manner as a refund due from a credit provision referred to in subsection (b)(2) of such section.

(e) REGULATIONS.—The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of this Act, and

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section.

SEC. 7005. SPECIAL RULE RELATED TO TAX ON EMPLOYERS.

26 USC 3111 note.

(a) IN GENERAL.—Any wages required to be paid by reason of the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of section 3111(a) of the Internal Revenue Code of 1986 or compensation for purposes of section 3221(a) of such Code.

(b) ALLOWANCE OF CREDIT FOR HOSPITAL INSURANCE TAXES.—

(1) IN GENERAL.—The credit allowed by section 7001 and the credit allowed by section 7003 shall each be increased by the amount of the tax imposed by section 3111(b) of the Internal Revenue Code of 1986 on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 7001 or 7003 (respectively).

(2) DENIAL OF DOUBLE BENEFIT.—For denial of double benefit with respect to the credit increase under paragraph (1), see sections 7001(e)(1) and 7003(e)(1).

(c) TRANSFERS TO FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND.—There are hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) amounts equal to the reduction in revenues to the Treasury by reason of this section (without regard to this subsection). Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund or Account had this section not been enacted.

DIVISION H—BUDGETARY EFFECTS

SEC. 8001. BUDGETARY EFFECTS.

(a) STATUTORY PAYGO SCORECARDS.—The budgetary effects of division B and each succeeding division shall not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the Statutory Pay-As-You-Go Act of 2010.

(b) SENATE PAYGO SCORECARDS.—The budgetary effects of division B and each succeeding division shall not be entered on any PAYGO scorecard maintained for purposes of section 4106 of H. Con. Res. 71 (115th Congress).

(c) CLASSIFICATION OF BUDGETARY EFFECTS.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the joint explanatory statement of the committee of conference accompanying Conference Report 105–217 and section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, the

budgetary effects of division B and each succeeding division shall not be estimated—

(1) for purposes of section 251 of such Act; and

(2) for purposes of paragraph (4)(C) of section 3 of the Statutory Pay-As-You-Go Act of 2010 as being included in an appropriation Act.

Approved March 18, 2020.

LEGISLATIVE HISTORY—H.R. 6201:

CONGRESSIONAL RECORD, Vol. 166 (2020):
Mar. 13, considered and passed House.
Mar. 18, considered and passed Senate.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2020):
Mar. 18, Presidential statement.

○

Designated Altitudes. 2,500 feet MSL to but not including 5,000 feet MSL.

Times of designation. From 0600 to 1800 local time, daily, or other times as specified by NOTAM issued 48 hours in advance.

Controlling agency. FAA, Boston Approach Control.

Using agency. Commander, U.S. Army Garrison, Camp Edwards, MA.

R–4101C Camp Edwards, MA [New]

Boundaries. Beginning at lat. 41°40′52″ N, long. 70°33′07″ W; to lat. 41°41′01″ N, long. 70°33′58″ W; to lat. 41°41′58″ N, long. 70°34′56″ W; to lat. 41°42′52″ N, long. 70°34′56″ W; to lat. 41°43′52″ N, long. 70°34′30″ W; to lat. 41°44′30″ N, long. 70°34′14″ W; to lat. 41°45′17″ N, long. 70°34′11″ W; to lat. 41°45′12″ N, long. 70°33′59″ W; to lat. 41°46′07″ N, long. 70°33′02″ W; to lat. 41°45′18″ N, long. 70°31′16″ W; to lat. 41°44′37″ N, long. 70°30′40″ W; to lat. 41°44′11″ N, long. 70°29′38″ W; to lat. 41°43′06″ N, long. 70°30′06″ W; to lat. 41°43′07″ N, long. 70°30′34″ W; to lat. 41°42′45″ N, long. 70°30′48″ W; to lat. 41°42′38″ N, long. 70°30′31″ W; to lat. 41°41′51″ N, long. 70°30′50″ W; to lat. 41°41′38″ N, long. 70°31′16″ W; to lat. 41°41′20″ N, long. 70°31′27″ W; to lat. 41°41′18″ N, long. 70°31′24″ W; to lat. 41°41′06″ N, long. 70°31′52″ W; to the point of beginning.

Designated Altitudes. 5,000 feet MSL to 9,000 feet MSL.

Times of designation. By NOTAM issued 48 hours in advance.

Controlling agency. FAA, Boston Approach Control.

Using agency. Commander, U.S. Army Garrison, Camp Edwards, MA.

* * * * *

Issued in Washington, DC, on August 28, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–19467 Filed 9–15–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 826

RIN 1235–AA35

Paid Leave Under the Families First Coronavirus Response Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Temporary rule.

SUMMARY: The Secretary of Labor ("Secretary") is promulgating revisions and clarifications to the temporary rule issued on April 1, 2020, implementing public health emergency leave under Title I of the Family and Medical Leave Act (FMLA) and emergency paid sick leave to assist working families facing public health emergencies arising out of the Coronavirus Disease 2019 (COVID–19) global pandemic, in response to an August 3, 2020 district court decision finding certain portions of that rule invalid. Both types of emergency paid leave were created by a time-limited statutory authority established under the Families First Coronavirus Response Act (FFCRA), and are set to expire on December 31, 2020. The FFCRA and its implementing regulations, including this temporary rule, do not affect the FMLA after December 31, 2020.

DATES: This rule is effective from September 16, 2020 through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 18, 2020, President Trump signed into law the FFCRA, which creates two new emergency paid leave requirements in response to the COVID–19 global pandemic. Division E of the FFCRA, "The Emergency Paid Sick Leave Act" (EPSLA), entitles certain employees of covered employers to take up to two weeks of paid sick leave if the employee is unable to work for specific qualifying reasons related to COVID–19. These qualifying reasons are: (1) Being subject to a Federal, state, or local quarantine or isolation order related to COVID–19; (2) being advised by a health care provider to self-quarantine due to COVID–19 concerns; (3) experiencing COVID–19 symptoms and seeking a medical diagnosis; (4) caring for another individual who is either subject to a Federal, state, or local quarantine or isolation order related to COVID–19 or who has been advised by a health care provider to self-quarantine due to COVID–19 concerns; (5) caring for the employee's son or daughter whose school, place of care, or child care provider is closed or unavailable due to COVID–19 related reasons; and (6) experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services (HHS).[1] FFCRA section 5102(a)(1)–(6). Division C of the FFCRA, "The Emergency Family and Medical Leave Expansion Act" (EFMLEA), which amends Title I of the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.* (FMLA), permits certain employees of covered employers to take up to 12 weeks of expanded family and medical leave, ten of which are paid, if the employee is unable to work due to a need to care for his or her son or daughter whose school, place of care, or child care provider is closed or unavailable due to COVID–19 related reasons. FFCRA section 3012, adding FMLA section 110(a)(2)(A).

These paid sick leave and expanded family and medical leave requirements will expire on December 31, 2020. The costs to private-sector employers of providing paid leave required by the EPSLA and the EFMLEA (collectively "FFCRA leave") are ultimately covered by the Federal Government as Congress provided tax credits for these employers in the full amount of any FFCRA leave taken by their employees. On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136 (CARES Act), which amends certain provisions of the EPSLA and the provisions of the FMLA added by the EFMLEA.

FFCRA leave is part of a larger set of Federal Government-provided COVID–19 economic relief programs, which also include the Paycheck Protection Program and expanded unemployment benefits provided under the CARES Act. The Paycheck Protection Program, CARES Act sections 1101–1114, provided an incentive for employers to keep workers on their payrolls. FFCRA leave provides paid leave to certain employees who continue to be employed but are prevented from working for specific COVID–19 related reasons. And the CARES Act's expanded unemployment benefits, CARES Act sections 2101–2116, provided help to workers whose

[1] The Secretary of HHS has not identified any other substantially similar condition that would entitle an employee to take paid sick leave.

positions have been affected by COVID–19. Together, these three programs provide relief with respect to: (1) Employed individuals whose employers continue to pay them; (2) employed individuals who must take leave from work; and (3) unemployed individuals who no longer had work or had as much work.

The FFCRA grants authority to the Secretary to issue regulations for certain purposes. Section 3102(b) of the FFCRA, as amended by section 3611(7) of the CARES Act, and 5111(3) of the FFCRA grant the Secretary authority to issue regulations "as necessary, to carry out the purposes of this Act, including to ensure consistency" between the EPSLA, the EFMLEA, and the Act's tax credit reimbursement provisions. Due to the exigency created by COVID–19, the FFCRA authorizes the Secretary to issue EPSLA and EFMLEA regulations under two exceptions to the usual requirements of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* One of those exceptions permits issuing a rule without prior public notice or the opportunity for the public to comment if there is good cause to believe that doing so is "impractical, unnecessary, or contrary to the public interest"; the other permits a rule to become effective immediately, rather than after a 30-day delay, if there is good cause to do so. FFCRA sections 3102(b) (as amended by section 3611(7) of the CARES Act), 5111 (referring to 5 U.S.C. 553(b)(B) and (d)(3)). Relying on those exceptions, the Department promulgated a temporary rule to carry out the EPLSA and EFMLEA, which was made public on April 1, 2020. 85 FR 19326 (published April 6, 2020); *see also* 85 FR 20156–02 (April 10, 2020 correction and correcting amendment to April 1 rule).

On April 14, 2020, the State of New York filed suit in the United States District Court for the Southern District of New York ("District Court") challenging certain parts of the temporary rule under the APA. On August 3, 2020, the District Court ruled that four parts of the temporary rule are invalid: (1) The requirement under § 826.20 that paid sick leave and expanded family and medical leave are available only if an employee has work from which to take leave; (2) the requirement under § 826.50 that an employee may take FFCRA leave intermittently only with employer approval; (3) the definition of an employee who is a "health care provider," set forth in § 826.30(c)(1), whom an employer may exclude from being eligible for FFCRA leave; and (4) the statement in § 826.100 that employees who take FFCRA leave must provide their employers with certain documentation before taking leave. *New York* v. *U.S. Dep't of Labor,* No. 20–CV–3020 (JPO), 2020 WL 4462260 (S.D.N.Y. Aug. 3, 2020).[2]

The Department has carefully examined the District Court's opinion and has reevaluated the portions of the temporary rule that the court held were invalid. Given the statutory authorization to invoke exemptions from the usual requirements to engage in notice-and-comment rulemaking and to delay a rule's effective date, *see* FFCRA sections 3102(b), 5111, the time-limited nature of the FFCRA leave benefits, the urgency of the COVID–19 pandemic and the associated need for FFCRA leave, and the pressing need for clarity in light of the District Court's decision, the Department issues this temporary rule, effective immediately, to reaffirm its regulations in part, revise its regulations in part, and further explain its positions. In summary:

1. The Department reaffirms that paid sick leave and expanded family and medical leave may be taken only if the employee has work from which to take leave and explains further why this requirement is appropriate. This temporary rule clarifies that this requirement applies to all qualifying reasons to take paid sick leave and expanded family and medical leave.

2. The Department reaffirms that, where intermittent FFCRA leave is permitted by the Department's regulations, an employee must obtain his or her employer's approval to take paid sick leave or expanded family and medical leave intermittently under § 825.50 and explains further the basis for this requirement.

3. The Department revises the definition of "health care provider" under § 825.30(c)(1) to mean employees who are health care providers under 29 CFR 825.102 and 825.125,[3] and other employees who are employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care.

4. The Department revises § 826.100 to clarify that the information the employee must give the employer to support the need for his or her leave should be provided to the employer as soon as practicable.

5. The Department revises § 826.90 to correct an inconsistency regarding when an employee may be required to give notice of expanded family and medical leave to his or her employer.

II. Reaffirming and Explaining the Work-Availability Requirement Under § 826.20, Consistent With Supreme Court Precedent and FMLA Principles

The Department's April 1, 2020 rule stated that an employee is entitled to FFCRA leave only if the qualifying reason is a but-for cause of the employee's inability to work. 85 FR 19329. In other words, the qualifying reason must be the actual reason the employee is unable to work, as opposed to a situation in which the employee would have been unable to work regardless of whether he or she had a FFCRA qualifying reason. This means an employee cannot take FFCRA paid leave if the employer would not have had work for the employee to perform, even if the qualifying reason did not apply. *Id.* This work-availability requirement was explicit in the regulatory text as to three of the six qualifying reasons for leave.[4] As explained below, the Department's intent, despite not explicitly including the work-availability requirement in the regulatory text regarding the other three qualifying reasons, was to apply the requirement to all reasons.

The work-availability requirement and the but-for causation standard that undergirds it were part of the legal challenge to the rule. *New York,* 2020 WL 4462260 at *6–7. The FFCRA uses the words "because" and "due to" in identifying the reasons for which an employee may take FFCRA leave. *See* FFCRA sections 3102 and 5102(a). The District Court held that the FFCRA's use of "because" and "due to" in referring to the reasons an employee is unable to work or telework were ambiguous as to the causation standard imposed and further concluded that the work-availability requirement was invalid for

[2] The District Court invalidated § 826.20 because the Department did not sufficiently explain the positions taken in that provision and because the regulatory text explicitly applied the work availability requirement only to three of the six qualifying reasons for taking FFCRA leave, § 826.50 because the Department did not sufficiently explain the positions taken in that provision, and §§ 826.30(c)(1) and .100 as being inconsistent with the statute. *Id.* at *8–12.

[3] The definition of "health care provider" under § 825.102 is identical to the definition under § 825.125.

[4] *Compare* § 826.20(a)(2), (6) and (9) (applying requirement to leave due to a government quarantine or isolation order, to care for a person subject to such an order or who has been advised by a health care provider to self-quarantine, and to care for the employee's child whose school or place of care is closed or child care provider is unavailable, respectively) *with* § 826.20(a)(3), (4), and (1)(vi) (no language applying requirement to leave due to being advised by a health care provider to self-quarantine, to having COVID–19 symptoms and seeking a diagnosis, or to other substantially similar conditions defined by the Department of Health and Human Services, respectively).

two reasons. One, the Department's explicit application of the requirement to only three of the six reasons for taking leave was unreasoned and inconsistent with the statutory text; two, the Department did not sufficiently explain the reason for imposing this requirement at all. *Id.* at *7–9.

The Department has carefully considered the District Court's opinion and now provides a fuller explanation for its original reasoning regarding the work-availability requirement. With this revised rule, the Department explains why it continues to interpret the FFCRA to impose a but-for causation standard that in turn supports the work-availability requirement for all qualifying reasons for leave.[5] Further, the Department revises § 826.20 to explicitly include the work-availability requirement in all qualifying reasons for leave.

The FFCRA states that an employer shall provide its employee FFCRA leave to the extent that the employee is unable to work (or telework) due to a need for leave "because" of or "due to" a qualifying reason for leave under FFCRA sections 3102 and 5102(a).[6] The terms "because," "due to," and similar statutory phrases have been repeatedly interpreted by the Supreme Court to require "but-for" causation.[7] "[A]n act is not a 'but-for' cause of an event if the event would have occurred even in the absence of the act[,]"[8] including where the event would have occurred due to another sufficient cause.[9] The District Court recognized that the "traditional meaning of 'because' (and 'due to') implies a but-for causal relationship," but concluded that these terms' use in the FFCRA did not necessarily foreclose a different interpretation. *New York,* 2020 WL 4462260, at *7.

After considering the District Court's conclusion that the statute does not necessarily require the traditional result, the Department continues to believe that the traditional meaning of "because" and "due to" as requiring but-for causation is the best interpretation of the FFCRA leave provisions in this context. This standard is especially compelling in light of Supreme Court precedent applying the "ordinary meaning" of but-for causation where the underlying statute did not specify an alternative standard. *Burrage* v. *United States,* 571 U.S. 204, 216 (2014) ("Congress could have written [a statute] to impose a mandatory minimum when the underlying crime 'contributes to' death or serious bodily injury, or adopted a modified causation test tailored to cases involving concurrent causes . . . . It chose instead to use language that imports but-for causality."). Here too, the Department sees no textual basis or other persuasive reason to deviate from the standard meanings of these terms.[10] The Department's regulations thus interpret the FFCRA to require that an employee may take paid sick leave or expanded family and medical leave only to the extent that a qualifying reason for such leave is a but-for cause of his or her inability to work.

In the FFCRA context, if there is no work for an individual to perform due to circumstances other than a qualifying reason for leave—perhaps the employer closed the worksite (temporarily or permanently)—that qualifying reason could not be a but-for cause of the employee's inability to work.[11] Instead, the individual would have no work from which to take leave. The Department thus reaffirms that an employee may take paid sick leave or expanded family and medical leave only to the extent that any qualifying reason is a but-for cause of his or her inability to work. Because the Department agrees with the District Court that there is no basis, statutory or otherwise, to apply the work-availability requirement only to some of the qualifying reasons for FFCRA leave, and in keeping with the Department's original intent, the Department amends § 826.20(a)(3), (a)(4) to state explicitly, as § 826.20(a)(2), (6), and (9) do, that an employee is not eligible for paid leave unless the employer would otherwise have work for the employee to perform. The Department similarly adds § 826.20(a)(10) to make clear such requirement is likewise needed when an employee requests paid leave for a substantially similar condition as specified by the Secretary of Health and Human Services.[12]

The Department's continued application of the work-availability requirement is further supported by the fact that the use of the term "leave" in the FFCRA is best understood to require that an employee is absent from work at a time when he or she would otherwise have been working. As to this point, the District Court concluded that the statute did not mandate such an interpretation. *New York,* 2020 WL 4462260, at *7–8. After reconsideration, the Department now reaffirms that even if "leave" could encompass time an employee would not have worked regardless of the relevant qualifying reason, the Department, based in significant part on its experience administering and enforcing other mandatory leave requirements, interprets the FFCRA as allowing employees to take paid leave only if they would have worked if not for the qualifying reason for leave. "Leave" is most simply and clearly understood as an authorized absence from work; if an employee is not expected or required to work, he or she is not taking leave. This interpretation is consistent with the Department's long-standing interpretation of the term "leave" in the FMLA (which the EFMLEA amended). *See* 29 U.S.C. 2612(a). For instance, the Department's FMLA regulation at

[5] To the extent that the District Court required addition or further explanation of the Department's final action in promulgating this rule, the additional explanation here should be read as a supplement to—and not a replacement of—the discussion of causation included in the April 1 temporary rule.

[6] The statute's use of the mandatory language "shall," in setting forth the employer's obligation, FFCRA section 5102(a), 29 U.S.C. 2612(a), is therefore limited by prerequisites: What the employer is obligated to provide to employees is "leave" and the employer's obligation is triggered only when the employee's need for leave is because of one of the qualifying reasons. These *prerequisites,* set forth in the plain text, to employers having an obligation to provide FFCRA leave are unaffected by the fact that the FFCRA elsewhere provides certain *exceptions* to that obligation (*e.g.,* the health care provider exception).

[7] *See, e.g., Burrage* v. *United States,* 571 U.S. 204, 211 (2014) (the phrase "results from" in a criminal statute "requires proof that the harm would not have occurred in the absence of—that is, but for—the defendant's conduct") (internal citations and quotation marks omitted); *Univ. of Tex. SW. Ctr.* v. *Nassar,* 570 U.S. 338, 346–47 (2013); *Gross* v. *FBL Fin. Servs., Inc.,* 557 U.S. 167, 176 (2009) ("[T]he ordinary meaning of the [Age Discrimination in Employment Act's] requirement that an employer took adverse action 'because of' age is that . . . age was the 'but-for' cause of the employer's adverse decision."); *Safeco Ins. Co. of Am.* v. *Burr,* 551 U.S. 47, 63 (2007) ("[T]he phrase 'based on' indicates a but-for causal relationship. . . .").

[8] *In re Fisher,* 649 F.3d 401, 403 (5th Cir. 2011); *see also, e.g., Burrage,* 571 U.S. at 219 (heroin use was not proven to be a cause of death where "the Government concedes that there is no 'evidence that [the decedent] would have lived but for his heroin use'").

[9] *See Brandt* v. *Fitzpatrick,* 957 F.3d 67, 76 (1st Cir. 2020) (employer may avoid damages in an employment discrimination case "if it can show it would have made the same decision even if race hadn't factored in (meaning race wasn't the 'but-for' cause of the failure to hire)").

[10] This conclusion reflects a fair and natural reading of the FFCRA, and there is no textual basis here to deviate from such a reading. This is so even through the FFCRA may be classified as a remedial statute under which Congress sought to protect workers. *See, e.g., Encino Motorcars, LLC* v. *Navarro,* 138 S. Ct. 1134, 1142 (2018) (statute's remedial purpose did not justify departing from "a fair reading" of the plain text). This is particularly true in light of the fact that FFCRA leave is but one part of a wider universe of COVID–19-related government-provided relief. Moreover, the text of the FFCRA demonstrates that Congress was attuned to not only employees' need for leave but also to employers' circumstances. *See, e.g.,* FFCRA 3102(b); 3105, 5102(a).

[11] *See Brandt,* 957 F.3d at 76.

[12] The Department notes that as of the date of this publication, the Secretary of Health and Human Services had not specified a substantially similar condition in accordance with this subsection.

§ 825.200(h) states that "if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work," the time that "the employer's activities have ceased do not count against the employee's FMLA leave entitlement." Time that an employee is not required to work does not count against an employee's 12 workweek leave entitlement under the FMLA—including any EFMLEA leave—because it is not "leave." [13] In addition, the Department's regulations implementing Executive Order 13706, which require certain federal contractors to provide employees with paid sick leave under certain circumstances, reflect this same understanding. The regulations explicitly define "paid sick leave" to mean "compensated absence *from employment,*" 29 CFR 13.2 (emphasis added), and explain that "a contractor must permit an employee to use paid sick leave to be absent from work for that contractor *during time the employee would have been performing work on or in connection with a covered contract* or, [under other specified circumstances], during *any work time* because of [the enumerated qualifying reasons for leave]," 29 CFR 13.5(c)(1) (emphasis added).

The Department notes that removing the work-availability requirement would not serve one of the FFCRA's purposes: Discouraging employees who may be infected with COVID–19 from going to work. If there is no work to perform, there would be no need to discourage potentially infected employees from coming to work through the provision of paid FFCRA leave. Nor is there a need to protect a potentially infected employee who stays home from an employer's disciplinary actions if the employer has no work for the employee to perform.

Removing the work-availability requirement would also lead to perverse results. Typically, if an employer closes its business and furloughs its workers, none of those employees would receive paychecks during the closure or furlough period because there is no paid work to perform. But if an employee with a qualifying reason could take FFCRA leave even when there is no work, he or she could take FFCRA leave, potentially for many weeks, even when the employer closes its business and furloughs its workers. The employee on FFCRA leave would continue to be paid during this period, while his or her co-workers who do not have a qualifying reason for taking FFCRA leave would not. The Department does not believe Congress intended such an illogical result.

