



## EASTERN CONTRACTORS ASSOCIATION, INC.

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### *NYS Paid Sick Leave & Labor Unions Update*

December 17, 2020

Dear Signatory Contractors:

There has been a lot of confusion about the New York State Paid Sick Leave legislation, and whether a signatory employer must comply with the statutory requirements if they have a collective bargaining agreement (“CBA”) that is in place. This confusion is understandable because the guidance has not been clear and appears to be at times inconsistent with the text of the legislation. ECA has spent considerable time reviewing this issue. We have read the legislation and attempted to understand its plain meaning. We have read conflicting reports from lawyers as well as guidance from NYS that can be interpreted in multiple ways. We have also had conversations with agency staff who have provided guidance that is favorable to unionized employers and also told that same guidance cannot be provided in writing. Further, we have active ongoing discussions with our labor partners.

It is clear that the plain text of the legislation requires **ALL** private employers to provide sick leave in accordance with the new legislation’s requirements. There is no collective bargaining exemption in the legislation, which is something that some groups tried to get included. It is also clear that “all private employers” must comply. A copy of the most recent [guidance for labor unions](#) (click for .pdf) demonstrates this. It is also clear that New York State is not demanding that all in-effect collective bargaining agreements need to be re-opened immediately to deal with this issue. Some have read this type of language to mean that the employer does not have to comply with the new sick leave legislation because their CBA would be “impacted” by doing so and is the source of the issue we are addressing. Further, it is clear that CBAs can be re-opened to address this issue, and if they are, parties likely have some flexibility in determining the form of the benefit offered to satisfy the law’s requirements. CBAs negotiated after September 30 also must include language that specifically references this new provision of the labor law.

The risks for not complying with the sick leave legislation include: being ordered to provide the leave, paying the damages for not providing the leave, and most importantly, having to disclose the issue on a NYS Vendor Questionnaire. This last risk is substantial and in our mind a great concern if an aggressive position regarding the leave is taken and we are wrong.

All of this has lead ECA to provide the following recommendations.

*Signatory employers are private employers and as such they MUST provide NYS mandated sick leave to all of their employees – union and non-union.*

*Some trades have vacation funds or other benefits that may be sufficient to comply with the sick leave requirements, provided the benefits offered are “comparable benefits for the employees” to those required under the new law. Existing provisions of this nature should be reviewed for compliance. We suggest adding specific language to these agreements to make it clear that the benefit is being offered in lieu of the sick leave mandated under the labor law. At this time there are not any signed agreements that deal with this explicitly. There are several that have vacation funds that could be compliant with additional language, and one that has been modified and awaits signature.*

Please keep in mind that this advice is not legal advice. We are providing our best interpretation of the legislation and what we believe to be the safest practice. We are not lawyers and are not providing a legal opinion. Along with a large group of trade associations, we have also asked for further clarification from NYS state. If that is received we will update this memo.

Please join our webinar on Monday, December 21 at noon to learn more and ask questions. [Click here](#) to register. Or, contact me at 518-869-0961 or [toddh@ecainc.org](mailto:toddh@ecainc.org) if you are in need of guidance.

Sincerely,

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President and CEO  
Eastern Contractors Association, Inc.