

# COVID-19 FAQs for *New York* Employers

July 25, 2020



# Contents

Contents .....	1
1 Generally speaking, how does New York’s reopening plan work?.....	2
2 Where do I get the Guidance for my industry? .....	2
3 If I am an essential business, am I subject to the requirements detailed in the Guidance documents? .....	2
4 Due to special circumstances, I cannot fully comply with the Guidance. Can I apply for a waiver? .....	2
5 What if my business cannot procure enough personal protective equipment (PPE) for all workers? .....	2
6 Does my business need to procure PPE for on-site contractors and visitors, or only my employees?.....	3
7 Are delivery persons (e.g., food, packages, materials) considered “visitors” of the building for purposes of screening? .....	3
8 I do not have adequate space to allow employees to social distance during lunch breaks. Am I required to provide lunch/break space, or can I close this space off entirely? .....	3
9 Is the State encouraging businesses to reopen in phases/stages? .....	3
10 I’ve read that New York is requiring all businesses to develop a <i>written</i> health and safety plan. Do I need to create such a plan and, if so, what needs to be included in the plan? .....	3
11 Am I required to do anything else in addition to the health and safety plan? .....	3
12 What are some examples of the health and safety measures being required by New York State at this time? .....	4
13 Do I need approval or confirmation from any State agency to reopen or continue operating? .....	6
14 If someone on my staff becomes sick, are we required to close the business? If so, for how long? .....	6
15 Has New York issued specific guidance on how to return employees to the workplace following COVID-19 infection or exposure? .....	6
16 Are there any exceptions to the guidelines identified in the prior FAQ? .....	6
17 Can I refuse entry to someone not wearing a mask on site? .....	7
18 Governor Cuomo recently issued an executive order requiring individuals entering or returning to New York from certain states to quarantine for a period of 14 days. Does this measure impact the workplace at all? .....	7
19 Does an employer have to notify the state or local health department if an employee screens positive for COVID-19 symptoms? .....	7
20 What screening and related processes are being required by New York State at this time? .....	7
21 Is New York State enforcing the new reopening requirements? .....	9
Back Cover .....	10

In early May, New York State Governor Andrew Cuomo outlined guidelines for when Empire State businesses can reopen and return to “in-person” operations. To that end, below is a series of FAQs we have compiled based on some of the more common questions that clients with New York-based employees have posed to us in recent months.

These FAQs are general and high-level in nature, and should not be used as a substitute for speaking with a Reed Smith employment lawyer. This is true especially because the COVID-19 situation is a fluid, rapidly evolving one, and there are many considerations that are unique to particular circumstances, industries, and localities.

To that end, the information contained in this memorandum is current as of **July 25, 2020**. Federal, state, and local agencies continue to issue regular updates and implement new laws, regulations, and guidance in response to COVID-19 that may impact these FAQs in the future. Please note that this is not legal advice.

If you have any questions about the matters covered by this document, please contact a member of Reed Smith’s New York Labor and Employment team.

## 1 Generally speaking, how does New York's reopening plan work?

In early May, New York State Governor Andrew Cuomo outlined guidelines for when Empire State businesses can reopen and return to "in-person" operations. Under the Governor's "New York Forward" plan, reopenings have been determined, first, on a region-by-region basis and then, once a region was eligible to reopen, on a four-phase industry-by-industry basis. Following is a summary of the four industry-specific phases:

- "Phase one" industries include construction, non-food related agriculture, forestry, fishing, hunting, retail trade, manufacturing, wholesale trade, and higher education research.
- "Phase two" industries include certain offices, real estate, essential and phase two in-store retail businesses, auto dealerships, retail rental, repair, and cleaning, commercial building management, hair salons and barbershops, and outdoor and takeout/delivery food services.
- "Phase three" industries include personal care services (which does not include gyms).
- "Phase four" industries include higher education, pre-K to grade 12 schools, low-risk outdoor arts and entertainment, low-risk indoor arts and entertainment, media production, professional sports with no fans, and malls.

At present, each of the State's 10 regions have entered all four reopening phases.

As the state moves through the four phases and businesses start and continue to reopen, all New York State employers are required, as more fully detailed below, to adopt a written plan to protect employees and consumers, make the physical work space safer, and implement specific safety precautions. Businesses must also adhere to detailed Guidance documents promulgated by the State. The Guidance documents outline the minimum mandatory health and safety measures that New York employers must take as they reopen (as well as recommended best practices), including conducting daily health screenings of employees.

Notably, "essential" businesses that remained opened during the pandemic must also adopt a health and safety plan and adhere to the Guidance documents.

Finally, in conjunction with "New York Forward," the Governor has also released [this comprehensive reopening guide](#), which addresses business reopenings, plus a host of other COVID-19-related issues.

## 2 Where do I get the Guidance for my industry?

General industry-specific Guidance documents can be found [here](#) (phase one), [here](#) (phase two), [here](#) (phase three), and [here](#) (phase four), and New York City-specific phase three and four documents can be found [here](#) and [here](#), respectively.