To be clear, the Department's interpretation does not permit an employer to avoid granting FFCRA leave by purporting to lack work for an employee. The work-availability requirement for FFCRA leave should be understood in the context of the applicable anti-retaliation provisions, which prohibit employers from discharging, disciplining, or discriminating against employees for taking such leave. *See* 29 U.S.C. 2615; FFCRA section 5104, as amended by CARES Act section 3611(8); 29 CFR 826.150(a), 826.151(a). Accordingly, employers may not make work unavailable in an effort to deny FFCRA leave because altering an employee's schedule in an adverse manner because that employee requests or takes FFCRA leave may be impermissible retaliation. *See Burlington N. & Santa Fe Ry. Co.* v. *White,* 548 U.S. 53, 69 (2006) ("A schedule change in an employee's work schedule may make little difference to many workers, but may matter enormously to a young mother with school-age children."); *see also Welch* v. *Columbia Mem'l Physician Hosp. Org., Inc.,* No. 1:13–CV–1079 GLS/CFH, 2015 WL 6855810, at *7 (N.D.N.Y. Nov. 6, 2015) (employee's "return[ ] from FMLA leave days before her supervisors changed her schedule . . . . suffic[ed] to support an inference of retaliation."). There must be a legitimate, non-retaliatory reason why the employer does not have work for an employee to perform. This may occur, for example, where the employer has temporarily or permanently ceased operations at the worksite where the employee works or where a downturn in business forces the employer to furlough the employee for legitimate business reasons. *See, e.g., Mullendore* v. *City of Belding,* 872 F.3d 322, 329 (6th Cir. 2017) (no FMLA retaliation where employer "has demonstrated a legitimate [and non-pretextual] reason for terminating" the employee). Although an out-of-work employee would not be eligible for FFCRA leave in these scenarios, he or she may be eligible for unemployment insurance and other assistance programs.

New York State has argued that the work-availability requirement would "insert[] a capacious and unpredictable loophole basing eligibility on the hour-by-hour or day-by-day happenstance that work may not be available." Pl's Mem. Of L., *New York* v. *U.S. Dep't of Labor,* 2020 WL 3411251 (S.D.N.Y. filed May 5, 2020). But as discussed above, the requirement is not a loophole but rather a longstanding principle in the Department's employee-leave regulations. It does not operate as an hour-by-hour assessment as to whether the employee would have a task to perform but rather questions whether the employee would have reported to work at all. Moreover, the availability or unavailability of work must be based on legitimate, non-discriminatory and non-retaliatory business reasons.[14]

Furthermore, FFCRA leave is only one form of relief that has been made available during the COVID–19 crisis. Among other things, FFCRA paid leave ensures workers are not forced to choose between their paychecks and the public health measures needed to combat the virus; for example, an employee who may have been exposed to COVID–19 is encouraged not to go to work and thereby risk spreading the virus. Other provisions of the CARES Act assist workers in other circumstances. To encourage employers to maintain employees on the payroll, the Paycheck Protection Program, CARES Act sections 1101–1114, made available low-interest, and potentially forgivable, loans to employers who use those funds to continue to pay employees who might otherwise be laid off. To furnish relief to employees whose employers are not able to maintain them on the payroll, the Relief for Workers Affected by Coronavirus Act, CARES Act sections 2101–2116, expanded the Federal Government's support of unemployment insurance by enlarging the scope of unemployment coverage, the length of time for which individuals were eligible for unemployment payments, and the amount of those payments. And most directly, the CARES Act created a refundable tax credit, advances of which are being paid in 2020, to address the financial stress of the pandemic. The credit is worth up to $1,200 per eligible individual or up to $2,400 for individuals filing a joint return, plus up to $500 per qualifying child. CARES Act

[13] Under the FMLA, a period during which an employer has no work for an employee is not counted against the employee's entitlement to leave. Because FFCRA leave is paid, an added result in the same scenario is that the employee would not receive pay for that period because that period would not count as leave. The introduction of pay, however, does not change the meaning of "leave." Paid leave under the FFCRA provides employees income for time during which they otherwise would have worked and therefore would have otherwise been paid. If an employer has no work for an employee, the employee would not have reported to work (or telework) or been paid, and therefore any payments for FFCRA leave would not, as intended, substitute for wages that he or she would otherwise have received.

[14] Regardless, any economic incentive for private-sector employers to wrongfully deny their employees FFCRA leave is limited by the fact that, for these employers, FFCRA leave is fully funded by the Federal Government through tax credits.

section 2201. All of this was in addition to industry-specific support measures and myriad changes to the Internal Revenue Code. *See, e.g.,* CARES Act sections 2202–2308; 4001–4120. Against this backdrop, the Department interprets the FFCRA's paid sick leave and emergency family and medical leave provisions to grant relief to employers and employees where employees cannot work because of the enumerated reasons for leave, but not where employees cannot work for other reasons, in particular the unavailability of work from the employer.

III. Reaffirming and Explaining the Employer-Approval Requirement for Intermittent Leave Under § 826.50 in Accordance With FMLA Principles

The Department reaffirms the April 1 temporary rule's position that employer approval is needed to take intermittent FFCRA leave, and explains the basis for this requirement, which is consistent with longstanding FMLA principles governing intermittent leave. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason, with the employee reporting to work intermittently during an otherwise continuous period of leave taken for a single qualifying reason.[15] Under the FMLA, intermittent leave is specifically defined as "leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks." 29 CFR 825.102. In the original FMLA statute, Congress expressly authorized employees taking FMLA leave for any qualifying reason to do so intermittently but only under certain circumstances. Depending on the reason for taking FMLA leave, the statute requires a medical need to take intermittent leave or an agreement between the employer and employee before an employee may take intermittent leave. *See* Public Law 103–3, sec. 102(b)(1), codified at 29 U.S.C. 2612(b)(1). In 2008, Congress amended the FMLA to create two new reasons for FMLA leave: Qualifying exigencies due to service in the Armed Forces and to care for injured service members. 29 U.S.C. 2612(a)(1)(E), (a)(3). Like the FMLA in 1993, the 2008 amendments explicitly authorized intermittent leave for these new qualifying FMLA leave reasons. 29 U.S.C. 2612(b)(1).

In contrast to the FMLA, in the FFCRA, Congress said nothing about intermittent leave,[16] but granted the Department broad regulatory authority to effectuate the purposes of the EPLSA and EFMLEA (which amends the FMLA) and to ensure consistency between the two laws.[17] As the District Court acknowledged, because "Congress did not address intermittent leave at all in the FFCRA[,] it is therefore precisely the sort of statutory gap . . . that DOL's broad regulatory authority empowers it to fill." *New York,* 2020 WL 4462260, at *11.

The Department did not interpret the absence of language authorizing intermittent leave under the FFCRA to categorically permit[18] or prohibit[19] intermittent leave. Rather, § 826.50 permits an employee who is reporting to a worksite to take FFCRA leave on an intermittent basis only when taking leave to care for his or her child whose school, place of care, or child care provider is closed or unavailable due to COVID–19, and only with the employer's consent. 29 CFR 826.50(b). Because this is the only qualifying reason for EFMLEA leave, such leave may always be taken intermittently provided that the employer consents. As to EPSLA leave, this constitutes only one of the six potential qualifying reasons. The Department reasoned that the other reasons for taking EPSLA leave correlate to a higher risk of spreading the virus and therefore that permitting intermittent leave would hinder rather than further the FFCRA's purposes.

An employee who is teleworking (and not reporting to the worksite) may take intermittent leave for any of the FFCRA's qualifying reasons as long as the employer consents. 29 CFR 826.50(c). The District Court upheld the rule's prohibition on intermittent leave for employees who are reporting to the worksite when the reason for leave correlates to a higher risk of spreading the virus, *i.e.,* all qualifying reasons except for caring for the employee's child due to school or childcare closure or unavailability. *New York,* 2020 WL 4462260, at *11–12 & n.9; 29 CFR 826.50(b)(2). However, the District Court held that the Department did not adequately explain the rationale for the requirement that intermittent leave, where available, can only be taken with the employer's consent. *New York,* 2020 WL 4462260, at *12. After reconsideration, the Department affirms its earlier interpretation—with additional explanation.[20]

As the April 1 rule explained, the Department "imported and applied to the FFCRA certain concepts of intermittent leave from its FMLA regulations." 85 FR 19336.[21] Under

[15] Intermittent leave occurs only when the employee has periods of leave interrupted with periods of reporting to work (or telework). In contrast, an employee who works a schedule that itself could be characterized as "intermittent" or sporadic in which he or she has, for example, several days off in between each shift, is not taking intermittent leave where the periods between the shifts for which leave is used are periods during which the employee is not scheduled to work.

[16] Congress did, however, include temporal language as to leave, which is consistent with a recognition that an employee with a qualifying reason for leave might not need to take his or her full FFCRA leave entitlement of two weeks (up to 80 hours) of EPSLA leave and twelve weeks of EFMLEA leave, ten of which are paid. *See* FFCRA section 3102(b) ("An employer shall provide paid leave for each day of [EFMLEA] leave that an employee takes"); *id.* § 5110(f)(A)(i) (defining "paid sick time" as "an increment of compensated leave that . . . is provided by an employer for use during an absence from employment" for an EPSLA qualifying reason); *id.* § 7001(b) (referencing days and calendar quarters for tax credit purposes). These provisions do not mention "intermittent leave," a term Congress has previously invoked and therefore could have used but did not.

[17] FFCRA section 5111(3) (delegating to the Secretary of Labor authority to promulgate regulations "as necessary, to carry out the purposes of this Act, *including to ensure consistency*" between the EPSLA and the EFMLEA) (emphasis added); *id.* section 3102(b), *amended by* CARES Act section 3611(7) (same).

[18] Permitting employees to take intermittent leave without restriction would create tension with how both Congress and the Department have understood intermittent leave in most of the circumstances for which it is permitted under the FMLA. Further, while the Department recognizes that the FFCRA is intended in part to allow eligible employees to take paid leave for certain COVID–19-related reasons, unrestricted intermittent leave would undermine a statutory purpose of combating the COVID–19 public health emergency. For example, giving employees who take paid sick leave because an individual in their care could be infected with COVID–19, *see* FFCRA section 5102(a)(4), unrestricted flexibility to go to work on days of their choosing could increase the risk of COVID–19 contagion. *See New York,* 2020 WL4462260, at *12. Accordingly, the Department did not interpret the FFCRA to permit unrestricted intermittent leave.

[19] An alternative construction that prohibits employees from intermittently taking paid sick leave and expanded family and medical leave in any circumstance is arguably more consistent with Congress' and the Department's practice of explicitly identifying circumstances in which FMLA leave may be taken intermittently. It also would be more consistent with the FFCRA's public health objectives because employees who take FFCRA leave for some, but not all, qualified reasons may have been infected or exposed to COVID–19, and allowing them to return to work intermittently would exacerbate COVID–19 contagion. Nevertheless, the Department does not believe this is the best interpretation because it would unnecessarily limit employer and employee flexibilities in accommodating work and leave needs in situations that do not as directly implicate public health concerns.

[20] The Department gives the additional explanation here as a supplement to—and not a replacement of—the discussion of intermittent leave included in the April 1 temporary rule.

[21] In so doing, the Department aligned the availability, conditions, and limits of intermittent leave under EPSLA and EFMLEA to the greatest extent possible consistent with 29 U.S.C. 2612(b) and 29 CFR 825.202, while at the same time applying and balancing Congress' broader objectives to contain COVID–19 through furnishing paid leave to employees.

those regulations, "FMLA leave may be taken intermittently . . . under certain circumstances" specified in the statute and applied in the regulation. 29 CFR 825.202.[22] In other words, as Congress has previously specified, and as the Department's regulations require, FMLA leave must be taken in a single block of time unless specific conditions are met. These conditions are: (1) A medical need for intermittent leave taken due to the employee's or a family member's serious health condition, which the employer may require to be certified by a health care provider; (2) employer approval for intermittent leave taken to care for a healthy newborn or adopted child; or (3) a qualifying exigency related to service in the Armed Forces. *Id.*

The regulations concerning intermittent leave due to service in the Armed Forces are not relevant in the very different FFCRA context. *See* 29 CFR 825.202(d). The Department further believes certified medical need is not an appropriate condition for FFCRA intermittent leave. As the District Court explained, an employer may not require documentation of any sort as a precondition to taking FFCRA leave, *New York,* 2020 WL 4462260, at *12, so the Department does not believe certification could be required as a precondition for such leave taken intermittently. Moreover, certified medical need is inapplicable where an employee takes expanded family and medical leave or paid sick leave under § 826.20(a)(v) due to the closure or unavailability of his or her child's school, place of care, or child care provider because those qualifying reasons bear no relationship to any medical need.

The remaining qualifying reasons to take paid sick leave under § 826.20(a)(i)–(iv) and (vi) are medically related but do not lend themselves to the allowance of intermittent leave for medical reasons. A COVID–19-related quarantine or isolation order under § 826.20(a)(i) prevents certain employees from going to work because the issuing government authority has determined that allowing such employees to work would exacerbate COVID–19 contagion. Similarly, a health care provider may advise an employee to self-quarantine under § 826.20(a)(ii) because that employee is at particular risk if he or she is infected by the coronavirus or poses a risk of infecting others. In both cases, the government authority and health care provider may be concerned that an individual to whom the order or advice is directed has an elevated risk of having COVID–19.[23] If so, an employee who takes leave under § 826.20(a)(iv) to care for such an individual may have elevated risk of COVID–19 exposure. Finally, an employee who is experiencing COVID–19 symptoms under § 826.20(a)(iii), or other similar symptoms identified by the Secretary of HHS under § 826.20(a)(iii), would also have elevated risk of having COVID–19.

At bottom, the qualifying reasons to take paid sick leave under § 826.20(a)(i)–(iv) are medically related because they include situations where the employee may have an elevated risk of being infected with COVID–19, or is caring for someone who may have an elevated risk of being infected with COVID–19. Rather than justifying intermittent leave, these medical considerations militate against intermittent FFCRA leave where the employee may have an elevated risk of being infected with COVID–19 or is caring for someone who may have such elevated risk. Permitting such an employee to return to work intermittently when he or she is at an elevated risk of transmitting the virus would be incompatible with Congress' goal to slow the spread of COVID–19. *See* 85 FR 19336; *New York,* 2020 WL 4462260, at *12. The same is broadly true where an individual is at higher risk if infected: Permitting an individual who has been ordered or advised to self-isolate due to his or her vulnerability to COVID–19 to return to work intermittently would also undermine the FFCRA's public health objectives. Accordingly, the regulations do not allow employees who take paid sick leave under § 826.20(a)(i)–(iv) and (vi) to return to work intermittently at a worksite.[24] Employees who take paid sick leave for these reasons, however, may telework on an intermittent basis without posing the risk of spreading the contagion at the worksite or being infected themselves.

The Department believes the employer-approval condition for intermittent leave under its FMLA regulation is appropriate in the context of FFCRA intermittent leave for qualifying reasons that do not exacerbate risk of COVID–19 contagion. It is a longstanding principle of FMLA intermittent leave that such leave should, where foreseeable, avoid "unduly disrupting the employer's operations." 29 CFR 825.302(f). It best meets the needs of businesses that this general principle is carried through to the COVID–19 context, by requiring employer approval for such leave. In the context of intermittent leave being required for medical reasons, the FMLA long has recognized certified medical needs for intermittent leave as paramount, unless the leave is for planned medical treatment, in which case the employee must make reasonable efforts to schedule the leave in a manner that does not unduly disrupt operations. 29 U.S.C. 2612(e)(2)(A); 29 CFR 825.302(e). However, when intermittent leave is not required for medical reasons, the FMLA balances the employee's need for leave with the employer's interest in avoiding disruptions by requiring agreement by the employer for the employee to take intermittent leave. 29 CFR 825.120(b); .121(b). The Department's FFCRA regulations already provide that employees may telework only where the employer permits or allows. *See* § 826.10(a). Since employer permission is a precondition under the FFCRA for telework, the Department believes it is also an appropriate condition for teleworking intermittently due to a need to take FFCRA leave.[25] On the other hand, the Department does not believe that an employee should be required to obtain certification of medical need in order to telework intermittently because it may be unduly burdensome in this context for an employee to obtain such certification. Medical certification would also be redundant because the employee must already obtain employer permission to telework in the first place. The Department has thus aligned the employer-agreement requirements to

[22] In 1995, the Department promulgated regulations implementing the intermittent leave provisions as part of its final rule implementing the FMLA, which had been enacted in 1993. *See* 60 FR 2180. The current version of the regulation includes organizational and other minor amendments made in 2008, 2013, and 2015. *See* 29 CFR 825.202; *see also* 80 FR 10001; 78 FR 8902; 73 FR 67934.

[23] This is not the only reasons why a government entity or a health care provider may order or advise an individual to quarantine. For instance, the government entity or health care provider may be concerned that the individual has elevated vulnerability to COVID–19 because that individual falls within a certain age range or has a certain medical condition.

[24] Employees are not required to use up their entire FFCRA leave entitlement the first time they face a qualifying reason for taking FFCRA leave. Depending on their circumstances, employees may not need to take their full FFCRA leave entitlement when taking leave for one of these qualifying reasons. If so, they will be eligible to take the remainder of their FFCRA leave entitlement should they later face a separate qualifying reason for such leave. Taking leave at a later date for a distinct qualifying reason is not intermittent leave.

[25] For example, consider an employee who takes paid sick leave after being advised to self-isolate by a health care provider. If the employer does not permit telework, the employee would be unable to work intermittently at the worksite during the period of paid sick leave. Intermittent leave would be possible only if the employer allows the employee to telework.

apply to both telework and intermittent leave from telework. The Department believes that its approach affords both employers and employees flexibility. In many circumstances, these agreed-upon telework and scheduling arrangements may reduce or even eliminate an employee's need for FFCRA leave by reorganizing work time to accommodate the employee's needs related to COVID–19.

Employer approval is also an appropriate condition for taking FFCRA leave intermittently to care for a child, whether the employee is reporting to the worksite or teleworking. This condition already applies where an employee takes FMLA leave to care for his or her healthy newborn or adopted child, which is similar to where an employee takes FFCRA leave to care for his or her child because the child's school, place of care, or child care provider is closed or unavailable.

The employer-approval condition would not apply to employees who take FFCRA leave in full-day increments to care for their children whose schools are operating on an alternate day (or other hybrid-attendance) basis because such leave would not be intermittent under § 826.50. In an alternate day or other hybrid-attendance schedule implemented due to COVID–19, the school is physically closed with respect to certain students on particular days as determined and directed by the school, not the employee. The employee might be required to take FFCRA leave on Monday, Wednesday, and Friday of one week and Tuesday and Thursday of the next, provided that leave is needed to actually care for the child during that time and no other suitable person is available to do so. For the purposes of the FFCRA, each day of school closure constitutes a separate reason for FFCRA leave that ends when the school opens the next day. The employee may take leave due to a school closure until that qualifying reason ends (*i.e.,* the school opened the next day), and then take leave again when a new qualifying reason arises (*i.e.,* school closes again the day after that). Under the FFCRA, intermittent leave is not needed because the school literally closes (as that term is used in the FFCRA and 29 CFR 826.20) and opens repeatedly. The same reasoning applies to longer and shorter alternating schedules, such as where the employee's child attends in-person classes for half of each school day or where the employee's child attends in-person classes every other week and the employee takes FFCRA leave to care for the child during the half-days or weeks in which the child does not attend classes in person. This is distinguished from the scenario where the school is closed for some period, and the employee wishes to take leave only for certain portions of that period for reasons other than the school's in-person instruction schedule. Under these circumstances, the employee's FFCRA leave is intermittent and would require his or her employer's agreement.

With those explanations and exceptions in mind, the Department reaffirms that employer approval is needed to take FFCRA leave intermittently in all situations in which intermittent FFCRA leave is permitted.

IV. Revisions to Definition of "Health Care Provider" Under § 826.30(c)(1) to Focus on the Employee

Sections 3105 and 5102(a) of the FFCRA, respectively, allow employers to exclude employees who are "health care provider[s]" or who are "emergency responder[s]" from eligibility for expanded family and medical leave and paid sick leave. The Department understands that the option to exclude health care providers and emergency responders serves to prevent disruptions to the health care system's capacity to respond to the COVID–19 public health emergency and other critical public health and safety needs that may result from health care providers and emergency responders being absent from work. The FFCRA adopts the FMLA definition of "health care provider," FFCRA section 5110(4), which covers (i) licensed doctors of medicine or osteopathy and (ii) "any other person determined by the Secretary to be capable of providing health care services," 29 U.S.C. 2611(6). The FFCRA, however, uses the term "health care provider" in two markedly different contexts. Section 5102(a)(2) of the FFCRA uses "health care provider" to refer to medical professionals who may advise an individual to self-isolate due concerns related to COVID–19 such that the individual may take paid sick leave to follow that advice. In the Department's April 1 temporary rule implementing the FFCRA's paid leave provisions, the Department used the definition of this term it adopted under the FMLA, 29 CFR 825.125, to define this group of health care providers. § 826.20(a)(3). In the second context, Sections 3105 and 5102(a) of the FFCRA allow employers to exclude employees who are "health care providers" or who are "emergency responders" from the FFCRA's entitlement to paid leave. The Department promulgated a different definition of "health care provider" to identify these employees, § 826.30(c)(1), which the District Court held was overly broad. *See New York,* 2020 WL 4462260, at *9–10.

The District Court explained that because the FFCRA adopted the FMLA's statutory definition of "health care provider" in 29 U.S.C. 2611(6), including the portion of that definition permitting the Secretary to determine that additional persons are "capable of providing health care services," any definition adopted by the Department must require "at least a minimally role-specific determination" of which persons are "capable of providing healthcare services." *New York,* 2020 WL 4462260, at *10. In other words, the definition cannot "hinge[ ] entirely on the identity of the *employer,*" but must depend on the "skills, role, duties, or capabilities" of the employee. *Id.* To define the term otherwise would sweep in certain employees of health care facilities "whose roles bear *no nexus whatsoever* to the provision of healthcare services." *Id.* The District Court did not foreclose, however, an amended regulatory definition that is broader than the FMLA's regulatory definition, explaining that there is precedent for the proposition that an agency may define a term shared by two sections of a statute differently "as long as the different definitions individually are reasoned and do not exceed the agency's authority." *Id.* at *10 n.8.

After careful consideration of the District Court's order, this rule adopts a revised definition of "health care provider," to appear at § 826.30(c)(1), for purposes of the employer's optional exclusion of employees who are health care providers from FFCRA leave. First, revised § 826.30(c)(1)(i) defines a "health care provider" to include employees who fall within the definition of health care provider under 29 CFR 825.102 and 825.125. Specifically, revised § 826.30(c)(1)(i)(A) cites 29 CFR 825.102 and 825.125—to bring physicians and others who make medical diagnoses within this term. Second, revised § 826.30(c)(1)(i)(B), consistent with the District Court's order, identifies additional employees who are health care providers by focusing on the role and duties of those employees rather than their employers. It expressly states that an employee is a health care provider if he or she is "capable of providing health care services." The definition then further limits the universe of relevant "health care services" that the employee must be capable of providing to qualify as a "health care provider"—*i.e.,* the duties or role of the employee. Specifically, a health care provider must be "employed to provide diagnostic services, preventive services, treatment services,

or other services that are integrated with and necessary to the provision of patient care."

