

# Combating Coronavirus (COVID-19) Concerns at Work

*Immediate Response and Future  
Implications for Employers*

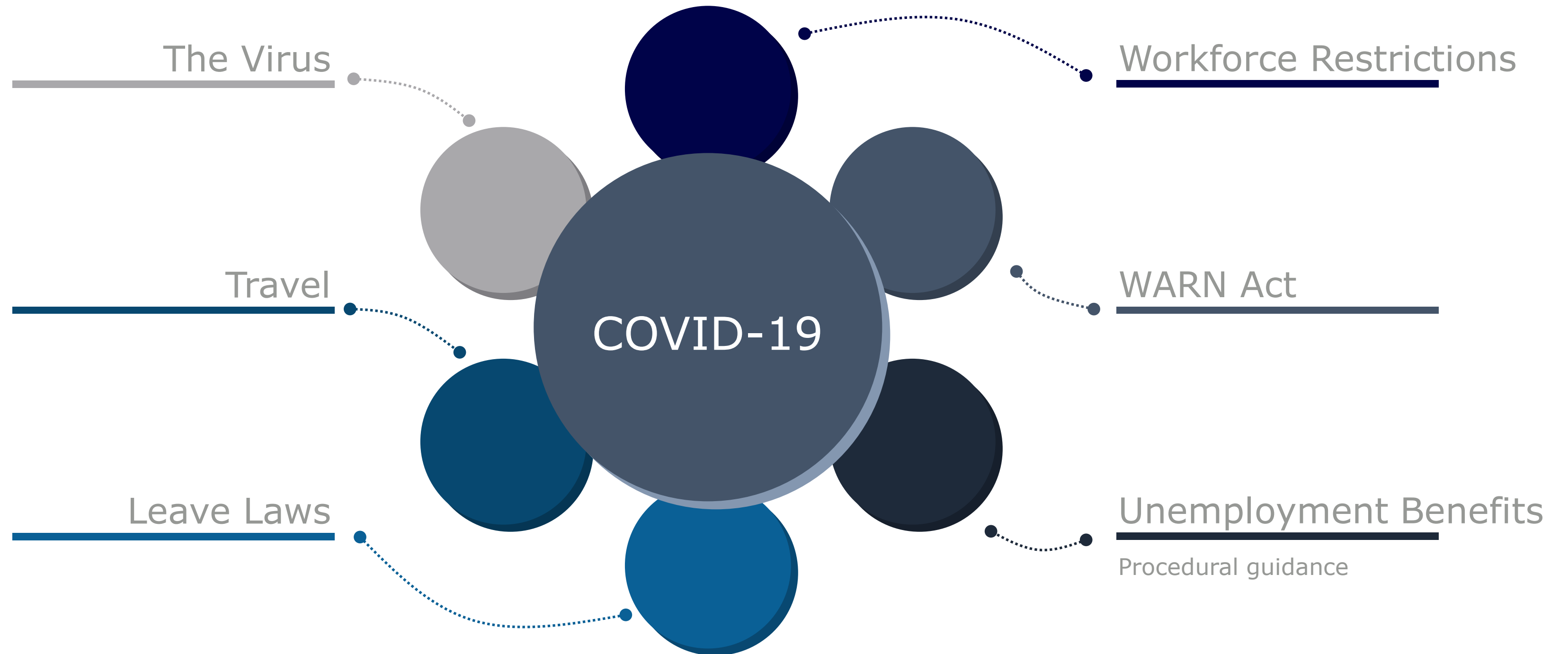
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**HORTON**  
Management Law



# Overview

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# Spread of COVID-19

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Status as of March 24, 2020

## » International

195 countries and territories with reported cases of COVID-19, 382,052 confirmed cases worldwide.

## » New York

20,875 confirmed cases of COVID-19 in New York State

## » United States

Over 33,404 confirmed cases of COVID-19 in the U.S.

## » Reported Deaths

16,565 COVID-19 related deaths across the globe and over 500 in the U.S.

# Travel Guidelines

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## International Travel

CDC Level 3 (widespread community transmission) - Travel banned to, through, or from China, Italy, Iran, and South Korea,  
CDC Level 2 (sustained community spread) — Travel deferred for anything other than essential missions (incl. Japan & U.K.)

## Travel within the United States

No current domestic travel ban, but travel should be limited to urgent and absolutely necessary situations

## United States and Canadian Border

Restriction on nonessential travel between U.S. and Canada

## Travel for Federal Workers

Only mission critical travel for federal employees and agencies

# Employees with Recent Travel History

- Employers may require a mandatory quarantine for employees that have travel to high risk countries or areas per the CDC recommendations
- Employers may send symptomatic employees home
- Employers may require employees to disclose whether they have been in contact with family members or friends who have traveled to high risk countries or areas
- The EEOC allows temperature screening upon arrival to work

# Wage & Hour Issues

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- Employers must maintain accurate time records for all non-exempt employees, even those working from home
- Still must pay overtime per laws and agreements
- Exempt salaried employees must be paid for any week in which they provide services
- Should continue to comply with meal period requirements

# Leave Laws

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- **Family and Medical Leave Act** – Provides eligible employees with 12 weeks of unpaid leave annually due to their own serious health condition or to care for a parent, spouse, or child with a serious health condition (among other qualifying conditions). Some states have similar laws, including New York's Paid Family Leave Act.
- **Paid Sick Leave** – Some states and localities had already enacted mandatory paid sick leave. Some have passed or proposed emergency paid sick leave specifically for COVID-19 related absences.
- **Disability Leave** – Under ADA and similar state laws, employees might be entitled to reasonable accommodations that could include time off from work without pay.

