



New York Releases Industry-Specific Reopening Guidelines

Insights

5.14.20

New York just issued industry specific guidance for businesses that are preparing to reopen. As previously [reported](#), the state hardest hit by the COVID-19 pandemic is preparing to begin phased business reopenings on a regional basis. Come May 15, regions in the state that hit certain metrics that allow for reopening can begin Phase 1 of the New York Forward reopening plan.

In Phase 1, businesses in the following industries are permitted to reopen so long as they have a plan in place to protect employees and customers, make the physical workplace safer, and implement processes that lower risk of infection: construction; manufacturing; wholesale trade; retail (for curbside pickup only); agriculture, forestry and fishing. The state has now issued [industry specific guidelines](#) that set minimum requirements for “Phase 1” businesses to institute to help protect against the spread of COVID-19 as well as [FAQs](#) to address some commonly asked concerns. What do employers need to know about these guidelines?

What Do The Guidelines Entail?

The state has released summary guidelines, detailed guidelines and a business plan template for each of the industries permitted to reopen in Phase 1 of New York Forward, the state’s phased, regional reopening plan. The guidelines are noted to be minimum requirements only, with an employer free to provide additional precautions or increased restrictions.

Businesses cannot reopen without meeting the minimum state standards, as well as applicable federal requirements, including those set forth by the Americans with Disabilities Act (ADA), Centers for Disease Control and Prevention (CDC), Environmental Protection Agency (EPA) and United States Department of Labor’s Occupational Safety and Health Administration (OSHA).

While the guidelines vary somewhat across industries, there are generally five categories of that must be addressed: physical distancing, protective equipment, hygiene/cleaning, communication, and screening. New York businesses, including essential businesses, are **required** to prepare and implement a COVID-19 Health and Safety Plan, which must include the ways in which the business intends to comply with the guidelines to ensure it can safely reopen. The state has provided templates to assist businesses with this endeavor.

The safety plan must be conspicuously posted in the workplace. Additionally, businesses are required to affirm that they have read and understand their obligations to operate in accordance with

the state-issued guidance through a state [website](#).

While employers must be sure to read the complete guidance applicable to their industry to ensure compliance, the mandatory guidelines generally include the following:

- **Physical Distancing**

- Ensure 6 feet of distance between personnel;
- For any work occurring indoors, limit the workforce presence to no more than 50% of maximum occupancy;
- Limit tightly confined spaces to one individual at a time;
- Post social distancing markers that denote 6 feet of space in commonly used areas;
- Limit in-person gatherings as much as possible; and
- Establish designated areas for pick-ups and deliveries, limiting contact to the extent possible.

- **Protective Equipment**

- Provide employees with acceptable face coverings at no-cost to the employee and have an adequate supply of face coverings in case of replacement;
- Clean or replace face coverings after use or when damaged or soiled; and
- Limit the sharing of objects (e.g., cash registers, tools) and discourage touching of shared surfaces; when in contact with shared objects or frequently touched areas, wear gloves or sanitize or wash hands before and after contact.

- **Hygiene And Cleaning**

- Adhere to hygiene and sanitation requirements from the CDC and Department of Health;
- Maintain cleaning logs that document date, time and scope of cleaning;
- Provide and maintain hand hygiene stations, including handwashing with soap, water and paper towels, as well as an alcohol-based hand sanitizer;
- Provide and encourage employees to use cleaning/disinfecting supplies before and after use of shared and frequently touched surfaces, followed by hand hygiene;
- Conduct regular cleaning and disinfection at least after every shift, daily, or more frequently as needed and more frequent cleaning and disinfection of shared objects and surfaces, as well as high transit areas, such as payment devices, pickup areas, restrooms and common areas; and
- Prohibit shared food and beverages.

- **Communication**

- Affirm you have reviewed and understand the state-industry guidelines and that you will implement them;
- Post signage to remind employees and customers to adhere to proper hygiene, social

- distancing rules, appropriate use of PPE, and cleaning and disinfecting protocols;
 - Train all personnel on new protocols and frequently communicate safety guidelines;
 - Establish a communication plan for employees, visitors and clients 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 customers and deliveries performed with appropriate PPE or through contactless means);
 - If a worker tests positive for COVID-19, notify state and local health departments and cooperate with contact tracing efforts, including notification of potential contacts, such as workers, visitors, and/or customers who had close contact with the individual, while maintaining confidentiality required by state and federal law and regulations; and
 - Conspicuously post completed safety plans on site.
- **Screening**
 - Employees who are sick should stay home or return home if they become ill at work;
 - Implement mandatory health screening assessment (e.g., questionnaire, temperature check) before employees begin work each day and for essential visitors (but not customers) asking about (1) COVID-19 symptoms in past 14 days, (2) positive COVID-19 test in past 14 days, and/or (3) close contact with confirmed or suspected COVID-19 case in past 14 days, and these assessment responses must be reviewed every day and such review must be documented;
 - Employees who present with COVID-19 symptoms should be sent home to contact their health care provider for medical assessment and testing;
 - Employees (whether symptomatic or not) who have tested positive for COVID-19 may only return to work after completing a 14-day quarantine;
 - Employees who have had close contact with a confirmed or suspected person with COVID-19 but are not experiencing any symptoms may be able to work with additional precautions, including regular monitoring for symptoms and temperature, required face covering at all times and appropriate social distancing from others; and
 - On-site screeners should be trained by employer-identified individuals familiar with CDC, DOH and OSHA protocols and wear appropriate PPE, including at a minimum, a face covering.

In addition to the mandatory requirements, each of the industry guidelines include recommended best practices in the five above areas.

What Else Do Employers Need To Know?

In addition to the industry-specific guidelines, New York has provided answers to some frequently answered questions. Per these FAQs, New York businesses should note the following:

- Essential businesses that were already permitted to open are now subject to the industry-specific guidance;
- No waivers will be issued for businesses that cannot fully comply with the guidance; and
- Businesses can contact their county Office of Emergency Management for assistance in procuring PPE if the business cannot procure an adequate supply of protective equipment.

Additionally, the state has made clear the industry guidelines are based on the best-known public health practices, and that the guidelines can and will change frequently. Employers are accountable for staying current with any updates to the industry guidelines, as well as incorporating changes into their business operations and safety plans.

What Should Employers Do?

New York employers preparing to reopen must review the state's industry specific guidelines, prepare a safety plan and implement the necessary protocols in the workplace. As you begin the process of reopening, you should familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace.

For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#). Even if your region has not yet met all seven criteria for re-opening or your business is not a "Phase 1" industry, employers can use this guidance to prepare for an eventual re-opening. Your business can take proactive steps to ensure that it is in the best position to succeed when you can re-open and ensure that your business can remain open with as little disruption as possible.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [New York City office](#), or any member of [our Post-Pandemic Strategy Group Roster](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People





Melissa (Osipoff) Camire

Partner

212.899.9965

Email

Service Focus

Workplace Safety and Catastrophe Management

Industry Focus

Retail

Related Offices

New York