Neither the FMLA nor FFCRA defines "health care services," leaving a statutory gap for the Department to fill. When used in the context of determining who may take leave despite a need to respond to a pandemic or to ensure continuity of critical operations within our health care system, the term "health care services" is best understood to encompass a broader range of services than, as in the FMLA context, primarily those medical professionals who are licensed to diagnose serious health conditions. To interpret this critical term, the Department is informed by how other parts of Federal law define this term. In one notable example, the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (Pandemic Act) defines "health care service" in the context of a pandemic response to mean "any services provided by a health care professional, or by any individual working under the supervision of a health care professional, that relate to (A) the diagnosis, prevention, or treatment of any human disease or impairment; or (B) the assessment or care of the health of human beings." 42 U.S.C. 234(d)(2). The services listed in subparagraphs (A) and (B) of this definition reflect Congress's view of health care services that are provided during a pandemic. In the Department's view, the Pandemic Act's description of the categories of services that qualify as "health care services" provides a useful baseline for interpretation of "health care services" as that term is used in connection with the FFCRA because both statutes focus on pandemic response. Accordingly, for purposes of who may be excluded by their employers from taking FFCRA leave, the revised regulation provides that an employee is "capable of providing health care services," and thus may be a "health care provider" under 29 U.S.C. 2611(6)(B), if he or she is employed to provide diagnostic services, preventative services, or treatment services. The Department also includes a fourth category, services that are integrated with and necessary to the provision of patient care and that, if not provided, would adversely impact patient care, which is analogous to but narrower than the Pandemic Act's reference to services "related to . . . the assessment or care of the health of human beings." *See* U.S.C. 234(d)(2)(B). These categories are codified in the revised § 826.30(c)(1)(i)(B).

The Pandemic Act and the FFCRA diverge in an important way, however. The provision of the Pandemic Act cited above limits the liability of "health care professionals," defined to be limited to individuals "licensed, registered, or certified under Federal or State laws or regulations to provide health care services," who provide services as members of the Medical Reserve Corps or in the Emergency System for Advance Registration of Volunteer Health Professionals. 42 U.S.C. 234(d)(1). The FFCRA's optional exclusion from its leave entitlements has a different purpose: Ensuring that the health care system retains the capacity to respond to COVID–19 and other critical health care needs. *See* 85 FR 19335. Congress' optional exclusion of emergency responders in addition to health care providers demonstrates that Congress was intending to provide a safety valve to ensure that critical health and safety services would not be understaffed during the pandemic. Given this context, the Department concluded Congress did not intend to limit the optional health care provider exclusion to only physicians and others who make medical diagnoses, *i.e.* the persons that qualify as a health care provider in the different contexts posed by the FMLA and EPSLA. The Department thus interprets "health care services" for the purpose of this definition to encompass relevant services even if not performed by individuals with a license, registration, or certification. For the same reason, the Department has determined that an employee is "capable" of providing health care services if he or she is employed to provide those services. That is, the fact that the employee is paid to perform the services in question is, in this context, conclusive of the employee's capability. While a license, registration, or certification may be a prerequisite for the provision of some health care services, the Department's interpretation of "health care services" encompasses some services for which license, registration, or certification is not required at all or not universally required.

In any event, Congress defined health care services, listed in 42 U.S.C. 234(d)(2)(A) and (B), in the context of combatting a pandemic. The Department also recognizes that the definition must have limits, as the District Court held. The Department's revised "health care provider" definition is thus clear that employees it covers must themselves must be capable of providing, and employed to provide diagnostic, preventative, or treatment services or services that are integrated with and necessary to diagnostic, preventive, or treatment services and, if not provided, would adversely impact patient care. It is not enough that an employee works for an entity that provides health care services. Moreover, the Department has designed the fourth category to encompass only those "services that are integrated with and necessary to the provision of patient care" and that, "if not provided, would adversely impact patient care." Health care services that do not fall into any of these categories are outside the Department's definition. Finally, the Department adds descriptions to emphasize that the definition of "health care provider" is far from open-ended by identifying specific types of employees who are and are not included within the definition and by describing the types of roles and duties that would make an employee a "health care provider."

Revised § 826.30(c)(1)(ii) lists the three types of employees who may qualify as "health care providers" under § 826.30(c)(1)(i)(B). First, § 826.30(c)(1)(ii)(A) explains that included within the definition are nurses, nurse assistants, medical technicians, and any other persons who directly provide the services described in § 826.30(c)(1)(i)(B), *i.e.,* diagnostic, preventive, treatment services, or other services that are integrated with and necessary to the provision of patient care are health care providers.

Second, § 826.30(c)(1)(ii)(B) explains that, included within the definition, are employees providing services described in paragraph (c)(1)(i)(B) under the supervision, order, or direction of, or providing direct assistance to, a person described in paragraphs (c)(1)(i)(A) (that is, employees who are health care providers under the usual FMLA definition) or (c)(1)(ii)(A) (that is, nurses or nurse assistants and other persons who directly provide services described in paragraph (c)(1)(i)(B)).

Finally, under § 826.30(c)(1)(ii)(C), "health care providers" include employees who may not directly interact with patients and/or who might not report to another health care provider or directly assist another health care provider, but nonetheless provide services that are integrated with and necessary components to the provision of patient care. Health care services reasonably may include services that are not provided immediately, physically to a patient; the term health care *services* may reasonably be understood to be broader than the term *health care*. For example, a laboratory technician who processes test results would be providing diagnostic health care services because,

although the technician does not work directly with the patient, his or her services are nonetheless an integrated and necessary part of diagnosing the patient and thereby determining the proper course of treatment.[26] Processing that test is integrated into the diagnostic process, like performing an x-ray is integrated into diagnosing a broken bone.

Individuals who provide services that affect, but are not integrated into, the provision of patient care are not covered by the definition, because employees who do not provide health care services as defined in paragraph (c)(1)(i)(B) are not health care providers. Accordingly, revised § 826.30(c)(1)(iii) provides examples of employees who are not health care providers. The Department identifies information technology (IT) professionals, building maintenance staff, human resources personnel, cooks, food service workers, records managers, consultants, and billers. While the services provided by these employees may be related to patient care—*e.g.,* an IT professional may enable a hospital to maintain accurate patient records—they are too attenuated to be integrated and necessary components of patient care. This list is illustrative, not exhaustive.

Recognizing that a health care provider may provide services at a variety of locations, and to help the regulated community identify the sorts of employees that may perform these services, § 826.30(c)(2)(iv) provides a non-exhaustive list of facilities where health care providers may work, including temporary health care facilities that may be established in response to the COVID–19 pandemic.[27] This list contains almost the same set of health care facilities listed in the original § 826.30(c)(1)(i) and is drawn from 42 U.S.C. 300jj(3), which also contains a non-exhaustive list of entities that qualify as "health care providers."[28] Consistent with the District Court's decision, however, the revised regulatory text explicitly provides that not all employees who work at such facilities are necessarily health care providers within the definition. For example, the categories of employees listed in § 826.30(c)(1)(iii) would not qualify as "health care providers" even if they worked at a listed health care facility. On the other hand, employees who do not work at any of the listed health care facilities may be health care providers under FFCRA sections 3105 and 5102(a). Thus, the list is merely meant to be a helpful guidepost, but itself says nothing dispositive as to whether an employee is a health care provider.

Under this revised definition, § 826.30(c)(1)(v) provides specific examples of services that may be considered "diagnostic services, preventative services, treatment services, or other services that are integrated with and necessary to the provision of patient care" under § 826.30(c)(1)(i). These examples are non-exhaustive and are meant to be illustrative.

Diagnostic services include, for example, taking or processing samples, performing or assisting in the performance of x-rays or other diagnostic tests or procedures, and interpreting test or procedure results. These services are integrated and necessary because without their provision, patient diagnosis would be undermined and individuals would not get the needed care. To illustrate, a technician or nurse who physically performs an x-ray is providing a diagnostic service and therefore is a health care provider.

Preventative services include, for example, screenings, check-ups, and counseling to prevent illnesses, disease, or other health problems. As with diagnostic services, preventative services are integrated and necessary because they are an essential component of health care. For example, a nurse providing counseling on diabetes prevention or on managing stress would be providing preventative services and therefore would be a health care provider.

Treatment services are the third category of services which make up health care services. Treatment services include, for example, performing surgery or other invasive or physical interventions, administering or providing prescribed medication, and providing or assisting in breathing treatments.

The last category of health care services are those services that are integrated with and necessary to diagnostic, preventive, or treatment services and, if not provided, would adversely impact patient care. This final category is intended to cover other integrated and necessary services that, if not provided, would adversely affect the patient's care. Such services include, for example, bathing, dressing, hand feeding, taking vital signs, setting up medical equipment for procedures, and transporting patients and samples. These tasks must be integrated and necessary to the provision of patient care, which significantly limits this category.

For example, bathing, dressing, or hand feeding a patient who cannot do that herself is integrated into to the patient's care. In another example, an individual whose role is to transport tissue or blood samples from a patient to the laboratory for analysis for the purpose of facilitating a diagnosis would be providing health care services because timely and secure transportation of the samples is integrated with and necessary to provide care to that patient.[29] These tasks also must be something that, if not performed, would adversely affect the patient's care, and they also must be integrated into that patient's care. Thus, tasks that may be merely indirectly related to patient care and are not necessary to providing care are not health care services. Further, the Department notes that some of the exemplar services listed in § 826.30(c)(1)(v)(D) may fit into more than one category.

Finally, § 826.30(c)(1)(vi) explains that the above definition of "health care

[26] The District Court's opinion noted that "lab technicians" do not "directly provide healthcare services to patients." *See New York,* 2020 WL 4462260, at *10. However, the precise question whether any lab technician may be a health care provider was not before or decided by the District Court. The relevant statutory definition does not limit the persons the Secretary may determine capable of providing health care services to only those who provide health care services directly to patients. As explained in this context, the Department concludes some persons who provide health care services will do so indirectly. Importantly, however, the Department's definition includes only persons who themselves provide health care services, whether indirectly or directly. Accordingly, the Department concludes based on the explanation provided above that, while not all lab technicians will necessarily qualify as health care providers, some will. The determination requires a role-specific analysis.

[27] The Javits Center in New York City, for example, was converted into a temporary hospital to treat COVID–19 patients. *See, e.g.,* Adam Jeffery and Hannah Miller, Coronavirus, Gov. Guomo, the National Guard and FEMA transform the Javits Center into a hospital, CNCN, Mar 28, 2020, available at *https://www.cnbc.com/2020/03/27/coronavirus-gov-cuomo-the-national-guard-and-fema-transform-the-javits-center-into-a-hospital.html.*

[28] "The term 'health care provider' includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, community mental health center . . ., renal dialysis facility, blood center, ambulatory surgical center . . ., emergency medical services provider, Federally qualified health center, group practice, a pharmacist, a pharmacy, a laboratory, a physician . . ., a practitioner . . ., a rural health clinic, . . . an ambulatory surgical center . . ., a therapist, . . .and any other category of health care facility, entity, practitioner, or clinician determined appropriate by the Secretary [of Health and Human Services]." 42 U.S.C. 300jj(3).

[29] Again, this requirement operates against the backdrop that a health care provider must be employed to provide the identified health care services. Therefore, a person employed to provide general transportation services that does not, for example, specialize in the transport of human tissue or blood samples is not a health care provider.

provider" applies only for the purpose of determining whether an employer may exclude an employee from eligibility to take FFCRA leave. This definition does not otherwise apply for the purposes of the FMLA. Nor does it identify health care providers whose advice to self-quarantine may constitute a qualified reason for paid sick leave under FFCRA section 5102(a)(2).

Revised § 826.30(c)(1)'s definition of "health care provider" for purposes of FFCRA sections 3105 and 5102(a) remains broader than the definition of "health care provider" under § 825.125, which defines the term for the pre-existing parts of FMLA and for purposes of FFCRA section 5102(a)(2). This is because these two definitions serve different purposes. The same term is usually presumed to have the same meaning throughout a single statute. *Brown* v. *Gardner,* 513 U.S. 115, 118 (1994). But "this presumption . . . yields readily to indications that the same phrase used in different parts of the same statute means different things." *Barber* v. *Thomas,* 560 U.S. 474, 484 (2010) (collecting cases). The Department purposefully limited § 825.125's definition of "health care provider" to licensed medical professionals because the pre-existing FMLA definition used that term in the context of who could certify the diagnosis of serious health conditions for purposes of FMLA leave.[30] As a result, the definition in 29 CFR 825.125 is narrower than the ordinary understanding of "health care provider," since many "providers" of health care services—such as nurses, physical therapists, medical technicians, or pharmacists—do not diagnose serious health conditions. *See* 29 CFR 825.115(a)(1) (defining continuing treatment for incapacity to require "[t]reatment two or more times, within 30 days of the first day of incapacity, by a health care provider, a *nurse* under direct supervision of a health care provider, or by a *provider of health care services (e.g., physical therapist)* under orders of, or on referral by, a health care provider") (emphases added); *id.* 825.115(c)(1) (defining continuing treatment for a chronic condition as including "periodic visits for treatment by a health care provider *or a nurse* under the direct supervision of a health care provider" (emphasis added)).

In contrast, and as explained above, the term "health care provider" serves an entirely different purpose in FFCRA sections 3105 and 5102(a). The Department believes these sections are best understood to have granted employers the option to exclude from paid leave eligibility health care providers whose absence from work would be particularly disruptive because those employees' services are important to combating the COVID–19 public health emergency and are essential to the continuity of operations of our health care system in general.[31] The definition of "health care provider" as limited only to diagnosing medical professionals under 29 CFR 825.125 is, in the Department's view, incompatible with this understanding of these sections. For example, nurses provide crucial services, often directly related to the COVID–19 public health emergency or to the continued operations of our health care system in general, but as noted, most nurses are not "health care providers" under § 825.125.[32] Nor are laboratory technicians who process COVID–19 or other crucial medical diagnostic tests, or other employees providing the critical services described above. But these workers are vital parts of the health system capacity that the Department believes Congress sought to preserve with the exclusions in FFCRA sections 3105 and 5102(a). A purposefully narrow definition of "health care providers" such as that in 29 CFR 825.125 would make excludable only a small class of employees that the Department believes would lack a connection to the identified policy objective. In accord with that understanding, revised § 826.30(c)(1) adopts a broader, but still circumscribed, definition of "health care provider" than 29 CFR 825.125.

V. Revising Notice and Documentation Requirements Under §§ 826.90 and .100 To Improve Consistency

The FFCRA permits employers to require employees to follow reasonable notice procedures to continue to receive paid sick leave after the first workday (or portion thereof) of leave. FFCRA section 5110(5)(E). Section 3102(b) of the FFCRA amends the FMLA to require employees taking expanded family and medical leave to provide their employers with notice of leave as practicable, when the necessity for such leave is foreseeable.

Section 826.100 lists documentation that an employee is required to provide the employer regarding the employee's need to take FFCRA leave, and states that such documentation must be provided "prior to" taking paid sick leave or expanded family and medical leave. The District Court held that the requirement that documentation be given "prior to" taking leave "is inconsistent with the statute's unambiguous notice provision," which allows an employer to require notice of an employee's reason for taking leave only "after the first workday (or portion thereof)" for paid sick leave, or "as is practicable" for expanded family and medical leave taken for school, place of care, or child care provider closure or unavailability. *New York,* 2020 WL 4462260, at *12.

In keeping with the District Court's conclusion, the Department amends § 826.100 to clarify that the documentation required under § 826.100 need not be given "prior to" taking paid sick leave or expanded family and medical leave, but rather may be given as soon as practicable, which in most cases will be when the employee provides notice under § 826.90. The Department is also revising § 826.90(b) to correct an

[30] Commenters to the 1993 proposed FMLA regulations asked the Department to define "health care provider" to include "providers of a broad range of medical services." 58 FR 31800. The Department considered "such a broad definition . . . inappropriate" because, at that time, the term "health care provider" was used in the FMLA to refer to those who "will need to indicate their diagnosis in health care certificates." *Id.*

[31] Although the statute does not explicitly articulate the purpose of these exceptions, the Department believes it is the only reasonable inference given that FFCRA sections 3015 and 5102(a) each allowed employers to exclude both "health care providers" and "emergency responders" from FFCRA leave. Moreover, at the time the FFCRA was passed, many people feared that the health system capacity would be strained, and these provisions appear to have been calculated to ameliorate that issue. *See, e.g.,* NYC Mayor urges national enlistment program for doctors, Associated Press, Apr. 3, 2020, available at *https://www.pbs.org/newshour/health/nyc-mayor-urges-national-enlistment-program-for-doctors;* Jack Brewster, Cuomo: 'Any Scenario That Is Realistic Will Overwhelm The Capacity Of The Current Healthcare System,' Forbes, Mar. 26, 2020, available at *https://www.forbes.com/sites/jackbrewster/2020/03/26/cuomo-any-scenario-that-is-realistic-will-overwhelm-the-capacity-of-the-current-healthcare-system/#2570066e7cf1;* Melanie Evans and Stephanie Armour, Hospital Capacity Crosses Tipping Point in U.S. Coronavirus Hot Spots, WSJ.com, Mar. 26, 2020, available at *https://www.wsj.com/articles/hospital-capacity-crosses-tipping-point-in-u-s-coronavirus-hot-spots-11585215006;* Beckers Hospital Review, COVID–19 response requires 'all hands on deck' Atlantic Health System CEO says, Mar. 20, 2020, available at *https://www.beckershospitalreview.com/hospital-management-administration/covid-19-response-requires-all-hands-on-deck-atlantic-health-system-ceo-says.html.* The Department recognizes that this understanding of FFCRA sections 3105 and 5102(a) means that fewer people may receive paid leave. However, as explained, the Department believes this was the balance struck by Congress.

[32] The 1995 FMLA final rule added to § 825.125's definition of health care provider "nurse practitioners and nurse-midwives (who provide diagnosis and treatment of certain conditions, especially at health maintenance organizations and in rural areas where other health care providers may not be available) if performing within the scope of their practice as allowed by State law." 60 FR 2199. Other nurses, however, are not generally considered health care providers under 29 CFR 825.125.

inconsistency regarding the timing of notice for employees who take expanded family and medical leave.

Sections 826.90 and 826.100 complement one another. Section 826.90 sets forth circumstances in which an employee who takes paid sick leave or expanded family and medical leave must give notice to his or her employer. Section 826.100 sets forth information sufficient for the employer to determine whether the requested leave is covered by the FFCRA. Section 826.100(f) also allows the employer to request an employee furnish additional material needed to support a request for tax credits under Division G of the FFCRA.

Section 826.90(b) governs the timing and delivery of notice. Previous § 826.90(b) stated, "Notice may not be required in advance, and may only be required after the first workday (or portion thereof) for which an Employee takes Paid Sick Leave or Expanded Family and Medical Leave." This statement is correct with respect to paid sick leave. FFCRA section 5110(5)(E). However, section 110(c) of the FMLA, as amended by FFCRA section 3102, explicitly states that "where the necessity for [expanded family and medical leave] is foreseeable, an employee shall provide the employer with such notice of leave as is practicable." Thus, for expanded family and medical leave, advance notice is not prohibited; it is in fact typically required if the need for leave is foreseeable. Revised § 826.90(b) corrects this error by stating that advanced notice of expanded family and medical leave is required as soon as practicable; if the need for leave is foreseeable, that will generally mean providing notice before taking leave. For example, if an employee learns on Monday morning before work that his or her child's school will close on Tuesday due to COVID–19 related reasons, the employee must notify his or her employer as soon as practicable (likely on Monday at work). If the need for expanded family and medical leave was not foreseeable—for instance, if that employee learns of the school's closure on Tuesday after reporting for work—the employee may begin to take leave without giving prior notice but must still give notice as soon as practicable.

Section 826.100(a) previously stated that an employee is required to give the employer certain documentation "prior to taking Paid Sick Leave under the EPSLA or Expanded Family and Medical Leave under the EFMLEA." As noted above, the District Court held that the requirement that documentation be provided prior to taking leave "is inconsistent with the statute's unambiguous notice provision," which allows an employer to require notice of an employee's reason for taking leave only "after the first workday (or portion thereof)" for paid sick leave, or "as is practicable" for expanded family and medical leave taken for school, place of care, or child care provider closure or unavailability. *New York,* 2020 WL 4462260, at *12. Accordingly, the Department is revising § 826.100(a) to require the employee to furnish the listed information as soon as practicable, which in most cases will be when notice is provided under § 826.90. That is to say, an employer may require an employee to furnish as soon as practicable: (1) The employee's name; (2) the dates for which leave is requested; (3) the qualifying reason for leave; and (4) an oral or written statement that the employee is unable to work. The employer may also require the employee to furnish the information set forth in § 826.100(b)–(f) at the same time.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections and their practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The Department has determined that this temporary rule does not add any new information collection requirements. The information collection associated with this temporary rule was previously approved by the Office of Management and Budget (OMB) under OMB control number 1235–0031.

VII. Administrative Procedure Act

This rule is issued without prior notice and opportunity to comment and with an immediate effective date pursuant to the Administrative Procedure Act (APA). 5 U.S.C. 553(b) and (d).

A. Good Cause To Forgo Notice and Comment Rulemaking

The APA, 5 U.S.C. 553(b)(B), authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The FFCRA authorizes the Department to issue regulations under the EPSLA and the EFMLEA pursuant to the good cause exception of the APA. FFCRA sections 3102(b) (adding FMLA section 110(a)(3)), 5111.

As it did in the initial April 1, 2020 temporary rule, the Department is bypassing advance notice and comment because of the exigency created by the COVID–19 pandemic, the time limited nature of the FFCRA leave entitlement which expires December 31, 2020, the uncertainty created by the August 3, 2020 district court decision finding certain portions of the April 1 rule invalid, and the regulated community's corresponding immediate need for revised provisions and explanations from the Department. A decision to undertake notice and comment rulemaking would likely delay final action on this matter by weeks or months, which would be counter to one of the FFCRA's main purposes in establishing paid leave: enabling employees to leave the workplace immediately to help prevent the spread of COVID–19 and to ensure eligible employees are not forced to choose between their paychecks and the public health measures needed to combat the virus. In sum, the Department determines that issuing this temporary rule as expeditiously as possible is in the public interest and critical to the Federal Government's relief and containment efforts regarding COVID–19.

B. Good Cause To Proceed With an Immediate Effective Date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). The FFCRA authorizes the Department to issue regulations that are effective immediately under the EPSLA and the EFMLEA pursuant to the good cause exception of the APA. FFCRA sections 3102(b) (adding FMLA section 110(a)(3)), 5111; CARES Act section 3611(1)–(2). For the reasons stated above, the Department has concluded it has good cause to make this temporary rule effective immediately and until the underlying statute sunsets on December 31, 2020.

