

May 30, 2020

## COVID-19 Update: New York State and CDC Guidance for Employers Reopening Offices

Under the NY Forward Reopening Plan, New York State has now issued guidance for reopening Phase Two industries, consisting of (i) office-based businesses; (ii) real estate; (iii) limited retail; (iv) vehicle sales, leases and rentals; (v) retail rental, repair and cleaning; (vi) commercial building management; and (vii) hair salons and barbershops.<sup>1</sup> All essential and non-essential businesses operating in office settings must affirm and adhere to the State's Interim Guidance for Office-Based Work During the COVID-19 Public Health Emergency (the "Guidance for Office-Based Work" or "Guidance").<sup>2</sup> The Guidance applies to business activities "where the core function takes place within an office setting" and is relevant to businesses in the following sectors: professional services, nonprofit, technology, administrative support, and higher education administration (excluding full campus reopening).<sup>3</sup> It may also apply to a business that operates parts of its business functions under different guidance, such as a front office for a construction company.<sup>4</sup>

In addition, the Centers for Disease Control and Prevention (the "CDC") has issued employer guidelines specifically for office buildings. This memorandum serves as a follow-on to the [COVID-19 Update: New York State Guidance on Reopening Businesses](#) ("May 19 Memorandum") and summarizes guidance relevant to employers operating offices under the NY Forward Reopening Plan and recent CDC guidance.

### I. Key Takeaways

- The owner/operator of the business with office-based functions is responsible for meeting the standards under the Guidance for Office-Based Work. The building owner is primarily responsible for meeting standards with respect to any unleased or common areas, and the tenant is primarily responsible for their leased space, absent an alternate agreement.
- The Guidance for Office-Based Work sets forth detailed requirements with respect to: physical distancing; gatherings in enclosed spaces; workplace activity; movement and commerce; protective

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<sup>1</sup> See New York State, Phase Two Industries, <https://forward.ny.gov/phase-two-industries>.

<sup>2</sup> New York State, Interim Guidance for Office-Based Work During the COVID-19 Public Health Emergency (as of May 28, 2020), <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/offices-interim-guidance.pdf>.

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

equipment; hygiene, cleaning and disinfection; phased reopening; communications plans; screening and testing; and tracing and tracking.

- Under the CDC guidelines for office employers, businesses should create and implement a COVID-19 workplace health and safety plan and implement various measures, including engineering and administrative controls, to reduce the risk of potential COVID-19 transmission.

## II. Reopening Phase Two Industries

As we discussed in our [May 19 Memorandum](#), the NY Forward Reopening Plan permits businesses in each of New York State's 10 regions to reopen in phases, with at least two weeks between each phase,<sup>5</sup> once each region becomes eligible for reopening by satisfying public health and safety metrics.<sup>6</sup> As of the date of this Memorandum, all regions of the State, except New York City, are now in Phase One or Phase Two of reopening.<sup>7</sup> New York City is expected to enter Phase One on June 8.<sup>8</sup>

Every business is required to develop a written COVID-19 Reopening Safety Plan. 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") in the event of an inspection. All Phase Two businesses are required to conspicuously post their completed Safety Plan on site.

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<sup>5</sup> 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>.

<sup>6</sup> See New York State, Industry Reopening by Phase, <https://forward.ny.gov/industries-reopening-phase>. As of the date of this Memorandum, nine of the State's 10 regions (Finger Lakes, Central New York, Mohawk Valley, Southern Tier, North Country, Western New York, Capital Region, Mid-Hudson and Long Island) have met the seven metrics required to begin reopening.

<sup>7</sup> See Executive Order 202.34, <https://www.governor.ny.gov/news/no-20234-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>; see also New York State, "Regional Monitoring Dashboard" (updated May 27, 2020, <https://forward.ny.gov/regional-monitoring-dashboard>).

<sup>8</sup> Governor Andrew M. Cuomo, "Video, Audio, Photos & Rush Transcript: Governor Cuomo Announces New York City to Enter Phase 1 of Reopening on June 8 and Five Regions Enter Phase 2 of Reopening Today" (May 29, 2020), <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-cuomo-announces-new-york-city-enter-phase-1>.

### III. Guidance for Office-Based Work

#### *Standards for Responsible Office-Based Work Activities in New York State*

In order to operate office-based activities in New York State, all businesses must adhere to the minimum standards outlined in the Guidance for Office-Based Work. The owner/operator of the business with office-based functions, or their designee (in either case, “the Responsible Parties”), is responsible for meeting the standards. The building owner, or their designee, is primarily responsible for meeting the standards with respect to any unleased or common areas, whereas the tenant, if not the owner, is primarily responsible for meeting the standards with respect to their leased space(s), unless the tenant and building owner reach an alternate agreement. Responsible Parties should coordinate with building management, where applicable.

