
May 19, 2020

COVID-19 Update: New York State Guidance on Reopening Businesses

Under New York State's reopening plan (the "NY Forward Reopening Plan"), non-essential businesses in each of the State's 10 regions can begin reopening once the region in which they are located meets the seven metrics established by the State to protect public health.¹ Each region which meets the public health requirements will reopen its businesses on a staggered timeline in four phases. Every business is required to develop a written Safety Plan and comply with industry-specific guidelines issued by New York State. This memorandum summarizes relevant guidance issued by New York State under the NY Forward Reopening Plan for employers.

I. Key Takeaways

- Non-essential businesses in New York State should monitor the NY Forward Reopening Plan website and applicable Executive Orders to determine when their industry is eligible to reopen in any relevant location.
- All businesses—both essential and non-essential—should develop a written COVID-19 Reopening Safety Plan, by using New York State's Safety Plan template (the "Safety Plan template") or drafting their own plan. The plan should be kept on the premises and be made available to health and safety authorities in the event of an inspection.
- Essential and non-essential businesses should review and affirm their obligations to comply with industry-specific guidelines on the NY Forward Reopening Plan website. Currently, guidelines for Phase One industries are available on the website; guidelines for other industries will soon be available.

¹ See Press Release, Governor Andrew M. Cuomo, "Amid Ongoing COVID-19 Pandemic, Governor Cuomo Announces Five Regions Will Begin Reopening Today" (May 14, 2020), <https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-announces-five-regions-will-begin-reopening-today>.

II. NY Forward Reopening Plan

Under the NY Forward Reopening Plan, a region may start reopening its Phase One industries once it meets the State's seven health and safety metrics.² For regions currently not eligible for reopening, New York State's Executive Order imposing in-person restrictions on non-essential businesses remains in effect.³

Once a region becomes eligible for reopening, businesses in that region will be permitted to reopen in phases, with at least two weeks between each phase.⁴

- Phase One: construction, agriculture, forestry, fishing and hunting, select retail for curbside pickup and drop-off or in-store pickup only, manufacturing and wholesale trade;
- Phase Two: professional services, retail, administrative support, real estate/rental & leasing;
- Phase Three: restaurant/food services;
- Phase Four: arts/entertainment/recreation and education.

Non-essential businesses can use the Business Reopening Lookup Tool on the NY Forward Reopening website to determine when they can reopen, and what mandatory public health and safety standards will apply.⁵

Every business—both non-essential businesses that reopen and essential businesses that continue in-person operations—is required to develop a written COVID-19 Reopening Safety Plan, outlining how it will prevent the spread of COVID-19 in the workplace. Businesses may satisfy this requirement either by using the Safety Plan template or drafting their own plans. Each business must retain its plan on the premises and make it available to the New York Department of Health (the “DOH”) or local health or safety authorities in the event of an inspection. Businesses in certain industries are required to conspicuously post

² See New York State, Industry Reopening by Phase, <https://forward.ny.gov/industries-reopening-phase>. As of the date of this Memorandum, six of the State's 10 regions (Central New York, Finger Lakes, Mohawk Valley, North Country, Southern Tier and Western New York) have met the seven metrics required to begin reopening.

³ Executive Order No. 202.31 (May 14, 2020), <https://www.governor.ny.gov/news/no-20231-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>. The four regions which have not yet met the criteria for reopening are: Capital Region, Long Island, Mid-Hudson and New York City.

⁴ See NY Forward: A Guide to Reopening New York & Building Back Better, at 56, <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYForwardReopeningGuide.pdf>

⁵ New York State, New York Forward Business Reopening Lookup Tool, <https://www.businessexpress.ny.gov/app/nyforward>.

the completed Safety Plan. All businesses must agree to take the specific measures set forth in the Safety Plan template to ensure that the business and its employees comply with the following requirements:

Physical Distancing Requirements

- Ensure six feet of distance between employees to the extent possible. Any time personnel are less than six feet apart from one another, acceptable face coverings must be worn. Develop and implement measures to ensure the safety of employees when physical distancing is not feasible and to manage industry-specific physical social distancing (e.g., shift changes, lunch breaks).
- Tightly confined spaces must be occupied by only one individual at a time, unless all occupants are wearing face coverings and occupancy is kept under 50% of maximum capacity.
- Post social distancing markers using tape or signs that denote six feet of spacing in commonly used and other applicable areas of the workplace.
- Limit in-person gatherings as much as possible and use tele- or video-conferencing whenever possible. Essential in-person gatherings should be held in open, well-ventilated spaces with appropriate social distancing among participants.
- Establish designated areas for pick-ups and deliveries, limiting contact to the extent possible.
- Develop a plan for implementing physical distancing requirements with respect to customers and visitors.