VIII. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

A. Introduction

Under E.O. 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and therefore, subject to the requirements of the E.O. and OMB review. Section 3(f) of E.O. 12866 defines a "significant regulatory

action" as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. As described below, this temporary rule is not economically significant. The Department has prepared a Regulatory Impact Analysis (RIA) in connection with this rule, as required under section 6(a)(3) of Executive Order 12866, and OMB has reviewed the rule. OIRA has designated this rule as not a "major rule," as defined by 5 U.S.C. 804(2).

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

B. Overview of the Rule

The temporary final rule promulgated by the Department in April 2020 implemented the EPSLA and the EFMLEA, as modified by the CARES Act. The EPSLA requires that certain employers provide two workweeks (up to 80 hours) of paid sick leave to eligible employees who need to take leave from work for specified reasons related to COVID–19. The EFMLEA requires that certain employers provide up to 12 weeks of expanded family and medical leave to eligible employees who need to take leave from work because the employee is caring for his or her son or daughter whose school or place of care is closed or child care provider is unavailable due to COVID–19 related reasons. Payments from employers to employees for such paid leave, as well as allocable costs related to the maintenance of health benefits during the period of the required leave, is to be reimbursed by the Department of the Treasury via tax credits, up to statutory limits, as provided under the FFCRA.

The Department is issuing this revised, new temporary rule, effective immediately, to reaffirm, revise, and clarify its regulations. The Department reaffirms that paid sick leave and expanded family and medical leave may be taken only if the employee has work from which to take leave, and that employees must receive employer approval to take paid sick leave or expanded family and medical leave intermittently. The Department narrows the definition of "health care provider" to employees who are health care providers under 29 CFR. 825.125 and employees capable of providing health care services, meaning those who are employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care. In this rule, the Department also clarifies that the information the employee gives the employer to support the need for leave should be given as soon as practicable, and corrects an inconsistency regarding when an employee may be required to give notice of expanded family and medical leave to their employer.

C. Economic Impacts

1. Costs

This rule revises and clarifies the temporary rule implementing the paid sick leave and expanded family and medical leave provisions of the FFCRA. The Department estimates that these revisions will result in additional rule familiarization costs to employers.

The Department noted that according to the 2017 Statistics of U.S. Businesses (SUSB), there are 5,976,761 private firms in the U.S. with fewer than 500 employees.[33] The Department estimates that all 5,976,761 employers with fewer than 500 employees will need to review the rule to determine how and if their responsibilities have changed from the initial temporary rule. The Department estimates that these employers will likely spend fifteen minutes on average reviewing the new rule, and that this will be a one-time rule familiarization cost.

The Department's analysis assumes that the rule would be reviewed by Compensation, Benefits, and Job Analysis Specialists (SOC 13–1141) or employees of similar status and comparable pay. The median hourly wage for these workers is $31.04 per hour.[34] In addition, the Department also assumes that benefits are paid at a rate of 46 percent [35] and overhead costs are paid at a rate of 17 percent of the base wage, resulting in a fully-loaded hourly wage of $50.60.[36] The Department estimates that the total rule familiarization cost to employers with fewer than 500 employees, who spend 0.25 hour reviewing the rule, will be $75,606,027 (5,976,761 firms × 0.25 hour × $50.60) in the first year. This results in a ten-year annualized cost of $10.1 million at 7 percent and $8.6 million at 3 percent.

In the initial rule, the Department estimated the costs to employers of both documentation and of posting a notice, and qualitatively discussed managerial and operating costs and costs to the Department. The Department does not expect these revisions and clarifications to result in additional costs in any of these categories.

ii. Transfers

In the initial temporary rule, the Department estimated that the transfers associated with this rule are the paid sick leave and expanded family and medical leave that employees will receive as a result of the FFCRA. The paid leave will initially be provided by employers, who will then be reimbursed by the Treasury Department through tax credits, up to statutory limits, which is then ultimately paid for by taxpayers. In the economic analysis of the initial temporary rule, the Department noted that it lacked data to determine which employees will need leave, and how many days of leave will ultimately be used. Because the share of employees who will use leave is likely to be only a partial share of those who are eligible, the Department was therefore unable to quantify the transfer of paid leave.

Certain health care providers and emergency responders may be excluded from this group of impacted employees. This new rule limits the definition of health care provider to employees who are health care providers under 29 CFR 825.125 and other employees capable of

[33] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html*, 2017 SUSB Annual Data Tables by Establishment Industry.

[34] Occupational Employment and Wages, May 2019, *https://www.bls.gov/oes/2019/may/oes_nat.htm*.

[35] The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU1020000000000D and CMU1030000000000D.

[36] $31.04 + $31.04(0.46) + $31.04(0.17) = $50.60.

providing health care services, meaning those who are employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care. As discussed in the initial temporary rule, according to the SUSB data mentioned above, employers with fewer than 500 employees in the health care and social assistance industry employ 9.0 million workers.[37] The Department estimated that this is likely to be the upper bound of potential excluded health care providers, because some of these employees' employers could decide not to exclude them from eligibility to use paid sick leave or expanded family and medical leave. In this new rule, the Department is narrowing the definition of health care provider, which means that fewer employees could potentially be excluded from receiving paid sick leave and expanded family and medical leave. If more employees are able to use this leave, transfers to employees will be higher. Because the Department lacks data on the number of workers who were potentially excluded under the prior definition, and how that number will change under the new definition, the Department is unable to quantify the change in transfers associated with this new rule. However, the Department does not expect that this new temporary rule will result in a transfer at or more than $100 million dollars annually.

iii. Benefits

This new temporary rule will increase clarity for both employers and employees, which could lead to an increase in the use of paid sick leave and expanded family and medical leave. As discussed in the initial rule, the benefits of the paid sick leave and expanded family and medical leave provisions of the FFCRA are vast, and although unable to be quantified, are expected to greatly outweigh any costs of these provisions. With the availability of paid leave, sick or potentially exposed employees will be encouraged to stay home, thereby helping to curb the spread of the virus at the workplace. If employees still receive pay while on leave, they will benefit from being able to cover necessary expenses, and to continue to spend money to help support the economy. This will have spillover effects not only on the individuals who receive pay while on leave, but also to their communities and the national economy as a whole, which is facing unique challenges due to the COVID–19 global pandemic.

[37] A few estimates from other third party analyses confirm that this 9 million figure is reasonable. *See* Michelle Long and Matthew Rae, *Gaps in the Emergency Paid Sick Leave Law for Health Care Workers,* KFF, Jun. 17, 2020 (estimating that 8.1 million workers are subject to the exemption), available at *https://www.kff.org/coronavirus-covid-19/issue-brief/gaps-in-emergency-paid-sick-leave-law-for-health-care-workers/;* Sarah Jane Glynn, *Coronavirus Paid Leave Exemptions Exclude Millions of Workers from Coverage,* American Progress (Apr. 17, 2020) (estimating that 8,984,000 workers are subject to the exemption), available at *https://www.americanprogress.org/issues/economy/news/2020/04/17/483287/coronavirus-paid-leave-exemptions-exclude-millions-workers-coverage/.*

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

As discussed above, the Department calculated rule familiarization costs for all 5,976,761 employers with and fewer than 500 employees. For the 5,755,307 employers with fewer than 50 employees, their one-time rule familiarization cost would be $12.65.[38] The Department calculated this cost by multiplying the 15 minutes of rule familiarization by the fully-loaded wage of a Compensation, Benefits, and Job Analysis Specialist (0.25 hour × $50.60). These estimated costs will be minimal for small business entities, and will be well below one percent of their gross annual revenues, which is typically at least $100,000 per year for the smallest businesses. Based on this determination, the Department certifies that the rule will not have a significant economic impact on a substantial number of small entities.

X. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written statement for rules that include any federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $165 million ($100 million in 1995 dollars adjusted for inflation using the CPI–U) or more in at least one year. This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative. Based on the cost analysis in this temporary rule, the Department determined that the rule will not result in Year 1 total costs greater than $165 million.

[38] Statistics of U.S. Businesses 2017, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* 2017 SUSB Annual Data Tables by Establishment Industry.

XI. Executive Order 13132, Federalism

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order No. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

XII. Executive Order 13175, Indian Tribal Governments

This rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Part 826

Wages.

Signed at Washington, DC, this 10th day of September, 2020.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

For the reasons set out in the preamble, the Department of Labor amends title 29 of the Code of Federal Regulations part 826 as follows:

PART 826—PAID LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

■ 1. The authority citation for part 826 continues to read as follows:

Authority: Pub. L. 116–127 sections 3102(b) and 5111(3); Pub. L. 116–136 section 3611(7).

■ 2. Amend § 826.20 by revising paragraphs (a)(3) and (a)(4) and adding paragraph (a)(10), to read as follows:

§ 826.20 Paid leave entitlements.

(a) * * *

(3) *Advised by a health care provider to self-quarantine.* For the purposes of this section, the term health care provider has the same meaning as that term is defined in § 825.102 and 825.125 of this chapter. An Employee may take Paid Sick Leave for the reason described in paragraph (a)(1)(ii) of this section only if:

(i) A health care provider advises the Employee to self-quarantine based on a belief that:

(A) The Employee has COVID–19;

(B) The Employee may have COVID–19; or

(C) The Employee is particularly vulnerable to COVID–19; and

(ii) Following the advice of a health care provider to self-quarantine prevents the Employee from being able to work, either at the Employee's normal workplace or by Telework. An Employee who is advised to self-quarantine by a health care provider may not take Paid Sick Leave where the Employer does not have work for the Employee.

(4) *Seeking medical diagnosis for COVID–19.* An Employee may take Paid Sick Leave for the reason described in paragraph (a)(1)(iii) of this section if the Employee is experiencing any of the following symptoms:

(i) Fever;

(ii) Dry cough;

(iii) Shortness of breath; or

(iv) Any other COVID–19 symptoms identified by the U.S. Centers for Disease Control and Prevention.

(v) Any Paid Sick Leave taken for the reason described in paragraph (a)(1)(iii) of this subsection is limited to time the Employee is unable to work because the Employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID–19. An Employee seeking medical diagnosis for COVID–19 may not take Paid Sick Leave where the Employer does not have work for the Employee.

* * * * *

(10) *Substantially similar condition.* An Employee may take leave for the reason described in paragraph (a)(1)(vi) of this section if he or she has a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor. The substantially similar condition may be defined at any point during the Effective Period, April 1, 2020, to December 31, 2020. An Employee may not take Paid Sick Leave for a substantially similar condition as specified by the Secretary of Health and Human Services where the Employer does not have work for the Employee.

* * * * *

■ 3. Amend § 826.30 by revising paragraph (c)(1) to read as follows:

§ 826.30 Employee eligibility for leave.

* * * * *

(c) * * *

(1) *Health care provider*—(i) *Basic definition.* For the purposes of Employees who may be exempted from Paid Sick Leave or Expanded Family and Medical Leave by their Employer under the FFCRA, a health care provider is

(A) Any Employee who is a health care provider under 29 CFR 825.102 and 825.125, or;

(B) Any other Employee who is capable of providing health care services, meaning he or she is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care.

(ii) *Types of Employees.* Employees described in paragraph (c)(1)(i)(B) include only:

(A) Nurses, nurse assistants, medical technicians, and any other persons who directly provide services described in (c)(1)(i)(B);

(B) Employees providing services described in (c)(1)(i)(B) of this section under the supervision, order, or direction of, or providing direct assistance to, a person described in paragraphs (c)(1)(i)(A) or (c)(1)(ii)(A) of this section; and

(C) Employees who are otherwise integrated into and necessary to the provision of health care services, such as laboratory technicians who process test results necessary to diagnoses and treatment.

(iii) Employees who do not provide health care services as described above are not health care providers even if their services could affect the provision of health care services, such as IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers.

(iv) *Typical work locations.* Employees described in paragraph (c)(1)(i) of this section may include Employees who work at, for example, a doctor's office, hospital, health care center, clinic, 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 permanent or temporary institution, facility, location, or site where medical services are provided. This list is illustrative. An Employee does not need to work at one of these facilities to be a health care provider, and working at one of these facilities does not necessarily mean an Employee is a health care provider.

(v) *Further clarifications.* (A) Diagnostic services include taking or processing samples, performing or assisting in the performance of x-rays or other diagnostic tests or procedures, and interpreting test or procedure results.

(B) Preventive services include screenings, check-ups, and counseling to prevent illnesses, disease, or other health problems.

(C) Treatment services include performing surgery or other invasive or physical interventions, prescribing medication, providing or administering prescribed medication, physical therapy, and providing or assisting in breathing treatments.

(D) Services that are integrated with and necessary to diagnostic, preventive, or treatment services and, if not provided, would adversely impact patient care, include bathing, dressing, hand feeding, taking vital signs, setting up medical equipment for procedures, and transporting patients and samples.

(vi) The definition of *health care provider* contained in this section applies only for the purpose of determining whether an Employer may elect to exclude an Employee from taking leave under the EPSLA and/or the EFMLEA, and does not otherwise apply for purposes of the FMLA or section 5102(a)(2) of the EPSLA.

* * * * *

■ 4. Amend § 826.90 by revising paragraph (b) to read as follows:

§ 826.90 Employee notice of need for leave.

* * * * *

(b) *Timing and delivery of notice.* Notice may not be required in advance, and may only be required after the first workday (or portion thereof) for which an Employee takes Paid Sick Leave. After the first workday, it will be reasonable for an Employer to require notice as soon as practicable under the facts and circumstances of the particular case. Generally, it will be reasonable for notice to be given by the Employee's spokesperson (*e.g.*, spouse, adult family member, or other responsible party) if the Employee is unable to do so personally. Notice for taking Expanded

Family and Medical Leave is required as soon as practicable. If the reason for this leave is foreseeable, it will generally be practicable to provide notice prior to the need to take leave.

* * * * *

■ 5. Amend § 826.100 by revising paragraph (a) to read as follows:

§ 826.100 Documentation of need for leave.

(a) An Employee is required to provide the Employer documentation containing the following information as soon as practicable, which in most cases will be when the Employee provides notice under § 826.90:

(1) Employee's name;

(2) Date(s) for which leave is requested;

(3) Qualifying reason for the leave; and

(4) Oral or written statement that the Employee is unable to work because of the qualified reason for leave.

* * * * *

[FR Doc. 2020–20351 Filed 9–11–20; 5:00 pm]

BILLING CODE 4510–27–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG 2020–0027]

RIN 1625–AA09

Drawbridge Operation Regulation; Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is altering the operating schedule that governs the US 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina. This modification will allow the drawbridge to be maintained in the closed position during peak traffic hours and provide daily scheduled openings to meet the reasonable needs of navigation.

DATES: This rule is effective October 16, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type USCG–2020–0027 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Martin A. Bridges, Fifth Coast Guard District (dpb), at (757) 398–6422, email *Martin.A.Bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Proposed Management and Budget
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Basis and Purpose, and Regulatory History

The purpose of this rule is to alter the operating schedule that governs the US 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina. This modification will allow the drawbridge to be maintained in the closed position during peak traffic hours and provide daily scheduled openings to meet the reasonable needs of navigation. On May 13, 2020, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Trent River, New Bern, NC" in the **Federal Register** (85 FR 28546). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the comment period that ended June 12, 2020, we received one comment and that comment is addressed in Section IV of this Final Rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The US 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina, has a vertical clearance of 14 feet above mean high water in the closed position and unlimited vertical clearance above mean high water in the open position. The current operation schedule for the drawbridge is published in 33 CFR 117.843(a)

Trent River is used predominately by recreational vessels, sailing vessels, and pleasure craft. The 16-month average of bridge openings, average number of vessels, and maximum number of bridge openings by month, as drawn from the data contained in the bridge tender logs provided by the North Carolina Department of Transportation, is presented below.

Month	Average openings	Average vessels	Maximum openings
January	28	24	28
February	36	28	36
March	67	56	67
April	204	212	271
May	236	265	302
June	245	251	306
July	199	185	242
August	261	260	261
September	161	163	161
October	119	106	119
November	122	85	122
December	65	39	65
Monthly	145	139	165
Daily	56	54	63

Families First Coronavirus Response Act: Employee Paid Leave Rights

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that employees of covered employers are eligible for:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular* rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and
- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Covered Employers: The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.[1] Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Eligible Employees: *All employees* of covered employers are eligible for two weeks of paid sick time for specified reasons related to COVID-19. *Employees employed for at least 30 days* are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.[2]

Notice: Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.

Qualifying Reasons for Leave:

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Duration of Leave:

For reasons (1)-(4) and (6): A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

For reason (5): A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

Calculation of Pay:[3]

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to $511 per day and $5,110 in the aggregate (over a 2-week period).

For leave reasons (4) or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $2,000 in the aggregate (over a 2-week period).

For leave reason (5): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to $200 per day and $12,000 in the aggregate (over a 12-week period). [4]

[1] Certain provisions may not apply to certain employers with fewer than 50 employees. *See* Department FFCRA regulations (expected April 2020).

[2] Under the Act, special rules apply for Health Care Providers and Emergency Responders.

[3] Paid sick time provided under this Act does not carryover from one year to the next. Employees are not entitled to reimbursement for unused leave upon termination, resignation, retirement, or other separation from employment.

[4] An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section.

An agency within the U.S.
Department of Labor

200 Constitution Ave NW
Washington, DC 20210
1-866-4-US-WAGE
1-866-487-9243
www.dol.gov

STATE OF NEW YORK

8091

IN SENATE

March 18, 2020

Introduced by Sen. RAMOS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT providing requirements for sick leave and the provision of certain employee benefits when such employee is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19

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

Section 1. 1.(a) For employers with ten or fewer employees as of January 1, 2020, each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, shall be provided with unpaid sick leave until the termination of any mandatory or precautionary order of quarantine or isolation due to COVID-19 and any other benefit as provided by any other provision of law. During the period of mandatory or precautionary quarantine or isolation, an employee shall be eligible for paid family leave benefits and benefits due pursuant to disability pursuant to this act. An employer with ten or fewer employees as of January 1, 2020, and that has a net income of greater than one million dollars in the previous tax year, shall provide each employee who is subject to a precautionary or mandatory order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, at least five days of paid sick leave and unpaid leave until the termination of any mandatory or precautionary order of quarantine or isolation. After such five days of paid sick leave, an employee shall be eligible for paid family leave benefits and benefits due pursuant to disability pursuant to this act.

(b) For employers with between eleven and ninety-nine employees as of January 1, 2020, each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, shall

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

LBD12052-01-0

be provided with at least five days of paid sick leave and unpaid leave until the termination of any mandatory or precautionary order of quarantine or isolation. After such five days of paid sick leave, an employee shall be eligible for paid family leave benefits and benefits due pursuant to disability pursuant to this act.

(c) For employers with one hundred or more employees as of January 1, 2020, each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, shall be provided with at least fourteen days of paid sick leave during any mandatory or precautionary order of quarantine or isolation.

(d) For public employers, each officer or employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19 shall be provided with at least fourteen days of paid sick leave during any mandatory or precautionary order of quarantine or isolation. Each officer or employee shall be compensated at his or her regular rate of pay for those regular work hours during which the officer or employee is absent from work due to a mandatory or precautionary order of quarantine or isolation due to COVID-19. For purposes of this act, "public employer" shall mean the following: (i) the state; (ii) a county, city, town or village; (iii) a school district, board of cooperative educational services, vocational education and extension board or a school district as enumerated in section 1 of chapter 566 of the laws of 1967, as amended; (iv) any governmental entity operating a college or university; (v) a public improvement or special district including police or fire districts; (vi) a public authority, commission or public benefit corporation; or (vii) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of this state.

(e) Such leave shall be provided without loss of an officer or employee's accrued sick leave.

2. For purposes of this act, "mandatory or precautionary order of quarantine or isolation" shall mean a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.

3. Upon return to work following leave taken pursuant to this act, an employee shall be restored by his or her employer to the position of employment held by the employee prior to any leave taken pursuant to this act with the same pay and other terms and conditions of employment. No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee because such employee has taken leave pursuant to this act.

4. An employee shall not receive paid sick leave benefits or any other paid benefits provided by any provisions of this section if the employee is subject to a mandatory or precautionary order of quarantine because the employee has returned to the United States after traveling to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice and the travel to that country was not taken as part of the employee's employment or at the direction of the employee's employer, and if the employee was provided notice of

the travel health notice and the limitations of this subdivision prior to such travel. Such employee shall be eligible to use accrued leave provided by the employer, or to the extent that such employee does not have accrued leave or sufficient accrued leave, unpaid sick leave shall be provided for the duration of the mandatory or precautionary quarantine or isolation.

5. The commissioner of labor shall have authority to adopt regulations, including emergency regulations, and issue guidance to effectuate any of the provisions of this act. Employers shall comply with regulations promulgated by the commissioner of labor for this purpose which may include, but is not limited to, standards for the use, payment, and employee eligibility of sick leave pursuant to this act.

6. Notwithstanding any other provision of law, and for purposes of this act only, for purposes of article 9 of the workers' compensation law, "disability" shall mean: any inability of an employee to perform the regular duties of his or her employment or the duties of any other employment which his or her employer may offer him or her as a result of a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19 and when the employee has exhausted all paid sick leave provided by the employee's employer under this act.

7. Notwithstanding subdivision 1 of section 204 of the workers' compensation law, disability benefits payable pursuant to this act shall be payable on the first day of disability.

8. Notwithstanding any other provision of law, and for purposes of this act only, for purposes of article 9 of the workers' compensation law, "family leave" shall mean: (a) any leave taken by an employee from work when an employee is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19; or (b) to provide care for a minor dependent child of the employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19.

9. Notwithstanding any other provision of law, and for purposes of this act only, for purposes of article 9 of the workers' compensation law, disability and family leave benefits pursuant to this act may be payable concurrently to an eligible employee upon the first full day of an unpaid period of mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19, provided however, an employee may not collect any benefits that would exceed $840.70 in paid family leave and $2,043.92 in benefits due pursuant to disability per week.

10. Notwithstanding any other provision of law, and for purposes of this act only, for purposes of article 9 of the workers' compensation law, the maximum weekly benefit which the employee is entitled to receive for benefits due pursuant to disability pursuant to subdivision six of this section only shall be the difference between the maximum weekly family leave benefit and such employee's total average weekly wage from each covered employer up to a maximum benefit due pursuant to disability of $2,043.92 per week.

11. Notwithstanding subdivision 7 of section 590, and subdivision 2 of section 607, of the labor law, a claim for benefits under article 18 of

the labor law due to closure of an employer otherwise subject to this section for a reason related to COVID-19 or due to a mandatory order of a government entity duly authorized to issue such order to close such employer otherwise subject to this section, shall not be subject to a waiting period for a claim for benefits pursuant to such title.

12. A mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19 shall be sufficient proof of disability or proof of need for family leave taken pursuant to this act.

13. The provisions of this act shall not apply in cases where an employee is deemed asymptomatic or has not yet been diagnosed with any medical condition and is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means.

14. 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, or to prohibit any personnel action which otherwise would have been taken regardless of any request to use, or utilization of, any leave provided by this act.

