

PREPARING YOUR REQUIRED COVID-19 HEALTH AND SAFETY PLAN FOR A PHASE TWO BUSINESS REOPENING

Hodgson Russ OSHA Alert
June 1, 2020

Governor Cuomo has announced the second phase of industries that can start preparing for the reopening process. As part of that process, the State has released detailed guidance, and a safety plan template, for each industry which is part of Phase II of reopening: (1) offices; (2) real estate; (3) essential and Phase II 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. (See the NY Forward website for a list of businesses considered part of Phase II.)

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

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

Similar to Phase I, the NY Forward guidance calls for businesses to prepare and retain on their premises a COVID-19 Health and Safety Plan outlining how their workplace will safely reopen and mitigate the prevent the spread of COVID-19. Template plans are available on the NY Forward website that incorporate minimum plan requirements. Employers must also complete an electronic affirmation acknowledging that they have read and understand the obligation to operate their business in accordance with the guidance.

Note that the following businesses must still remain closed during Phase II: (1) malls (with the exception of stores which have 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 take-out 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)

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places of public amusement (indoor or outdoor). Note also that non-haircutting-related personal care services or activities, including but not limited to: nail salons, bear trimming, nose hair trimming, facials, manicures/pedicures, makeup application, threading, tweezing, waxing, and tattoo parlors remain prohibited.

For help determining whether or not your business is eligible to reopen in Phase II, use the State's reopen lookup tool.

Common COVID-19 Health and Safety Plan Requirements

The guidance for each industry is organized around four distinct categories: (1) people (social distancing and reducing workplace density); (2) places (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;
- 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 (e.g., equipment) and surfaces, as well as high transit areas, such as restrooms and common areas;
- Implementing mandatory health screening assessment (e.g., questionnaire of COVID-19 symptoms, exposure, or testing positive, and temperature check) for employees, contractors, and visitors;
- Adhering to Centers for Disease Control (CDC) and New York State Department of Health (NYSDOH) hygiene and sanitation requirements.
- Conspicuously posting completed safety plans on site.

The template Phase II COVID-19 Health and Safety Plans are organized around the same elements: people; places; and processes. The Plans do 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 NYSDOH and other local health or safety authorities in the event of an inspection. These reopening standards apply to both essential and nonessential Phase II businesses for the duration of the COVID-19 public health emergency or until rescinded or amended by the State.

Employers with questions about the guidance or their obligations under Phase II may find answers on the Frequently Asked Questions (FAQ) page on the NY Forward website. For questions not answered by the FAQ, businesses may contact their regional office of the Empire State Development Corporation using the regional contact information provided in the FAQ.

Employers seeking to reopen in Phase II should be mindful that their compliance obligations are not limited to the State guidance. Employers should also be aware of and follow 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").

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Takeaway

The reopening process is evolving quickly. Using the standards articulated by Governor Cuomo, as set forth above, *Phase II 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), Glen Doherty (518.433.2433) or Charlie Kaplan (646.218.7513) 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 OSHA alert mailing list or any other of our mailing lists, please visit us **HERE**.