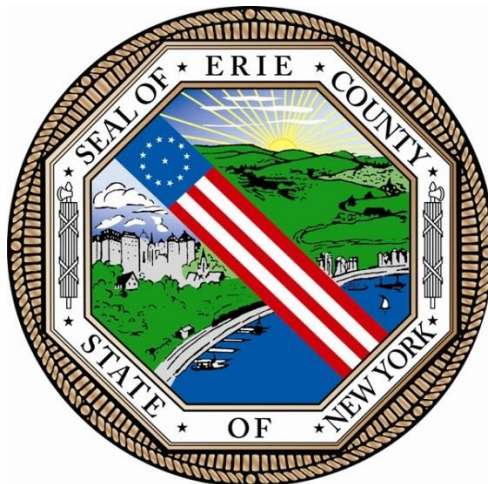


June 2020

**A Report on Return to County Facilities Concerns
Received from Erie County Employees**



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June 29, 2020

Erie County Legislature
92 Franklin Street 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

On the afternoon of Sunday, June 28,2020, an Erie County Announcement was emailed to employees outlining policies and procedures relating to a return to work on Monday, June 29, 2020. Employees have contacted our whistleblower hotline with concerns related to reopening, not all of which were addressed in the email and its attachment.

Our objectives were to:

- Compile concerns expressed to our office regarding reopening.
- Offer additional insight to the concern where appropriate.

To accomplish these objectives, we reviewed the concerns addressed to our office, made physical examinations of property, and researched actions taken by other area businesses and non-profits.

As a result of our examination, we offer these concerns and observations to your honorable body should you choose to discuss these concerns expressed to our office by Erie County employees.

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Background

New York State has been impacted by COVID-19 more than any other state in the union. While much attention has been paid to New York City, Western New York, and Erie County in particular, have been impacted particularly hard.

On March 17, 2020, in an effort to slow the spread of COVID-19 and in response to the Governor's order to reduce exposure to COVID-19, Erie County implemented a policy which allowed non-essential employees to work from home, if possible.

Certain essential employees were not in a position to be able to work from home. Other employees reported to the office on an as needed basis, while completing other work assignments from a remote location. Some employees, who were not essential and who were unable to complete assignments from a remote location, were paid using an "Unutilized" pay code.

Since that date, the pandemic spread across New York State, before conditions improved. Erie County looks forward to Phase 4 of reopening. Some businesses in the area have taken this opportunity to change their work model to continue to allow employees to work from home to avoid unnecessarily exposing their employees to COVID-19. Such as not limited to businesses. New York State and the University at Buffalo, as well as other non-profits, are continuing to implement remote work environments for employees in non-customer-facing roles. Other businesses have returned to pre-COVID-19 workplace formats, while implementing measures to somewhat lessen the risk of exposure to COVID-19.

On the afternoon of June 28, 2020, Erie County distributed to its workforce an email describing steps taken to reduce the risk of exposure to COVID-19, while ending permission for employees in departments to work remotely, with limited exceptions. These changes to policies and procedures were effective June 29, 2020.

Despite improvements of certain metrics across New York State and in Erie County, COVID-19 remains a threat. Even with increased testing, Erie County is experiencing a death rate of 8.9% of deaths compared to confirmed cases. This compares to 4.9% for the United States as a whole. It has experienced deaths from COVID-19 of 69/100,000 residents. This compares to 40/100,000 for the United States as a whole.

Given the impact of the disease on Erie County, the knowledge of steps taken by other businesses and organizations, and the understanding of the phased in approach to reopening discussed at length and publicly, Erie County employees in departments understandably have questions and concerns regarding the return to work. The concerns were compiled and summarized to allow for an organized discussion of these concerns.

Social Distancing Concerns

Elevators in the Rath Building are limited to four people in order to enforce social distancing encouraged by the Governor. Does that allow six feet of space between riders?

A measurement of the Rath Building elevators show that they are six feet by seven feet. The average person has a shoulder span of 16 to 20 inches. As such, individuals standing in adjacent corners of the elevator would not have six feet space in between. Opposite corners of the elevator are 9.2 feet apart. As such, if the individuals remain tight to the corners, they may be six feet away from each other. If maintaining six feet between individuals is truly a goal, the capacity of the elevator should be limited to one or two individuals. The University at Buffalo has limited capacity to two riders with similarly sized elevators.