15. Notwithstanding any inconsistent provision of law, on or before June 1, 2020, the superintendent of financial services by regulation, in consultation with the director of the state insurance fund and the chair of the workers' compensation board of the state, shall promulgate regulations necessary for the implementation of a risk adjustment pool to be administered directly by the superintendent of financial services, in consultation with the director of the state insurance fund and the chair of the workers' compensation board of the state. "Risk adjustment pool" as used in this subdivision shall mean the process used to stabilize member claims pursuant to this act in order to protect insurers from disproportionate adverse risks. Disproportionate losses of any members of the risk adjustment pool in excess of threshold limits established by the superintendent of financial services of the state may be supported, if required by the superintendent, by other members of such pool including the state insurance fund in a proportion to be determined by the superintendent. Any such support provided by members of the pool shall be fully repaid, including reasonable interest, through a mechanism and period of time to be determined by the superintendent of financial services.

16. (a) The superintendent of financial services, in consultation with the director of the state insurance fund and the chair of the workers' compensation board shall issue two reports assessing the risk adjustment pool required by this act.

(b) On or before January 1, 2022, an initial report shall be provided to the speaker of the assembly, the chair of the assembly ways and means committee and the chair of the assembly labor committee, the temporary president of the senate, the chair of the senate finance committee and the chair of the senate labor committee. Such report shall include: the total number of claims filed pursuant to this section for (i) family leave benefits, and (ii) benefits due to disability, as a result of a mandatory or precautionary order of quarantine or isolation due to COVID-19; the aggregate amount of paid family leave claims and disability claims; the total amount of the claims paid for out of the risk

adjustment pool; the threshold limits established by the department of financial services; and any other information the superintendent of financial services deems necessary to provide to the legislature.

(c) On or before January 1, 2025, a final report shall be provided to the speaker of the assembly, the chair of the assembly ways and means committee and the chair of the assembly labor committee, the temporary president of the senate, the chair of the senate finance committee and the chair of the senate labor committee. Such report shall include the balance of the risk adjustment pool, if any, the total amount collected through the repayment mechanism established by the department of financial services including interest; and any other information the superintendent of financial services deems necessary to provide to the legislature. If there exists a balance in the risk adjustment pool, the final report shall provide a timeline by which repayment will be completed.

17. If at any point while this section shall be in effect the federal government by law or regulation provides sick leave and/or employee benefits for employees related to COVID-19, then the provisions of this section, including, but not limited to, paid sick leave, paid family leave, and benefits due to disability, shall not be available to any employee otherwise subject to the provisions of this section; provided, however, that if the provisions of this section would have provided sick leave and/or employee benefits in excess of the benefits provided by the federal government by law or regulation, then such employee shall be able to claim such additional sick leave and/or employee benefits pursuant to the provisions of this section in an amount that shall be the difference between the benefits available under this section and the benefits available to such employee, if any, as provided by such federal law or regulation.

§ 2. This act shall take effect immediately.

Bill Text: NY S04883 | 2019-2020 | General Assembly | Introduced

New York Senate Bill 4883

NY State Legislature page for S04883

Bill Title: Requires all employers to provide paid sick leave to employees.

Spectrum: Partisan Bill (Democrat 1-0)

Status: *(Introduced)* 2020-01-08 - REFERRED TO LABOR [S04883 Detail]

Download: New_York-2019-S04883-Introduced.html

STATE OF NEW YORK

4883
2019-2020 Regular Sessions
IN SENATE
March 28, 2019

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

AN ACT to amend the labor law, in relation to enacting the "paid sick leave act"

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

Section 1. The labor law is amended by adding a new article 5-A to read as follows:

ARTICLE 5-A
PAID SICK LEAVE

Section 171. Short title.
172. Definitions.
173. Accrual of paid sick leave.
174. Use of paid sick leave.
175. Notice and posting.
176. Employer records.
177. Exercise of rights protected; retaliation prohibited.

178. Enforcement.
179. Waiver by collective bargaining.
180. Minimum requirements.
181. Severability.

§ 171. Short title. This article shall be known and may be cited as the "paid sick leave act".

§ 172. Definitions. For the purposes of this article:

1. "Employee" means any individual who performs services for and under the control and direction of an employer for wages or other remunera-tion.

2. "Employer" means any person, firm, partnership, institution, limited liability company, corporation or association that employs one or more employees; and the state, any political subdivision thereof, any department, board, bureau, division, commission, committee, public

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

LBD10470-01-9

authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any political subdivision thereof.

3. "Paid sick leave" means the payment of the full wages of an employee during any period of such employee's absence from his or her employment because of illness, injury, medical condition, need for medical diagnosis or treatment for himself, herself, or his or her child, spouse, parent, grandparent, grandchild, sibling, or aunt or uncle.

4. "Small business" means an employer with less than ten employees during any week.

§ 173. Accrual of paid sick leave. 1. For employees employed by an employer immediately prior to the effective date of this article, paid sick leave with such employer shall begin to accrue upon the effective date of this article. For employees who commence employment with an employer after the effective date of this article, paid sick leave with such employer shall begin to accrue on the ninetieth day after the commencement of such employment.

2. Paid sick leave shall accrue at a rate of one hour of such leave for every twenty hours worked by the employee for his or her employer. Paid sick leave shall accrue in whole hour increments.

3. No employee shall accrue, at any one period of time, more than eighty hours of paid sick leave; provided, however, that the employee of a small business shall not accrue more than forty hours of paid sick leave.

4. Any employer which provides paid sick leave that equals or exceeds the requirements of subdivisions one, two and three of this section, shall not be required to provide additional paid sick leave pursuant to this section.

5. No employer shall be required to provide financial or other reimbursement for unused accrued paid sick leave, upon the termination, resignation, retirement or other separation from employment of any employee.

§ 174. Use of paid sick leave. 1. An employee may use paid sick leave not only when he or she is ill or injured, or for the purpose of the employee's receiving medical care, treatment or diagnosis; but also to aid or care for any of the following persons when they

are ill or injured, or receiving medical care, treatment or diagnosis: a child; parent; legal guardian or ward; sibling; grandparent; grandchild; spouse; or designated person. The employee may use all or any percentage of his or her paid sick leave to aid or care for the aforementioned persons. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption, step-relationships, and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

If the employee has no spouse, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked thirty hours after paid sick leave begins to accrue. There shall be a period of ten work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the employee on an annual basis, with a period of ten work days for the employee to make such designation.

2. An employer shall not require, as a condition of an employee's use of paid sick leave, that the employee search for or find a replacement worker to work the period during which such employee is using paid sick leave.

3. An employer may require employees to provide, whenever possible, reasonable notification of an absence from work for which paid sick leave is or will be used. The period of such reasonable notification shall not be more than twenty-four hours prior to any such absence.

4. An employer may only take reasonable measures to verify or document that an employee's use of paid sick leave is lawful.

§ 175. Notice and posting. 1. The department shall establish, publish and make available to all employers, in all languages spoken by five percent or more of the state's workforce, a notice suitable for posting by employers in the workplace informing employees of their rights pursuant to this article. The department shall, on or before December first, update such notice in any year in which there is a change in the languages spoken by five percent or more of the state's workforce.

2. Every employer shall conspicuously post in the workplace or job site the notice established pursuant to subdivision one of this section.

§ 176. Employer records. Every employer shall, for a period of four years, maintain records for each employee documenting the hours worked and the paid sick leave used. The department shall have access to such records during the normal business hours of each employer. When there is an issue relating to an employee's accrual and use of paid sick leave there shall be, absent clear and convincing evidence to the contrary, a presumption that the employer violated the provisions of this article, if the employer fails to maintain the records required by this section or fails to provide access thereto to the department.

§ 177. Exercise of rights protected; retaliation prohibited. 1. It shall be unlawful for any employer or any other person to interfere with, restrain, or deny the accrual or use of or the attempted use of any paid sick leave required by this article.

2. No employer or any other person shall discharge, threaten to discharge, demote, suspend, or in any other manner discriminate or take

adverse action against any employee in retaliation for exercising any right granted by this article. Such rights shall include, but not be limited to, the use of paid sick leave, the filing of a complaint or informing any person about any violation of this article, the cooperation with the department in the investigation of any alleged violation of this article, and the informing of any person of his or her rights pursuant to this article.

3. No employer shall consider or use paid sick leave taken pursuant to this article as an absence that may lead to or result in the discipline of, the discharge of, the demotion of, the suspension of or any other action against any employee.

4. The provisions of this section shall apply to any person who, in good faith, alleges a violation of this article.

5. The taking of any adverse action against an employee within ninety days of any person filing a complaint with the department or a court alleging a violation of the provisions of this article, informing any other person relating to an alleged violation of this article by an employer, cooperating with the department or any other person in the investigation or prosecution of any alleged violation of this article or informing any person of the provisions of this article, shall establish a rebuttable presumption that such adverse action was taken in retaliation for exercising the rights granted pursuant to this article.

§ 178. Enforcement. 1. The department is charged with the duty to enforce the provisions of this article. Furthermore, the commissioner is authorized and directed to promulgate any rules and regulations neces-sary to implement the provisions of this article.

2. For any violation of this article the department may order an employer to grant reinstatement, back pay, the payment for any paid sick leave withheld and/or the payment of a penalty to the affected employee. Furthermore, the department shall impose a civil penalty, for any violation of this article, equal to triple the monetary value of the paid sick leave denied or two hundred dollars, whichever shall be great-er.

§ 179. Waiver by collective bargaining. All or any portion of the provisions of this article may be waived with regard to any employees and employers who are subject to a bona fide collective bargaining agreement to the extent that such provisions are expressly waived in such agreement in clear and unambiguous terms.

§ 180. Minimum requirements. The provisions of this article shall constitute the minimum requirements of the provision of paid sick leave to employees. No provision of this article shall be deemed to prohibit any employer from granting greater paid sick leave benefits than those required by this article.

§ 181. Severability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent juris-diction to be invalid and after exhaustion of all further judicial review, the judgement shall not affect, impair or invalidate the remain-der thereof, but shall be confined in this operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgement shall have been rendered.

§ 2. This act shall take effect on the first of January next succeed-ing the date on which it shall have become a law. Effective immediate-ly, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized to be completed on or before such date.

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting nyc.gov/dcwp. The Law and Rules are current as of October 2020.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer and Worker Protection (DCWP) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AND WORKER PROTECTION
CHAPTER 8: EARNED SAFE AND SICK TIME ACT

§ 20-911 Short title.
This chapter shall be known and may be cited as the "Earned Safe and Sick Time Act."

§ 20-912 Definitions.
When used in this chapter, the following terms shall be defined as follows:

"Calendar year" shall mean a regular and consecutive twelve month period, as determined by an employer.

"Chain business" shall mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments in such group is at least five.

"Child" shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

"Commissioner" shall mean the commissioner of consumer and worker protection.

"Department" shall mean the department of consumer and worker protection.

"Domestic partner" shall mean any person who has a registered domestic partnership pursuant to section 3-240 of the code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

"Domestic worker" shall mean any person who provides care for a child, companionship for a sick, convalescing or elderly person, housekeeping, or any other domestic service in a home or residence.

"Employee" shall mean any "employee" as defined in subdivision 2 of section 190 of the labor law who is employed for hire within the city of New York who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law, and not including those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the

judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

"Employer" shall mean any "employer" as defined in subdivision (3) of section 190 of the labor law, but not including (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

"Family member" shall mean an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; the child or parent of an employee's spouse or domestic partner; and any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship.

"Family offense matter" shall mean an act or threat of an act that may constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision 1 of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions 1, 2 and 3 of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household.

"Grandchild" shall mean a child of an employee's child.

"Grandparent" shall mean a parent of an employee's parent. "Health care provider" shall mean any person licensed under federal or New York state law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

"Hourly professional employee" shall mean any individual (i) who is professionally licensed by the New York state education department, office of professions, under the direction of the New York state board of regents under education law sections 6732, 7902 or 8202, (ii) who calls in for work assignments at will determining his or her own work schedule with the ability to reject or accept any assignment referred to them and (iii) who

is paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the calendar year.

"Human trafficking" shall mean an act or threat of an act that may constitute sex trafficking, as defined in section 230.34 of the penal law, or labor trafficking, as defined in section 135.35 and 135.36 of the penal law.

"Member of the same family or household" shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

"Safe/sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivisions a and b of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

"Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

"Public disaster" shall mean an event such as fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster by the president of the United States, the governor of the state of New York or the mayor of the city of New York.

"Public health emergency" shall mean a declaration made by the commissioner of health and mental hygiene pursuant to subdivision d of section 3.01 of the New York city health code or by the mayor pursuant to section 24 of the executive law.

"Public service commission" shall mean the public service commission established by section 4 of the public service law.

"Safe time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivision b of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

"Sexual offense" shall mean an act or threat of an act that may constitute a violation of article 130 of the penal law.

"Sibling" shall mean an employee's brother or sister, including half-siblings, step-siblings and siblings related through adoption.

"Sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivision a of section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

"Spouse" shall mean a person to whom an employee is legally married under the laws of the state of New York.

"Stalking" shall mean an act or threat of an act that may constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the penal law.

§ 20-913 Right to safe/sick time; accrual.

a. All employees have the right to safe/sick time pursuant to this chapter.

1. All employers that employ five or more employees, all employers of one or more domestic workers, and any employer of four or fewer employees that had a net income of

one million dollars or more during the previous tax year, shall provide paid safe/sick time to their employees in accordance with the provisions of this chapter. An employer shall pay an employee for paid safe/sick time at the employee's regular rate of pay at the time the paid safe/sick time is taken, provided that the rate of pay shall not be less than the highest applicable rate of pay to which the employee would be entitled pursuant to subdivision 1 of section 652 of the labor law, or any other applicable federal, state, or local law, rule, contract, or agreement. Such rate of pay shall be calculated without allowing for any tip credit or tip allowance set forth in any federal, state, or local law, rule, contract, or agreement.

2. All employees not entitled to paid safe/sick time pursuant to this chapter shall be entitled to unpaid safe/sick time in accordance with the provisions of this chapter.

b. All employers shall provide a minimum of one hour of safe/sick time for every thirty hours worked by an employee, provided that employers with ninety-nine or fewer employees shall not be required under this chapter to provide more than a total of forty hours of safe/sick time for an employee in a calendar year and further provided that employers with one hundred or more employees shall not be required under this chapter to provide more than a total of fifty-six hours of safe/sick time for an employee in a calendar year. Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of safe/sick time at a faster rate or the use of sick safe/sick time at an earlier date than this chapter requires.

c. An employer required to provide paid safe/sick time pursuant to this chapter who provides an employee with an amount of paid leave, including paid time off, paid vacation, paid personal days or paid days of rest required to be compensated pursuant to subdivision 1 of section 161 of the labor law, sufficient to meet the requirements of this section and who allows such paid leave to be used for the same purposes and under the same conditions as safe/sick time required pursuant to this chapter, is not required to provide additional paid safe/sick time for such employee whether or not such employee chooses to use such leave for the purposes included in section 20-914 of this chapter. An employer required to provide unpaid safe/sick time pursuant to this chapter who provides an employee with an amount of unpaid or paid leave, including unpaid or paid time off, unpaid or paid vacation, or unpaid or paid personal days, sufficient to meet the requirements of this section and who allows such leave to be used for the same purposes and under the same conditions as safe/sick time required pursuant to this chapter, is not required to provide additional unpaid safe/sick time for such employee whether or not such employee chooses to use such leave for the purposes set forth in section 20-914 of this chapter.

d. Safe/sick time as provided pursuant to this chapter shall begin to accrue at the commencement of employment or on the effective date of the local law that created the right to such time, whichever is later. An employee shall be entitled to use safe/sick time as it is accrued, except that employees of any employer of four or fewer employees that had a net income of one million dollars or more during the previous tax year may use paid safe/sick time as it is accrued on or after January 1, 2021, and that employees of any employer of one hundred or more employees may use any accrued amount of paid safe/sick time that exceeds forty hours per calendar year on or after January 1, 2021.

e. Employees who are exempt from the overtime requirements of New York state law or regulations, including the wage orders promulgated by the New York commissioner of labor pursuant to article 19 or 19-A of the labor law, shall be assumed to work forty hours in each work week for purposes of safe/sick time accrual unless their regular work week is less than forty hours, in which case safe/sick time accrues based upon that regular work week.

f. The provisions of this chapter do not apply to (i) work study programs under 42 U.S.C. section 2753, (ii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117, (iii) independent contractors who do not meet the definition of employee under subdivision 2 of section 190 of the labor law, and (iv) hourly professional employees.

g. Employees shall determine how much accrued safe/sick time they need to use, provided that employers may set a reasonable minimum increment for the use of safe/sick time which shall not exceed four hours per day.

h. For employees of employers with ninety-nine or fewer employees, up to forty hours of unused safe/sick time as provided pursuant to this chapter shall be carried over to the following calendar year, and for employees of employers with one hundred or more employees, up to fifty-six hours of unused safe/sick time as provided pursuant to this chapter shall be carried over to the following calendar year; provided that no employer with ninety-nine or fewer employees shall be required to (i) allow the use of more than forty hours of safe/sick time in a calendar year or (ii) carry over unused paid safe/sick time if the employee is paid for any unused safe/sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid safe/sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year; and further provided that no employer with one hundred or more employees shall be required to (i) allow the use of more than fifty-six hours of safe/sick time in a calendar year or (ii) carry over unused paid safe/sick time if the employee is paid for any unused safe/sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid safe/sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year.

i. Nothing in this chapter shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued safe/sick time that has not been used.

j. If an employee is transferred to a separate division, entity or location in the city of New York, but remains employed by the same employer, such employee is entitled to all safe/sick time accrued at the prior division, entity or location and is entitled to retain or use all safe/sick time as provided pursuant to the provisions of this chapter. When there is a separation from employment and the employee is rehired within six months of separation by the same employer, previously accrued safe/sick time that was not used shall be reinstated and such employee shall be entitled to use such accrued safe/sick time at any time after such employee is rehired, provided that no employer shall be required to reinstate such safe/sick time to the extent the employee was paid for unused accrued safe/sick time prior to separation and the employee agreed to accept such pay for such unused safe/sick time.

§ 20-914 Use of safe/sick time.

a. Sick time.

1. An employee shall be entitled to use sick time for absence from work due to:

(a) such employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care; or

(b) care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care; or

(c) closure of such employee's place of business by order of a public official due to a public health emergency or such employee's need to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency.

2. For an absence of more than three consecutive work days for sick time, an employer may require reasonable documentation that the use of sick time was authorized by this subdivision. For sick time used pursuant to this subdivision, documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation and an employer shall not require that such documentation specify the nature of the employee's or the employee's family member's injury, illness or condition, except as required by law. Where a health care provider charges an employee a fee for the provision of documentation requested by their employer, such employer shall reimburse the employee for such fee.

b. Safe time.

1. An employee shall be entitled to use safe time for absence from work due to any of the following reasons when the employee or employee's family member has been the victim of domestic violence pursuant to subdivision thirty-four of section two hundred ninety-two of the executive law, a family offense matter, sexual offense, stalking, or human trafficking:

(a) to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

(b) to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

(c) to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

(d) to file a complaint or domestic incident report with law enforcement;

(e) to meet with a district attorney's office;

(f) to enroll children in a new school; or

(g) to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

2. For an absence of more than three consecutive work days for safe time, an employer may require reasonable documentation that the use of safe time was authorized by this subdivision. For safe time used pursuant to this subdivision, documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee's family member has sought assistance in addressing domestic violence, family offense matters, sex offenses, stalking, or human trafficking and their effects; a police or court record; or a notarized letter from the employee explaining the need for such time shall be considered reasonable documentation and an employer shall not require that such documentation specify the details of the domestic violence, family offense matter, sexual offense, stalking, or human trafficking. An employer shall reimburse an employee

for all reasonable costs or expenses incurred for the purpose of obtaining such documentation for an employer.

c. An employer may require reasonable notice of the need to use safe/sick time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such safe/sick time, not to exceed seven days prior to the date such safe/sick time is to begin. Where such need is not foreseeable, an employer may require an employee to provide notice of the need for the use of safe/sick time as soon as practicable.

d. Nothing herein shall prevent an employer from requiring an employee to provide written confirmation that an employee used safe/sick time pursuant to this section.

e. An employer shall not require an employee, as a condition of taking safe/sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing time.

f. Nothing in this chapter shall be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses safe/sick time provided pursuant to this chapter for purposes other than those described in this section.

§ 20-915 Changing schedule.

Upon mutual consent of the employee and the employer, an employee who is absent for a reason listed in subdivision a of section 20-914 of this chapter may work additional hours during the immediately preceding seven days if the absence was foreseeable or within the immediately subsequent seven days from that absence without using safe/sick time to make up for the original hours for which such employee was absent, provided that an adjunct professor who is an employee at an institute of higher education may work such additional hours at any time during the academic term. An employer shall not require such employee to work additional hours to make up for the original hours for which such employee was absent or to search for or find a replacement employee to cover the hours during which the employee is absent pursuant to this section. If such employee works additional hours, and such hours are fewer than the number of hours such employee was originally scheduled to work, then such employee shall be able to use safe/sick time provided pursuant to this chapter for the difference. Should the employee work additional hours, the employer shall comply with any applicable federal, state or local labor laws.

§ 20-916 Collective bargaining agreements.

a. The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, safe/sick time, and holiday and Sunday time pay at premium rates.

b. Notwithstanding subdivision a of this section, the provisions of this chapter shall not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions are expressly waived in such collective bargaining agreement.

§ 20-917 Public disasters.

In the event of a public disaster, the mayor may, for the length of such disaster, suspend the provisions of this chapter for businesses, corporations or other entities regulated by the public service commission.

§ 20-918 Retaliation and interference prohibited.

a. No person shall interfere with any investigation, proceeding or hearing pursuant to this chapter.

b. No person shall take any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights under this chapter or interfere with an employee's exercise of rights under this chapter and implementing rules.

c. Adverse actions include, but are not limited to, threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee's exercise of rights under this chapter, blacklisting, and maintenance or application of an absence control policy that counts protected leave for safe/sick time as an absence that may lead to or result in an adverse action. Adverse actions include actions related to perceived immigration status or work authorization.

d. An employee need not explicitly refer to a provision of this chapter or implementing rules to be protected from an adverse action.

e. The protections of this section shall apply to any person who mistakenly but in good faith asserts their rights or alleges a violation of this chapter.

f. A causal connection between the exercise, attempted exercise, or anticipated exercise of rights protected by this chapter and implementing rules and an employer's adverse action against an employee or a group of employees may be established by indirect or direct evidence.

g. For purposes of subdivision b of this section, a violation is established when it is shown that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

§ 20-919 Notice of rights.

a.

1. An employer shall provide an employee with written notice of such employee's right to safe/sick time pursuant to this chapter, including the accrual and use of safe/sick time, the calendar year of the employer, and the right to be free from retaliation and to file a complaint with the department. Such notice shall be in English and the primary language spoken by that employee, provided that the department has made available a translation of such notice in such language pursuant to subdivision b of this section. Such notice shall also be conspicuously posted at an employer's place of business in an area accessible to employees.

