

# PHASE TWO OF NY BUSINESS REOPENINGS CALLS FOR COVID-19 HEALTH AND SAFETY PLAN

Jason E. Markel, Glen P. Doherty, and Charles H. Kaplan  
*BLR's New York Employment Law Letter*  
July 1, 2020

*New York Governor Andrew Cuomo recently announced a second phase of industries can start preparing to reopen amid the COVID-19 pandemic. As part of the process, the state released detailed guidance and a safety plan template for each affected industry. If your region has satisfied, or is close to satisfying, the metrics for proceeding to the second phase, you should begin assembling your individualized reopening plan now.*

## **Covered businesses**

Businesses eligible to reopen during Phase Two include (1) offices, (2) real estate, (3) essential and Phase Two in-store retail, (4) vehicle sales, leases, and rentals, (5) retail rental, repair, and cleaning, (6) commercial building management, and (7) hair salons and barbershops.

As of May 29, 2020, the following regions were permitted to proceed with Phase Two of the reopening process: Finger Lakes, North Country, Southern Tier, Mohawk Valley, and Central New York. Western New York was expected to reopen for Phase Two businesses on June 2, with the Capital Region likely to follow on June 3. The governor has projected New York City may finally reach Phase One reopening status as soon as June 8.

Note the following businesses must remain closed during Phase Two: (1) malls (with the exception of stores with their own external entrances open to the public, separate from the general mall entrance, e.g., strip malls), (2) dine-in and on-premise restaurant or bar service (with the exception of takeout or delivery for off-premise consumption), (3) large gathering/event venues, (4) gyms, fitness centers, and exercise classes (except for remote or streaming services), (5) video lottery and casino gaming facilities, (6) movie theaters (except drive-ins), and (7) places of public amusement (indoor or outdoor).

Also prohibited are nonhaircutting-related personal care services or activities, including but not limited to nail salons, beard and nose hair trimming, facials, manicures or pedicures, makeup application, threading, tweezing, waxing, and tattoo parlors. For help with determining whether your business is eligible to resume operations, use the state's reopen lookup tool (<https://www.businessexpress.ny.gov/>)

## **Attorneys**

Glen Doherty  
Charles H. Kaplan  
Jason Markel  
Aaron Saykin

## **Practices & Industries**

Labor & Employment  
Occupational Safety & Health Act  
(OSHA)

## PHASE TWO OF NY BUSINESS REOPENINGS CALLS FOR COVID-19 HEALTH AND SAFETY PLAN

app/nyforward).

### ***Common COVID-19 health and safety requirements***

Similar to Phase One, the New York Forward guidance (<https://forward.ny.gov/>) calls for businesses to prepare and retain a COVID-19 health and safety plan outlining how their workplace will safely reopen and mitigate and prevent the spread of COVID-19. Template plans incorporating the minimum requirements are available on the state's website. Employers also must complete an electronic affirmation acknowledging they have read and understood the obligation to operate their business in accordance with the guidance.

The guidance for each industry is organized around four distinct categories: (1) people (social distancing and reducing workplace density), (2) places (personal protective equipment and cleaning), (3) processes (screening, testing, and tracking), and (4) employer plans. Some of the highlights common to all industries include:

- Requiring six feet of distance between all individuals unless safety or core activity requires a shorter distance and individuals are wearing acceptable face coverings;
- Providing employees with an acceptable face mask at no cost to them, and having an adequate supply of replacement coverings;
- Conducting regular cleaning and disinfection at least every day, and more frequent cleansing of shared objects (e.g., equipment) and surfaces as well as high-transit areas, such as restrooms and common areas;
- Implementing mandatory health screening assessments (e.g., questionnaires about COVID-19 symptoms, exposures, or positive test results, and temperature checks) for employees, contractors, and visitors;
- Adhering to U.S. Centers for Disease Control and Prevention (CDC) and New York State Department of Health (NYSDOH) hygiene and sanitation requirements; and
- Conspicuously posting completed safety plans on the site.

The template for the Phase Two health and safety plans is organized around the same elements: people, places, and processes. You don't need to submit the plans to a state agency for approval but must conspicuously retain them on your premises and make them available to the NYSDOH and other local health or safety authorities in the event of an inspection. The reopening standards apply to both essential and nonessential Phase Two businesses for the duration of the COVID-19 public health emergency or until the state rescinds or amends them.

### ***For more information***

If you have questions about the guidance or your obligations under the second phase, you may find the answers on the frequently asked questions (FAQs) page of the New York Forward website. In addition, you may contact the regional office of the Empire State Development Corporation by using the contact information provided in the FAQs.

Keep in mind, too, your compliance obligations aren't limited to the state guidance. You also need to follow the applicable federal requirements, such as the minimum standards of the Americans with Disabilities Act (ADA), the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the CDC.

## PHASE TWO OF NY BUSINESS REOPENINGS CALLS FOR COVID-19 HEALTH AND SAFETY PLAN

### *Takeaway*

The business reopening process is evolving quickly. To position yourself for a timely reopening in your respective phase, you should follow the standards set forth by Governor Cuomo, and immediately begin formulating your written COVID-19 health and safety plan.

*You can reach attorneys Jason E. Markel at [jmarkel@hodgsonruss.com](mailto:jmarkel@hodgsonruss.com) or 716-848-1395, Glen P. Doherty at [gdoherly@hodgsonruss.com](mailto:gdoherly@hodgsonruss.com) or 518-433-2433, and Charles H. Kaplan at 646-218-7513 or [ckaplan@hodgsonruss.com](mailto:ckaplan@hodgsonruss.com). Also contributing to the article were colleagues Raymond J. Fadel at [rfadel@hodgsonruss.com](mailto:rfadel@hodgsonruss.com) or 716-848-1724, and Aaron M. Saykin at [asaykin@hodgsonruss.com](mailto:asaykin@hodgsonruss.com) or 716-848-1345.*