

Allied Building Metal Industries, Inc.

**Comment Regarding
REBNY Construction Return Guidelines**

I. Principle #1: Workers Who Are Sick Must Not Be Allowed On-Site

1. Require Sick Workers to Stay Home:

- a. Zero tolerance policy should be made clear and enforced. *Agreed, but see comments below regarding section III.*
- b. Signage to reinforce message. *Agreed. This should be the responsibility of the general contractor/ construction manager.*
- c. Consistent messaging and enforcement from management. *Agreed.*
- d. Workers should be encouraged to self-monitor for symptoms of Covid-19. *Agreed.*

2. Where site conditions allow, a staging area should be established to screen workers and ensure only healthy workers are allowed on-site

- a. Staging areas should be arranged to allow for social distancing
- b. Where possible multiple staging areas should be arranged to avoid excessive queuing
- c. Workers waiting to enter staging areas should remain 6 feet apart

Staging should be the responsibility of the general contractor/ construction manager.

3. Before allowing workers on-site they should answer the following questions and attest that they are healthy

- a. Have you had contact with a confirmed case or a person under investigation for coronavirus within the past 14 days?
- b. Do you currently have fever, chills, cough, sore throat or shortness of breath?
- c. Does your temperature check show a fever (>100.4°F)

See comments below regarding section III. Screening should be the responsibility of the general contractor/ construction manager although it is acknowledged it may be preferable at times for this function to be shared by subcontractors ahead of time to alleviate bottlenecks at the access point of the worksite.

4. Before allowing workers on-site they should have their temperature taken - Workers with elevated temperatures or who can't attest to their health should not be allowed to enter the site and should be immediately sent home

See comments below regarding section III.

As to items 2, 3 and 4 above, the screening of workers before they are permitted to enter the worksite is necessary and appropriate and, generally speaking, should be the responsibility of the general contractor/ construction manager. With that being said, screening, temperature taking, and similar suggested protocols will present many thorny issues that should be identified, sorted out and addressed now, to the extent possible, before widespread reopening of worksites commences.

The entry process through an elaborate screening area is well-intentioned. However, even where multiple staging areas are possible, significant delays in accessing the site will inevitably ensue. Where multiple staging areas are *not* feasible due to site conditions or for other reasons, and/or if the unions do not agree to staggered shifts for various trades, there could be chaos. A line of one hundred workers spaced six feet apart waiting to access the site would form a line six hundred feet long. Under virtually any screening scenario, even under optimal conditions, it will take a considerable amount of time – perhaps hours – for all workers to enter the site and get to the work point. Obviously, such delay will affect scheduling and productivity, with ensuing costs. Time spent by workers delayed at the access point during the screening process and then, once through the access point, delayed in entering the hoist due to social distancing requirements, is all, or mostly all, compensable work time under the Fair Labor Standards Act. Subcontractors will be responsible for having to pay workers for the considerable amount of compensable downtime between the access point and the work-point attributable directly and solely to the types of COVID-19-related safety protocols being suggested here. While the safety of employees is of paramount importance, the economic ramifications for small- and mid-size subcontractors will very likely be enormous and potentially crippling.

The question the subcontractor is asking is whether the general contractor/ construction manager will share in the pain of such COVID-19-related additional costs or defer these important issues and leave the subcontractor to manage these uncertain outcomes alone. Especially on large construction sites it is difficult to see how even the best-planned screening protocol at the point of entry will not put enormous downward pressure on productivity, cause significant delays and, ultimately, foist additional, substantial costs onto the subcontractor. Given the unprecedented circumstances driving these additional costs, the expectation is for the owner to step in and reimburse the general contractor/ construction manager and the subcontractor for these additional costs incurred.