2. Such notice shall be provided to each employee at the commencement of employment. For employees who were already employed prior to the effective dates of provisions of this chapter establishing their right to safe/sick time, such notice shall be provided within thirty days of the effective date of the local law that established each such right.

b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section concerning safe/sick time and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall be posted in a downloadable format on the department's website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.

c. The amount of safe/sick time accrued and used during a pay period and an employee's total balance of accrued safe/sick time shall be noted on a pay statement or other form of written documentation provided to the employee each pay period.

d. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

§ 20-920 Employer records.
Employers shall make and retain records documenting such employer's compliance with the requirements of this chapter for a period of three years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time of day, in furtherance of an investigation conducted pursuant to this chapter.

§ 20-921 Confidentiality and nondisclosure.
An employer may not require the disclosure of details relating to an employee's or his or her family member's medical condition or require the disclosure of details relating to an employee's or his or her family member's status as a victim of domestic violence, family offenses, sexual offenses, stalking, or human trafficking as a condition of providing safe/sick time under this chapter. Health information about an employee or an employee's family member, and information concerning an employee's or his or her family member's status or perceived status as a victim of domestic violence, family offenses, sexual offenses, stalking or human trafficking obtained solely for the purposes of utilizing safe/sick time pursuant to this chapter, shall be treated as confidential and shall not be disclosed except by the affected employee, with the written permission of the affected employee or as required by law. Provided, however, that nothing in this section shall preclude an employer from considering information provided in connection with a request for safe time in connection with a request for reasonable accommodation pursuant to subdivision 27 of section 8-107.

§ 20-922 Encouragement of more generous policies; no effect on more generous policies.
a. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a safe time or sick time policy more generous than that which is required herein.
b. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe time or sick time to an employee than required herein.
c. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding safe time or sick time as provided pursuant to federal, state or city law.

§ 20-923 Other legal requirements.
a. This chapter provides minimum requirements pertaining to safe time and sick time and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe time or sick time, whether paid or unpaid, or that extends other protections to employees.
b. Nothing in this chapter shall be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this chapter be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.
c. Where section 196-b of the labor law, or any regulation issued thereunder, sets forth a standard or requirement for minimum hour or use of safe/sick time that exceeds any provision in this

chapter, such standard or requirement shall be incorporated by reference and shall be enforceable by the department in the manner set forth in this chapter and subject to the penalties and remedies set forth in the labor law.

§ 20-924 Enforcement and penalties.

a. The department shall enforce the provisions of this chapter. In effectuating such enforcement, the department shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this chapter and investigate complaints received by the department in a timely manner. The department may open an investigation upon receipt of a complaint or on its own initiative.

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within two years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any natural person providing information relevant to enforcement of this chapter unless disclosure of such person's identity is necessary to the department for resolution of its investigation or otherwise required by federal or state law. The department shall, to the extent practicable, notify such person that the department will be disclosing his or her identity prior to such disclosure.

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint. Within fourteen days of written notification of an investigation by the department, the person or entity under investigation shall provide the department with a written response and such other information as the department may request. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

d. The department shall have the power to impose penalties provided for in this chapter and to grant each and every employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of safe/sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of safe/sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the original hours during which such employee is absent pursuant to this chapter: five hundred dollars; (iii) for each violation of section 20-918 not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate; and (v) for each employee covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of accrued safe/sick time in violation of section 20-913, five hundred dollars.

e. Any entity or person found to be in violation of the provisions of sections 20-913, 20-914, 20-915 or 20-918 of this chapter shall be liable for a civil penalty payable to the city not to exceed

five hundred dollars for the first violation and, for subsequent violations that occur within two years of any previous violation, not to exceed seven hundred fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation. Penalties shall be imposed on a per employee basis.

f. The department shall annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

§ 20-924.1 Enforcement by the corporation counsel.

The corporation counsel or such other persons designated by the corporation counsel on behalf of the department may initiate in any court of competent jurisdiction any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the department pursuant to this chapter or for the correction of any violation issued pursuant to section 20-924, including actions to mandate compliance with the provisions of such order, secure permanent injunctions, enjoining any acts or practices that constitute such violation, mandating compliance with the provisions of this chapter or such other relief as may be appropriate.

§ 20-924.2 Civil action by corporation counsel for pattern or practice of violations.

a. Cause of action.

1. Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of this chapter, the corporation counsel or such other persons designated by the corporation counsel may commence a civil action on behalf of the city in a court of competent jurisdiction.

2. The corporation counsel or such other persons designated by the corporation counsel shall commence such action by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief.

3. Nothing in this section prohibits the department from exercising its authority under section 20-924 or the city charter, provided that a civil action pursuant to this section shall not have previously been commenced.

b. Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to subdivision a of this section, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

c. Civil penalties and relief for employees. In any civil action commenced pursuant to subdivision a of this section, the trier of fact may impose a civil penalty of not more than $15,000 for a finding that an employer has engaged in a pattern or practice of violations of this chapter. Any civil penalty so recovered shall be paid into the general fund of the city. The trier of fact may, in addition, award relief of up to $500 to each employee covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of earned time in violation of section 20-913.

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting nyc.gov/dcwp. The Law and Rules are current as of October 2020.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer and Worker Protection (DCWP) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 7: OFFICE OF LABOR POLICY AND STANDARDS

SUBCHAPTER A: OFFICE OF LABOR POLICY AND STANDARDS

§ 7-101. Definitions.

(a) As used in this subchapter, the following terms have the following meanings:

"Employee" means any person who meets the definition of "employee," as defined by section 20-912 of the Code, "eligible grocery employee," as defined by section 22-507 of the Code, "fast food employee," as defined by section 20-1201 or 20-1301 of the Code, or "retail employee," as defined by section 20-1201 of the Code.

"Employer" means any person who meets the definition of "employer," as defined by section 20-912 of the Code, "successor grocery employer" or "incumbent grocery employer," as defined by section 22-507 of the Code, "fast food employer," as defined by section 20-1201 or 20-1301 of the Code, or "retail employer," as defined by section 20-1201 of the Code.

"Freelancers Law and rules" means Chapter 10 of Title 20 of the Code and subchapter E of this chapter.

"OLPS laws and rules" means chapters 8, 12, and 13 of Title 20 and section 22-507 of the Code and subchapters A, B, D, F, and G of this chapter.

"Transportation Benefits Law and rules" means Chapter 9 of Title 20 of the Code and subchapter C of this chapter.

(b) As used in the OLPS laws and rules, the following terms have the following meanings:

"Code" means the Administrative Code of the City of New York.

"Department" means the New York City Department of Consumer Affairs.

"Director" means the director of the office of labor standards established pursuant to section 20-a of the charter.

"Joint employer" means each of two or more employers who has some control over the work or working conditions of an employee or employees. Joint employers may be separate and distinct individuals or entities with separate owners, managers and facilities. A determination of whether or not a joint employment relationship exists will not often be decided by the application of any single criterion; rather the entire relationship shall be viewed in its totality.

"Office" means the office of labor standards established pursuant to section 20-a of the New York City Charter and referred to as the Office of Labor Policy and Standards.

"Supplements" means all remuneration for employment paid in any medium other than cash, or reimbursement for expenses, or any payments which are not 'wages' within the meaning of the New York State Labor Law, including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay,? life insurance, and apprenticeship training.

"Temporary help firm" means an employer that recruits and hires its own employees and assigns those employees to perform work or services for another organization to: (i) support or supplement the other organization's workforce; (ii) provide assistance in special work situations including, but not limited to, employee absences, skill shortages, or seasonal workloads; or (iii) perform special assignments or projects.

"Work week" means a fixed and regularly recurring period of 168 hours or seven consecutive 24 hour periods; it may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

"Written" or "writing" means a hand-written or machine-printed or printable communication in physical or electronic format, including a communication that is maintained or transmitted electronically, such as a text message.

§ 7-102. Construction.

This chapter shall be liberally construed to permit the Office to accomplish the purposes contained in section 20-a of the New York City Charter. The provisions of this subchapter shall not be construed to supersede any other provision of the OLPS laws and rules, the Freelancers Law and rules, or the Transportation Benefits Law and rules.

§ 7-103 Severability.

The rules contained in this chapter shall be separate and severable. If any word, clause, sentence, paragraph, subdivision, section, or portion of these rules or the application thereof to any person, employer, employee, or circumstance is contrary to a local, state or federal law or held to be invalid, it shall not affect the validity of the remainder of the rules or the validity of the application of the rules to other persons or circumstances.

§ 7-104 Complainants and Witnesses.

(a) All people, regardless of immigration status, may access resources provided by the Office.

(b) Any person who meets the definition of employee in section 7-101 of this subchapter is entitled to the rights and protections provided by this subchapter to employees and any applicable provision of the OLPS laws and rules, regardless of immigration status.

(c) The Office shall conduct its work without inquiring into the immigration status of complainants and witnesses.

(d) The Office shall maintain confidential the identity of a complainant or natural person providing information relevant to enforcement of the OLPS laws and rules and the Transportation Benefits Law and rules, unless disclosure is necessary for resolution of the investigation or matter, or otherwise required by law, and the Office, to the extent practicable, notifies such complainant or natural person that the Office will be disclosing such person's identity before such disclosure.

(e) For purposes of effectuating subdivision (d) of this section, the Office shall keep confidential any information that may be used to identify, contact, or locate a single person, or to identify an individual in context.

§ 7-105 Joint Employers.

(a) Joint employers are individually and jointly liable for violations of all applicable OLPS laws and rules and satisfaction of any penalties or restitution imposed on a joint employer for any violation thereof, regardless of any agreement among joint employers to the contrary.

(b) A joint employer must count every employee it employs for hire or permits to work, whether joint or not, in determining the number of employees employed for hire or permitted to work for the employer. For example, a joint employer who employs three workers from a temporary help firm and also has three permanent employees under its sole control has six employees for purposes of the OLPS laws and rules.

§ 7-106 Determining Damages Based on Lost Earnings.

(a) The following provisions apply to the extent necessary in circumstances described in paragraphs (1) and (2) below for the calculation of damages based on lost earnings in an administrative enforcement action:

(1) When an employer pays a flat rate of pay for work performed, regardless of the number of hours actually worked, an employee's hourly rate of pay shall be based on the most recent hourly rate paid to the employee for the applicable pay period, calculated by adding together the employee's total earnings, including tips, commissions, and supplements, for the most recent work week in which no sick time or other leave was taken and dividing that sum by the number of hours spent performing work during such work week or forty hours, whichever amount of hours is less.

(2) If an employee performs more than one job for the same employer or the employee's rate of pay fluctuates for a single job, the hourly rate of pay shall be the rate of pay that the employee would have been paid during the time that employee would have been performing work but for the employee's absence.

(b) If the methods for calculating the hourly rate described in subdivision (a) produce an hourly rate that is below the full hourly minimum wage, then the employee's lost earnings shall be based on the full hourly minimum wage.

§ 7-107 Required Notices and Postings.

(a) For any notice created by the Office that is made available on the City's website and that is then required by a provision of the OLPS laws and rules to be provided to an employee or posted in the workplace, an employer must provide and/or post such notice in English and in any language spoken as a primary language by at least five percent of employees at the employer's location, provided that the Director has made the notice available in such language. Employers covered by the Earned Safe and Sick Time Act, chapter 8 of Title 20 of the Code, are required to comply with this subdivision in addition to the requirement pursuant to section 20-919 of the Code that an employer provide the notice of rights in an employee's primary language.

(b) (1) For any notice that is not created by the Office and made available on the City's website, that is required to be provided to an employee and/or posted in the workplace by a provision of the OLPS laws and rules, an employer must provide and/or post such notice in English and in any language that the employer customarily uses to communicate with the employee.

(c) (2) For any notice that is not created by the Office and made available on the city's website, that is required to be posted in the workplace by a provision of the OLPS laws and rules, an employer must post such notice in English and in any language that the employer customarily uses to communicate with any of the employees at that location.

(d) Any notice, policy, or other writing that is required by a provision of the OLPS laws and rules to be personally provided to an employee must be provided by a method that reasonably ensures personal receipt by the employee and that is consistent with any other applicable law or rule that specifically addresses a method of delivery.

(e) Any notice, policy or, other writing that is required to be posted pursuant to a provision of the OLPS laws and rules must be posted in a printed format in a conspicuous place accessible to employees where notices to employees are customarily posted pursuant to state and federal laws and, except for notices created by the Office, in a form customarily used by the employer to communicate with employees.

(f) An employer that places employees to perform work off-site or at dispersed job-sites, such as in private homes, building security posts, or on delivery routes, must comply with any applicable requirement to post a notice, policy or other writing contained in the OLPS laws and rules by providing employees with the required notice personally upon commencement of employment, within fourteen (14) days of the effective date of any changes to the required posting, and upon request by the employee, in addition to the requirements in subdivision (c) of this section.

§ 7-108 Retaliation.

(a) No person shall take any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights under the OLPS laws and rules or interfere with an employee's exercise of rights under the OLPS laws and rules.

(b) Taking an adverse action includes, but is not limited to threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an employee, reducing the

hours of pay of an employee, informing another employer than an employee has engaged in activities protected by the OLPS laws and rules, discriminating against the employee, including actions related to perceived immigration status or work authorization, and maintenance or application of. an absence control policy that counts protected leave as an absence that may lead to or result in an adverse action.

(c) An employee need not explicitly refer to a provision of the OLPS laws and rules to be protected from an adverse action.

(d) The Office may establish a causal connection between the exercise, attempted exercise, or anticipated exercise of rights protected by the OLPS laws and rules and an employer's adverse action against an employee or a group of employees by indirect or direct evidence.

(e) For purposes of this section, retaliation is established when the Office shows that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.

§ 7-109 Enforcement and Penalties.

(a) The Office may open an investigation to determine compliance with laws enforced by the Office on its own initiative or based on a complaint, except as otherwise provided by section 20-1309 of Chapter 13 of Title 20 of the Code.

(b) Whether it was issued in person, via mail, or, on written consent of the employer, email, an employer must respond to a written request for information or records by providing the Office with true, accurate, and contemporaneously-made records or information within the following timeframes, except as provided in subdivision (c) of this section, subdivision (c) of section 20-924 of the Code, section 7-213 of this title or other applicable law:

(1) For an initial request for information or records, the employer shall

i. Within ten (10) days of the date that the request for information was received by the employer provide the following information, if applicable:

A. the employer's correct legal name and business form;

B. the employer's trade name or DBA;

C. the names and addresses of other businesses associated with the employer;

D. the employer's Federal Employer Identification Number;

E. the employer's addresses where business is conducted;

F. the employer's headquarters and principal place of business addresses;

G. the name, phone number, email address, and mailing address of the owners, officers, directors, principals, members, partners and/or stockholders of more than 10 percent of the outstanding stock of the employer business and their titles;

H. the name, phone number, email address, and mailing address of the individuals who have operational control over the business;

I. the name, phone number, email address, and mailing address of the individuals who supervise employees;

J. the name and contact information of the individual who the office should contact regarding an investigation of the business and an affirmation granting authority to act; and

ii. Within fourteen (14) days of the date of that the initial request for

information or records was received, provide the remaining information or records requested in that initial request.

(2) For all requests for information or records after the initial request, an employer must respond within the timeframe prescribed by the Office in the request, which shall not exceed fourteen (14) days from the date that the request was received by the employer, unless a longer timeframe has been agreed to by the Office.

(3) Upon good cause shown, the Director may extend response timeframes required pursuant to this subdivision.

(c) An employer shall respond to a written request for information or records by providing the Office with true, accurate, and contemporaneously-made records or information in a lesser amount of time than provided in paragraphs 2 and 3 of subdivision b of this section if agreed to by the parties or the Office has reason to believe that:

(1) The employer will destroy or falsify records;

(2) The employer is closing, selling, or transferring its business, disposing of assets or is about to declare bankruptcy;

(3) The employer is the subject of a government investigation or enforcement action or proceeding related to wages and hours, unemployment insurance, workers' compensation, discrimination, OLPS laws and rules, the Freelancers Law and rules, or the Transportation Benefits Law and rules; or

(4) More immediate access to records is necessary to prevent or remedy retaliation against employees.

(d) In accordance with applicable law, the Office may resolve or attempt to resolve an investigation at any point through settlement upon terms that are satisfactory to the Office.

(e) The Office may issue a notice of violation to an employer who fails to provide true and accurate information or records requested by the Office in connection with an investigation.

(f) An employer who fails to timely and fully respond to the request for information or records that is the subject of a notice of violation issued under subdivision (e) of this section on or before the first scheduled appearance date is subject to a penalty of five hundred dollars, in addition to any penalties or remedies imposed as a result of the Office's investigation.

(g) The employer may cure a notice of violation issued in accordance with subdivision (e) of this section without the penalty imposed in connection with subdivision (f) by:

(1) producing the requested information or records on or before the first scheduled appearance date; or

(2) resolving, to the satisfaction of the Office on or before the first scheduled appearance date, the investigation that is the basis for the request for information or records.

(h) A finding that an employer has an official or unofficial policy or practice that denies a right established or protected by the OLPS laws and rules shall constitute a violation of the applicable provision of the OLPS laws and rules for each and every employee subject to such policy or practice.

§ 7-110 Service.

Service of documents issued by the Office to employers, including written requests for information or records and notices of violation, shall be made in a manner reasonably calculated to achieve actual notice to the employer. The following are presumed to be reasonably calculated to achieve

actual notice: (i) personal service on the employer; (ii) personal service on the employer by regular first-class mail, certified mail, return receipt requested, or private mail delivery services, such as UPS, to an employer's last known business address; or (iii) if an employer has so consented, facsimile, email, including an attachment to an email.

§ 7-111 Recordkeeping.

(a) An employer's failure to maintain, retain, or produce a record that is required to be maintained under the OLPS laws and rules that is relevant to a material fact alleged by the Office in a notice of violation issued pursuant to a provision of the OLPS laws and rules creates a reasonable inference that such fact is true, unless a rebuttable presumption or other adverse inference is provided by applicable law.

(b) An employer that produces records to the department or Office in response to a request for information affirms that the records produced are true and accurate.

SUBCHAPTER B: EARNED SAFE AND SICK TIME ACT

§ 7-201 Definitions.

(a) As used in this chapter, the terms "calendar year", "employee," "employer," "health care provider," "paid safe/sick time," "safe time," and "sick time" shall have the same meanings as set forth in section 20-912 of the Administrative Code.

(b) As used in the Earned Safe and Sick Time Act and in this subchapter, the term "domestic worker" means a person who provides care for a child, companionship for a sick, convalescing or elderly person, housekeeping, or any other domestic service in a home or residence whenever such person is directly and solely employed to provide such service by an individual or private household. The term "domestic worker" does not include any person who is employed by an agency whenever such person provides services as an employee of such agency, regardless of whether such person is jointly employed by an individual or private household in the provision of such services. Such person may be considered an employee under the Earned Safe and Sick Time Act and this subchapter.

§ 7-202 Business Size.

(a) Business size for an employer that has operated for less than one year shall be determined by counting the number of employees performing work for an employer for compensation per week, provided that if the number of employees fluctuates between less than five employees and five or more employees per week, business size may be determined for the current calendar year based on the average number of employees per week who worked for compensation for each week during the 80 days immediately preceding the date the employee used safe time or sick time.

(b) Business size for an employer that has operated for one year or more is determined by counting the number of employees working for the employer per week at the time the employee uses safe time or sick time, unless the number of employees fluctuates, in which case business size may be determined for the current calendar year based on the average number of employees per week during the previous calendar year. For purposes of this section, "fluctuates" means that at least three times in the most recent calendar quarter the number of employees working for an employer fluctuated between less than five employees and five or more employees.

§ 7-203 Employees.

(a) An individual is "employed for hire within the city of New York for more than eighty hours in a calendar year" for purposes of section 20-912(f) of the Administrative Code if the individual performs work, including work performed by telecommuting, for more than eighty hours while the individual is physically located in New York City, regardless of where the employer is located.

i. Example: An individual who only performs work while physically located outside of New York City, even if the employer is based in New York City, is not "employed for hire within the city of New York" for purposes of section 20-912(f) for hours worked outside New York City.

ii. Example: An individual performs twenty hours of work in New Jersey and sixty hours of work in New York City in a calendar year. The twenty hours of work performed by the employee in New Jersey do not count towards the employee's eighty hours of work for purposes of section 20-912(f).

§ 7-204 Minimum increments and fixed intervals for the use of safe time and sick time.

(a) Unless otherwise in conflict with state or federal law or regulations, an employee may decide how much earned safe time or sick time to use, provided however, that an employer may set a minimum increment for the use of safe time and sick time, not to exceed four hours per day, provided such minimum increment is reasonable under the circumstances.

(i) Example: An employee has worked eighty hours and more than one hundred twenty calendar days have passed since the employee's first day of work for the employer. The employer has set a minimum increment of four hours per day for use of safe time and sick time. The employee has not yet accrued four hours of time, but is entitled to use the time he or she has already accrued. Under these circumstances, it would not be "reasonable under the circumstances" for the employer to require the employee to use a minimum of four hours of safe time or sick time as the minimum increment.

(ii) Example: An employee is scheduled to work from 8:00 am to 4:00 pm Mondays. She schedules a doctor's appointment for 9:00 am on a Monday and notifies her employer of her intent to use sick time and return to work the same day. The employer's written sick time policies require a four hour minimum increment of sick time used per day. If she does not go to work before her appointment, she should appear for work by 12:00 pm.

(b) An employer may set fixed periods of thirty minutes or any smaller amount of time for the use of accrued safe time or sick time beyond the minimum increment described in subdivision (a) of this section and may require fixed start times for such intervals.

Example: The employee in Example (ii) of subdivision (a) of this section arrives to work at 12:17pm. Under her employer's written sick time policies, employees must use sick time in half-hour intervals that start on the hour or half-hour. The employer can require the employee to use four-and-a-half hours of her accrued sick time and require her to begin work at 12:30 pm. Similarly, if the employee wanted to leave work at 8:40 am to go to her 9:00 am doctor's appointment, the employer could require the employee to stop work at 8:30 am.

§ 7-205 Employee notification of use of safe time or sick time.

(a) An employer may require an employee to provide reasonable notice of the need to use safe time or sick time.

(b) An employer that requires notice of the need to use safe time or sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice as soon as practicable. Examples of such procedures may include, but are not limited to, instructing the employee to: (1) call a designated phone number at which an employee can leave a message; (2) follow a uniform call-in procedure; or (3) use another reasonable and accessible means of communication identified by the employer. Such procedures for employees to give notice of the need to use safe time or sick time when the need is not foreseeable may not include any requirement that an employee appear in person at a worksite or deliver any document to the employer prior to using safe time or sick time.

(c) In determining when notice is practicable in a given situation, an employer must consider the individual facts and circumstances of the situation.