# State & City Paid Sick Leave Laws

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Status of Paid Sick Leave Laws prior to the Covid-9 Pandemic.



## Paid Sick Leave Laws

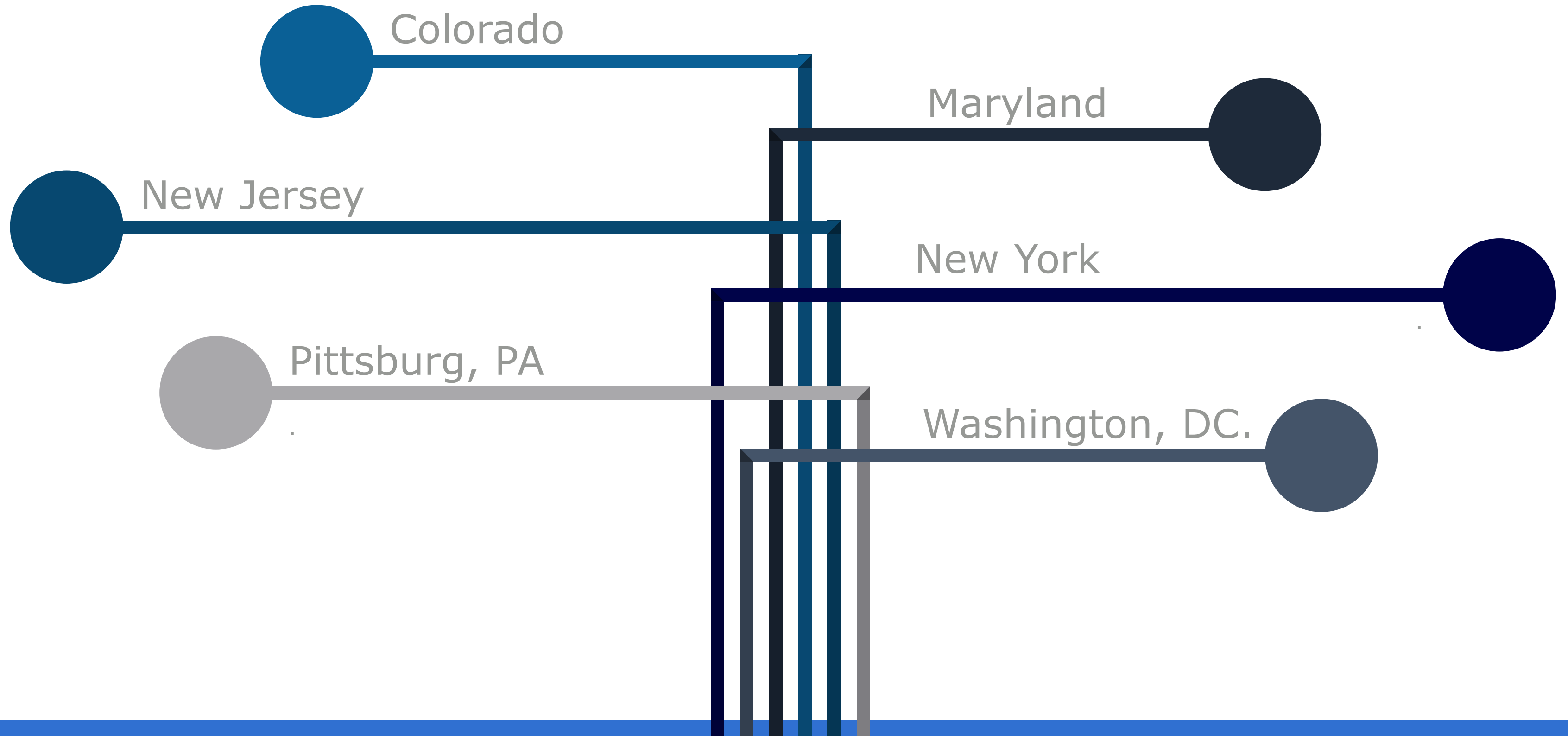
At least 16 states and 30 localities have passed mandatory paid sick leave laws, including:

States: Arizona; California; Connecticut; District of Columbia; Illinois; Maine; Maryland; Massachusetts; Michigan; Minnesota; Nevada; New Jersey; Oregon; Pennsylvania; Rhode Island; and Texas.

Localities: Berkley, CA; Emeryville, CA; Los Angeles, CA; Oakland, CA; San Diego, CA; San Francisco, CA; Santa Monica, CA; Chicago, IL; Cook County, IL; Montgomery County, Maryland; Duluth, MN; New York, NY; Portland, OR; Pittsburgh, PA; Philadelphia, PA; Austin, TX; and San Antonio, TX.



