Local 22
U.A. Plumbers & Steamfitters

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December 29, 2020

Roberta Reardon
Commissioner
Department of Labor
State Office Bldg. # 12
W.A. Harriman Campus
Albany, NY 12240

Re: New York Paid Sick Leave Law Applicability to All Private Employers in New York State

Dear Commissioner Reardon:

This letter is being sent on behalf of the Membership of U.A. Plumbers and Steamfitters local Union No. 22.

In April 2020, the New York legislature passed, and Governor Andrew Cuomo signed the New York Paid Sick Leave Law ("PSLL" or "law") requiring that all private employers in the state of New York provide sick leave to their workforce. The law does not exempt any industry or group of employers from the sick leave mandates. Guidance from the state has been clear and consistent on this issue.

Despite this clarity, groups representing employers that are parties to collective bargaining agreements ("CBA") have expressed their intention to refuse to comply with the new law. The undersigned requests guidance from the New York State Department of Labor ("DOL") affirming the applicability of the new PSLL to all private-sector employers, including those party to CBAs in effect prior to September 30, 2020, and clearly rejecting the position announced by these employers.

The Paid Sick Leave law begins: "*Every* employer *shall be required* to provide its employees with sick leave."[1] The amount of sick leave required to be provided varies by the size of the employer. However, no employer is permitted to provide zero hours paid or unpaid time to its employees. The text of the law is plain, clear, and unambiguous.[2]

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[1] N.Y. Labor Law § 196-b.
[2] *Id.*

The PSLL is meant to provide every private-sector employee in the state of New York with the benefit of job-protected sick time. Some private-sector employees already enjoyed the benefit of paid sick time prior to the passage of the law, whether through a CBA or a unilateral policy of an employer. The DOL has provided the following guidance for employers with a paid time off policy in effect prior to the passage of the PSLL:

> If an employer, including those covered by a collective bargaining agreement, has an existing leave policy (sick leave or other time off) that *meets or exceeds* the accrual, carryover, and use requirements, this law does not present any further obligations on that employer.[3]

If an employer's existing policy does not "meet or exceed" the requirements of the law, then the employer must provide additional leave to employees in order to come into compliance with the law. The guidance goes on to address CBAs more specifically:

> Collective bargaining agreements that are entered into after September 30, 2020 are not required to provide the sick leave described above so long as the agreement provides for comparable benefits/paid days off for employees and specifically acknowledges the provisions of Labor Law 196-b. For the purposes of collective bargaining agreements, the Department of Labor considers leave time which has fewer restrictions on its use to be comparable to that required by this law, regardless of the label of such leave (e.g., annual or vacation time) and multiple leave benefits which meet the use requirements of this law may be combined to satisfy the "comparable benefit" requirement.[4]

The statute and guidance do not explicitly answer the question of what must happen when an employer has a CBA signed before September 30, 2020, the CBA has no paid leave benefits (or has benefits lower than what the PSLL guarantees), and the CBA is set to expire some time after January 1, 2021, when the PSLL goes into effect (for clarity, these agreements will hereinafter be referred to as "existing CBAs."). There are three basic possible answers to the question:

> 1) the law requires such employers to immediately reopen the CBA and bargain a policy that complies with the PSLL;
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> 2) the law requires such employers to provide benefits that comply with the PSLL to employees starting January 1, 2021; or

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[3] *Existing Policies*, NEW YORK PAID SICK LEAVE, https://www.ny.gov/new-york-paid-sick-leave/new-york-paid-sick-leave (last visited Dec. 23, 2020).
[4] *Id.*

3) the law requires such employers to do neither, and their employees will receive no sick leave protections until the expiration of the existing CBA, whenever that occurs.

Employers and unions alike have asked the DOL whether the parties are obligated to reopen an existing CBA to address the new law prior to the expiration of that CBA. Although the DOL has not provided any formal guidance on the question, it is generally understood that the parties to an existing CBA have no obligation to reopen a CBA prior to its expiration simply to address the new sick leave law. On the other hand, there is clear guidance that the PSLL must be addressed directly in all CBAs entered into on or after September 30, 2020.

In short, there is a dispute between employers and unions about whether the answer is option 2 or option 3.

Recently, groups of employers that are parties to existing CBAs without paid leave policies, and which do not currently offer any leave to their employees, have communicated with your office about the law's application to them. These communications apparently announce the employers' position that they believe the NYSLL requires them neither to begin providing leave in accordance with the law going forward, nor to reopen their CBAs before the expiration dates. In other words, they take the position that option 3 applies, and their workers are the only ones who do not need to receive any leave under the NYSLL.

In response, we take the position that there is absolutely no legal basis for this position, that that such employers are thus announcing their intention to flagrantly violate the PSLL. We believe the answer to the question must be that employees covered by these CBAs are required to begin to receive paid sick leave benefits in compliance with the PSLL starting January 1, 2021, until the time the CBAs expire and are renegotiated.

There are several reasons why this must be the case, and why it cannot be true that employers in these categories are the only ones exempt from the law's requirements. First, there is no actual indication in official or unofficial DOL guidance that employers in this category are exempt from the law. The simple fact of an existing CBA does not put this group of employers into a special, exempt category. All private-sector employees must be provided sick leave under the new law, without exception or exemption. It is a well-settled principle of legal interpretation that an exception to a newly-established right should be clear and unambiguous at the start.

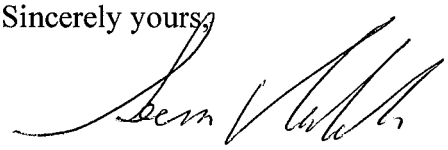
Second, the employers' position is fundamentally contrary to the obvious and well-defined spirit of the statute. With passage of the PSLL, the state said clearly that *all* private-sector employees must have the benefit of job-protected and, except in the case of extremely small workplaces, paid sick leave. Lawmakers did not exempt any class of worker, employer, or any industry. Any guidance from the DOL that would permit employers that are parties to CBAs to deny the right to sick time to their employees is contrary to the intent, spirit, and plain text of the

PSLL. The right to sick leave is a benefit that exists outside of a CBA, just like the rights to a minimum wage and overtime pay.

Finally, such an interpretation of the PSLL would undermine the value and strength of organized labor in New York, a result that we believe the State legislature would never intend. It is beyond question that, along with institutions like the DOL, labor unions are a critical force in maintaining and improving the overall working conditions of New Yorkers. With virtually no exceptions, workers protected by a union have a higher quality of work life than non-union workers – the state of affairs that allows union contracts to affect industry standards rather than just the individuals employed by a particular employer. By contrast, the position announced by employers on the question before us would make unionized workers the only unprotected employees in the state. This would be a perverse result, and it is absurd to suggest it was the law's aim.

For all these reasons, the undersigned respectfully request a written reply affirming the applicability of New York Paid Sick Leave Law to all private-sector employers in the state, regardless of industry or union status.

Sincerely yours,



Sean P. Redden,
Business Manager/
Financial Secretary/Treasurer