II. Principle #2: Take Preventative Measures to Keep Workers Safe

1. Enforce Social Distancing:
 - a. To the extent possible, enforce 6 foot social distancing requirements
 - b. Eliminate large meetings
 - c. Install signage to reiterate importance of distancing and information on personal hygiene, including the use of face coverings
 - d. Discourage use of shanties and crew shacks and impose limits on number of people who can be present at any one time

- e. When changing rooms are required and pace allows there should be separate space for separate crews; changing rooms should be cleaned and sanitized
- f. Discourage congregating for meals, leaving site for meals, or bringing food trucks on-site
- g. Reduce density on hoists and elevators
- h. Require social distancing wherever it is possible for lines to form, including at bathrooms, shanties, and food trucks
- i. Delivery drivers should remain in their vehicles if possible and must always use a mask and clean hands prior to leaving the vehicle

Many of the above suggested protocols are more within the purview of the general contractor/ construction manager than the subcontractor, such as the installation of signage and reducing density on hoists and elevators. Other suggested protocols may not be possible as a contractual or logistical matter. By way of example only, most collective bargaining agreements require the use of shanties, so while the idea of “discouraging” the use of shanties is not unreasonable, an employer that unilaterally eliminates shanties from the worksite will be liable for an unfair labor practice under most CBAs. The same goes for unilaterally limiting or prohibiting workers from leaving the worksite during breaktime.

In a different way, the suggestion to provide separate changing space for separate crews, while not unreasonable in theory, often will not be possible given the logistical and spatial limitations prevailing on many jobsites; there just isn’t enough room. Encouraging workers to come to the worksite already dressed might be a preferable alternative whenever possible.

In any event, all of the above suggested protocols will require coordination and collaboration between general contractors/ construction managers, subcontractors, and labor, which, in and of itself, will present challenges.

A stringent six-foot social distancing mandate (*see* item 1a, above) will not be feasible for most jobsites at the work-point. Rather, any such mandate should target workers at times they are not actively engaged *in work*, *e.g.*, waiting to clear the access point, waiting to enter the hoist, on the hoist, during break periods, and so forth. During active work-time, the standard should be for workers to maintain social distancing, but only to the extent feasible, and otherwise to be equipped with adequate PPE that is appropriate for the circumstances. Stated another way, where social distancing is not feasible, which is a determination that should rest within the sole and absolute discretion of the subcontractor. The kind of nuanced social distancing strategy we are suggesting here would likely require an adjustment to the Empire State Development Corporation’s current guidance, which states that for essential construction to proceed, “[a]t every site, it is *required* that the personnel working on the site maintain an appropriate social distance.”

2. Reduce Risk of Widespread Exposure

- a. Encourage workers to use private vehicles ~~or bicycles~~ to come to work if possible and arrange for parking
- b. Stagger shifts by trade where possible

- c. Stagger arrival and departure times
- d. Limit crew sizes and prevent mixing of trades – supervisors should stick with their crews and enforce requirements
- e. Stagger break times and do not allow crews to mix during breaks
- f. No sharing of equipment. If equipment needs to be shared it must be sanitized properly prior to sharing
- g. No visitors on-site. If visitors must access site visitors should follow same entrance and exit protocols as workers
- h. Increase ventilation in enclosed space
- i. Target the following areas for cleaning and disinfection daily:
 - i. Site entrance access gates and doors
 - ii. Turnstile entrance
 - iii. Lift and hoist cars and controls
 - iv. Toilets
 - v. Hand washing stations
 - vi. Handrails
 - vii. Telephones
 - viii. Desks
 - ix. Eating areas
 - x. High touch surfaces

As a threshold matter, many of the above suggested protocols should be the responsibility of the general contractor/ construction manager, such as item 2d (mixing of trades), 2g (prohibiting visitors), 2h (ventilating enclosed spaces), and 2i (cleaning and disinfecting).

Moreover, certain of these suggested protocols are not feasible as a practical matter for certain trades, such as items 2a (bicycles; arranging for parking), 2d (limiting crew sizes) and 2f (sanitizing “shared” equipment).

For most construction workers, many of whom are commuting great distances to get to work in an urban environment, it is not feasible to travel to work by bicycle. Moreover, especially at larger construction sites, to require subcontractors to coordinate parking, in the numbers that would be necessary to accommodate all workers, would be logistically impossible and cost-prohibitive.