(d) An employer that requires notice of the need to use safe time or sick time where the need is foreseeable shall have a written policy for the employee to provide reasonable notice. Such policy shall not require more than seven days' notice prior to the date such safe time or sick time is to begin. The employer may require that such notice be in writing.

§ 7-206 Documentation from licensed health care provider.

(a) When an employee's use of sick time results in an absence of more than three consecutive work days, an employer may require reasonable written documentation that the use of sick time was for a purpose authorized under section 20-914(a) of the Administrative Code. Written documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation. "Work days" as used in this subdivision and in section 20-914(a)(2) of the Administrative Code means the days or parts of days the employee would have worked had the employee not used sick time.

(b) If an employer requires an employee to provide written documentation from a licensed health care provider when the employee's use of sick time resulted in an absence of more than three consecutive work days, the employee shall be allowed a minimum of seven days from the date he or she returns to work to obtain such documentation. The employee is responsible for the cost of such documentation not covered by insurance or any other benefit plan.

(c) If an employee provides written documentation from a licensed health care provider in accordance with subdivision (a) of this section, an employer may not require an employee to obtain documentation from a second licensed health care provider indicating the need for sick time in the amount used by the employee.

§ 7-207 Domestic workers.

(a) Domestic workers who have worked for the same employer for at least one year and who work more than 80 hours in a calendar year will be entitled to two days of paid safe/sick time per year, as provided in this section.

(b) The two days of paid safe/sick time must be calculated in the manner that paid days of rest for domestic workers are calculated pursuant to New York State Labor Law section 161(1).

(c) A domestic worker described in subdivision (a) of this section is entitled to two days of paid safe/sick time on the next date that such domestic worker is entitled to a paid day or days of rest under New York State Labor Law section 161(1), and annually thereafter.
(d) Safe time and sick time accrued by a domestic worker will carry over to the next calendar year.

§ 7-208 Rate of pay for Safe Time and Sick Time.

(a) Except as provided in subdivision (b) of this section, when using paid safe/sick time, an employee shall be compensated at the same hourly rate that the employee would have earned at the time the paid safe/sick time is taken.
(b) If the employee uses paid safe/sick time during hours that would have been designated as overtime, the employer is not required to pay the overtime rate of pay.
(c) An employee is not entitled to compensation for lost tips or gratuities, provided, however, that an employer must pay an employee whose hourly rate of pay or salary is based in whole or in part on tips or gratuities at least the full minimum wage.
(d) For employees who are paid on a commission (whether base wage plus commission or commission only), the hourly rate of pay shall be the base wage or minimum wage, whichever is greater. When an employer pays a flat rate of pay for work performed, regardless of the number of hours actually worked, an employee's hourly rate of pay shall be based on the most recent hourly rate paid to the employee for the applicable pay period, calculated by adding together the employee's total earnings, including tips, commissions, and supplements, for the most recent work week in which no safe time or sick time or other leave was taken and dividing that sum by the number of hours spent performing work during such work week or forty hours, whichever amount of hours is less.
(e) If an employee performs more than one job for the same employer or the employee's rate of pay fluctuates for a single job, the rate of pay shall be the rate of pay that the employee would have been paid during the time the employee used the safe time or sick time.
(f) An employer is not required to pay cash in lieu of supplements for safe time or sick time used if remuneration for employment includes supplements. The fact that an employer pays cash in lieu of supplements to an employee does not relieve the employer of the requirements of the Earned Safe and Sick Time Act.
(g) Under no circumstance can the employer pay the employee less than the minimum wage for paid safe/sick time.

§ 7-209 Payment of safe/sick time.

(a) Safe time and sick time must be paid no later than the payday for the next regular payroll period beginning after the safe time or sick time was used by the employee.
(b) If the employer has asked for written documentation or verification of use of safe time or sick time pursuant to section 20-914(a), 20-914(b) or 20-914(d) of the Administrative Code, the employer is not required to pay safe time or sick time until the employee has provided such documentation or verification.

§ 7-210 Employer's sale of business.

(a) If an employer sells its business or the business is otherwise acquired by another business, an employee will retain and may use all accrued safe time and sick time if the employee continues to perform work within the City of New York for the successor employer.

(b) If the successor employer has fewer than five employees, and the former employer had more than five employees, the employee is entitled to use and be compensated for unused safe time and sick time accrued while working for the former employer, until such safe time and sick time is exhausted.

(c) A successor employer must provide employees with its written safe time and sick time policies at the time of sale or acquisition, or as soon as practicable thereafter, which shall include a policy that complies with this section.

§ 7-211 Employer's Written safe time and sick time policies.

(a) Every employer shall maintain written safe time and sick time policies in a single writing and follow such written safe time and sick time policies except as allowed in subdivision (d) of this section.

(b) Every employer must distribute its written safe time and sick time policies personally upon commencement of employment, within 14 days of the effective date of any changes to the policy, and upon request by the employee.

(c) An employer's written safe time and sick time policies must meet or exceed all of the requirements of the Earned Safe and Sick Time Act and this chapter and state at a minimum:

(1) The employer's method of calculating safe time and sick time as follows:

(i) If an employer provides employees with an amount of safe time and sick time that meets or exceeds the requirements of the Earned Safe and Sick Time Act on or before the employee's 120th day of employment and on the first day of each new calendar year, which for the purposes of this section is defined as "frontloaded safe time and sick time," then the employer's written safe time and sick time policy must specify the amount of frontloaded safe time and sick time to be provided;

(ii) If the employer does not apply frontloaded safe time and sick time, then the employer's written safe time and sick time policy must specify when accrual of safe time and sick time starts, the rate at which an employee accrues safe time and sick time and the maximum number of hours an employee may accrue in a calendar year;

(2) The employer's policies regarding the use of safe time and sick time, including any limitations or conditions the employer places on the use of safe time and sick time, such as:

(i) Any requirement that an employee provide notice of a need to use safe time and sick time and the procedures for doing so in accordance with section 7-205 of this chapter;

(ii) Any requirement for written documentation or verification of the use of safe time and sick time in accordance with Sections 20-914(a)(2), 20-914(b)(2), or 20-914(d) of the Administrative Code, and the employer's policy regarding any consequences of an employee's failure or delay in providing such documentation or verification;

(iii) Any reasonable minimum increment or fixed period for the use of accrued safe time and sick time;

(iv) Any policy on discipline for employee misuse of safe time and sick time under Section 7-215 of this Title; and

(v) A description of the confidentiality requirements of Section 20-921 of the Administrative Code.

(3) The employer's policy regarding carry-over of unused safe time and sick time at the end of an employer's calendar year in accordance with Section 20-913(h) of the Administrative Code; and,

(4) If an employer uses a term other than "safe/sick time" or "safe and sick time" to describe leave provided by the employer to meet the requirements of the Earned Safe and Sick Time Act, the employer's policy must state that such leave may be used by an employee for any of the purposes set forth in the Earned Safe and Sick Time Act without any condition prohibited by the Earned Safe and Sick Time Act. Terms used to describe such leave may include, but are not necessarily limited to, "paid time off" ("PTO"), vacation time, personal days, or days of rest.

(d) Nothing in this chapter shall prevent an employer from making exceptions to its written safe time and sick time policy for individual employees that are more generous to the employee than the terms of the employer's written policy.

(e) Requirements relating to an employer's additional and separate obligation to provide employees with a Notice of Rights under the Earned Safe and Sick Time Act are set forth in section 20-919 of the Administrative Code. An employer may not distribute the Notice of Rights required by Section 20-919 of the Administrative Code or any other department writing in lieu of distributing or posting its own written safe time and sick time policies as required by this section.

(f) An employer that has not provided to the employee a copy of its written safe time and sick time policies along with any forms or procedures required by the employer related to the use of safe time and sick time shall not deny safe time or sick time or payment of safe time or sick time to the employee based on non-compliance with such a policy.

§ 7-212 Employer records.

(a) Employers must retain records demonstrating compliance with the requirements of the Earned Safe and Sick Time Act, including records of any policies required pursuant to this Chapter, for a period of three years unless otherwise required by any other law, rule or regulation.

(b) An employer must maintain, in an accessible format, contemporaneous, true, and accurate records that show, for each employee:

(1) The employee's name, address, phone number, date(s) of start of employment, date(s) of end of employment (if any), rate of pay, and whether the employee is exempt from the overtime requirements of New York State labor laws and regulations;

(2) The hours worked each week by the employee, unless the employee is exempt from the overtime requirements of New York State labor laws and regulations and has a regular work week of forty hours or more;

(3) The date and time of each instance of safe time or sick time used by the employee and the amount paid for each instance;

(4) Any change in the material terms of employment specific to the employee; and

(5) The date that the Notice of Rights as set forth in section 20-919 of the Administrative Code was provided to the employee and proof that the Notice of Rights was received by the employee.

(c) If the office issues a written request for information or records, an employer shall provide the office with such information or records, upon appropriate notice, at the

department's office. Alternately, an employer shall provide the office with access to such information or records upon appropriate notice and at a mutually agreeable time of day at the employer's place of business.

(d) "Appropriate notice" shall mean 30 days' written notice, unless the employer agrees to a lesser amount of time, the office's request for the information or records is a second or subsequent request made to the same employer during the same investigation or case as the first request, or the office has reason to believe that:
(1) the employer will destroy or falsify records;
(2) the employer is closing, selling or transferring its business, disposing of assets or is about to declare bankruptcy;
(3) the employer is the subject of a government investigation or enforcement action or proceeding related to wages and hours, unemployment insurance, workers' compensation, discrimination, or an OLPS law or rule; or
(4) more immediate access to records is necessary to prevent retaliation against employees.

(e) The office will make two attempts by letter, email or telephone to arrange a mutually agreeable time of day for the employer to provide access to its records in accordance with subdivision (d) of this section. If these attempts are not successful, the office may set a time to access records at the employer's place of business during regular business hours, upon two days' notice.

§ 7-213 Enforcement and Penalties.

(a) A finding that an employer has an official or unofficial policy or practice of not providing or refusing to allow the use of safe time or sick time as required under the Earned Safe and Sick Time Act constitutes a violation of Section 20-913 of the Administrative Code for each and every employee affected by the policy and will be subject to penalties as provided in Section 20-924(e) of the Code.

(b) For purposes of Section 20-924(e) of the Administrative Code, penalties shall be imposed on a per employee basis.

(c) If an employer, as a matter of policy or practice, does not allow accrual of safe time and sick time as required under the Earned Safe and Sick Time Act, the relief granted to each and every employee affected by the policy or practice must include either application of 40 hours of safe time and sick time to the employee's safe time and sick time balance or, where such information is known, application of the number of hours of safe time and sick time the employee should have accrued to the employee's safe time and sick time balance, provided that such balance does not exceed 80 hours.

§ 7-214 Accrual, Hours Worked and Carry Over.

(a) If an employee is scheduled and available to work for an on-call shift and is compensated for the scheduled time regardless of whether the employee works, the scheduled time constitutes hours worked for the purposes of accrual under the Earned Safe and Sick Time Act.

(b) For employees who are paid on a piecework basis, accrual of safe time and sick time is measured by the actual length of time spent performing work.

(c) For employees who are paid on a commission basis, accrual of safe time and sick time is measured by the actual length of time spent performing work.

(d) For employees with indeterminate shift lengths (e.g. a shift defined by business needs), an employer shall base the hours of safe time or sick time used upon the hours worked by the replacement employee for the same shift. If this method is not possible, the hours of safe time or sick time must be based on the hours worked by the employee when the employee most recently worked the same shift in the past.

(e) If an employee is rehired within six months of separation from employment and had not reached the required 120 days to begin using accrued safe time and sick time under section 20-913(d)(1) of the Administrative Code at the time the employee separated from employment, upon resumption of employment, the employee shall be credited at least his or her previous calendar days towards the 120 day waiting period. For the purposes of this subdivision, "waiting period" shall mean the time period described in section 20-913(d)(1) of the Administrative Code between the start of employment and the 120th calendar day following the start of employment or July 30, 2014, whichever is later, except for that an employer is not required to allow an employee to begin to use safe time before May 5, 2018.

(f) An employee may carry over up to 40 hours of unused safe and sick time from one calendar year to the next, unless the employer has a policy of paying employees for unused safe time and sick time at the end of the calendar year in which such time is accrued and providing the employee with an amount of paid safe time and sick time that meets or exceeds the requirements of the Earned Safe and Sick Time Act for such employee for the immediately subsequent calendar year on the first day of such year in accordance with Section 20-913(h) of the Administrative Code. Regardless of the number of hours an employee carried over from the previous calendar year, an employer is only required to allow employees to accrue up to 40 hours of safe time and sick time in a calendar year. If an employee's safe time and sick time balance exceeds 40 hours in a single calendar year, an employer is only required to allow the employee to use up to 40 hours in such calendar year.

Example: An employee accrues 40 hours of safe time and sick time in calendar year one and uses 20 hours of safe time and sick time in calendar year one. She carries over 20 hours from calendar year one to calendar year two, accrues 40 hours in calendar year two, and does not use any hours in calendar year two. Her safe time and sick leave balance at the end of calendar year two is 60 hours (20 hours from calendar year two plus 40 hours from calendar year two). She may carry over 40 of those 60 hours into calendar year three and accrue another 40 hours in calendar year three.

§ 7-215 Employee Abuse of Safe Time and Sick Time.

An employer may take disciplinary action, up to and including termination, against an employee who uses safe time or sick time provided under the Earned Safe and Sick Time Act for purposes other than those described in sections 20-914(a) and section 20-914(b) of the Administrative Code. Indications of abuse of safe time and sick time may include, but are not limited to a pattern of: (1) use of unscheduled safe time and sick time on or adjacent to weekends, regularly scheduled days off, holidays, vacation or pay day, (2) taking scheduled safe time and sick time on days when other leave has been denied, and (3) taking safe time and sick time on days when the employee is scheduled to work a shift or perform duties perceived as undesirable.

COVID-19 FAQs

for Employment-Related Inquiries

Table of Contents

Obligation to go into Work

What are my rights to stay home during the pandemic?

Governor Cuomo has instructed non-essential employees not to go into work. The Governor ordered on March 20, 2020, that businesses are required to keep 100% of their employees at home after Sunday, March 22, 2020. The Executive Order can be found here: https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.

Certain businesses or entities providing essential services, including those in the healthcare, infrastructure, manufacturing, retail, essential public services, news media, finance, charities, construction, defense, sanitation, and technology vending sectors, are exempt from the Executive Order's in-person work restrictions. The full list of essential businesses and services can be found here: https://esd.ny.gov/guidance-executive-order-2026.

Under the Governor's order, however, entities providing essential service continue to be under obligation to utilize, to the maximum extent possible, any telecommuting or work from home procedures. For entities that provide both essential and non-essential services, only those business operations that are necessary to support the essential services are exempt.

You can submit a complaint with the Attorney General's Office if you believe your employer is doing any of the following:

- Requiring employees to come to work even if the employer is not an essential business;

- Requiring employees to come to work even if they are performing business operations that are not necessary to support essential services; or

- Not permitting employees whose job responsibilities would permit them to telecommute or work from home to do so.

Please contact the Attorney General's Office, preferably by e-mail at Labor.Bureau@ag.ny.gov, or by phone at (212) 416-8700.

Emergency Paid Sick and Family Leave

New federal and state emergency sick and family leave laws offer specific protections for people who are diagnosed with, have symptoms of, or are quarantined for COVID-19, people caring for those with COVID-19, or people caring for children whose schools have closed due to COVID-19.

The federal Families First Coronavirus Response Act takes effect on April 2, 2020, and the state law is currently in effect.

Am I entitled to any paid medical leave if I have COVID-19 or have symptoms of COVID-19?

Employees who are diagnosed with or displaying symptoms of COVID-19 are entitled to 80 hours of paid sick leave at full pay, with a maximum of $5,110 total, if they are working for employers of 499 employees or less, with limited exceptions, under federal law.

Am I entitled to any paid medical leave if I am under a mandatory or precautionary quarantine order?

Both federal and state law provide protections for those under quarantine or isolation. The state paid leave provisions only apply if they are more protective than the federal leave provisions. The state law protections do not apply to those who are not sick and able to work remotely but under quarantine or self-isolation at home.

Whether state or federal protections govern depends on employer size. This means that in general:

For employers with 100 or more employees
Employees are entitled to 14 days of paid sick leave at full pay under state law.

For employers with between 50 and 99 employees
Employees are entitled to 80 hours of paid sick leave at full pay, with a maximum of $5,110 total, under federal law.

For employers with between 11 and 49 employees or with 10 or fewer employees with net income over $1 million
Under federal law, employers with fewer than 50 employees are obligated to provide up to 80 hours of paid sick leave at full pay, with a maximum of $ 5,110 total, with limited exceptions.

If the employer is not able to provide leave under federal law, employees are still entitled to take sick leave for the duration of their quarantine, with at least five days of sick leave at full pay, under state law. Employees may apply for state paid family leave and temporary disability benefits to cover the rest of the quarantine period. For state family leave benefits, the maximum weekly allowance is $840.70. For emergency temporary disability benefits, the maximum weekly allowance is $2,043.92. For more information on state paid family leave, please call the PFL Helpline at (844) 337-6303 or visit: https://paidfamilyleave.ny.gov/paid-family-leave-family-care.

For employers with 10 or fewer employees with net income under $1 million
Under federal law, employers with fewer than 50 employees are obligated to provide up to 80 hours of paid sick leave at full pay, with a maximum of $ 5,110 total, with limited exceptions.

If the employer is not able to provide leave under federal law, employees are still entitled to take unpaid sick leave for the duration of their quarantine under state law. Employees may apply for state paid family leave and temporary disability benefits to cover the quarantine period. For state family leave benefits, the maximum weekly allowance is $840.70. For emergency temporary disability benefits, the maximum weekly allowance is $2,043.92. For more information on state paid family leave, please call the PFL Helpline at (844) 337-6303 or visit: https://paidfamilyleave.ny.gov/paid-family-leave-family-care.

Am I entitled to any paid leave if someone in my family has COVID-19 or has been quarantined?

Employees are entitled to up to 80 hours of emergency paid family leave, with a maximum of $200 per day and $2,000 in the aggregate, with limited exceptions, under federal law.

Employees are also entitled to use state paid family leave to care for sick family members or for children under mandatory quarantine. For state family leave benefits, employees will be compensated at 60% of their average weekly earnings for 10 weeks with a maximum weekly allowance of $840.70 per week. For more information on state paid family leave, please call the PFL Helpline at (844) 337-6303 or visit: https://paidfamilyleave.ny.gov.

Am I entitled to any paid leave if my children's school is closed due to COVID-19?

Employees are entitled to use federal emergency sick leave and emergency family medical leave to care for children whose schools have closed due to COVID-19 outbreaks if they work for employers with between 50 and 499 employees. Employers with fewer than 50 employees may be exempt from providing family leave if it jeopardizes their business viability. For federal paid sick leave benefits, the maximum is $200 per day and $2,000 in the aggregate. For federal family leave benefits, employees will be compensated at a maximum of $2,000 total for the first two weeks and at 67% of their regular rate for the following ten weeks, with a maximum of $10,000 total.

Am I entitled to any emergency paid leave for COVID-19 if I am an independent contractor?

Under federal law, individuals who are self-employed are entitled to receive tax credits for the equivalent of 10 days of paid sick leave at the lesser of 100% of their average daily rate or $511 per day. Individuals are also entitled to receive tax credits for the equivalent of 10 days of paid sick leave at the lesser of 67% of their average daily rate or $200 to care for family members or to care for children whose schools have been closed due to COVID-19. Individuals may receive an additional 50 days of paid family leave at the lesser of 67% of their average daily rate or $200 per day to care for children whose schools have closed due to COVID-19.

Sick Leave and Family Leave Generally

In addition to the protections for COVID-19 recovery, New York State and City have generally-available paid sick leave and family leave protections for those with, or caring for family members with, other illnesses or medical conditions

What are my rights to paid sick leave if I live in New York City or Westchester?

Most employees in New York City and Westchester have up to five days of paid sick leave per year if they work for an employer that has more than five employees or if the employee is a domestic worker.

Employees accrue one hour of paid sick time for every 30 hours worked and most employees can take sick time after they have worked for the employer for 120 days (employees in Westchester can begin taking sick time after 90 days of employment). Employees must be able to carry over at least 40 hours of accrued sick time year to year.

This means that full-time employees will have at least five paid sick days if they have worked for an employer for more than eight months.

Employees should request leave from their employers. An employee may be required to provide reasonable notice (but no more than seven days) only if the use of sick time is foreseeable. Otherwise, for unexpected medical issues, no advance notice is required, but an employer may require that notice be given as soon as practical.

An employer may not require employees to provide documentation from medical professionals about the necessity of sick leave unless the employee is out for more than three consecutive days.

If you have been unlawfully denied sick leave or for more information, please visit:

NYC residents can contact the Department of Consumer Affairs by calling 311, or visit: https://www1.nyc.gov/site/dca/workers/workersrights/paid-sick-leave-law-for-workers.page.

To file a complaint, please visit: https://www1.nyc.gov/assets/dca/downloads/pdf/workers/OLPS-IntakeForm-English.pdf

Westchester residents can contact the Department of Consumer Protection at (914) 995-2155 or visit: https://humanrights.westchestergov.com/resources/earned-sick-leave-law.

What are my rights to paid sick leave if I live outside of New York City and Westchester?

There is currently no general state paid sick leave law, although the Governor has proposed a bill that provides some paid sick leave that may be passed by the legislature this year.

What are my rights to temporary disability benefits?

Employees who become ill or injured off-the-job may be eligible for temporary disability benefits. Disability benefits are paid at 50% of an employee's average weekly wage with a maximum of $170 per week.

For more information on temporary disability benefits, contact the New York State Workers' Compensation Board by phone at (877) 632-4996 or via e-mail at Claims@wcb.ny.gov, or visit: http://www.wcb.ny.gov/content/main/DisabilityBenefits/Employer/introToLaw.jsp.

For information on how to file a claim, please visit: http://www.wcb.ny.gov/content/main/offthejob/db-overview.jsp#howToFileClaim.

What are my rights to paid leave if a family member is sick?

Most employees in New York can take 10 weeks of partially paid leave to take care of a family member with a serious health condition. Employees will be compensated at 60% of their average weekly earnings with a maximum weekly allowance of $840.70 per week.

Full-time employees may start taking leave after 26 weeks of starting work and part-time employees may start taking leave after 175 days of work.

Employees should request leave from their employers. An employee may be required to notify the employer 30 days in advance if the leave is foreseeable. If the leave is unexpected, then employees must give their employers notice as soon as practical.

Please note that employees generally may not use leave for their own medical conditions.

If you have been unlawfully denied family leave, or for more information, please call the PFL Helpline at (844) 337-6303 or visit: https://paidfamilyleave.ny.gov.

What are my rights to unpaid leave if I or a family member becomes sick?

Under federal law, employees are guaranteed 12 weeks of job-protected leave within a 12-month period if they are sick or need to take care of a sick family member if they have worked for an employer of 50 or more employees for at least a year. Family members include spouses, children, and parents. Employees may take this leave on a part-time or intermittent basis. Your employer must continue your health insurance during the leave of absence, although employees may be asked to make employee contributions.