# Emergency Paid Sick Leave Laws



# NYS COVID-19 Sick Leave Law

Effective March 18, 2020

## »» “Small” Private Employers

- Less than 10 employees as of 1/1/20
- Income less than \$1 million in previous tax year
- **Unpaid** sick leave to employees under a precautionary or mandatory order of quarantine or isolation through the period of quarantine or isolation

## »» “Large” Private Employers

- 100 or more employees
- **14** days of **paid** leave
- Plus unpaid leave for the remainder of the quarantine or isolation period

## »» “Medium” Private Employers

- Less than 10 employees with income over \$1 million, OR
- Between 11-99 employees
- **5** days of **paid** sick leave
- Plus unpaid leave for the remainder of the quarantine or isolation period

## »» Public Employers

- All state and local government entities
- **14** days of **paid** sick leave (at regular rate of pay)

# Additional NYS Quarantine Benefits

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- After employer-paid leave, employees still under a quarantine/isolation order are eligible for enhanced DBL and PFL benefits for remainder of quarantine/isolation period
- Appears not to apply to public employees or large (100+ employee) private employers
- 5-day waiting period for disability benefits is waived
- Eligible for PFL (max. \$840.70/wk.) and DBL benefits (max. of \$2,043.92/wk.), simultaneously

# Exceptions to NYS Quarantine Leave

- No leave or benefits for employees who are asymptomatic or not yet diagnosed with COVID-19 **and** is physically able to work through remote access or other similar means
- No paid benefits for employees who knowingly traveled for non-work purpose to a country or area designated by the CDC with a Level 2 or Level 3 Threat; but such employees are still entitled to unpaid leave while under quarantine or isolation order

# Families First Coronavirus Response Act (Federal)

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Must comply by April 2 through December 31, 2020



## Leave Components

- Emergency Paid Sick Leave Act
- Emergency FMLA Expansion Act
- Corresponding Tax Credits

# Emergency Paid Sick Leave Act

- Employers with less than 500 employees and government entities of any size
- All employees, but can exclude health care providers and emergency responders
- 80 hours of paid sick time to full-time employees if they are unable to work (including telework)
- Average hours over two weeks for part-time employees
- Employees taking leave to care for themselves paid at full regular rate of pay (max of \$511/day; \$5,110 total)
- Employees taking leave to care for another individual paid at 2/3 of their regular rate of pay (max of \$200/day; \$2,000 total)
- In addition to any other paid leave available to employees

# Emergency Paid Sick Leave Act

## » Qualifying Conditions

- Subject to federal, state, or local quarantine or isolation order related to COVID-19
- Advised by a health care provider to self-quarantine due to COVID-19 related concerns
- Experiencing symptoms of COVID-19 and seeking medical diagnosis
- Caring for an individual that is subject to quarantine or isolation order
- Caring for a son or daughter if their school has been closed or their childcare provider is unavailable
- Experiencing any other substantially similar condition specified by Sec. of Health and Human Services in consultation with the Sec. of Treasury and Sec. of Labor.

# Emergency FMLA Expansion Act

- Employers with less than 500 employees and government entities of any size
- Employees eligible if they've been employed for 30 days
- Up to 12 weeks of leave to care for minor child whose school is closed or who has lost childcare due to COVID-19 if unable to work/telework
- First 10 days are unpaid (but Emergency Paid Sick Leave would apply)
- Remaining 10 weeks paid at 2/3 regular rate of pay with a max of \$200/day (\$10,000 total)
- Possible exceptions for health care providers, emergency responders, and businesses with less than 50 employees (subject to DOL regulations)



# Tax Credits

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## Payroll Tax Credits

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- Employers receive payroll tax credit equal to 100% of wages paid to each employee for these new leaves
- No employer payroll taxes on these paid leave wages
- If credit exceeds amount owed, employers can receive refunds for excess

# NY on PAUSE

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## Policies that Assure Uniform Safety for Everyone

- All non-essential businesses will be closed
- Non-essential gatherings of individuals of any size canceled
- Any concentration of individuals outside their home should only be of essential workers and social distancing must be practiced
- Social distancing should be practiced at all times outside the home.
- Businesses designated as essential must implement social distancing rules
- All outdoor recreational activities should require no contact
- Public transportation should only be used if urgent and absolutely necessary and social distancing should be practiced
- Sick individuals should not leave house except for medical appointments and only after telehealth visit or advice sought from doctor
- Young people should avoid contact with vulnerable population and practice social distancing
- Use precautionary sanitizer practices such as isopropyl alcohol wipes

# 100% Mandatory Workforce Reduction

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Took effect on March 22<sup>nd</sup> at 8:00 P.M.

- All non-essential businesses must reduce in-office headcount by 100%
- All businesses and not-for-profit entities in NY must utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize
- Essential businesses or entity providing essential services or functions are not be subject to the in-person restrictions.
- An entity providing essential services or functions either to an essential business or a non-essential business shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function
- Essential Businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health
- Civil penalties are available for non-compliance and the Attorney General is actively encouraging people to report violations

# “Essential Businesses”

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1. **Essential Health Care Operations:** research and laboratory services; hospitals; walk-in-care health facilities; emergency veterinary and livestock services; elder care; medical wholesale and distribution; home health care workers or aides for the elderly doctor and emergency dental; nursing homes, or residential health care facilities or congregate care facilities; medical supplies and equipment manufacturers and providers.
2. **Essential infrastructure** including: utilities including power generation, fuel supply and transmission; public water and wastewater; telecommunications and data centers; airports/airlines; transportation infrastructure such as bus, rail, or for-hire vehicles, garages; hotels, and places of accommodation.
3. **Essential manufacturing** including: food processing, manufacturing agents, including all foods and beverages; chemicals; medical equipment/instruments; pharmaceuticals; sanitary products; telecommunications; microelectronics/semi-conductor agriculture/farms; household paper products.
4. **Essential retail** including: grocery stores including all food and beverage stores; pharmacies; convenience stores; farmer's markets gas stations; restaurants/bars (but only for take-out/delivery); hardware and building material stores.

