

Questions Posed About Impact of the Coronavirus Outbreak Upon Employees Covered by the Operating Engineers Local 399 CBA

1. Can the Employer change the schedule of the engineers from a Mon-Fri to Tues-Sat if the Employer wants to lessen the chance of the engineers being exposed to carriers of the coronavirus?

Answer: Yes, except that the employee and Union must be given two weeks' notice of the schedule change. Section 10 of the CBA provides that the workweek begins at 12:01 a.m. on Monday and ends at 12:00 midnight the following Sunday. Within the defined workweek, the regular schedule for engineers consists of five consecutive days of eight consecutive hours of work. This section also requires that two weeks advance notice must be given of "shift" changes to the Union and the affected employees but is silent as to whether the same notice must be given for changes in the employee's schedule. However, the Union undoubtedly would take the position that the same two weeks' advance notice must be given if an employee's schedule is changed.

2. Can the Employer reduce the weekly hours of an engineer (e.g. from 40 hours per week to 32 or 24 hours per week) if the building experiences a number of tenants who close their offices thus reducing the number of engineers needed to respond to tenant calls for service? Does that change H&W benefit payments owed to the trust funds?

Answer: No, not without the Union's consent. Section 10 of the CBA requires that an engineer's work schedule must consist of five consecutive days of eight consecutive hours each. Even assuming the Union were willing to waive the 40 hour per week requirement, the Health and Welfare contribution required by Section 18 would remain the same since it is based on a specified amount per week for each employee covered by the CBA, unlike pension contributions which per Section 17 are based on hours worked.

3. Assuming the reduced needs of the building are a temporary situation, is there a furlough option that would permit the Employer to place an engineer on inactive status for a 30 or 60 day period?

Answer: Yes. Section 6 of the CBA gives the Employer the exclusive right to layoff for cause, although the Union has the right to challenge the layoff through the grievance procedure. The Employer is required to give ten days' advance notice of discharges (subject to exceptions), but the CBA does not require advance notice of a layoff for cause. In conducting layoffs, Section 9 (D) of the CBA requires that employees must be laid off by seniority within classification. Additionally, employees must be recalled in seniority order.

4. If an engineer's employment is terminated due to reduced building needs because of coronavirus, what are the severance payments owed to that engineer?

Answer: According to Section 6(C) of the CBA, if an employee with more than one year of service is permanently terminated because a building closes, he is entitled to severance pay equal to 1% of his straight time earnings during the preceding 12 months multiplied by the number of the employee's full years of continuous service with the Employer as of

the date of separation. Although the CBA is unclear on this point, an argument could be made that if a building does not close, but instead reduces operations due to lower tenant occupancy caused by the coronavirus, any engineers who were terminated due to reduced tenant needs would not be entitled to severance pay. Such employees, however, would be entitled to ten days' additional pay in lieu of notice per Section 6(B) of the CBA.