As for limiting crew sizes (item 2d), this too will present potentially insurmountable challenges for certain trades, either as a contractual or logistical matter, or both. Where steel erection is concerned, for instance, the collective bargaining agreement dictates the minimal number of workers that must be present on a crew depending on the nature of certain tasks, such as a raising gang. In other situations, the logistics and sequencing of work will not permit reductions in crew size. Again, where steel erection is concerned, most work will require a sufficient supply of backup manpower to keep the work flow moving behind the raising gang and to keep scheduling intact. For example, there must be a sufficient number of bolters directly behind the raising gang to bolt up the steel before metal decking can be laid down. A lack of sufficient manpower can and will adversely disrupt the sequencing of such work,

causing scheduling delays and increased costs. The point is that reducing crew size is easier said than done.

Item 2f (sanitizing of shared equipment) is also a non-starter for many trades. For ironworkers, larger coordinated logistical maneuvers require many workers to place their hands on the same piece of equipment in real time, from raising a steel beam, to erecting prefabricated concrete members, to installing curtain wall. By way of example, multiple workers will put their hands on a large steel member as soon as it is delivered by truck to the worksite. The process of rigging and lifting a load involves still more sets of hands touching and guiding the steel beam, by hand, as the rigging is set and the steel beam is raised. One chain fall will be touched, by hand, multiple times by multiple workers, or sets of workers, before the load it is carrying reaches its ultimate destination perhaps hundreds of feet (or more) above the ground. Obviously, as this type of coordinated, sequenced move is being executed it would not be possible to disinfect or sanitize the equipment or the load as it passes from one worker to the next. Rather, the use of tools and equipment by multiple workers equipped with appropriate PPE, including but not limited to protective gloves, should suffice as a reasonable and acceptable substitute where strategies involving disinfecting sprays and wipes are simply not feasible. The above examples are meant to illustrate these issues as they relate specifically to ironworkers, but are also indicative of the real challenges involved in *any* coordinated effort to sanitize and disinfect effectively a multitrade, multiemployer worksite.

Finally, it is acknowledged that staggering shifts (item 2b) and staggering arrival and departure times (item 2c) are a necessary and appropriate component to reopening construction. However, these strategies will also present challenges.

Stacking shifts and staggering start and departure times likely will require the New York City Department of Buildings to adjust its onerous permitting requirements around afterhours variances so that shift work can be implemented on an adequate scale to alleviate personnel density on the worksite. If not, the industry will have to marshal its resources in Albany to bend the will of the Department to alter its practices. Stacking shifts and staggering start and departure times will also trigger additional costs, from increased wage differentials for second and third shifts, to increased costs for evening and overnight deliveries, to having to manage and oversee overnight work.

3. Promote Hygiene:

- a. All workers must wear face covering and use hand coverings
- b. Workers should be encouraged to possess their own personal hand sanitizer
- c. Hand washing must be done upon entering and exiting site
- d. Hand washing and hand sanitizer must be available frequently along with trash bins for disposal of paper towels
- e. Signage should be installed to remind workers about and enforce hygiene requirements
- f. Frequent cleaning and disinfection of sites
- g. Clean/change clothing and private vehicles with appropriate products prior to entering private residence after leaving construction site

- h. Consider use of third-party cleaning company

The suggested protocols in items 3c through 3f, and 3h, are appropriate and within the purview of the general contractor/ construction manager.

Suggested protocols such as individual workers being encouraged to possess their own personal hand sanitizer are clearly for the subcontractor to manage. With that being said, however, it is appropriate and necessary for the general contractor/ construction manager to provide redundancies throughout the worksite to complement these types of suggested protocols falling in the first instance to the subcontractor. Similar to a gym or a health care facility where there is an elevated risk of exposure, on a multiemployer construction site it should fall within the responsibility of the general contractor/ construction manager to provide hand sanitizer dispensers and disinfecting wipes at multiple locations throughout each floor of a vertical construction site, or otherwise at appropriate locations throughout the worksite, and in sufficient numbers to complement whatever the individual worker may be carrying with him or her to work for his or her own infection protection.

