

February 12, 2021

No. 163 (General)

To: Representatives of Memberships in the
Realty Advisory Board on Labor Relations, Inc.

Subj: **New Guidance on NY State Covid Leave**

With the expiration of mandatory FFCRA federal COVID leave on December 31, 2020 (covered employers may continue to offer the leave and receive reimbursement through March 31, 2021), employees will increasingly be turning to the NY State COVID-19 Leave for job protection during the ongoing pandemic. As all RAB employers should be aware, the NY COVID-19 Leave Law requires employers to provide qualifying employees with job-protected leave during a period of mandatory quarantine or isolation. The law may also require, depending on the size of the employer, that either five workdays (for medium employers, 11-99 employees, or small employers with net annual income of more than \$1 million in 2019) or fourteen (for large employers, 100 or more employees) calendar days of the leave be paid. Previously unaddressed in the law, however, was whether employees could qualify for successive periods of leave.

On January 20, 2021, Commissioner Reardon of the New York State Department of Labor issued guidance clarifying that employees could receive up to *three* successive periods of leave under the NY COVID-19 Leave Law. The January 20 guidance specifies that an employee who receives a positive diagnostic test for COVID-19, after previously completing a period of quarantine or isolation, will be deemed subject to another mandatory order of quarantine or isolation and will be eligible for another period of leave. The guidance further clarifies that this pattern may be continued, with successive mandatory orders of quarantine, for up to a total of three periods. Importantly, the second and third periods of quarantine and isolation are only available after the employee presents a positive diagnostic test and are not available for quarantine due to potential exposure.

Current RAB Memoranda of Agreement with Local 32BJ require each employer to pay for the missed workdays during a 14-day NY COVID-19 leave period of each qualifying 32BJ employee. All RAB employers are deemed to be in the category of the largest covered employers by agreement with Local 32BJ for purposes of NY COVID-19 leave eligibility.

Additionally, the NYS DOL guidance made clear that employers who mandate an employee's absence from work because of that employee's exposure or potential exposure to COVID-19, must pay such employee's regular rate until the employer permits the employee to return. This guidance only applies in situations where an employee is not otherwise subject to a mandatory or precautionary order of quarantine or isolation. There is no time limit specified for continued pay where the employer is mandating the employee's absence.

We will continue to follow developments in the NY COVID-19 Leave Law as they arise.

Please contact the RAB if you have any questions about any of the information discussed above.