

KEY TAKE-AWAYS AND INFORMATION FROM 3/30/20 WITH

Ask the Lawyer Zoom Session with Stephanie Cole Adams
NYALS directors

Topic: Ask the Lawyer: Connecting With Stephanie Cole Adams NYALS
Time: Mar 30, 2020 10:00 AM Eastern Time (US and Canada)

Join Zoom Meeting
<https://zoom.us/j/453238599>

Meeting ID: 453 238 599

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Questions:

- 1. I have been sending out her responses to our member libraries and trustees and they find them incredibly helpful. However, I have received at least 5 questions for trustees in our service area about the definition of transcribing for the open meetings law write up. Some interpret that they need a word for word account or that they need to hire a transcription service. Guidance on how to answer our trustees on transcribing would be helpful!**

Key take-aways: There is no requirement that the transcript must be immediately available, nor that it must be created by any specific means. Remember that the recording, which is for public access, is different from the meeting minutes. If the group goes into executive session, the direction to stop the recording for the duration of the executive session should be noted in the motion, and the direction to resume the recording when the executive session is ended should also be in the motion and noted in the minutes.

- 2. One of the big questions I am getting is for public libraries classified as political subdivisions: does the work-from-home mandate in the executive order apply to them?**

https://esd.ny.gov/sites/default/files/ESD_EssentialEmployerFAQ_032220.pdf

NOTE: As I mentioned, with regard to the fiscal and employment matters, now is the time for individual libraries to reach out to local attorneys (or a local bar association referral service) for a pro bono reduced rate. Each library will have a unique situation and generic guidance can only take a library so far. Now is also the time for trustees to shine, breaking into task forces to pay attention to SBA and other loans/aid, and employment issues.

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QUESTION: Are state and local governments required to comply with Executive Order 202.8? ANSWER: No. State and local governments including public authorities, municipal governments, and school districts are not covered by Executive Order 202.8.

3. How do we address people who might want to work, but appear unwell, or share that they have been exposed to COVID-19?

I wish I could offer more targeted guidance, but addressing this requires consideration of any relevant collective bargaining agreement, your policies (including but not limited to any emergency or pandemic response guidelines).

If your library is in a position to implement them, here is OSHA's guidance on developing policy and procedure to keep your office environment safe: <https://www.osha.gov/Publications/OSHA3990.pdf>.

It is feasible to require employees to self-isolate during a verified global pandemic, but it should not be done ad hoc.

4. Have the adjustments to Open Meeting Law been extended to April 19th or will they expire on April 11th?

No update seen; will monitor.

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5. Has the state has extended the time for petitions to be submitted for library trustees running for election or is that governed by each district?

Researching this one.

6. Are votes going ahead or being postponed for school budgets and library budgets?

This got updated during our meeting! See Executive Order 202.13.

7. Are candidates for the board allowed to email the petition to people, so they can print it out, sign it, scan it, and email the petition back since the state is now on "Pause?"

8. Researching this one, too

9. Interpretation of the Governor's EO's – particularly if/how it applies to libraries that are governmental agencies.

See above

10. In a message yesterday to NYLINE-P, Lauren Moore provided the following update on a specific question regarding pl trustee terms and postponed or cancelled elections:

"If a school district public library is not proposing a tax levy increase, and is unable to hold a trustee election, a hold over provision in [public officers law might apply and could allow trustees to remain in the expired term](#). We cannot give legal advice to individual libraries, but I encourage libraries to consult with an attorney if they have questions about the hold over provision."

I think it would be useful for Cole to address this issue and specifically to parse out the actual language of the section so we can all better understand it.

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Public Officers (PBO)

Section 5

Holding over after expiration of term

“Every officer except a judicial officer, a notary public, a commissioner of deeds and an officer whose term is fixed by the constitution, having duly entered on the duties of his office, shall, unless the office shall terminate or be abolished, **hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been chosen, until his successor shall be chosen and qualified**; but after the expiration of such term, the office shall be deemed vacant for the purpose of choosing his successor. **An officer so holding over for one or more entire terms, shall, for the purpose of choosing his successor, be regarded as having been newly chosen for such terms.** An appointment for a term shortened by reason of a predecessor holding over, shall be for the residue of the term only.”

Cole Commet: Case law shows this does cover inability to hold election.

