

# STLS Pandemic Plan Guidance

## Recently Asked Questions



### 1. Can a library compel staff to get tested for COVID-19?

Yes, libraries can legally require staff to get tested before returning to work if the staff member has tested positive for COVID-19, or been exposed. [The Equal Employment Opportunity Commission offers comprehensive guidance on this topic, but also cautions employers on testing unless it is absolutely necessary. You can click here for a detailed Question & Answer thread published by the EEOC.](#)

Additionally, Centers for Diseases Control and Infection (CDC) states, *“Employers should not require sick employees to provide a COVID-19 test result or healthcare provider’s note to validate their illness, qualify for sick leave, or return to work. Healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner.”*

Libraries should use their best judgement when determining if a test is absolutely necessary for an employee to return to work. It all depends on the type of exposure, or if the employee has actually tested positive for COVID-19. [Click here for most current STLS interpretation of CDC guidance and how to deal with exposures.](#)

### 2. What actions are a library allowed to take if a staff member refuses to get tested for COVID-19?

Libraries should develop an objective process for determining the need for staff testing. It is not advisable for a library to use a staff member’s refusal to get tested as a means for discipline. [The August 10, 2020 article from The National Law Review addresses reasons for not requiring tests, and how to deal with staff refusal. It also highlights New York State practices specifically.](#)

Most staff who are interested in returning to work in a timely manner, and in a way that is safe for all library staff, will work with the library to get tested if it is absolutely necessary. Again, it all depends on the type of exposure, or if the employee has actually tested positive for COVID-19.

### 3. Can we ask staff to work from home during the two-week paid leave if the library has work that they can do or is it just paid time off?

No; an employer cannot require an employee to work from home or telecommute while taking sick leave. But an employer can offer the employee the options of working from

home or telecommuting. If employees voluntarily agree to work from home or telecommute, employees will retain the paid or unpaid sick leave that they have accrued.

To determine the amount of NYS Paid Sick Leave employees are eligible for, please use the charts below:

**AMOUNT OF LEAVE**

Employees will receive an amount of sick leave depending on the size of their employer:

Number of Employees	Employer Sick Leave Requirements
0 - 4	If net income is <b>\$1 million or less</b> in the previous tax year, the employer is required to provide up to 40 hours of <b>unpaid</b> sick leave per calendar year.
0 - 4	If net income is <b>greater than \$1 million</b> in the previous tax year, the employer is required to provide up to 40 hours of <b>paid</b> sick leave per calendar year.
5 - 99	Up to <b>40</b> hours of <b>paid</b> sick leave per calendar year.
100+	Up to <b>56</b> hours of <b>paid</b> sick leave per calendar year.

For counting employees, small employers who reported a net income of less than \$1 million do not need to pay their employees sick leave, but must provide the additional allotted leave time. Note: "calendar year" means the 12-month period from January 1 to December 31. For other purposes, including use and accrual of leave, employers may set a calendar year to mean any 12-month period.

See New York State Paid Sick Leave FAQ for this chart and more information:  
[https://www.ny.gov/sites/ny.gov/files/atoms/files/PSL\\_FAQ\\_PaidSickLeaveFAQ.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/PSL_FAQ_PaidSickLeaveFAQ.pdf)

**Eligibility depends on how the employer (the library) is classified:**

Factor 1: Is the library in question considered a "type" of "governmental agency?"  
 AND/OR

Factor 2: Are the employees of that library compensated as if they were employees of a governmental agency?

Please use the chart below to make this determination:

Library-municipality Relationship Type	Hallmarks	Legal impact with regard to employees and labor law	What this means with regard to the new "Sick Leave" law (196-b).
1. "Total Coupling" Type	The library never separated any functions from the sponsoring entity; all finances, employee compensation, employee benefits, procurements, and property are owned/controlled by the	In "total coupling," employees of the library, for Labor Law 196-b purposes, are considered municipal/district employees, <i>even though the library board retains the</i>	Employees are totally covered by the policies and benefits of the municipality/district, including the sick leave policy, and 196-b does not apply.

