



MEMORANDUM

TO: Steve Morgan, Executive Director, New York Road and Infrastructure Coalition (NYRIC)
Ross J. Pepe, President, Construction Industry Council of Westchester & Hudson Valley (CIC)
Marc Herbst, Executive Director, Long Island Contractors Association (LICA)
Robert Wessels, Executive Director, General Contractors Association (GCA)
Michael J. Elmendorf II, President and CEO, Associated General Contractors of NYS (AGC)
Carlo A. Scissura, Esq. President and CEO, The New York Building Congress (NYBC)
J. Simson, President, American Council of Engineering Companies of New York (ACEC)

FROM: Marie Therese Dominguez, NYSDOT Commissioner *Marie Therese Dominguez*

SUBJECT: COVID-19 Guidance for NYSDOT Construction Projects

DATE: April 3, 2020

The New York State Department of Transportation ("the Department") has received multiple requests from the construction industry seeking support to modify the work week from the normal five days of 8 hours, to four 10-hour days. This request for a condensed work schedule has been put forth to facilitate the effort to practice greater social distancing.

Labor Law § 220 applies to Public Work projects. *Section 220(1)* states that eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

Section 220(2) notes that "no such person shall be so employed more than eight hours in any day...". The exception to this general rule applies when there is an extraordinary emergency including fire, flood or danger to life or property.

The Department believes the COVID-19 crisis would qualify as an extraordinary danger to life, thus, supporting an exception to allow for a deviation from the 8-hour workday.

In accordance with NYSDOT's Standard Specification §102-10 *Labor and Employment*, Subsection B. *Overtime Dispensation*, the Department is reminding all firms of the ability to request overtime dispensation for an alternate work schedule on our construction contracts utilizing the procedures outlined below:

1. All firms must have an approved *Dispensation for Hours* (Form PW-30) in place for their contract before any worker exceeds an 8-hour workday.
2. Once the Dispensation for Hours is approved, the firm should review Form PW-30.1 *Employer Registration for Use of 4 Day / 10 Hour Work Schedule* to ensure that the project includes the qualifying titles listed.
3. If the project includes qualifying titles, complete and submit Form PW-30.1 *Employer Registration for Use of 4 Day / 10 Hour Work Schedule* to the Engineer In-Charge (EIC) for approval of qualifying titles to be compensated for 4 days/10 hours at *straight time*.

4. For those firms who do not have an up to date approved overtime dispensation for their contract, they should immediately submit Form PW-30 *Application for Dispensation for Hours* and Form PW-30.1 *Employer Registration for Use of 4 Day / 10 Hour Work Schedule* to the EIC.

The Department will review the application to ensure the information is complete and accurate and will forward directly to New York State Department of Labor (NYSDOL) for review and processing. These overtime dispensations will be submitted by the Department. Applications should not be sent directly to the NYSDOL by either Contractors or the Regional Office.

The Department cannot guarantee that the NYSDOL will grant dispensation from restrictions pursuant to the provisions of Article 8 of the State Labor Law, however we will provide our support provided that the Contractor is in compliance with Labor Law requirements at the time of application. The Department will work with NYSDOL to expedite approval of these applications.

For additional information and to get a copy of the forms go to:

<https://www.labor.ny.gov/workerprotection/publicwork/PW410s.shtm>.

Please feel free to contact Mr. Wahid Albert, Chief Engineer at Wahid.Albert@dot.ny.gov if you have any additional questions.

cc: Wahid Albert, Chief Engineer
Todd Westhuis, Chief of Staff
Ron Epstein, Executive Deputy Commissioner
Jan McLachlan, Chief Counsel, Legal Division
Scott Geiger, Director, Office of Construction
Eric Celia, Director, Project Management Office
James Flynn, Director, Office of Structures
Robert Sack, Director, Office of Technical Services
Richard Wilder, Director, Office of Design
Daniel Hitt, Director, Office of Environment
Sam Zhou, Assistant Commissioner, Operations & Asset Management Division
NYSDOT Regional Directors 1-11