11. In Cole's last communication the challenge of exhibiting benefit to the taxpayer that a staff member will provide being paid during an emergency closure or quarantine was mentioned. Is there a test or examples that Cole can provide us to gauge how we might choose the best activities for staff and how to best document that time/cost to stand up to the scrutiny of an audit? I'm not looking for a list of activities but rather a checklist or a rubric than can help us think about appropriate activities and documentation.

RUBRIK

Materials needed: Job Description(s), Plan of Service

For each employee, identify tasks or remote equivalents from the JD can be done remotely, or draw actions from the Plan of Service that can be new “duties as assigned.”

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Confirm the remote or new tasks in writing as “pandemic response tasks.”

Track hours as usual, but have employee also track tasks, linked to JD or Plan of Service goals. Have employee share deliverables with supervisor on shared drive, etc.

Collect all info to show alternate work was in furtherance of pre-existing duties OR newly developed in support of the mission and Plan of Service.

12. If a library board asks a director and staff to clean books that are being returned to the library during the closure from COVID-19 that may put the staff at a personal risk, is this a legal risk for our library?

We discussed that this is all about safety first, and a good source for information on how to perform tasks safely is from OSHA’s COVID-19 guidance:

<https://www.osha.gov/Publications/OSHA3990.pdf>

“Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment. When choosing cleaning chemicals, employers should consult information on Environmental Protection Agency (EPA)-approved disinfectant labels with claims against emerging viral pathogens. Products with EPA-approved emerging viral pathogens claims are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses. Follow the manufacturer’s instructions for use of all cleaning and disinfection products (e.g., concentration, application method and contact time, PPE). “

13. I got two broad questions about association libraries along the lines of “Do association libraries obligated to follow the rules set forth for other libraries during the Governor’s Executive Order?” and “If Association libraries are not obligated to follow the rules for public libraries, how do rules for association libraries differ?”

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Association libraries that are not performing essential functions exempt from 202.8 are subject to the current 100% workforce reduction.

Question: If someone is working in the library while we are supposed to be closed and they get hurt does worker's comp cover them?

If they are performing work duties, a worker should be covered by their employer's Worker's Compensation. The status of the employer per relevant executive orders should not penalize the worker.

- **Questions: For a library that is closed; can we allow one staff member to not only make a daily visit for a brief inspection, but provide materials to those who contact us (ie, providing home delivery to older patrons or those with underlying conditions as long as we follow protocols established for home delivery).**
 - **Can that one staff person do a task such as weeding?**
 - **Does Cole recommend that it be the same staff member? (ie... just me and not everyone on staff who wants to come in and help).**

The [current guidance from Empire State Development](#) is:

QUESTION: What if my business is not essential, but a person must pick up the mail or perform a similar routine function each day?

ANSWER: A single person attending a non-essential closed business temporarily to perform a specific task is permitted so long as they will not be in contact with other people.

As I mentioned, the 2/27 ESD guidance eliminated the language about single employee/occupants being exempt from the need to apply to be considered "essential."

Thus, the sole guidance at present regarding covered, non-essential functions is the "similar routine function" once per day.

I am not comfortable relying on this allowance to include staff or volunteers performing deliveries, or any other task where the risk of contact is assured or high.

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As we reviewed, I was more comfortable with the notion of solitary routine tasks that do not heighten risk of exposure in any way (like organizing deliveries in a closed library).

My advice on all times is that if using this exception, the activity be documented as necessary for operations, physically solitary, and safe (to that end, a routine check-in with an off-site employee for staff who will be alone in a closed facility alone is a good idea).

Advice needed: A couple of our staff cannot understand why they can't go in one at a time to weed or clean. I have tried to explain and sent out the document you sent today. Any advice on how to better explain it would be helpful. Or, clarification that it is OK for them to go in would be great.

Other than the guidance above, I would say: So far, every call that has been informed by the greatest sense of caution has been the right call. Other than the above-boxed parameters, I am not comfortable with anything more just now. I understand that is frustrating....my own team is stuck at home. Keeping dedicated staff idle or working at a lower capacity is frustrating. But hopefully, as we adapt, that energy can be channeled into developing online programming, reviewing the website, organizing library archives, composing library guides, and even trainings by and between staff.

And if that doesn't work: more guidance on phasing back into operations is sure to come soon. On that note, see you next week!

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