

# PREPARING YOUR REQUIRED COVID-19 HEALTH AND SAFETY PLAN FOR AN ENERGY CONSTRUCTION BUSINESS REOPENING

*Hodgson Russ Renewable Energy and Construction Alert*  
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Governor Cuomo has announced the first phase of industries that can start preparing for the reopening process, including construction in the energy sector. As part of that process, the State has released detailed guidance regarding construction activities, which is part of the first phase of reopening.

Among other things, the State is requiring businesses to prepare and retain on their premises a COVID-19 Health and Safety Plan outlining how their workplace will safely reopen and prevent the spread of COVID-19. Businesses must affirm that they are following these requirements by submitting an online form to the State.

If your region has satisfied, or is close to satisfying, the metrics for reopening, *the time for construction employers to assemble their individualized reopening plan is now*.

## Examples of Requirements

The State has prepared both a summary and master guidance document detailing its requirements for businesses reopening plans. The guidance is organized around three distinct categories: (1) people (social distancing and reducing workplace density); (2) places (protective equipment and cleaning); and (3) processes (screening, testing, and tracking). Some of the highlights include:

- Requiring six-feet of distance between workers unless workers are wearing acceptable face coverings;
- Employers must provide employees with an acceptable face covering at no-cost to the employee and have an adequate supply of coverings in case of replacement;
- Conducting regular cleaning and disinfection at least every day, and more frequent cleaning and disinfection of shared objects (g., tools) and surfaces, as well as high transit areas, such as restrooms and common areas;
- Implementing mandatory health screening assessment (g., questionnaire of COVID-19 symptoms, exposure, or testing positive, and temperature check) before employees begin work each day and for essential visitors.

## Attorneys

Catherine Grantier Cooley  
Glen Doherty  
Joseph Endres  
Michael Hecker  
Elizabeth Holden  
Ryan Lucinski  
Charles Malcomb  
Jason Markel  
Christopher Massaroni  
Paul Meosky  
Scott Paton  
Aaron Saykin  
Daniel Spitzer  
Jeffrey Stravino  
Brianna Szopinski  
William Turkovich  
Sujata Yalamanchili  
Michael Zahler  
John Zak  
Henry Zomerfeld  
Benjamin Zuffranieri Jr.

## Practices & Industries

Construction

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These standards apply to both essential and non-essential construction activities for the duration of the COVID-19 public health emergency or until rescinded or amended by the State. A construction business may fill out a template safety plan provided by the State, or develop its own COVID-19 Health and Safety Plan.

With respect to inter-regional travel of workers who may need to travel from one region that is not yet open to a site in a different region that is open, the State has not placed any restrictions on such movement.

Businesses engaged in construction must affirm with the State their compliance with the New York Forward reopening guidance through completion of an online form. *This plan does not need to be submitted to a State agency for approval, but must be conspicuously retained on the premises of the business and must be made available to the New York State Department of Health ("DOH") or local health or safety authorities in the event of an inspection.*

In addition to these minimum State standards, construction activity must comply with applicable federal requirements, such as the minimum standards of 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").

The State has also created a preliminary FAQ page regarding New York Forward and business reopening that provides additional guidance. The FAQ page directs businesses with immediate questions to contact their regional office of Empire State Development, and provides specific contact information by region.

The State also has provided a webinar presentation summarizing its guidance, and includes information regarding compliance and enforcement. For example, non-compliance can result in disciplinary action, including a stop work directive from NYSERDA and loss of eligibility to participate in programs. Similarly, it allows employees to submit complaints online or by phone to report violations of the guidance.

### **Regional Reopening**

Governor Cuomo's NY PAUSE order expires on May 28, 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 18, 2020, the Finger Lakes, the Mohawk Valley, the Southern Tier, Central New York, 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 four phases. **Phase 1** encompasses construction, manufacturing, wholesale trade, select retail for curbside pickup only, agriculture, forestry, and fishing. (See the NY Forward website for a list of businesses considered part of Phase 1.)

Businesses that are categorized as construction for purposes of Phase 1 include: building equipment contractors; building finishing contractors; foundation, structure, and building exterior contractors; highway, street, and bridge construction; land subdivision; nonresidential building construction; residential building construction; and utility system construction.

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### **NYSERDA and ESD Guidance on Nonessential Construction**

In regions that have not yet met the requirements to reopen, businesses in the energy sector must continue to comply with guidance from both the New York State Energy Research and Development Authority (“NYSERDA”) and Empire State Development (“ESD”) regarding which aspects of construction in the energy industry are considered essential, non-essential, and emergency. The NYSERDA guidance is set to expire on May 28, unless the in-person workforce restrictions are further extended by Executive Order.

Meanwhile, solar energy industry stakeholders are developing operating guidance that, in addition to fit-for-work, social distancing, and compliance with CDC requirements, will include protocols for scheduling work with home or building owners and other site visits, cleaning tools and equipment, and engaging with third party personnel, such as site auditors and delivery drivers. This industry guidance will assist solar developers in developing their individual reopening plans.

*Until your region reopens, if your business is categorized as nonessential construction, you will have to continue complying with ESD guidance before reopening.*

### **Takeaway**

The reopening process is evolving quickly. Using the standards articulated by Governor Cuomo, as set forth above, *businesses hoping to reopen as soon as possible 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 we stand 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), Sarah Main (518.433.2424), or Raymond Fadel (716.848.1724), and we would be happy to assist.

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 our Construction alert mailing list or any other of our mailing lists, please visit us **HERE**.