

Insights, News & Events

NEW YORK BEGINS TO “UNPAUSE”: WHAT BUSINESSES NEED TO KNOW TO MOVE “NEW YORK FORWARD” (UPDATED)

Insights
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New York, the state hardest hit by the COVID-19 pandemic, has released plans to guide the state’s reopening process that will permit certain lower-risk businesses to begin phased reopenings on a regional basis as soon as May 15. Dubbed “New York Forward,” the reopening plan focuses on getting people back to work and easing social isolation without triggering renewed spread of the coronavirus or overwhelming the hospital system.

New York State remains on PAUSE through May 15, after which Phase One of the opening begins on a regional and industry specific basis. What do employers need to know as we head into “New York Forward”?

HOW WE GOT HERE

After initially mandating a reduction in employee headcount at non-essential businesses since March 22, all non-essential businesses statewide have been closed, with businesses required to keep 100% of their workforce home, excluding essential services. The mandate was part of a series of other measures designed to put New York State on “PAUSE” to combat the spread of COVID-19.

The executive order requiring closure of non-essential businesses was extended multiple times and is currently set to expire on May 15. At that time, businesses in regions that meet certain criteria can begin to reopen.

METRICS TO GUIDE REOPENING

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New York will reopen on a regional basis as each region meets certain criteria necessary to protect public health. Phased reopenings can begin in a region only if the infection rate is sufficiently low, the health care system has the capacity to absorb a potential resurgence in new cases, diagnostic testing capacity is sufficiently high to detect and isolate new cases, and robust contact-tracing capacity is in place to help prevent the spread of the virus.

Specifically, Governor Cuomo has identified seven metrics that must be met before a region is permitted to enter the first phase of reopening:

- Decline in total hospitalizations over a 14-day period;
- Decline in deaths over a 14-day period;
- New hospitalization rate fewer than two new hospitalizations per 100,000 residents;
- At least 30% of total hospital beds available;
- At least 30% of ICU beds available;
- Ability to perform 30 tests per 1,000 people per month; and
- Robust contact tracing program in place.

Once a region begins a phased reopening, it must have a “control room” to monitor the above metrics and other key indicators so the region can slow or shut off reopening if needed. For purposes of the regional reopening plan, New York has been divided into ten regions: Capital Region, Central New York, Finger Lakes, Long Island, Mid-Hudson, Mohawk Valley, New York City, North Country, Southern Tier and Western New York.

The state has developed a [regional monitoring dashboard](#), which indicates where each region stands with respect to the seven required reopening metrics. We recommend that businesses refer to this website frequently to help guide decision-making.

PHASED REOPENING OF BUSINESSES

Once a region meets the necessary criteria for reopening, the region can reopen businesses in phases, with at least



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two weeks in between each Phase to allow the state and local leaders to monitor the effects of reopening:

- Phase 1: Construction; manufacturing; wholesale trade; select retail (for curbside pickup only); agriculture, forestry and fishing.
- Phase 2: Professional services; finance and insurance; retail; administrative support; real estate, rental and leasing.
- Phase 3: Restaurants and food services.
- Phase 4: Arts, entertainment and recreation; education.

The phase-in plan prioritizes businesses considered to have a greater economic impact and inherently lower risks of infection for workers and customers, followed by businesses considered to have less economic impact and those that present a higher risk of workplace or customer infection spread. Additionally, when phasing in reopenings, Governor Cuomo has cautioned that regions must not open attractions or businesses that would draw a large number of visitors from outside the local area.

In addition to the phased reopening of businesses, Governor Cuomo announced New York will also reopen, on a statewide basis, certain low-risk businesses and recreational activities as of May 15, including landscaping and gardening, “low risk” outdoor recreational activities (i.e., tennis), and drive-in movie theaters.

THE “NEW NORMAL”: NOT BUSINESS AS USUAL

Businesses will not be reopening to a business-as-usual state. Each business must have a plan in place to protect employees and customers, make the physical workplace safer, and implement processes that lower risk of infection. In developing these plans, businesses must consider three main factors:

- **Protections for employees and customers**, such as adjustments to workplace hours and shifts as necessary to reduce density in the workplace, enacting social distancing protocols, and restricting non-essential travel for employees;

- **Changes to the physical workplace**, including requiring all employees and customers to wear masks if in frequent close contact with others and implementing strict cleaning and sanitation standards; and
- **Implementing processes that meet changing public health obligations**, like screening individuals when they enter the workplace, or reporting confirmed positives to customers.

[Ed. Note: The state has started to issue industry-specific guidelines for businesses to reopen. Additional details are available [here](#).]

SHIFT TOWARDS REGIONAL GUIDANCE

As the state begins to move “New York Forward,” Governor Cuomo has indicated that there will be a shift from statewide mandates to local and regional directives and guidance. Governor Cuomo advised that localities may set additional restrictions and guidelines with respect to the reopening of businesses. Additionally, local government officials will be responsible for ensuring compliance with reopening requirements.

WHAT SHOULD EMPLOYERS DO?

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, employers now have more guidance that can be used 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, including an update early next week when further guidelines are expected to be issued. 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.