# “Essential Businesses”

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5. **Essential services** including: trash and recycling collection, processing and disposal; mail and shipping services; laundromats building cleaning and maintenance; child care services; auto repair; warehouse/distribution and fulfillment; funeral homes, crematoriums and cemeteries; storage for essential businesses; animal shelters.
6. **News media**
7. **Financial Institutions** including: banks; insurance payroll; accounting; services related to financial markets.
8. **Providers of basic necessities to economically disadvantaged populations** including: homeless shelters and congregate care facilities; food banks; human services providers whose function includes the direct care of patients in state-licensed or funded voluntary programs; the care, protection, custody and oversight of individuals both in the community and in state-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support.
9. **Construction including:** skilled trades such as electricians, plumbers; other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes.

# “Essential Businesses”

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10. **Defense:** defense and national security-related operations supporting the U.S. Government or a contractor to the US government.
11. **Essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses** including: law enforcement; fire prevention and response; building code enforcement; security; emergency management and response; building cleaners or janitors; general maintenance whether employed by the entity directly or a vendor; automotive repair; disinfection.
12. **Vendors that provide essential services or products**, including: logistics and technology support, child care and services: logistics; technology support for online services; child care programs and services; government owned or leased buildings essential government services.

If your business is not listed as an “essential business,” and you believe it should qualify, you can submit a request for opinion to Empire State Development at <https://esd.ny.gov/>

# Matilda's Law

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To protect vulnerable populations: individuals 70+ or with a compromised immune system



## Requirements

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- Remain Indoors
- Can go outside for solitary exercise
- Pre-screen all visitors and aids by taking their temperature
- Do not visit households with multiple people
- All vulnerable persons should wear a mask when in the presence of others.
- To the greatest extent possible, everyone in the presence of the vulnerable population should wear a mask.
- Always stay at least six feet away from others
- Do not take public transportation unless urgent and absolutely necessary

# Intent of the WARN Acts

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Federal WARN Act and state mini-WARN Acts

- Give employees more time to prepare for layoff and increase chances of finding a new job
- Regional Rapid Response teams help aid affected employees with job placement assistance, such as referrals, job fairs, resume preparation, job marked information, and career advice and training options



# Employers who are contemplating...

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- 1 Closing a plant
- 2 Moving locations
- 3 Reducing employee hours
- 4 Temporary layoffs
- 5 Terminating many employees

# State “WARN” Laws

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- California
- Connecticut
- Delaware
- Georgia
- Hawaii
- Illinois
- Iowa
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- New Hampshire
- New Jersey
- New York
- Ohio
- Oregon
- Tennessee
- Vermont
- Wisconsin