All businesses must read and affirm the Guidance for Office-Based Work through the NY Forward Reopening Plan website. The Guidance is summarized below:

- Ensure physical distancing by limiting the number of occupants to 50% of maximum occupancy at any given time; ensuring that a distance of at least six feet is maintained among individuals; limiting the use of shared workstations; increasing ventilation with outdoor air; taking measures to prevent congregation in elevator waiting areas and limiting density in elevators; reducing bi-directional foot traffic; and posting signs throughout the office consistent with DOH signage. Prohibit shared food and beverages (*e.g.*, buffet style meals) and reserve adequate space for employees to observe social distancing while eating meals.
- Limit in-person gatherings to the extent possible by holding meetings in open, well-ventilated spaces; closing non-essential amenities and communal areas; staggering employee schedules for gatherings like breaks, meals and shift starts/stops; allowing only limited document retrieval from offices by employees who do not need to be in the office; and closing non-essential common areas. Establish designated areas for pickups and deliveries.
- Create and encourage work-from-home policies, and consider developing return-to-office tiers based on factors such as function, safe transportation and ability to work remotely. Consider phasing-in reopening activities. Limit all non-essential travel.
- Provide acceptable face coverings to employees at no cost to the employee and maintain an adequate supply of personal protective equipment (“PPE”) replacements. Allow employees to use their own acceptable face coverings and train employees on how to adequately put on, take off, clean (as applicable) and discard PPE. Advise employees and visitors to wear face coverings in common areas and implement measures to limit the sharing of objects.

- Adhere to hygiene, cleaning and disinfection requirements from the CDC<sup>9</sup> and the DOH<sup>10</sup> and maintain cleaning logs. Provide and maintain hand hygiene stations and conduct regular cleaning and disinfection and more frequent cleaning and disinfection for high-risk areas. Comply with the CDC cleaning and disinfection guidelines<sup>11</sup> if an individual is suspected or confirmed to have COVID-19 at the workplace.
- Develop a communications plan for employees, visitors and customers. Work with building management to help facilitate buildingwide communications. Post signage to remind personnel and customers to adhere to health and safety protocols. Provide building management with a list of essential visitors expected to enter the building.
- Implement mandatory daily health screening of employees and, where practicable, visitors (except for delivery personnel) and coordinate with building managers to facilitate screening. Ensure that any personnel performing screening activities are appropriately protected, properly trained and using PPE.
- Require employees to immediately disclose if and when their responses to a health questionnaire change, such as if they begin to experience symptoms of COVID-19, review all employee and visitor screening responses on a daily basis, and maintain a record of such review.
- An employee who screens positive for COVID-19 symptoms should not be allowed to enter the office and should be sent home with instructions and information. Responsible Parties must immediately notify the local health department about any positive case of COVID-19.
- An employee who has had close contact with a person suspected or confirmed to have COVID-19 may not be allowed to enter the office without following protocols outlined in the Guidance for Office-Based Work.<sup>12</sup>
- Designate a site safety monitor. Maintain a log of every person, including employees and visitors, who may have close contact with other individuals at the worksite or area (excluding deliveries performed

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<sup>9</sup> 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>.

<sup>10</sup> DOH, “Interim Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID-19” (Mar. 10, 2020), [https://coronavirus.health.ny.gov/system/files/documents/2020/03/cleaning\\_guidance\\_general\\_building.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/cleaning_guidance_general_building.pdf); DOH, Stop the Spread Poster, [https://coronavirus.health.ny.gov/system/files/documents/2020/04/13067\\_coronavirus\\_protectyourself\\_poster\\_042020.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/04/13067_coronavirus_protectyourself_poster_042020.pdf).

<sup>11</sup> CDC, “Cleaning and Disinfecting Your Facility,” <https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>.

<sup>12</sup> Interim Guidance for Office-Based Work at 10–11.

with appropriate PPE or through contactless means) and cooperate with the local health department's contact tracing efforts. Designate a central point of contact responsible for receiving and attesting to having reviewed all employee questionnaires, who is also identified on the screening questionnaire as the party for employees and visitors to inform if they later are experiencing COVID-19-related symptoms.

- Immediately notify the local health department and DOH of any positive cases of COVID-19. Notify the local health department of all individuals who entered the site 48 hours prior to an employee or visitor experiencing COVID-19 symptoms or testing positive. And notify building management as to where a symptomatic employee has been throughout the building and if such employee tests positive for COVID-19.

#### **IV. CDC Guidance for Office Buildings**

The CDC has also issued guidance for employers in office settings, which is summarized below:

- Create a COVID-19 workplace health and safety plan to protect workers and clients.
- Before resuming business operations, check the building in which the business is located to confirm that it is ready for occupancy. Ensure that the ventilation systems operate properly, increase circulation of outdoor air and evaluate the building's mechanical and life safety systems.
- Identify where and how workers might be exposed to COVID-19 at work by conducting a thorough hazard assessment of the workplace. Develop a communications plan that includes all employees and contractors, if any.
- Implement a combination of workplace controls, including engineering controls and administrative controls. Engineering controls include methods that isolate workers from a potential risk of COVID-19 infection, such as modifying workstations to maintain social distancing, improving ventilation and utilizing devices such as ultraviolet germicidal irradiation (UVGI). Employers can implement administrative controls by actively encouraging employees to stay home when they or a family member are sick, conducting daily health checks, reducing the density of employees, cleaning and disinfecting high-touch services, establishing policies and practices for social distancing and personal hygiene, providing support for employees who commute to work using public transportation or ride sharing and encouraging the use of face coverings.
- Educate employees and supervisors about the following topics: (i) signs and symptoms of infection; (ii) staying home when ill; (iii) social distancing; (iv) personal protective equipment; (v) hand hygiene practices; and (vi) identifying and minimizing potential routes of transmission at work, at home and in

the community. Provide information and training on what actions employees should take when they are not feeling well (*e.g.*, workplace leave policies, local and state health department information).

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 guidelines for Phase Two Industries can be found here:

<https://forward.ny.gov/phase-two-industries>.

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](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>.

The CDC Guidance can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>.

The Business Reopening Lookup Tool can be found here:

<https://www.businessexpress.ny.gov/app/nyforward>.

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