

January 25, 2022

The Honorable Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

RE: Request For Modifications To Covid Requirements to  
Balance the Health and Economic Implications for BTEA Contractors

Dear Governor Hochul,

There is nothing more important to BTEA contractors than to protect the health, welfare and safety of their own employees as well as that of the 100,000 Building Trade union members they employ and are signatory to with their collective bargaining agreements.

While initially, emergency measures were adopted to address the COVID crisis, and as many of those health-related policies have proven successful, the redundancy of two paid sick leave laws two years after March 2020 is unnecessary and economically unsustainable for employers, especially BTEA union contractors.

We are requesting to discuss with you and your staff a series of recommendations we strongly believe should be amended in the best interests of protecting the health, welfare and safety of workers AND provides economic relief in order to rebuild our economy to create jobs and tax revenue. The two major modifications we are requesting are in two categories:

- 1) Amend legislation that would consolidate the COVID-19 Sick Pay Benefits with the Paid Family Sick Leave Benefit (PFL).
- 2) Rescind some of the policies mandated by the NYS Department of Labor with respect to how these benefits must be provided.

Attached you will find a detailed basis for these recommendations.

Just as health-related laws, policies and procedures have been adjusted over time to reflect the changing health environment—so too should the laws, policies and procedures that have implications for the economics affecting businesses be adjusted also.

We now have vaccinations, testing capabilities and boosters that are increasing every day, and FDA approved treatments are saving lives. We have a responsibility to make these amendments for the benefit of all New Yorkers.

The State has just now launched another initiative that will be enormously harmful to BTEA contractors and the business community. The website now says the State will allow employees to “attest” to the fact they have a positive test. And this attestation will serve as a “quarantine notice from a public health official”.

In essence, employees can now authorize their own 5 or 10-day quarantine period based on a home test. How will this help businesses get any semblance of recovery in an economy that continues to lose traction every day with policies like these that continue to be promulgated.

#### What Are The Economic Challenges BTEA Contractors Face?

Here is just one example of the many calls the BTEA receives every week. One specialty trade subcontractor has a company employing 198 union workers in the field. One day, he received 60 notices from his employees taking COVID-19 Sick Pay.

The average hourly cost of each employee is \$118 per hour including wages and fringe benefits. For up to 10 days, working 40 hours per week, the unrecoverable liability to this BTEA union subcontractor is \$4,720 per week and \$9,449 for two weeks per employee. For 60 employees that cost is over \$ 500,000. This is just one example of the economic strain BTEA contractors are facing. Without economic relief, this contractor’s business and many others like him are in jeopardy. Keep in mind that each individual employee is able to take paid COVID-19 sick leave up to three times per year.

#### What Are The Economic Benefits Of These Amendments That Will Stimulate The New York City?

A recent report by the economic forecasting firm Urbanomics shows that in New York City:

- Each \$ 1 dollar spent on construction yields a total of \$ 1.31 spent
- Each \$ \$1 million spent on construction creates a total of 8 jobs
- Each job on a construction site results in an economic multiplier of 1.32 jobs
- Construction and real estate comprise 20% of the City’s GDP, 10% of jobs and 5% of total wages.

The New York City construction industry has been devastated as a result of the COVID-19 pandemic. Here is what the NYC Independent Budget Office reported about the economic losses caused by the pandemic:

- **“A decade of employment growth was wiped out in two months last year. . .It will take at least 5 years to recover from the real contagion horror that has affected New York City”.**

Here is what that same Urbanomics analysis showed the economic consequences have been in New York City the last two years:

- **\$ 9.8 billion** in lost construction wages
- **\$ 5.5 billion** in lost wages
- **74,000** in direct and indirect jobs lost

A recent survey by the NYC Partnership showed that 47% of current job openings required a college degree or more. Yet only 43% of New York City Residents Have A High School Degree or Equivalency. Without a resumption of union construction where will these New Yorkers work and what kind of lifestyle will they be able to live?

WHO ARE THE MEMBERS OF THE BUILDING TRADES EMPLOYERS' ASSOCIATION?

The Building Trades Employers' Association represents 26 contractor associations representing 1,200 construction managers, general contractors and specialty trade contractors who according to Crain's NY Business included 9 of the top 10 largest contractors who generated over \$65 billion in construction revenue two years ago.

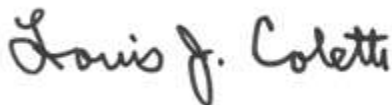
Some 75% of our members are classified as small contractors employing 100 or less workers; 20% or 237 are Minority and Women-Owned contractors—the largest number of M/WBE firms in any contractor association in New York State.

FINDING A SOLUTION THAT PROTECTS THE HEALTH, SAFETY AND WELFARE OF WORKERS AND PROVIDES ECONOMIC RELIEF FOR BTEA CONTRACTORS

Together we CAN fix this. Together we MUST fix this. For BTEA contractors, for the construction industry and for New York. Just as New York City was ground zero at the start of the pandemic two years ago—New York City can lead the world in recovery.

I will call your office shortly in the hopes we can schedule a time to discuss this issue. Thank you for your attention and cooperation with this very critical issue.