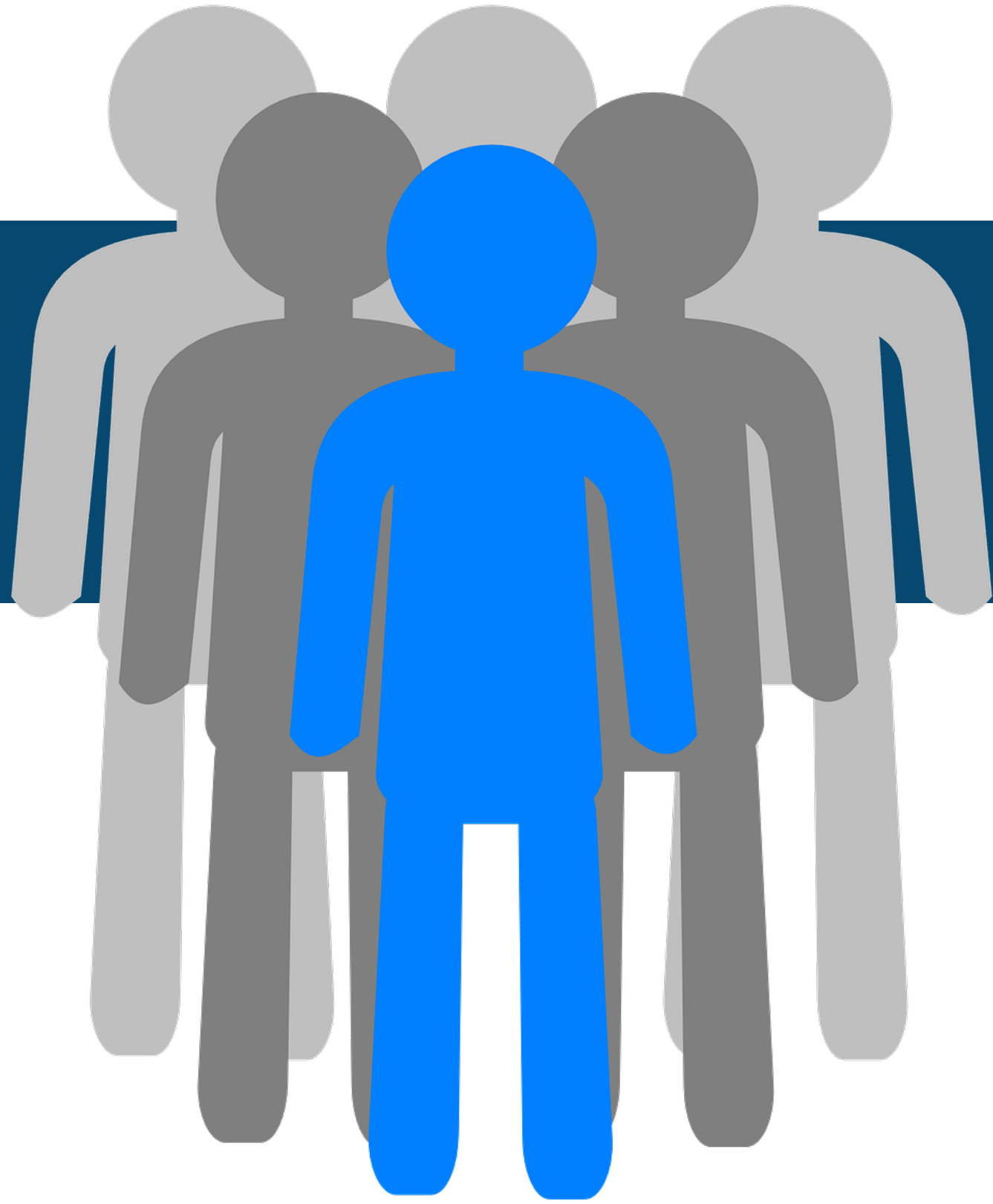
# Federal WARN

100+ employees  
in U.S.

# NY WARN

50+ employees  
in NY

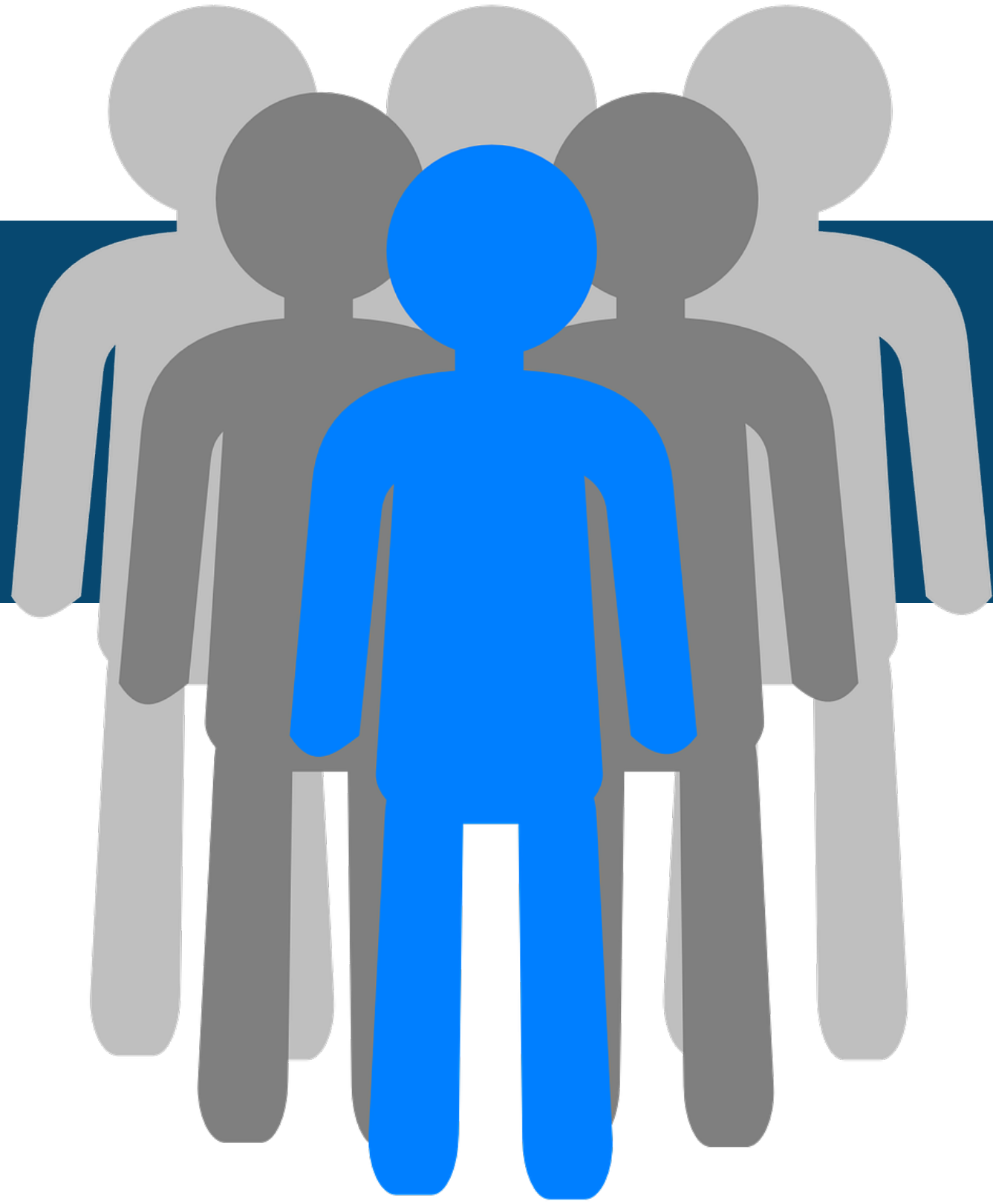




## “Plant Closing”

An employment site is being shut down and will result in an employment loss for **25(New York)/50(Federal)** or more employees\* during a *30-day period*.