Personal Protective Equipment (“PPE”) & Hygiene and Cleaning Requirements

- Provide employees with an acceptable face covering at no cost to the employee and have an adequate supply of replacements. Develop a policy for ensuring that PPE is appropriately cleaned, stored and/or discarded. PPE may not be shared and must be cleaned or replaced after use or when damaged or soiled.
- Limit the sharing of objects and discourage touching of shared surfaces without gloves, sanitizing or hand washing before and after contact.

- Comply with hygiene and sanitation requirements from the Centers for Disease Control and Prevention (the “CDC”)⁶ and the DOH⁷ and maintain cleaning logs on site that document date, time and scope of cleaning.
- Provide and maintain hand hygiene stations for employees and conduct regular cleaning and disinfection of the workspace at least after every shift, daily or more frequently as needed, and frequent cleaning and disinfection of shared objects and surfaces, as well as high-transit areas.

Communication Requirements

- Post signage throughout the site to remind employees to adhere to proper hygiene, social distancing rules, appropriate use of PPE and cleaning and disinfecting protocols.
- Establish a communications plan for employees, visitors and customers with a consistent means to provide updated information.
- Maintain a continuous log of every person, including workers and visitors, who may have close contact with other individuals at the work site or area, excluding deliveries that are performed with appropriate PPE or through contactless means and customers who may be encouraged to provide contact information to be logged but are not mandated to do so.
- If an employee tests positive for COVID-19, immediately notify state and local health departments and cooperate with contact tracing efforts.

Screening, Contact Tracing and Disinfection Requirements

- Implement mandatory health screening assessment (e.g., questionnaire, temperature check) before employees begin work each day and for essential visitors, asking about (i) COVID-19 symptoms in the preceding 14 days, (ii) positive COVID-19 tests in the preceding 14 days and/or (iii) close contact with confirmed or suspected COVID-19 cases in the preceding 14 days. Assessment responses must be reviewed every day and such review must be documented.

⁶ CDC, “Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes,” <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>.

⁷ New York State, “Information on Novel Coronavirus,” <https://coronavirus.health.ny.gov/home>. New York City has also issued guidance for cleaning and disinfecting workplaces. See NYC Health, “COVID-19: General Guidance for Cleaning and Disinfecting for Non-Health Care Settings” (Apr. 16, 2020), <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/disinfection-guidance-for-businesses-covid19.pdf>.

- Develop a plan for cleaning, disinfection and contact tracing in the event an employee tests positive for COVID-19.⁸

New York State has created a process for individuals, including customers, to file a complaint against a business for failing to comply with Executive Orders and restrictions on business operations and activities during the COVID-19 pandemic.⁹ Separately, employees may also file a complaint against their employer based on working conditions with the New York State Department of Labor.

Industry-Specific Guidance

Importantly, New York State is also issuing industry-specific guidelines, applicable to essential and non-essential businesses.¹⁰ Both industry-specific summary and detailed guidelines are posted on the NY Forward Reopening Plan website. Businesses must read and affirm the detailed guidelines applicable to their industry through the website. Businesses should consult the NY Forward Reopening Plan website and applicable Executive Orders on a periodic basis to stay abreast of industry-specific guidance. Industry-specific guidance for Phase One industries is currently available on the website, and relevant guidance for Phase Two, Three and Four industries is expected shortly.¹¹

Please refer to our [April 27 Memorandum](#) for a more detailed discussion of considerations for employers as they prepare for a return to the workplace.

The New York State website on the NY Forward Reopening Plan can be found here:
<https://forward.ny.gov/ny-forward>.

The New York State Guide on the NY Forward Reopening Plan can be found here:
<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYForwardReopeningGuide.pdf>.

The Safety Plan template can be found here:
https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf.

New York State's FAQ on how the NY Forward Reopening Plan may impact a business can be found here:
<https://esd.ny.gov/nyforward-faq>.

⁸ New York State Department of Health, "NY Forward Business Re-Opening Safety Plan Template," https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf.

⁹ See New York State, Industry Reopening by Phase, <https://forward.ny.gov/industries-reopening-phase>.

¹⁰ See *id.*

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For additional resources and real-time updates regarding new legal developments in connection with COVID-19, please visit Paul, Weiss's [Coronavirus Resource Center](#).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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