Is talking allowed on elevators?

The revised policies and procedures are silent on the issue of talking on elevators. Many medical experts recommend not speaking on elevators due to the increased particles released while talking, compared to simply breathing.

There are not markers denoting where to stand while waiting for the elevator. Where should we be standing to maintain six feet between people waiting?

Markers, such as those used in stores and businesses across the county, would be helpful. None were observed while addressing this concern. However, the waiting area in front of the elevators was measured to be 30 and a half feet by 12 and a half feet. In order to have six feet between waiting riders, accounting for shoulder width, and understanding the safety implications of leaning against elevator doors while waiting for them to open, the area between the elevators can accommodate 8 waiting passengers. Pictures of elevator waiting areas are included in Appendix "A."

If the elevator capacity is limited to four (or two) passengers, it is going to take a long time to get upstairs. Can I swipe in in the lobby?

Recognizing the extra time that accessing work space will take, the policies and procedures encourage employees to adjust commute times to accommodate the County's back-to-the-office order. Swipes will be temporarily allowed from entrance lobby areas. It was not stated for how long such swipes will be allowed. The revised policies and procedures do not address the possibility of changing shift times to reduce congestion on elevators. We recommend that consideration be given to changing shift times to reduce exposure of employees and visitors to COVID-19.

Given the full lobby of waiting elevator riders, can I just take the stairs?

Observation of the stairwells reveal literature encouraging individuals to take the stairs for fitness purposes, extolling the exercise benefits. However, the Governor has announced the gyms and fitness facilities will not be opening in phase four, due to lack of adequate ventilation and the increased exhalation of exercisers. Given the relatively reduced ventilation in the stairwell, the 43-inch width of the stairs and the tendency of individuals using the stairs to experience increased respiration (especially among those unaccustomed to using stairs), we recommend eliciting further guidance from New York State as to whether stairs should be limited to emergency use during social distancing times.

Has any thought been given to adjusted policies and procedures during a fire drill?

The amendments to the policies and procedures distributed to employees on June 28, 2020 do not mention any changes to policies and procedures during building evacuations. Long waits to re-enter the Rath Building have been observed during times of increased security screenings and building evacuations prior to COVID-19 social distancing measures. A reduction in elevator capacity to four (or two) will likely exacerbate wait times to return to the office after an evacuation.

Not all areas, such as reception areas, are separated by plexiglass. Aren't they supposed to be?

Some businesses and organizations have taken the step to erect plexiglass barriers separating employees from the public or other employees. Some offices have erected barriers, while others have not. The increase in plexiglass barriers suggests that use of such barriers is a method that may provide protection for employees and visitors alike. We recommend that Erie County examines such protective measures for the health and safety of employees and visitors alike.

Is plastic film, such as a transparent tarp, an effective barrier against COVID-19?

Without commenting on the effectiveness of such a barrier, we recommend that prior to installation of such a barrier, appropriate fire and safety codes be consulted. We observed such a barrier hanging from the ceiling at the newsstand in the Rath Building lobby.

My desk is not six feet apart from my co-worker(s). Is this proper?

The revised policies and procedures contemplate workstations being properly social distanced. We did not enter work areas to personally observe this. However, multiple concerns have been received concerning this issue. We recommend employees contacting their supervisor and/or Buildings and Grounds.

What should I do if I see a non-compliant employee or visitor?

The revised policies and procedures provided on June 28, 2020 do not specifically address the handling of COVID-19 safety violations. It should not be presumed that the policies and procedures are the same as addressing other violations. For example, addressing an individual

for a lack of safety precautions may require additional safety measures on the part of the individual confronting unsafe behavior. We recommend that additional procedures and training be offered to instruct employees on how to address safety concerns.

Hygiene and Sanitization Concerns

Will temperatures be taken as a pre-requisite to enter the Rath Building?

The policies and procedures require employees to self-monitor. It does not subject employees to temperature checks or health questionnaires, such as are effectively used at some local businesses and the library. Rather, employees are directed to seek medical attention if certain symptoms are noticed. The policies and procedures are silent as to whether guests to the Rath Building, or other county facilities, will be required to participate in temperature checks or health screening as a condition to entry.

Will hand sanitizer be made available at entrances to restrooms?

No such sanitizer stations were observed at entrances to restrooms.

I have certain allergies. What are the ingredients of the products being used for cleaning?