	<p>municipal entity.</p> <p>Ideally, the relationship is confirmed in writing.</p>	<p><i>authority to hire, discipline, set compensation, promote, or terminate the employees.</i></p>	
<p>2. "Select support: determinative" Type</p>	<p>The library has separated some functions from the sponsoring entity, but some functions determinative of legal status remain controlled by the municipal entity; for example, if a town still owns the library's building, or payroll and benefits are through a city.</p> <p>Ideally, the relationship is confirmed in writing.</p>	<p>In a "Select support: determinative" scenario, if "employment" is a determinative factor, employees of the library are paid by the municipality/district, so for legal purposes the employees might be considered municipal employees, <i>even though the board retains the authority to hire, discipline, set compensation, promote, collectively bargain with, or terminate the employees</i>, and even though the library has de-coupled from the entity in other ways.</p>	<p>IF employees are totally paid by and covered by the benefits of the municipality/district, including their sick leave policy, 196-b does not apply.</p> <p>Otherwise, the library must develop a policy under Labor Law 196-b, OR consider itself a separate "governmental agency" to be exempt.</p>
<p>3. "Select support: non-determinative" Type</p>	<p>The library has separated from the sponsoring entity to the degree that any slight collaboration between the library and the municipality does not determine legal status. For example, the Town may plow the parking lot as a courtesy, but does not own the building, hold the money, or provide payroll/benefits.</p> <p>Ideally, the relationship is confirmed in writing.</p>	<p>In a "Select support: non-determinative" scenario, the select support related to employees would not risk creating employer-employee status, or influence compensation and benefits, but could still be helpful assistance. For example: if library employees were allowed to attend town employee trainings and professional development to save money for the library.</p>	<p>Library employees are not paid through the town/district, so the library must develop a policy under Labor Law 196-b, OR consider itself a separate "governmental agency" exempt from the law (which should be confirmed by a lawyer in writing for that specific library).</p>

<p>4. "Totally De-coupled" Type</p>	<p>The library has <i>completely</i> separated functions from any sponsoring entity. The library owns the building, does all its own procurement and contracting, is the sole administrator of employee-related matters, and takes no extras or freebies from its municipalities/district.</p> <p>No need to confirm the lack of relationship in writing, but you can exchange New Year's cards.</p>	<p>In a "total de-coupling," there is <i>no</i> select support related to employees. Librarians and municipal/district employees might say "hi," but they don't attend regular trainings or joint work sessions, and they are not in any way co-workers.</p>	<p>Library employees are not paid through the town/district, so the library must develop a policy under Labor Law 196-b[9], OR consider itself a separate "governmental agency" exempt from the law (which should be confirmed by a lawyer in writing for that specific library).</p>
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“The bottom line here is: library employees shouldn't be left in a lurch, especially when it comes to sick leave, family medical leave, short-term disability, workers' compensation, and paid family medical leave—all of which are rooted in the question of "who" their employer is. This means library trustees should periodically confirm, with certainty and clarity, what policies apply to their workforce. Regardless of where a library falls on the above chart, this can be accomplished with a confirmed, clear set of policies.” - [Taken from WNYLRC Ask the Lawyer Recently Asked Questions, [post 11/05/2020](#)]

The chart and information above regarding eligibility can be found in the 11/05/2020 post to the WNYLRC Ask the Lawyer Recently Asked Questions on NYS Paid Sick Leave: <https://www.wnylrc.org/ask-the-lawyer/raqs?link=1>

**If the employee is using New York Paid Family Leave COVID-19:**

If an employee is under a mandatory or precautionary order of quarantine or isolation issued by the State, New York State Department of Health, local Board of Health, or other authorized government entity **they may be eligible** for job-protected sick leave and compensation through a combination of disability and Paid Family Leave COVID-19 quarantine leave benefits.

**If the employee is able to work from home, while under mandatory or precautionary quarantine, they are NOT eligible for COVID-19 quarantine leave.** If the employee is not showing symptoms and is physically able to work through remote access or similar means, they are not eligible for COVID-19 quarantine leave.

New York State Paid Family Leave COVID-19 FAQ:

<https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>

- 4. Are we required to post the plan in a place where the public can see it? Or, is it just posted for employees, for example, in the back room?**

No; libraries are not required to post their finalized plan in a place that is visible to the public. However, posting library policies for public viewing via the library website is a best practice and ensures transparency.

Please note: The finalized plan MUST be posted in a clear and visible place for employees, such as the breakroom, or some similar location within the library building. The plan should also be included in the employee handbook and should be available to employees online, via the library website or a similar venue.

- 5. What does protocol look like when staff return to buildings? Document what you are doing now so that you do not need to recreate the wheel next time.**

Libraries can refer to the section on Resources and Considerations for Reopening in the [STLS Guidance and Considerations for Reopening Libraries: A Response to the NOVEL Coronavirus, or COVID-19](#), issued on 5/6/20. Any protocol your library implemented during the earlier stages of the pandemic should be documented in writing and kept on file so that your library will be informed and prepared for similar considerations when facing a future pandemic. This will enable your library to have efficient and ready guidelines for future use.

- 6. A job described as essential, does not necessarily imply that the essential staff member is in the library building. Staff could be allowed into the building to work while a director is working from home.**

For the purposes of this plan, an essential employee is defined as an employee who is required to be physically present at a work site to perform his or her job. If it is the case that a position (such as the library director) has been classified as essential, but that person is able to conduct all or most of their essential duties remotely, please explain this in your plan. Furthermore, if non-essential employees will be allowed to work in the library building in lieu of the library director, describe this decision as well as the non-essential positions that would report to work in the library building.