## 3 If I am an essential business, am I subject to the requirements detailed in the Guidance documents?

Yes. And you should also refer to the State's "essential" business guidance that can be found [here](#).

## 4 Due to special circumstances, I cannot fully comply with the Guidance. Can I apply for a waiver?

No. Due to health and safety concerns, the State will not be issuing waivers.

## 5 What if my business cannot procure enough personal protective equipment (PPE) for all workers?

If your business cannot procure the required protective equipment, then, according to the State, it cannot operate safely. Your business can only operate if and when you are able to fully supply adequate PPE to your workers.

On this point, in addition to the necessary PPE as required for certain workplace activities, businesses must procure, fashion, or otherwise obtain acceptable face coverings and provide such coverings to their employees while at work (at no cost to the employee). Businesses should have an adequate supply of face coverings, masks, and other required PPE on hand should an employee need a replacement, or should a visitor be in need. Acceptable face coverings include, but are not limited to, cloth (e.g., homemade sewn, quick cut, bandana), surgical masks, and face shields.

In addition, businesses must train employees on how to adequately put on, take off, clean (as applicable), and discard PPE, including but not limited to appropriate face coverings. Businesses must also advise employees and visitors to wear face coverings in common areas including elevators, lobbies, and when traveling around the office. Finally, businesses must put in place measures to limit the sharing of objects, such as laptops, notebooks, touchscreens, and writing utensils, as well as the touching of shared surfaces, such as conference tables; or, require employees to perform hand hygiene before and after contact.

#### **6 Does my business need to procure PPE for on-site contractors and visitors, or only my employees?**

Yes, businesses are required to provide protective equipment for both employees and contractors. To the extent that visitors are not complying, the State has provided businesses “the discretion to ensure compliance with the directive in Executive Order 202.17 (requiring any individual over age two, and able to medically tolerate a face-covering, be required to cover their nose and mouth with a mask or cloth face-covering when in a public place), including the discretion to deny admittance to individuals who fail to comply with the directive in Executive Order 202.17 or to require or compel their removal if they fail to adhere to such directive.” The State’s Guidance requires businesses to assure that all employees, as well as customers and visitors, are in compliance with all applicable health requirements.

#### **7 Are delivery persons (e.g., food, packages, materials) considered “visitors” of the building for purposes of screening?**

Yes.

#### **8 I do not have adequate space to allow employees to social distance during lunch breaks. Am I required to provide lunch/break space, or can I close this space off entirely?**

The State is strongly encouraging employers to locate sufficient space to allow employees to socially distance during lunch and other breaks, to stagger shifts and break times, and to take other steps to limit the number of employees on break or lunch at the same time.

#### **9 Is the State encouraging businesses to reopen in phases/stages?**

Yes. The State is encouraging businesses to phase-in reopening activities so as to allow for operational issues to be resolved before production or work activities return to normal levels. Businesses should, according to the State, consider limiting the number of employees, hours, and number of customers available to be served when first reopening so as to provide operations with the ability to adjust to the changes.

#### **10 I've read that New York is requiring all businesses to develop a written health and safety plan. Do I need to create such a plan and, if so, what needs to be included in the plan?**

All New York businesses, *including “essential” businesses*, must develop a written COVID-19 health and safety plan to protect employees and consumers, make the physical work space safer, and implement processes that lower the risk of infection in the business. The plan requires employers to establish and detail its protocols and processes with respect to, among other things, physical distancing, protective equipment, hygiene and cleaning, screening, contact tracing, and disinfection of contaminated areas. The State has published a [template business safety plan](#) in this regard.

Businesses may fill out the State-provided template to satisfy the above requirement, or may develop their own written plan *(to that end, Reed Smith’s New York L&E team has developed a template plan as well, which we can tailor to your specific business and needs)*. Whatever option is chosen, the plan does not need to be submitted to a state agency for approval, but must be 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.

#### **11 Am I required to do anything else in addition to the health and safety plan?**

Yes. The State’s general phase one, two, three, and four websites, as well as the New York City-specific websites, require that businesses electronically affirm that they have read and will adhere to the Guidance documents specific to their industry ([here](#), for instance, is a link to the Guidance document and required affirmation for office-based businesses). Employers should routinely revisit these Guidance documents, as the State has revised them multiple times already since their issuance.