The ingredients to the New York State produced sanitizers are on the packaging. We recommend contacting Buildings and Grounds for more information on ingredients and cleaning frequency.

I have used so much sanitizer that my hands are getting dried out. How much is safe to use?

Without directly answering that particular question, it should be noted that a generic statement regarding the availability of cleaning supplies is included in the revised policies and procedures provided on June 28, 2020. However, notably absent is specific instructions regarding the use of cleaning supplies. We recommend supplying each employee/workstation with a specific set of cleaning/hygiene supplies which can be replenished as needed. Further, instruction should be provided regarding the use of said supplies. Consideration should also be given to the prohibition of outside supplies being brought in without the permission of Buildings and Grounds, to avoid possible dangerous interactions between cleaning solvents.

Family Health/Welfare Concerns

My children are not allowed in school or camp. Is there an exception which will allow me to work from home if I am able to?

The revised policies and procedures make reference to taking time off utilizing up to twelve weeks allowed by FMLA. As such, the policy contemplates remaining home and possibly getting paid. However, although it mandates work from home for certain situations such as potential exposure to COVID-19 or milder symptoms from the virus, it does not contemplate the allowance of productive work while at home for childcare reasons.

I reside with and/or care for an immune compromised individual. Can I work from home to reduce my household's potential exposure to COVID-19?

Please see the comments to the above concern.

Other Concerns

Rules are posted limiting elevator access to four riders and also instructing people to wear masks. What if the person doesn't speak English?

Signs limiting elevator occupancy to four individuals were observed in the Rath Building. They were written only in English. There are no universal graphics used with which to instruct non-English readers with health and safety information. A picture of signage is included in Appendix "B." We recommend signage be posted which could be understood by non-English speakers.

How do I know if I have COVID-19 and should not come to work?

The updated policies and procedures make reference to three of the several symptoms that are commonly associated with COVID-19. One of these symptoms is listed as "fever." Fever isn't defined until the appendix, which defines it as a temperature greater than 100° F. The policy does not state if there are opportunities to obtain temperature checks while at work, such as offered by other area businesses and organizations. We recommend that employees contact their personal physician with questions about healthcare and COVID-19.

Signage posted for the benefit of employees and visitors also refers to these three symptoms. However, the sign does not include an addendum to inform visitors of the definition of fever. Also, the sign is only in English, which may not be helpful to non-English speakers. A picture of a sign is included in Appendix "B."

Is it possible to still work from home?

Certainly, it is possible to work from home. Work from home has occurred since March 17, 2020. The revised policies and procedures acknowledge this by requiring people who are able to work from home while quarantining, or even sick with COVID-19 but experiencing milder symptoms, to work from home. It seems that the question is more directed at whether an employee is allowed to work from home. We recommend that the employee reviews the revised policies and procedures distributed on June 28, 2020 and consult with their department head.

Can I sue the County if I get sick from COVID-19?

New York State has shielded nursing homes and certain other healthcare providers from lawsuits arising out of COVID-19 negligence. However, non-healthcare businesses and organizations do not yet have such protections. We recommend that employees consult legal counsel when deciding if to bring a lawsuit against municipalities, being mindful of certain statutory time limits for bringing a lawsuit against a government entity.

Conclusion

On March 17, 2020, the County Executive announced that all non-essential Erie County employees would work from home in response to the COVID-19 pandemic. On June 28, 2020, the County Executive released policies and procedures for departments directing employees to return to county facilities to perform work on June 29, 2020. These policies and procedures answered some questions that employees have asked regarding a return to county facilities, but not all of them.

On March 27, 2020, the President signed into law the CARES act, which provided \$160 million for addressing COVID-19. Among the many purposes for the money, the funds can be used to provide equipment, cleaning supplies, PPE, workspace modification, remote working capacities, etc. As such, funds are available to implement safety measures to protect employees from COVID-19, as well as other contagious viruses. Such possible measures include expanding the capability to work from a remote location.

This report outlines some concerns that remain unanswered, or concerns that remain despite answers. This report offers comments and recommendations to address employee concerns. These recommendations include improved signage, improved training and information to employees, and improved access to sanitizing and protective supplies. Not included as a recommendation above, but reiterated here from previous communications from the Comptroller's Office, is a recommendation to continue work from home arrangements in order to reduce exposure of employees and visitors alike to the COVID-19 virus.

Appendix A



Appendix B

