

# PREPARING YOUR REQUIRED COVID-19 HEALTH AND SAFETY PLAN FOR BUSINESS REOPENING IN NEW YORK STATE

*Hodgson Russ OSHA and Business Litigation Alert*  
May 13, 2020

Governor Cuomo announced this week the first phase of industries that can start preparing for the reopening process. Whether your business may reopen depends on three things: (1) your business must be located in a region of the state that has satisfied the metrics for loosening restrictions; (2) the nature of your business must fall within the list of industries covered by the applicable reopening phase; and (3) you as an employer have a COVID-19 Health and Safety Plan in place that details the methods and procedures that will be undertaken to manage COVID-19 risks to employees and customers in the course of operations.

If your region has or is close to satisfying the metrics for reopening and your business is categorized in the early phases of reopening, *the time for employers to assemble their individualized reopening plan is now*. The COVID-19 Health and Safety Plan must describe the ways in which you intend to comply with applicable guidance to safely reopen your business.

## Regional Reopening

Governor Cuomo's NY PAUSE order expires on May 15, but the state will not automatically reopen at that time. Instead, the State's reopening will proceed in accordance with New York Forward, which is the State's plan to loosen restrictions gradually statewide. (The full New York Forward Guide can be found [here](#).) New York will reopen on a regional basis as each region meets the four criteria deemed necessary to protect public health. Satisfaction of the criteria are being measured by regional performance against seven metrics. (See the state's Regional Monitoring Dashboard identifying each region and the metrics they have satisfied.) As of May 13, 2020, only the Finger Lakes, the Mohawk Valley, the Southern Tier, and the North Country have satisfied all seven metrics for reopening.

Once a region reopens, non-essential businesses in certain industry sectors within that region will be permitted to re-open in phases. **Phase 1** encompasses construction, manufacturing, wholesale trade, select retail for curbside pickup only, agriculture, forestry, and fishing. **Phase 2** adds in professional services, finance and insurance, retail, administrative support, real estate, rental, and leasing. **Phase 3** includes restaurants and food services. **Phase 4** rounds out the reopening process

## Attorneys

Jane Bello Burke  
Carmine Castellano  
William Ciszewski III  
Marissa Coheley  
Catherine Grantier Cooley  
Ryan Cummings  
Reetuparna Dutta  
Joshua Feinstein  
Patrick Fitzsimmons  
Emily Florczak  
Rob Fluskey  
Neil Friedman  
Jodyann Galvin  
Joseph Goldberg  
Michael Hecker  
Julia Hilliker  
Patrick Hines  
Ryan Lucinski  
Cynthia Ludwig  
Charles Malcomb  
Jason Markel  
Christopher Massaroni  
Michael Maxwell  
Michelle Merola  
Jacqueline Meyer  
Matthew Parker  
Scott Paton  
Adam Perry  
Alexandria Rowen  
Hugh Russ III

## PREPARING YOUR REQUIRED COVID-19 HEALTH AND SAFETY PLAN FOR BUSINESS REOPENING IN NEW YORK STATE

with the art, entertainment, recreation, and education sectors. (See the NY Forward website for a list of businesses considered part of Phase 1.) At least two weeks must pass between each phase to determine if there is a resurgence in infections, which may impact further reopening.

### **Factors You Must Consider in Your Reopening Plan**

Under New York Forward, each employer reopening its business must create and implement a COVID-19 Health and Safety Plan to protect employees and consumers, make their facilities or other physical worksites safer, and implement processes designed to lower the risk of potential infections occurring at their business.

New York Forward sets forth three main conceptual elements that businesses must include in their COVID-19 Health and Safety reopening plans:

#### **1. Protections for employees and customers**

1. These include possible adjustments to workplace hours and shift design as necessary to reduce density in the workplace; enacting social distancing protocols; and restricting non-essential travel for employees.

#### **2. Changes to the physical workplace**

1. Requiring all employees and customers to wear masks if in frequent close contact with others and implementing strict cleaning and sanitation standards.

#### **3. Implementing processes that meet New York State's changing public health obligations**

1. Screening individuals when they enter the workplace, or reporting confirmed positives to customers. While these processes will vary from business to business, all will have to adapt in some way to the new normal.

In developing and implementing these plans, employers should incorporate procedures to follow Center for Disease Control recommendations (CDC), New York State Department of Health guidance, applicable safety regulations under the Occupational Safety and Health Act (OSHA), and other evolving federal, state, and local public health and COVID-19 safety guidelines. Proper employee training will also be critical to the effectiveness of the Plan.

Peter Sahasrabudhe

Aaron Saykin

Christian Soller

Daniel Spitzer

Jeffrey Stravino

Melissa Subjeck

Michael Zahler

James Zawodzinski Jr.

Benjamin Zuffranieri Jr.

### **Practices & Industries**

Business Litigation

Occupational Safety & Health Act (OSHA)

## PREPARING YOUR REQUIRED COVID-19 HEALTH AND SAFETY PLAN FOR BUSINESS REOPENING IN NEW YORK STATE

The State has created a preliminary FAQ page regarding New York Forward and business reopening. It has begun to provide specific information, guidance, and requirements, including: (1) businesses that previously qualified as “essential” are subject to the reopening plan requirement going forward, and (2) there are no waivers for businesses (including essential businesses) that cannot comply with the current guidance.

We expect the State to continue to supplement its guidance and requirements. Therefore, employers are encouraged to check the website regularly for additional updates. Additionally, the FAQ page directs businesses with immediate questions to contact their regional office of Empire State Development, and provides specific contact information by region.

### Takeaway

The reopening process is evolving quickly. Using the standards articulated by Governor Cuomo, as set forth above, *business hoping to re-open as soon as possible, and “essential businesses” that desire to continue operating, can and should immediately begin the process of formulating and preparing their written COVID-19 Health and Safety Plan to best position themselves for a timely reopening in their respective phases, and for continuation of any “essential business” operations.* Hodgson Russ is continuing to monitor the situation as it develops, and stands ready to assist you in getting back to business.

If you have any questions regarding this alert, or need assistance formulating, drafting, and developing safety protocols for your business re-opening plan please contact Jason Markel (716.848.1395), Aaron Saykin (716.848.1345), or Raymond Fadel (716.848.1724).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us **HERE**.