See list of definitions, such as essential vs non-essential, here:

[https://www.nyla.org/userfiles/uploads/Chapter\\_168\\_Requirements.pdf?utm\\_source=AL+NYL](https://www.nyla.org/userfiles/uploads/Chapter_168_Requirements.pdf?utm_source=AL+NYL)

**7. Can we compel staff to get vaccinations? Do we need waivers of library liability if a staff member chooses not to get vaccinated?**

At this time, it is not possible to accurately answer this question due to the ongoing development of the vaccine and pending formal government approval. We have requested legal guidance on this matter and will update this document when the guidance is available.

**8. Are 'flu prevention supplies' considered sanitizing equipment? (As the policy template refers to 'flu prevention supplies.')**

Libraries should consider flu prevention supplies and sanitizing equipment to be interchangeable terminology. Libraries may refer to OSHA Guidance on Preparing Workplaces for COVID-19 at <https://www.osha.gov/Publications/OSHA3990.pdf>. This guidance lists examples of safe work practices for SARS-VoV-2 including

- Providing resources and a work environment that promotes personal hygiene. For example, provide tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
- Requiring regular hand washing or using of alcohol-based hand rubs.”

It also lists PPE needed to prevent certain exposures including:

- gloves, goggles, face shields, face masks, and respiratory protection, when appropriate.

Libraries should check the OSHA and CDC websites regularly for updates about safe work practices for SARS VoV-2 and recommended PPE.

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

<https://www.osha.gov/SLTC/covid-19/controlprevention.html>

**9. How do we comply with HIPPA when tracking employee absenteeism related to flu symptoms? Related to Patient Privacy provision.**

Libraries can refer to the guidance provided by STLS in the [STLS Guidance & Considerations for Reopening Libraries: A response to the Novel Coronavirus, or COVID-19](#) document issued on 5/6/2020. Page six of that document describes the NYS Forward Business Plan Template process on screening employees. Health information about employees should be placed in confidential files and shredded and disposed of upon the end of the pandemic.

Information on addressing COVID-19 exposure and informing others can be found in the [Library Staff COVID Exposures](#) guidance document issued by STLS on 10/14/2020.

For additional information, see the Department of Health and Human Services resource on [Employers and Health Information in the Workplace](#) or the National Law Review article titled [“What Employers Need to Know about HIPPA.”](#)

**10. Are libraries really expected to offer a significant amount of paid leave for their staff?**

For the purpose of *Pandemic Operational Response Plans*, libraries should include language as defined under the Families First Coronavirus Response Act (FFCRA), and specifically reference this act as it has a term limit of December 31, 2020. Congress has not extended the provisions of this legislation beyond the term date. Libraries will be required to meet similar paid leave benefit time if the act is extended, or a similar act is put in place to meet the present needs of the COVID-19 pandemic.

*Pandemic Operational Response Plans* are intended to assist with the current COVID-19 pandemic and plan for the next pandemic. Nevertheless, libraries should use the circumstances of the current pandemic, and its legislation, as a benchmark for what might be expected of employers if another federal state of emergency occurs.

Indicating the type of *paid leave* an employee might receive during another pandemic is a proactive planning. Leave times might need to be adjusted depending on federal legislation or local decision-making, but at least the library has something to reference based on past practice.

**11. Is there a change in paid sick leave starting in 2021?**

NYS Paid Sick Leave was signed into legislation on April 3, 2020. [Click here for an overview of the program.](#) [And click here to determine how it applies to your library.](#) Libraries should use these guidelines to meet minimum requirements. Some libraries might already meet these requirements based on board approved Personnel Policies. See answers to Question #3 for additional details.

**12. Who are non-essential personnel? What should they be doing or not doing when they are given stay at home orders?**

Non-essential personnel as defined in NYS Executive Order 202.8 (EO 202.8), which required employers to reduce their in-person workforce by 100% are any employees who do not carry out operational essential activities that are critical to keeping the organization running.

For libraries, non-essential personnel includes everyone except for the Library Director, Circulation/Collections Manager, Bookkeeper/Treasurer, IT Technician/Manager or Facility Maintenance Worker. EO 202.8 indicated anyone who does not hold the job title or perform the duties listed above should work from home if possible.

**13. Are trustees considered essential? For instance, treasurers or others who sign checks. How do libraries accommodate trustees in defining essential positions?**

Libraries should apply and interpret NYS Executive Order 202.8 as referenced in the previous question for trustees. Library Board President may fall under the same essential administrative category as Library Director, and Treasurer or anyone else required to sign checks or maintain fiscal internal controls per board approved policy would fall under the same essential administrative category as Bookkeeper/Treasurer. These individuals would be able to enter the building to only perform administrative functions deemed essential.