

LABOR & EMPLOYMENT DURING COVID-19

Note: For Small Businesses (25 or Fewer Employees)

1. Mandatory Closures and Essential Businesses

- a. Are you “essential”?
(https://esd.ny.gov/sites/default/files/ESD_EssentialEmployerFAQ_033120.pdf)
- b. If your business is in a “gray area” or is a “derivative essential business,” consider: (1) planning for closing; and (2) seeking letters from the essential businesses that find you necessary to their essential function.
 - If you do not get that support but planned to stay open, you should re-evaluate that plan.
 - If you close, use the time to collect supporting materials, and re-open with healthy, essential employees.

2. Keeping Your Workforce Employed

- a. **Wage and Hour Considerations for Remote Workers**
 - Office Closures:
 - **Non-exempt** employees generally need only be paid for **hours actually worked**.
 - **Exempt** workers must receive **full salary for any week in which they perform work**.
 - Remote Work for Non-Exempt Employees:
 - Non-exempt employees must be compensated for **all time worked**.
 - Employers should consider implementing a “**temporary work from home**” **policy**.
 - Implement time-keeping strategies for non-exempt employees.
 - Reduction of Pay & Hours:
 - You can reduce an employees’ hours and pay but be mindful of **NYC Fair Workweek Law**.
 - Paid/Unpaid Time Off:
 - You can **provide employees with additional paid or unpaid leave**.
 - If you implement an **unpaid leave of absence**, employees that are **exempt** from overtime must be paid their **full week’s salary for any weeks in which they’ve performed work**.

3. Leave Laws Applicable to Small Businesses

- a. Federal Leave Laws:
 - FFCRA: Emergency Paid Sick Leave & Emergency Family Medical Leave Expansion Act

- b. State Leave Laws:
 - NY Emergency Paid Sick Leave
 - NY Emergency Paid Family Leave and Disability Benefits
 - NY Paid Family Leave Act
 - NY Short Term Disability
- c. Local Leave Laws:
 - NYC Earned Sick & Safe Leave Act
 - Westchester County Earned Sick Leave Law

4. Layoff, Furlough, and Termination Considerations

a. Requirements Upon Termination

- Health insurance continuation (Federal & State COBRA)
- Notice of termination date & expiration of benefits: **5 working days** after termination date
- Final payout requirements:
 - Accrued leave: must be paid out, unless there is a policy to the contrary.
 - Final paycheck: generally by the next regular pay day.
 - Unemployment benefits: notice to employees
(https://labor.ny.gov/formsdocs/ui/IA12_3.pdf)

b. WARN Act Considerations (<https://labor.ny.gov/formsdocs/factsheets/PDFs/p483.pdf>)

- Federal & State: Generally requires employers (with 50+ or 100+ employees) to provide employees with at least 60 or 90 days' notice before a **“plant closing”** or **“mass layoff”**
- “Unforeseen business circumstances” exception – notice as soon as “practicable”