

JULY 18, 2019



New York creates first Tax Credit program for employers who hire individuals in recovery from substance use disorders

By Jena M. Grady

Copyright © 2019, American Health Lawyers Association, Washington, DC. Reprint permission granted.

New York Governor Andrew M. Cuomo recently announced that New York's Fiscal Year 2020 Budget included the nation's first "Recovery Tax Credit" program.¹ This program will provide tax incentives for employers certified by the New York State Office of Alcoholism and Substance Abuse Services (OASAS) to employ individuals recovering from substance use disorders for full-time or part-time positions. Employers in the program will be eligible to receive up to a \$2,000 tax credit for each eligible individual in recovery who has worked at least 500 hours during that employer's taxable year.² The program will be administered by OASAS and the New York State Department of Taxation and Finance.

OASAS will certify eligible employers after determining that the employer has a "recovery supportive environment for their employees evidenced by a formal working relationship with a local recovery or treatment provider certified by [OASAS] to provide support for employers including any necessary assistance in the hiring process of eligible individuals in recovery from a substance use disorder and training for employers or supervisors."³ The employer will also be required to meet any forthcoming eligibility criteria established by OASAS.⁴

¹ Press Release, New York Governor's Press Office, *Governor Cuomo Announces FY 2020 Enacted Budget Includes Nation's First Recovery Tax Credit Program* (May 8, 2019), <https://www.governor.ny.gov/news/governor-cuomo-announces-fy-2020-enacted-budget-includes-nations-first-recovery-tax-credit>.

² If the employer's taxable year is a calendar year, the employer may claim a credit for the calendar year return for which the certificate of tax credit was issued. If the certified employer's taxable year is a fiscal year, the employer may claim the credit for the fiscal year that includes the last day of the calendar year covered by the certificate of tax credit. N.Y. Mental Hyg. Law § 32.38(f).

³*Id.* at (b)(1)(i). Substance use disorder is defined by New York law as "the misuse of, dependence on, or addiction to alcohol and/or legal or illegal drugs leading to effects that are detrimental to the

To become an eligible individual, an individual with a substance use disorder must be in a state of “wellness” with no signs or symptoms that indicate active addiction.⁵ Additionally, the individual must be able to demonstrate to the applicable employer’s satisfaction that the individual has completed or is receiving substance use disorder treatment.⁶ Employers will use guidelines established by OASAS for determining whether an employee has or is receiving appropriate treatment.⁷ As of June, OASAS is currently developing the processes to determine eligible individuals.⁸

It is estimated that 40-60% of individuals with substance use disorders relapse.⁹ Therefore, it is notable that the program provides that a relapse does not make an individual ineligible for the program provided that the individual shows “a continued commitment to recovery that aligns with an individual’s relapse prevention plan, discharge plan, and/or recovery plan.”¹⁰

Employers will be required to apply annually to OASAS to claim the credit for employing eligible individuals for the previous tax year. Applications for the first year of the program, tax year 2020, will be due January 15, 2021.

OASAS Commissioner Arlene González-Sánchez stated, “Steady employment can be vital to successful recovery. With this program, people in recovery will have another avenue to rebuild their lives, while employers have the chance to contribute to the recovery and well-being of their employees and community.”¹¹ The rollout of this program and hopefully the success of this program may lead other states and stakeholders to examine whether a tax credit for hiring individuals in recovery should be implemented in other states.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Jena M. Grady at jgrady@nixonpeabody.com or 212-940-3114
- Philip Rosenberg at prosenberg@nixonpeabody.com or 518-427-2709
- Valerie Breslin Montague at vbmontague@nixonpeabody.com or 312-977-4485

individual’s physical and mental health, or the welfare of others and shall include alcoholism, alcohol abuse, substance abuse, substance dependence, chemical abuse, and/or chemical dependence.” *Id.* at 1.03(57).

⁴ As of June, OASAS has provided it is currently in the process of establishing eligible employer criteria and that it will most likely use procurement to determine eligible employers. New York Behavioral Services Advisory Council Full Council Meeting, June 20, 2019, <https://www.youtube.com/watch?v=IDoQSSTTp2I&feature=youtu.be>

⁵ New York Mental Hyg. Law § 32.38(b)(2).

⁶ *Id.*

⁷ *Id.*

⁸ See *supra* note 4, New York Behavioral Services Advisory Council Full Council Meeting.

⁹ Nat’l Inst. on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction* (July 8, 2019, 3:39 PM), <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/treatment-recovery>

¹⁰ New York Mental Hyg. Law § 32.38(b)(2).

¹¹ See *supra*, note 1.

- Peter Armstrong Egan at pegan@nixonpeabody.com or 516-832-7633
 - Tony Dulgerian at tdulgerian@nixonpeabody.com or 516-832-7520
-