**\*excludes part-time employees**



## “Mass Layoff”

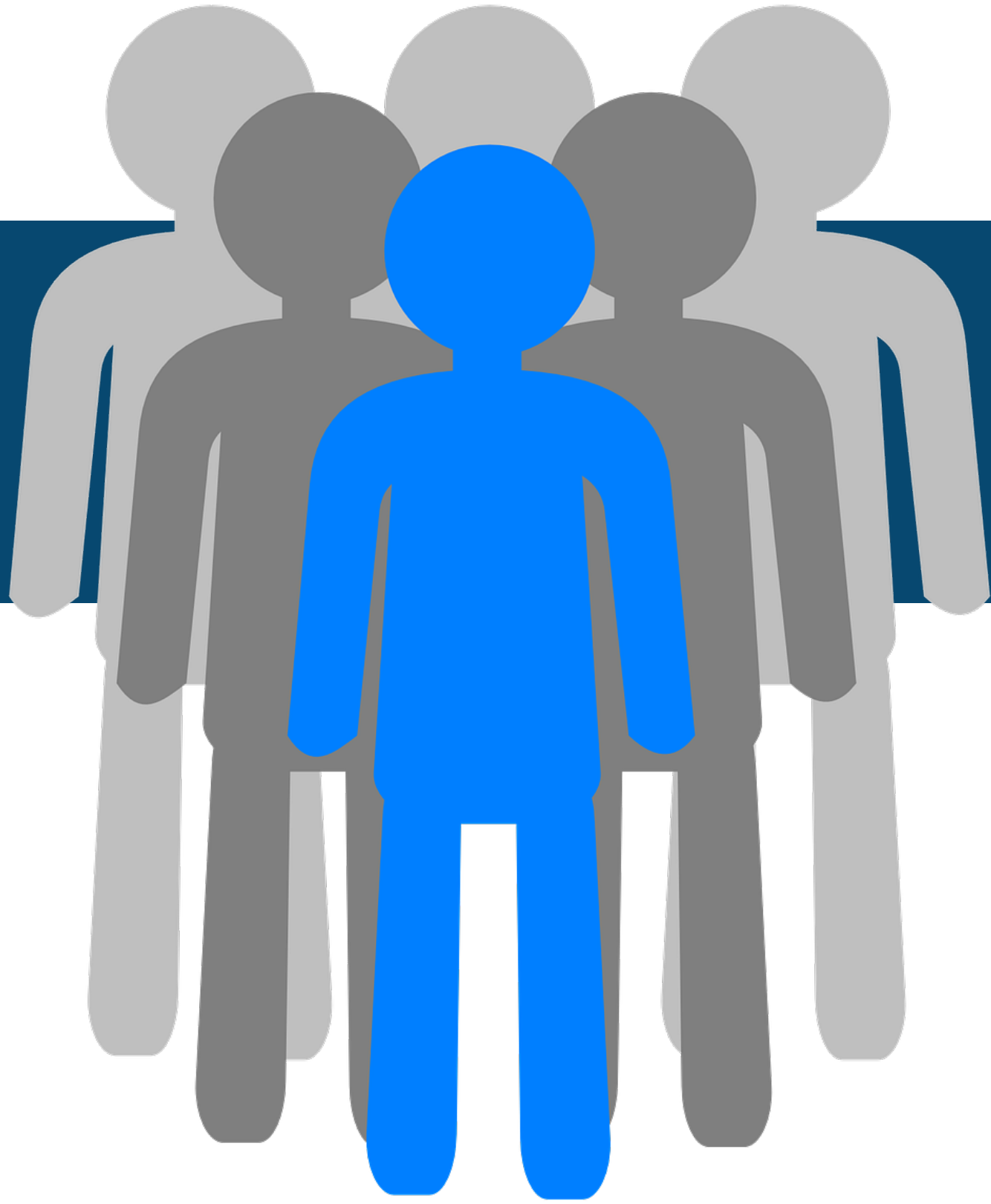
Reduction in workforce that results in an employment loss during any *30-day period* for:

- 250/500 or more employees\*; or
- 25-249/50-499 employees\* if at least 33% of active workforce.