4. Measures for Construction Work that is Occurring in Occupied Buildings:

- a. General principles should be applied wherever possible including daily health questionnaire, temperature screening, and hand washing prior to entering building
- b. All workers must always wear face coverings upon entering building
- c. Signage should be posted to encourage personal hygiene and reinforce protocols to distance from other building users
- d. Construction workers should all be on-site prior to tenant employees prior to 8am
- e. Workers should avoid areas of the building outside the construction site
- f. Construction workers should remain on-site for breaks and lunch
- g. As much work as possible should be conducted outside of hours where tenant employees are present
- h. Building common areas, elevators, and stairwells should be disinfected following use by construction workers

Many of these suggested protocols are within the purview of the general contractor/ construction manager, for example, disinfecting common areas or providing signage, and/or raise issues we have identified and addressed above and below, such as temperature screening, workers being encouraged or required to remain on site during breaks, or performing work outside normal business hours.

III. Principle #3: Rapidly Respond When a Worker Becomes Sick

- 1. Construction Managers/General Contractors should develop a plan to remove workers when become sick
- 2. In case a positive Covid-19 case occurs on-site an e-mail will be sent from the Construction manager notifying all contractors, foreman, and supers of the situation along with the date, time, and areas of potential exposure

3. Workers should be encouraged to report when they feel ill or notice a co-worker who is showing symptoms
4. Workers who are ill should be immediately removed from the site and sent home
5. Other workers who have been in close contact with ill workers should be promptly identified and directed to go home, get tested, and follow public health recommendations
6. Workers who contract the virus must not be allowed to return to work until it is safe to do so as defined by guidance from public health authorities

Generally, issues around managing workers who are exhibiting COVID-19 symptoms, have been exposed to someone with symptoms, or who were confirmed by formal diagnosis to have had COVID-19, will need to be addressed on a case-by-case basis pursuant to protocols that track current official guidance from federal, state and local health agencies. Countervailing concerns around whether particular safety measures may constitute an impermissible encroachment on employee privacy will also have to be considered and dealt with.

The Occupational Safety and Health Administration (“OSHA”), together with the US Department of Health and Human Services, has issued [joint guidance](#) on preparing workplaces for COVID-19. OSHA has also developed [interim guidance](#) to help prevent worker exposure to SARS-CoV-2, the virus that causes COVID-19. And the US Centers for Disease Control has also developed [interim guidance](#) to plan for and respond to COVID-19.

Moreover, in the last two weeks alone, the EEOC (April 9) issued updated [technical assistance](#) and Q&As for employers entitled “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws” to address COVID-19; OSHA (April 10) issued [guidance](#) clarifying certain employers’ recording requirements regarding cases of COVID-19, which largely exempts most employers from the requirement to record COVID-19 cases of employees for OSHA recordkeeping purposes, absent objective evidence that a case is work-related; the US Department of Labor (April 10) released technical [corrections](#) to the regulations implementing the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act provisions of the Families First Coronavirus Response Act; and the New York State Department of Health (April 14) issued [interim guidance](#) on [Executive Order No. 202.16](#) (April 12) requiring face coverings for public and private employees interacting with the public during the COVID-19 outbreak.

It should be noted, however, in particular with regard to items 4 and 5 above, that immediately removing and sending home a sick worker from the jobsite, and removing for testing others who may be in close proximity to such worker, will open the door to large-scale lost productivity and reduced manpower. It is common knowledge the availability of testing for COVID-19 is not close to meeting current demand. Removing an essential crew from the worksite for testing due to potential or actual exposure, if replicated across every worksite in New York, will inevitably lead to significant manpower shortages, and additional costs and

delays for as long as testing capacity continues to lag relative to demand. Most of these additional costs will fall on the subcontractor.