

NEW YORK ISSUES GUIDANCE FOR PHASE 4 OF THE GOVERNOR'S REOPENING PLAN

Hodgson Russ Labor & Employment Alert
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Last week, New York State issued guidance applicable to Phase 4 industries in Governor Cuomo's NY Forward reopening plan. Western New York is expected to enter Phase 4 on Tuesday, June 30. It is not yet clear when the Capital Region, Mid-Hudson or Long Island will enter Phase 4. New York City remains in Phase 2.

Phase 4 currently includes Higher Education, Low-Risk Outdoor Arts & Entertainment, Low-Risk Indoor Arts & Entertainment and Media Production. The complete Phase 4 guidance can be found [here](#). In an unexpected twist, indoor shopping malls, movie theaters and gyms have been excluded from Phase 4. According to Lieutenant Governor Kathy Hochul, individual industries that are not currently included in Phase 4 will receive approval to reopen at an unspecified time after Phase 4 has begun.

As with the prior phases of reopening, all Phase 4 employers and industries are required to prepare a return to work safety plan. Templates are available on the NY Forward website using the link above.

Higher Education

As with most other industries and businesses permitted to open, six feet of distance must be maintained between individuals who do not reside in the same residence. In the event social distancing cannot be maintained, face coverings must be worn at all times. Institutions are required to provide face coverings to employees who directly interact with students or members of the public at no cost to the employee.

Institutions also must work with their local health department to develop a plan for identifying students who are exposed to or infected with COVID-19. This plan must address where such students will reside and how their daily needs (such as food and medication) will be met during a period of quarantine or isolation.

Higher education institutions are also required to implement mandatory health screening practices for employees, students, and, where practicable, scheduled visitors.

Low-Risk Outdoor Arts & Entertainment

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Low-risk outdoor arts and entertainment activities include outdoor zoos, botanical gardens, nature parks, historical and cultural grounds and institutions, outdoor museums, and other similar institutions and activities. Businesses and institutions in this category must limit overall capacity to no more than 33% of the maximum occupancy for a particular area at any given time (taking into account both employees and customers). As with other industries, social distancing and the use of face coverings are required.

Tours must be limited to only members of the same household, and may not exceed the limitations on gathering size in effect at the time. In addition, any children's play areas or exhibits with play equipment must be closed unless such areas and/or exhibits can be cleaned, disinfected, and sanitized between each use.

Daily health screenings are not required for patrons or visitors, but are mandatory for employees and, where practicable, contractors and vendors.

Low-Risk Indoor Arts & Entertainment

Low-risk indoor arts & entertainment institutions include indoor museums, historical sites, aquariums, and other related activities. Overall capacity at indoor venues must be no more than 25% of maximum occupancy (inclusive of employees and customers). Patrons over the age of two must wear a face cover. Social distancing is also required.

As with the low-risk outdoor activities outlined above, group tours may only be permitted for members of the same household and may not exceed the current limitations on gathering size in effect at the time. High-risk interactive exhibits, such as those requiring patrons to touch or wear objections, must be closed to the public.

Daily health screenings are not required for patrons or visitors, but are mandatory for employees and, where practicable, contractors and vendors.

Media Production

Businesses and industries in this category include all activities undertaken in motion picture, music, television, and streaming productions on set, on location, or at any production or recording site. Social distancing must be enforced and, in situations where social distancing cannot be maintained (i.e. hair, makeup, sound, filming, performing), production institutions are required to develop protocols to mitigate the risk of contracting COVID-19 for all individuals.

Unique to the media production industry, all media production equipment and tools such as cases, cameras, eyepieces, lenses, and dollies, must be regularly cleaned and disinfected. Daily health screenings are mandatory for employees, cast, crew and, where practicable, contractors and vendors.

If you have any questions about whether you are included in the above categories, or any already permitted to open, or other concerns regarding reopening and current allowances, please contact Lura Bechtel at 416.595.2693, Elizabeth McPhail at 716.848.1530, or Andrew Drilling at 716.848.1412.

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

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