**\*excludes part-time employees**

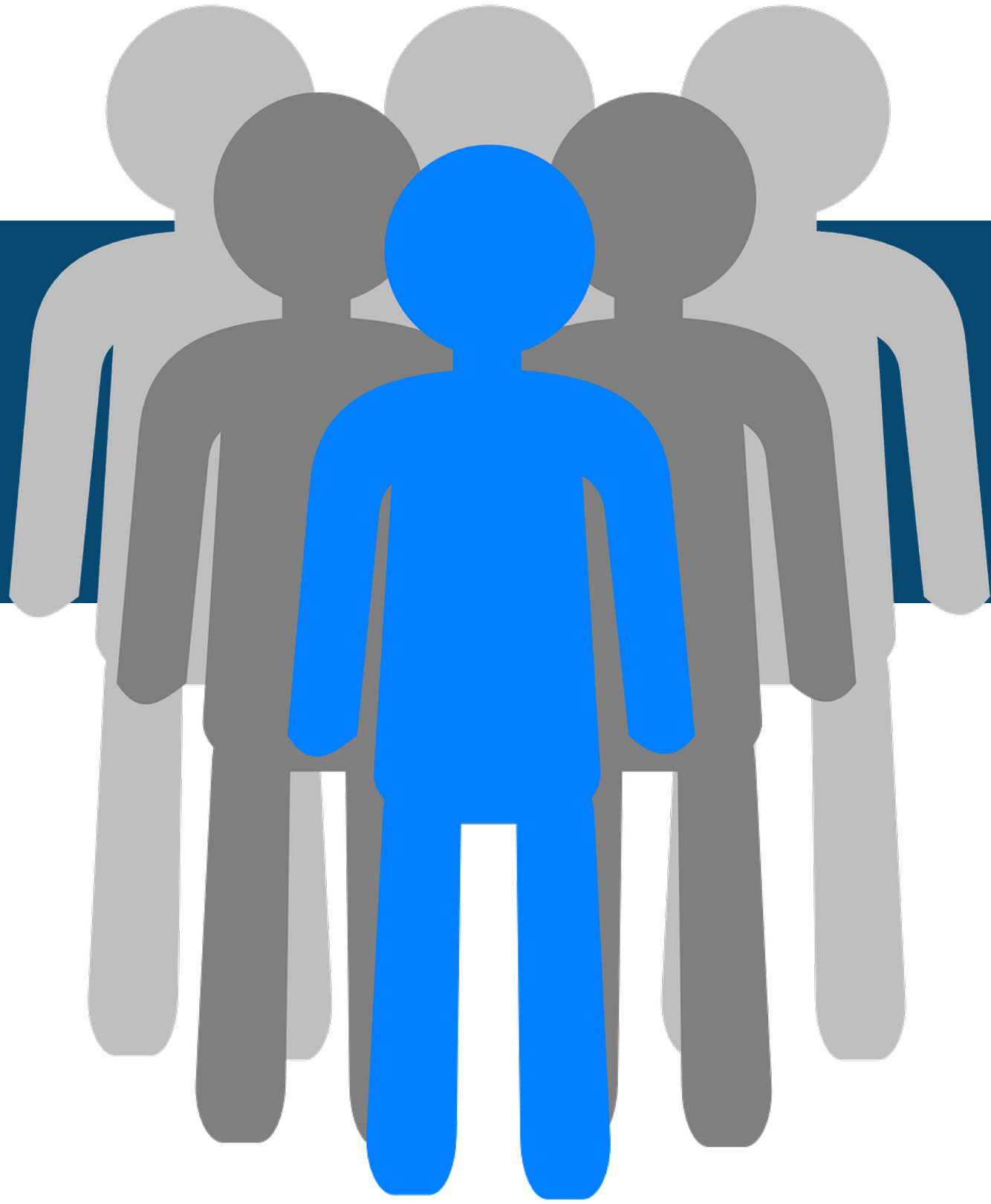
**But, be WARNed . . .**

**30 days sometimes means 90 days.**



## “Employment Loss”

- a) Employment termination, other than discharge for cause, voluntary departure, or retirement;
- b) Layoff longer than 6 months; or
- c) Reduction in hours of work of more than 50% during each month of any 6 month period.



## “Part-Time”

An employee who:

- a) is employed for an average of less than 20 hours per week; or
- b) who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.





## “Affected Employees”

Employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff.

\*Includes part-time employees.

# **Employers Must Give Notice to...**

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- “Affected Employees,” including part-time
- Unions (if applicable)
- Government officials- Local Chief Elected Official
- State Rapid Response Dislocated Worker Unit



**Federal WARN Act requires 60 days' notice,  
while NY requires 90 days**



# Consequences of Violations

- Damages to each employee who should have received notice
- Up to 60 days' pay and benefits, plus attorneys' fees
- Civil penalty of \$500 per day of violation
- Employers might be able to chose a pay in lieu of notice approach

# NEW YORK **WARN** ACT

(Worker Adjustment & Retraining Notification)

## COVERED EMPLOYERS

50+

Number of Employees  
in New York State

"Business  
Enterprise"

Might include separate,  
but related entities



Doesn't include government  
entities, but can include  
private non-profits

## NOTICE REQUIREMENT



Affected Employees  
and their Unions



Written notice 90 days  
before first  
employment loss



Government Officials

## PLANT CLOSING



Shutdown of  
employment site,  
facility, or operating unit



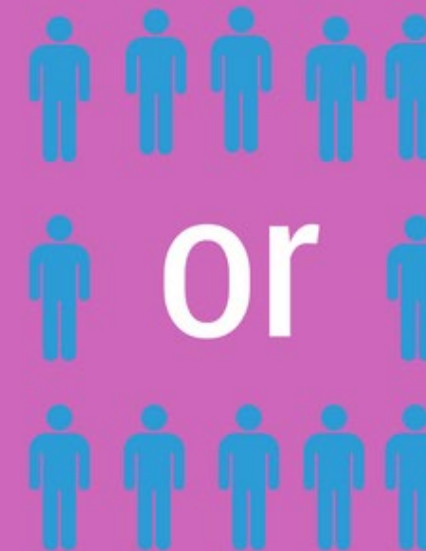
25+

Employees with  
employment loss

## MASS LAYOFF

25+

Employees with  
employment loss if at  
least 33% of active  
workforce at site



or

250+

Employees with  
employment loss at site  
even if less than 33% of  
workforce

# Narrowly Applied Exceptions

**Faltering Company exception**: only applies to plant closing and is limited to situations where a company has sought new capital or business to attempt to stay open **and** giving notice would ruin the opportunity to obtain the new capital/business.