Best Regards,



Louis J. Coletti  
President & CEO

Cc: Karen Persichilli Keogh, Secretary to the Governor  
Elizabeth Fine, Counsel to the Governor  
James Katz, Deputy Secretary for Economic Development and Workforce Development  
Roberta Reardon, Commissioner, NYS Department of Labor  
BTEA Board of Governors and Association Executives  
Kathy Wylde, The Partnership for New York City  
James Whelan, Real Estate Board of New York  
Heather Briccetti, Esq., Business Council of NYS  
Thomas Grech, President & CEO, Queens Chamber of Commerce  
Nayan Parik, President, National Minority Contractors Association, NYC Chapter  
Renee Sacks and Sandra Wilken, Women Builders Council

## **RECOMMENDED LEGISLATIVE AND REGULATORY COVID-19 AMENDMENTS**

### **1. CONSOLIDATE THE COVID-19 SICK PAY BENEFITS LAW WITH THE PAID FAMILY LEAVE BENEFIT (PFL).**

When COVID-19 first began New York State passed a COVID-19 Sick Pay Law to provide for benefits for workers who were infected with COVID-19. Since then New York State passed the New York State Sick and Safe Leave Act which gives even more time off separate and apart from COVID-19. New York State is one of the only States still requiring this type of benefit. Our economic competitors, New Jersey, Connecticut, New Hampshire and Vermont have no such policies.

With more people being vaccinated, quarantine times being reduced by the CDC and NYS, and symptoms less severe, we have the ability now to provide clarity and economic relief to BTEA contractors as well as all New York businesses in a way that continues to protect the health, safety and welfare of our workforces.

Currently, after a BTEA contractor finishes their obligation under the NYS COVID-19 Sick Pay Law, any additional leave is also subject to the PFL/Disability Office. Most of New York State's employers participate in the pooled State Fund and that is where the application is made.

### **2. ADD A PROVISION TO THE COVID-19 SICK PAY LAW THAT PROVIDES FOR A TERMINATION OF BENEFITS IF COVID-19 IS DETERMINED TO BE AN ENDEMIC INFECTION.**

Should COVID-19 be determined to be an endemic infection, Chapter 25 of the Sick Pay Law of 2020 should be revised to include a provision that it only be provided while the disease is designated as a pandemic and shall terminate if and or when it becomes an endemic infection among the population with a date certain.

### **3. REDUCE THE MANDATE REQUIRING EMPLOYERS TO PAY UP TO 14 DAYS THREE TIMES TO ONE SINGLE TIME FOR EMPLOYERS OF ALL SIZES.**

The current formula based on employer's size just doesn't make sense. The impact is no less to a company with a large number of employees than to a small business. Also, when the law was passed—there was no New York Paid Sick Leave Law. Today, all workers are entitled to Paid Sick Leave irrespective of company size. Sick Leave accruals began on September 30, 2020 and are eligible for use of effective January 1, 2021. That means employees have had a full year to benefit from the State's Paid Sick Leave requirement.

### **4. PAYMENT TO INFECTED WORKERS SHOULD BE LIMITED TO WAGES ONLY.**

The NYS Department of Labor (DOL) guideline requiring payment of wages and benefits is not cited in the text of the original law passed by the Legislature and signed on April 3 by then Governor Cuomo. This change and interpretation by the Department of Labor causes significant and disproportional economic harm to BTEA union contractors. Provisions for the payment of all fringe benefits is clearly delineated in every collective bargaining agreement BTEA contractors are signatory to with their respective Building Trade union affiliates. Non-union contractors either don't pay fringe benefits at all or pay some reduced level which gives them an even greater competitive advantage over BTEA contractors than they enjoy in an

environment without COVID-19. To make matters worse for BTEA contractors, respectfully, the Department of Labor just does not have the resources to effectively enforce these provisions on non-union contractors. As union contractors, our self-enforcement comes through the fringe benefit funds which take very seriously enforcement of these provisions on BTEA contractors. As mentioned earlier in this letter, given the new policy that allows employees the ability to “attest” to the fact they have a positive test on a website and that the attestation will serve as a “quarantine notice from a public health official” BTEA contractors and businesses in general will never recover from this economic pandemic even if the State begins to make additional progress with its health policies reducing the spread of the virus. How can any business survive with this kind of policy with no accountability?

At a minimum, there should be a carve out or exemption for union contractors who are party to a collective bargaining agreement in the construction industry in order to determine our own destiny. This would be similar to the NYS Insurance law provision for companies with collective bargaining agreements to negotiate with their respective Building Trade union signatories to be able to negotiate for Alternative Dispute Resolution as a way to reduce the high cost of Liability Insurance caused by the 240 Scaffold Law—not be subject by a government edict that has far reaching economic consequences for their businesses.

When unvaccinated workers test positive and cannot work it causes unprecedented levels of economic havoc on that BTEA contractor on every project. By the best estimates we can make, 60-70% of the 100,000 building trade union workers are vaccinated.

When the size of a contractor’s workforce is reduced because of a worker infected with COVID-19 the economic consequences are devastating. The loss of that “company” worker’s productivity may not be the same because the replacement worker is unfamiliar in working with that company, the project schedule gets delayed with cost implications to the contractor and they pay twice, once for the full cost of a replacement worker and once for the worker infected with COVID-19.

#### **5. ESTABLISH A TAX RELIEF PROGRAM FOR CONTRACTORS WHOSE WORKERS ARE INFECTED WITH COVID-19.**

The BTEA applauds your recent announcements to establish a \$100 million tax relief program and \$2.3 billion effort for these businesses. As you know, the federal government under the Families First Coronavirus Relief Act (FCRA) established two tax credits of up to \$5100 per \$80 hours of COVID-19 leave. New York should have its own business relief tax program.