

Client Alert **Employment & Labor**

Getting Back to Business: Are You Ready to Reopen in the New Normal?

The upcoming reopening of businesses in New York and New Jersey will prove to be another extraordinarily challenging chapter to the COVID-19 pandemic. Employers will be tasked with complying with extensive and evolving government directives (including federal, state and local requirements), to safely bring employees back to work, quell employee fears of exposure, minimize the risks of legal claims (as discussed in our [May 19, 2020 alert](#)), and adjust to the new financial reality, with the ultimate objective of resuming business operations. While New York and New Jersey indicated early on that the states would coordinate their resumption of business steps and schedules, there have been and will be differences in reopening approaches and requirements as the progress each state is making in reducing the number of new cases and deaths from the virus has varied.

New York State

Pursuant to Governor Cuomo's Reopening New York Plan, New York State will open in four phases by industry. "Phase 1" industries include construction, agriculture/forestry/fishing/hunting, retail (limited to curbside or in-store pick up or drop off), manufacturing and wholesale trade. "Phase 2" industries include offices, real estate, essential and phase 2 in-store retail, vehicle sales/leases/rentals, retail rental/repair/cleaning, commercial building management and hair salons/barbershops. "Phase 3" industries include restaurants/food services, and "Phase 4" industries include arts/entertainment/recreation and education.

All geographic areas in New York have begun to reopen with the exception of New York City. On May 29, 2020, the Governor announced that five New York State regions were entering Phase 2 of the reopening plan, while New York City will be entering Phase 1 on June 8, 2020. Extremely detailed reopening guidance is available by phase and industry at <https://forward.ny.gov>. The New York State Department of Health has also issued special [Interim Guidance for Office-Based Work During the COVID-19 Public Health Emergency](#).

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New York employers should consult these resources closely and frequently for updated guidance on detailed reopening requirements and recommended best practices in the following categories: physically maintaining social distancing between employees, making protective equipment available to the workforce, enhancing office hygiene and cleaning procedures, communicating new precautionary rules to employees, and pre-entry screening for COVID-19.

Employers also should be aware that their operations may be governed by more than one set of reopening requirements depending on the nature of the industry in which they operate and if the business crosses multiple business functions and/or geographic boundaries. According to a published [FAQ](#), if a New York State business is comprised of more than one type of business function (i.e., a food manufacturing business that has an on-site dining room), only those operations covered by the Phase 1 reopening guidelines are permitted to reopen now. Any “ancillary activities” conducted by the business that are not authorized to reopen now must remain closed until so authorized. Accordingly, employers with multiple types of operations, including office-based work (which are included in Phase 2), should evaluate whether they are required or it is advisable to reopen in different phases. In addition, employers will be required to affirm their compliance with the applicable guidance.

New Jersey

On May 18, 2020, Governor Murphy [announced](#) similar plans to reopen New Jersey in multiple stages. “Stage 1” restrictions have been relaxed for non-essential construction projects and retail businesses. [Executive Order 142](#), and subsequent executive orders have reopened charter fishing and watercraft rental businesses, and allowed the resumption of child care services, youth day camps and organized sports in the coming weeks.

On June 1, 2020, the Governor announced that New Jersey is on track to enter “Stage 2” on June 15th, which would include outdoor dining, limited in-person retail and other categories. More on-site business functions will be allowed to resume in a not yet scheduled “Stage 3.” However, to date, the Governor has not issued detailed guidance on when and under what circumstances other businesses will be allowed to reopen or, if they are already open, what the applicable terms and conditions will be.

[Executive Order 107](#), issued on March 21, 2020, which still remains in effect in relevant part, provides in sum that all businesses (whether closed or open to the public) (1) must accommodate their workforce, “*wherever practicable*,” for telework or work-from-home arrangements; and (2) to the extent a business or non-profit has employees who cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make “*best efforts*” to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. Published information on the official New Jersey State website provides a somewhat different message, namely, that all workers who can work from home can continue to do so, across the various reopening stages. Further guidance is needed to clarify the conflicting language. Employers should regularly consult the [New Jersey State website](#) for updated information.

Takeaways

The reopening requirements imposed on businesses will require careful advance planning on all fronts. It is imperative that those charged with formulating a reopening plan be conversant with the business's physical space and able to identify potential "hot spots" requiring additional precautionary steps to reduce the risk that COVID-19 will be spread. A reopening plan should address such issues as where and when face masks and gloves must be worn, how social distancing will be maintained, whether and where third parties will be given access to the worksite, where hand sanitizers and surface cleansers will be made available for hygiene purposes, what responsibility staff will have for wiping their workspace equipment, whether and where signage will be displayed reminding employees to frequently wash their hands and wear masks and other personal protective equipment in common areas, and whether and under what conditions continued remote work will be allowed. It would be prudent to involve multiple members of the management team in developing the plan, to limit the chance that key issues will be overlooked. And, employers should regularly consult with state and local websites, as well as applicable guidance from [OSHA](#) and the [Centers for Disease Control](#), as updated requirements may necessitate changes in the reopening plan.

Once the plan is in place, written communication or posted information to employees sharing the essential elements of the plan should be prepared. The objectives of such communication should be to signal to employees that the company takes worksite safety issues seriously, calm employee fears and motivate employees to return to work, set workplace expectations, and foster an environment of compliance.

We are available to review and consult on any reopening plans or answer any questions based on current guidance.

Attorneys in our Employment and Labor Law Practice Group can assist employers regarding the issues raised in this alert.

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