**Unforeseeable Business Circumstances exception**: applies to closings and layoffs caused by business circumstances that were **not reasonably foreseeable** when notice would otherwise have been required; **BUT** employers must still give as much notice as possible.

# Other Potential Exceptions

- Employer offers to transfer employees to a different work location within reasonable commuting distance
- Seasonal/temporary employment
- Closing or layoff was the direct result of a natural disaster, such as a flood, earthquake, drought, or storm
- Strikes and lockouts related to collective bargaining
- A new company will continue employment in connection with the sale of a business

# Unemployment

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- Temporary layoffs and terminations due to reasons related to COVID-19 would qualify most affected employees for unemployment benefits
- Due to the increase volume in UI filings and inquiries, state unemployment offices have been implementing new practices and procedures.
- New York has increased its server capacity to decrease the disruptions caused by the increased volume and implemented a new alphabetical filing system
- New York and some other states have waived the 7-day waiting period for benefits for people who are out of work due to COVID-19 closures or quarantines
- Some federal enhancements may be available under FFCRA or future legislation



# Eligibility for Unemployment

An employee who is subject to a reduction in hours or wages may be entitled to supplemental wages under NYS UI if the following conditions are met:

- Employee works less than four days per week
- Earns less than \$504 per week

A deduction of one-quarter of the eligible UI benefits will be deducted for each day that services are provided, even if no wages are earned and they only worked 1 hour during the day.

Employee must notify the DOL of any day worked or wages earned while receiving UI benefits. Failure to report this information could result in criminal penalties.

# **Policies and Procedures**

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- Paid and Unpaid Leave Policies - Paid Sick Leave, Disability Leave, FMLA, Paid Family Leave
- Teleworking Policies and Procedures
- Workplace Safety Policies and Procedures

# Stay Updated!

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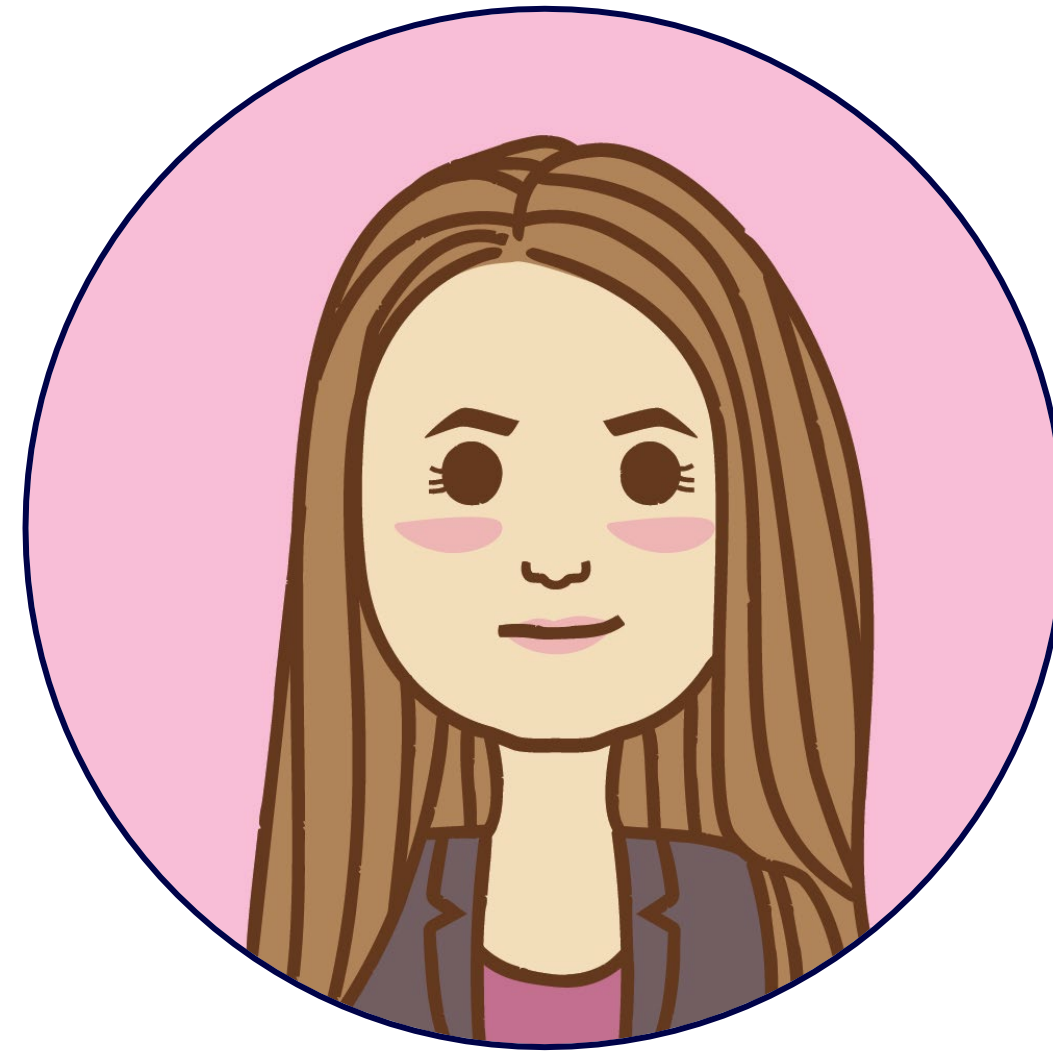
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**Thanks for your time!**

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**Questions?**

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