Employees should request leave from their employers. Employees must give employers 30 days' notice if leave is foreseeable.

If you have been unlawfully denied FMLA leave, or for more information, please call the U.S. Department of Labor, Wage and Hour Division, at 1-866-487-9243, or visit: https://www.dol.gov/agencies/whd/fmla.

Unemployment Insurance

What if I am laid off or furloughed from my job as a result of my employer's reduction in business or closure?

Employees may be entitled to unemployment insurance payments for 26 weeks if they are laid off on a temporary or permanent basis through no fault of their own. The amount of benefits employees receive depends on their average weekly rate, with a minimum of $104 per week and a maximum of $504 per week. In order to qualify for weekly benefits, employees must continue to look for work.

Employees should apply for unemployment insurance with the New York Department of Labor immediately after they are laid off. Unemployment insurance claims may be filed here: https://labor.ny.gov/unemploymentassistance.shtm. You may file a claim online, or you can call the Telephone Claim Center at (888) 209-8124. Once you file a claim for benefits, you must also file a claim for weekly benefits (also known as "certifying for benefits") for each week you are unemployed and meet the eligibility requirements. You can claim your weekly benefits each week online, or by calling (888) 581-5812.

For more information about the unemployment insurance claim process and eligibility you may find the NYSDOL claimant handbook in multiple languages here: https://labor.ny.gov/ui/claimantinfo/Claimant%20Handbook%20-%20Languages.shtm.

***During the COVID-19 outbreak, the Department of Labor is not requiring applicants to wait one week before receiving unemployment insurance benefits.*

What if my hours were heavily reduced? Or, what if I worked multiple jobs, and was laid off of one of the jobs?

Employees may be entitled to partial unemployment insurance benefits if they work fewer than four days a week and do not earn over the maximum rate of $504 per week. Depending on how many days per week you continue to work, you may receive up to three-quarters of your average weekly rate in partial benefits. Employees who receive partial benefits are entitled to receive benefits for a longer period of time than employees who receive full unemployment insurance benefits.

Am I entitled to unemployment insurance even if I am classified as an independent contractor?

You may be entitled to unemployment insurance even if you are classified as an independent contractor. If an employer has sufficient control over your schedule, pay, and day-to-day work conditions, you may be misclassified as an independent contractor.

Any worker that experiences loss in work may apply for unemployment insurance with the New York Department of Labor. Unemployment insurance claims may be filed here: https://labor.ny.gov/unemploymentassistance.shtm.

Workers' Compensation for Essential Employees Continuing to Work

Am I entitled to workers' compensation if I contract COVID-19 on the job?

Employees that contract COVID-19 at their place of work may be entitled to workers' compensation insurance during any treatment or recovery. Employees receive two-thirds of their average weekly rate in weekly benefits with a maximum payment of $934.11 per week.

Employees should apply for benefits with the Workers' Compensation Board. Workers' Compensation claims may be filed here: http://www.wcb.ny.gov/content/main/onthejob/howto.jsp. You may call (877) 632-4996 for questions or assistance.

Protections Against Discrimination and Harassment Based on National Origin

What are my rights if my employer is treating me unfairly because I am from or look like I am from a country where there is a serious COVID-19 outbreak?

Employers are prohibited by federal, state, and city law from treating employees differently based on race or national origin. If you have been fired, demoted, or harassed because your employer believes that you are from a country where there is a high incidence of COVID-19 cases (such as China, Japan, Iran, or Italy), you may file a complaint with the Attorney General's Office: https://ag.ny.gov/sites/default/files/cr-discrimiation-complaint-form-english.pdf. Completed forms can be mailed to the Civil Rights Bureau, emailed to civil.rights@ag.ny.gov or faxed to (212) 416-6030. You may also call (212) 416-8250.

Employees who work at a workplace with more than 15 people may also may also file a complaint with the federal Equal Employment Opportunity Commission: https://www.eeoc.gov/employees/charge.cfm. Complaints with the EEOC must be filed within 300 days of the discriminatory incident. They may also call (800) 669-4000.

Any employee may file with the State Division of Human Rights: https://dhr.ny.gov/complaint. Complaints with the SDHR must be filed within 1 year. They may also call (888) 392-3644.

Employees in New York City may file a complaint with the City Commission on Human Rights if their employer has employed more than three people in the past year: https://www1.nyc.gov/site/cchr/enforcement/complaint-process.page. For more information call (718) 722-3131.

Protections Against Discrimination for Those Recovering from COVID-19

What are my rights if I need an accommodation due to my treatment for or recovery from COVID-19?

Under federal, state, and local law, employers must provide a reasonable accommodation for employees if, as a result of a long- or short-term disability, they need an accommodation to perform their jobs. Reasonable accommodations can include telecommuting, staggering your schedule, or taking leave. Short-term disabilities protected under the anti-discrimination laws includes severe but temporary illnesses.

Employees should request an accommodation from their employers.

If you have been unlawfully denied an accommodation, you may file a complaint with the Attorney General's Office: https://ag.ny.gov/sites/default/files/cr-discrimiation-complaint-form-english.pdf.

Employees may also file a complaint with the federal Equal Employment Opportunity Commission if they work at a workplace with more than 15 people: https://www.eeoc.gov/employees/charge.cfm. Complaints with the EEOC must be filed within 300 days of the discriminatory incident. They may also call (800) 669-4000.

Any employee may file a complaint with the State Division of Human Rights: https://dhr.ny.gov/complaint. Complaints with the SDHR must be filed within 1 year. They may also call (888) 392-3644.

Employees in New York City may file a complaint with the City Commission on Human Rights if your employer has employed more than three people in the past year: https://www1.nyc.gov/site/cchr/enforcement/complaint-process.page. For more information call (718) 722-3131.

What are my rights if I am being treated unfairly due to my COVID-19 diagnosis?

Federal, state, and local law prohibits employers from discriminating against employees for a disability or a perceived disability. If you have been fired, demoted, or harassed because you are being treated for or recovering from COVID-19, you may file a complaint with the Attorney General's Office: https://ag.ny.gov/sites/default/files/cr-discrimiation-complaint-form-english.pdf. Completed forms can be mailed to the Civil Rights Bureau, emailed to civil.rights@ag.ny.gov or faxed to (212) 416-6030. You may also call (212) 416-8250.

Employees may also file a complaint with the federal Equal Employment Opportunity Commission if you work at a workplace with more than 15 people: https://www.eeoc.gov/employees/charge.cfm. Complaints with the EEOC must be filed within 300 days of the discriminatory incident. You may also call (800) 669-4000.

Any employee may file a complaint with with the State Division of Human Rights: https://dhr.ny.gov/complaint. Complaints with the SDHR must be filed within 1 year. You may also call (888) 392-3644.

Employees in New York City may file a complaint with the City Commission on Human Rights if your employer has employed more than three people in the past year: https://www1.nyc.gov/site/cchr/enforcement/complaint-process.page.
For more information you may call (718) 722-3131.

Health and Safety

What are my employer's obligations to keep me safe at work?

Your employer has an obligation to maintain a safe workplace, under the Occupational Safety and Health Act. If you are concerned about safety and health conditions in your workplace, you may file a complaint at your local OSHA office: https://www.osha.gov/contactus/bystate/NY/areaoffice.
You may also call (800) 321-6742 for more information.

Retaliation

What happens if my employer retaliates against me for exercising any of my rights above?

Retaliation is prohibited for exercising your right to paid or unpaid sick or family leave, unemployment insurance, workers' compensation, complaining about national origin or race discrimination, or requesting an accommodation for a disability. If you have been retaliated against for exercising any of your rights above, you should contact the Attorney General's Office: https://ag.ny.gov/sites/default/files/labor_bureau_complaint.pdf. You may also email labor.bureau@ag.ny.gov or call (212) 416-8700.

Retaliation is also prohibited for complaining about health and safety conditions at work. If you experience retaliation, you have thirty days to file a complaint. To file a complaint, you may call your local OSHA office or submit a written complaint by mail, email, or fax. You may do so online, and you may do so in any language. No particular form is required. Contact your local OSHA office: https://www.osha.gov/contactus/bystate/NY/areaoffice. You may also call (800) 321-6742 for more information.

Additional Protection from Retaliation for Healthcare Workers

Am I protected if I make a complaint about how my employer is handling the COVID-19 outbreak?

Healthcare services providers who disclose or threaten to disclose information to their supervisors or to the public about the quality of care patients receive are protected from retaliation.

Healthcare employees with concerns about patient care during the COVID-19 outbreak should contact the Department of Health: https://apps.health.ny.gov/surveyd8/facility-complaint-form.

Healthcare employees with concerns about retaliation for reporting patient care issues should contact the Attorney General's Office: https://ag.ny.gov/sites/default/files/labor_bureau_complaint.pdf.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, except as authorized by law or incorporated into a contract, cooperative agreement, or grant. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. DOL may not cite, use, or rely on any guidance that is not posted on this site, except to establish historical facts.

Worker Adjustment and Retraining Notification Act Frequently Asked Questions

Introduction

The federal Worker Adjustment and Retraining Notification (WARN) Act (or Act) is enforced by private legal action brought in the U.S. District Court for any district in which the violation is alleged to have occurred or in which the employer transacts business. Any dispute regarding the interpretation of the WARN Act including a closing or layoff's foreseeability will be determined on a case-by-case basis in the particular court proceeding. The role of the U.S. Department of Labor (Department) is limited to providing guidance and information about the WARN Act; such guidance is not binding on courts and does not replace the advice of an attorney. Some States have their own laws addressing layoffs and worksite closures. Information on State notice requirements can be obtained by contacting the applicable state dislocated worker unit.

Employer Questions for COVID-19

I am an employer who temporarily laid off my employees at the beginning of the pandemic when we anticipated reopening the business after a few weeks. However, due to changing circumstances, I now am concerned that the layoff will need to be extended beyond 6 months, and may become permanent. When do I need to provide my employees with a WARN Notice?

Short-term layoffs (6 months or less) that are later extended to last longer than originally contemplated are expressly addressed by the federal WARN Act and regulations. When a layoff is extended beyond 6 months, the layoff is treated as an "employment loss" from the date the layoff started and may violate the WARN Act unless: (1) the extension beyond 6 months is caused by business circumstances not reasonably foreseeable at the time of the initial layoff, and (2) notice is given at the time it becomes reasonably foreseeable that the extension beyond 6 months will be required.

Depending on the specific circumstances, events that lead an individual employer to unexpectedly decide to extend the duration of a furlough or layoff may constitute unforeseeable business circumstances such that a shortened notice period may be consistent with the requirements of the WARN Act. An employer's extension of the layoff will be judged based on

whether the need to extend the layoff could reasonably have been foreseen as of the time notice would have been required. The length of notice will be judged based on whether notice was provided at the point when it became reasonably foreseeable that extension of the layoff would be required. An employer relying on this exception from the general rule for notice is responsible for showing that the conditions for the exception were met. Please see WARN Act, 29 U.S.C. § 2102(c), and the regulations at 20 CFR 639.4(b).

Am I covered by the WARN Act?

The WARN Act requires employers with 100 or more full-time employees (not counting workers who have fewer than 6 months on the job) to provide at least 60 calendar days advance written notice of a worksite closing affecting 50 or more employees, or a mass layoff affecting at least 50 employees and 1/3 of the worksite's total workforce or 500 or more employees at the single site of employment during any 90-day period. Not all dislocations require a 60-day notice; the WARN Act makes certain exceptions to the requirements when employers can show that layoffs or worksite closings occur due to faltering companies, unforeseen business circumstances, and natural disasters. In such instances, the WARN Act requires employers to provide as much notice to their employees as possible.

If I am considering a temporary layoff or furlough, do I need to provide workers with a notice under the WARN Act?

A WARN Act notice must be given when there is an employment loss, as defined under the Act. A temporary layoff or furlough that lasts longer than 6 months is considered an employment loss. A temporary layoff or furlough without notice that is initially expected to last six months or less but later is extended beyond 6 months may violate the Act unless:

1. The extension is due to business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial layoff; and
2. Notice is given when it becomes reasonably foreseeable that the extension is required.

This means that an employer who previously announced and carried out a short-term layoff (6 months or less) and later extends the layoff or furlough beyond 6 months due to business circumstances not reasonably foreseeable at the time of the initial layoff is required to give notice at the time it becomes reasonably foreseeable that the extension is required. A layoff extending beyond 6 months for any other reason is treated as an employment loss from the date the layoff or furlough starts. The WARN Act is enforced by private legal action in the U.S. District Court for any district in which the violation is alleged to have occurred or in which the employer transacts business. Thus an employer may need to prove that it could not foresee the circumstances if a WARN Act action is brought. Any dispute regarding the interpretation of the WARN Act including its foreseeability will be determined on a case-by-case basis in such a court proceeding. The role of the U.S. Department of Labor is limited to providing guidance and information about the WARN Act; such guidance is not binding on courts and does not replace the advice of an attorney.

For permanent layoffs, may I claim an exception to the WARN Act because of COVID-19? If I do, what are my responsibilities?

The Department recommends that employers review the "unforeseeable business circumstances" exception to the 60-day notice requirement (contained in the WARN Act at § 3(b)(2)(A), and the WARN regulations at 20 CFR 639.9) set out below:

> The "unforeseeable business circumstances" exception… applies to plant closings and mass layoffs caused by business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required.
>
> (1) An important indicator of a business circumstance that is not reasonably foreseeable is that the circumstance is caused by some sudden, dramatic, and unexpected action or condition outside the employer's control. A principal client's sudden and unexpected termination of a major contract with the employer… and an unanticipated and dramatic major economic downturn might each be considered a business circumstance that is not reasonably foreseeable. A government ordered closing of an employment site that occurs without prior notice also may be an unforeseeable business circumstance.
>
> (2) The test for determining when business circumstances are not reasonably foreseeable focuses on an employer's business judgment. The employer must exercise such commercially reasonable business judgment as would a similarly situated employer in predicting the demands of its particular market. The employer is not required, however, to accurately predict general economic conditions that also may affect demand for its products or services.

When invoking an exception to the WARN Act's 60-day notice requirement, a covered employer is still required to:

1. Give as much notice as is practicable; and
2. Include a brief statement of the reason for giving less than 60-days' notice along with the other required elements of a WARN notice.

Applicability of the "unforeseeable business circumstances" exception rests on an employer's particular business circumstances. The WARN Act is enforced by private legal action in the U.S. District Court for any district in which the violation is alleged to have occurred or in which the employer transacts business. Thus an employer may need to prove that it could not foresee the circumstances 60 days in advance if a WARN Act action is brought. Any dispute regarding the interpretation of the WARN Act including its exceptions will be determined on a case-by-case basis in such a court proceeding. The role of the U.S. Department of Labor is limited to providing guidance and information about the WARN Act; such guidance is not binding on courts and does not replace the advice of an attorney.

Will the Department of Labor provide me with a letter that I have complied with the WARN Act?

No; the WARN Act is enforced by private legal action in the U.S. District Court for any district in which the violation is alleged to have occurred or in which the employer transacts business. Any dispute regarding the interpretation of the Act including its exceptions is determined on a case-by-case basis in such a court proceeding. The role of the U.S. Department of Labor is limited to providing guidance and information about the WARN Act; such guidance is not binding on courts and does not replace the advice of an attorney. While the Department can provide guidance and information about the WARN Act, it has neither investigative nor enforcement authority under the WARN Act; therefore, it cannot issue advisory opinions on specific cases.

Can the U.S. Department of Labor provide copies of WARN Notices or statistics on the number of WARN Notices that have been filed? Do States receive WARN Notice information?

No; the U.S. Department of Labor neither maintains a database of WARN notices, nor requires employers to provide WARN notices to the Department. But employers are required to provide WARN notices to the state dislocated worker unit. Some States publish WARN notice listings on their websites but this is voluntary for States, so the frequency of listings and amount of information varies from State to State. The Department recommends reaching out to each State for information or contacting the State Rapid Response Coordinators if you are having trouble locating this information online.

WARN FAQ for Workers on COVID-19 (also known as the coronavirus)

My employer has temporarily closed due to COVID-19. Was I supposed to receive notice under the WARN Act?

Employee protections under the WARN Act apply to those who suffer "an employment loss"; a layoff (or furlough) that is "temporary" may not be an employment loss for WARN Act purposes. Under the Act, an employee who is laid off does not suffer an employment loss unless the layoff extends beyond 6 months. Therefore, a temporary layoff of 6 months or less does not trigger the need for the employer to issue a WARN Act notice. However, if the layoff lasts for more than 6 months, employees would be considered to have experienced an employment loss and would have been entitled to notice before the layoff unless it was not reasonably foreseeable at the time of the initial layoff that the layoff would extend beyond 6 months. If a layoff is extended beyond 6 months due to business circumstances, notice is required when it becomes reasonably foreseeable that the extension is required. The WARN Act is enforced by private legal action in any U.S. District Court for any district in which the violation is alleged to have occurred or in which the employer transacts business. In such an action an employer may have to prove that it could not foresee the circumstances necessitating an extension of the layoff. Disputes regarding the WARN Act will be determined on a case-by-case basis in such a court proceeding. The role of the U.S. Department of Labor is limited to providing guidance and information about the WARN Act; such guidance is not binding on courts and does not replace the advice of an attorney.

My employer has permanently closed due to COVID-19 but did not provide a 60-day notice stating that the loss of business from the virus was an unforeseen business circumstance. Does this violate my rights under the WARN Act?

Under the WARN Act, employers can claim an exception to the 60-day notice requirement for unforeseeable business circumstances. The exception to the advance notice requirement applies to worksite closings and mass layoffs caused by business circumstances that are not reasonably foreseeable at the time that 60-day notice would have been required. An important indicator of a business circumstance that is not reasonably foreseeable is that the circumstance is caused by a sudden, dramatic, and unexpected action or condition outside the employer's control. This can include an unanticipated and dramatic major economic downturn. A government ordered closing of an employment site that occurs without prior notice also may be an unforeseeable business circumstance. Similarly sudden, dramatic, and unexpected action outside the employer's control, announced and implemented swiftly, such that the employer is unable to provide 60 days' notice may also fall within this exception to the 60-day notice requirement.

When invoking an exception to the WARN Act's 60-day notice requirement, a covered employer is still required to:

1. Give as much notice to employees (or the employees' representative(s)) and State and local government officials as is practicable (which may, in some circumstances, be notice after the fact); and
2. Include a brief statement of the reason for giving less than 60-days' notice along with the other required elements of a WARN notice.

The WARN Act is enforced by private legal action in any U.S. District Court for any district in which the violation is alleged to have occurred or in which the employer transacts business. Thus an employer may need to prove that it could not foresee the circumstances necessitating the worksite closing or mass layoff if such enforcement action is brought. Any dispute regarding the interpretation of the WARN Act will be determined on a case-by-case basis in such a court proceeding. The role of the U.S. Department of Labor is limited to providing guidance and information about the WARN Act; such guidance is not binding on courts and does not replace the advice of an attorney.

My employer sent WARN Notices by email because the business is currently closed. Is that allowed?

The regulations implementing the WARN Act state that: "Any reasonable method of delivery… which is designed to ensure receipt of notice" is an acceptable form of notice. *See* 20 CFR 639.8. A WARN notice sent via email must still be specific to the individual employee, and comply with all requirements of the WARN Act statute and regulations regarding written notifications.

My employer is talking about temporarily closing the office. Will we get a WARN notice if there are only 30 employees? Will I get a WARN Act notice if my employer is a nonprofit association?

Generally, WARN Act notice requirements apply to employers of 100 or more workers. A WARN Act covered employer is one that employs:
(a) 100 or more employees (not counting workers who are part time – *see below for more information on who is considered part time); or
(b) 100 or more employees (including part-time workers) who, in the aggregate, work at least 4,000 hours per week (excluding overtime hours).
A "part-time" employee for WARN Act coverage is someone who has worked an average of less than 20 hours per week or less than 6 of the last 12 months.
The WARN Act notice requirements apply to private for-profit businesses, nonprofit organizations, and quasi-public entities (when the entity is organized separately from regular government).

I believe my rights under the WARN Act were violated by my employer. Can the U.S. Department of Labor force my employer to comply or otherwise enforce the provisions of the WARN Act?

While the U.S. Department of Labor can provide general guidance and information about the provisions of the WARN Act and implementing regulations, employee rights under the Act, and employer responsibilities under the Act, the Department has neither investigative nor enforcement authority under the WARN Act. Therefore, any employee concerned about a WARN Act violation should seek legal counsel and consider whether to file suit in the applicable U.S. District Court. An employer who violates the provisions of the WARN Act may be found liable for an amount equal to the amount of wages and benefits for each day of the period of violation, up to 60 days. In any such suit, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of

the costs. The role of the U.S. Department of Labor is limited to providing guidance and information about the WARN Act; such guidance is not binding on courts and does not replace the advice of an attorney

I lost my job or am temporarily laid off due to COVID-19. What do I do now?

The U.S. Department of Labor-supported CareerOneStop.org website can direct workers and employers to resources and help answer questions about job loss, layoffs, business closures, unemployment benefits, and job training. Workers and employers can also call the U.S. Department of Labor's toll-free help line at 1-877-US-2JOBS (TTY: 1-877-889-5627).
Workers eligible for regular unemployment insurance benefits, as well as expanded benefits under the CARES Act, should file an unemployment benefits claim with the State where you worked. You can find the contact information for your State at https://www.dol.gov/coronavirus/unemployment-insurance#find-state-unemployment-insurance-contacts.

State Agency Questions for COVID-19

Are employers allowed to issue WARN notices by email to employees, State Rapid Response Coordinators, and Chief Elected Local Officials?

Yes, employers may issue WARN notices via email, although the same requirements for the content of the notices remain in place (found at 20 CFR 639.7). Given the COVID-19 pandemic-related guidelines and orders issued by many States, email may be a preferred method of notifying State and local government personnel, since many State officials are working from home. Employers are encouraged to reach out to these offices for more information on the preferred method of delivery. States should carefully review their policies and procedures to ensure that they can receive electronic notices.

What are the expectations for States managing the receipt of WARN notices and the provision of assistance to workers under the WARN Act?

States are expected to follow existing policies and procedures, as well as any further guidance provided by the State related to the COVID-19 pandemic.

When a State learns of a major dislocation (a worksite closing or mass layoff) resulting from the COVID-19 pandemic, should States add them to WARN logs before receiving WARN notices from the employers?

While the COVID-19 pandemic does not excuse employers from issuing WARN notices to employees, States, and Chief Local Elected Officials, the fast-moving nature of the pandemic may require certain worksite closings and mass layoffs to be implemented before completion of the 60-day notice requirement. Such closings and mass layoffs may fall under one of the exceptions to the 60-day notice requirement. Whether to add such actions to State WARN logs before receiving notice from employers is a State-level decision; States should continue to follow their policies and procedures for logging WARN notices. States may wish to track layoffs due to COVID-19, as well as whether notices are received concerning such layoffs.