## 12 What are some examples of the health and safety measures being required by New York State at this time?

### *Physical Distancing*

- For office-based work, the total number of occupants is limited to no more than 50% of the maximum occupancy at any given time for a particular area as set by the certificate of occupancy.
- Businesses must ensure that a distance of at least six feet is maintained among individuals at all times, unless safety of the core activity requires a shorter distance. Any time individuals must come within six feet of another person, acceptable face coverings must be worn. Individuals must be prepared to don a face covering if another person unexpectedly comes within six feet.
- Businesses should consider closing any common indoor or outdoor seating areas (e.g., reception areas) within their office space. To the extent that such spaces remain open, businesses must modify seating areas arrangements (e.g., chairs, tables) to ensure that individuals are at least six feet apart in all directions (e.g., side-to-side and when facing one another).
- Businesses may modify or reconfigure the use and/or restrict the number of workstations, employee seating areas, and desks, so that employees are at least six feet apart in all directions (e.g., side-to-side and when facing one another) and are not sharing workstations without cleaning and disinfection between use. When distancing is not feasible between workstations, businesses must provide and require the use of face coverings or physical barriers (e.g., plastic shielding walls, in lieu of face coverings in areas where they would not affect air flow, heating, cooling or ventilation).
- Businesses should consider implementing strict clean-desk policies, so that non-essential items are stored in enclosed cabinets or drawers, rather than on desks.
- Businesses should limit the use of shared workstations (e.g., “hot-desks”), to the extent practicable. To the extent that such workstations remain in use, they must be cleaned and disinfected between users.
- Businesses should prohibit the use of small spaces (e.g., elevators, supply rooms, personal offices, vehicles) by more than one individual at a time, unless all individuals in such space at the same time are wearing acceptable face coverings. However, even when face coverings in use, occupancy must never exceed 50% of the maximum capacity of the space or vehicle, unless it is designed for use by a single occupant. Businesses should increase ventilation with outdoor air to the greatest extent possible (e.g., opening windows and doors in individual office rooms), while maintaining safety protocols. Businesses should take additional measures to prevent congregation in elevator waiting areas and limit density in elevators, by enabling the use of stairs.
- Businesses should put in place measures to reduce bi-directional foot traffic using tape or signs with arrows in narrow aisles, hallways, or spaces, and post signage and distance markers denoting spaces of six feet in all commonly used areas and any areas in which lines are commonly formed or people may congregate (e.g., copy rooms, kitchens, reception desks, health screening stations).
- Businesses must post signs throughout the office, consistent with the DOH’s COVID-19 signage. Businesses can develop their own customized signage specific to their workplace or setting, provided that such signage is consistent with the DOH’s signage. Signage should be used to remind individuals to:
  - Cover their nose and mouth with a face covering when six feet of social distance cannot be maintained.
  - Properly store and, when necessary, discard PPE.
  - Adhere to physical distancing instructions.
  - Report symptoms of or exposure to COVID-19, and how they should do so.
  - Follow hand hygiene and cleaning and disinfection guidelines.
  - Follow appropriate respiratory hygiene and cough etiquette.

### *Gatherings in Enclosed Spaces*

- Businesses should encourage the use of video or teleconferencing for their employee meetings whenever possible to reduce the density of in-person gatherings.
- Businesses should hold in-person meetings in open, well-ventilated spaces and ensure that individuals maintain six feet of social distance between one another (e.g., if there are chairs, leave space between chairs, have employees sit in alternating chairs) or wear appropriate face coverings.
- Businesses should encourage social distancing by limiting occupancy or closing non-essential amenities and communal areas that do not allow for social distancing protocols. If open, businesses must make hand sanitizer or disinfecting wipes available next to equipment near such amenities (e.g., vending machines, communal coffee stations).
- Businesses must put in place practices for adequate social distancing in small areas, such as restrooms and breakrooms, and should develop signage and systems (e.g., flagging when occupied) to restrict occupancy when social distancing cannot be maintained in such areas.
- Businesses should stagger schedules for employees to observe social distancing for any gathering (e.g., coffee breaks, meals, and shift starts/stops).
- If required, employees that don't need to be in the office may be allowed to collect documents from their place of work on a case-by-case basis, but such collection should occur minimally, not with frequency.
- Non-essential common areas (e.g., gyms, pools, game rooms) must remain closed.

### *Workplace Activity*

- Businesses must take measures to reduce interpersonal contact and congregation, through methods such as:
  - Adjusting workplace hours;
  - Reducing in-office workforce to accommodate social distancing guidelines;
  - Shifting design (e.g., A/B teams, staggered arrival/departure times to reduce congestion in lobbies and elevators); and/or
  - Avoiding multiple teams working in one area by staggering scheduled tasks and using signs to indicate occupied areas.
- Businesses should create policies which encourage employees to work from home when feasible. Businesses may choose to develop return-to-office tiers or waves for employees based on factors such as function, safe transportation, and ability to work remotely.
- Businesses may choose to implement best practices for employees to successfully work from home, such as:
  - Conducting regular surveys of employees to determine what practices are working and what can be improved;
  - Providing tips and tricks for employees to enhance remote work sustainability;
  - Allowing for employees to set morning and evening boundaries and taking regular breaks throughout the day; and/or
  - Informing employees of the resources they have readily available.
  -

## *Movement and Commerce*

- Businesses should consider limiting all non-essential travel.
- Businesses must establish designated areas for pickups and deliveries, limiting contact to the extent possible.
- Businesses should limit on-site interactions (e.g., designate an egress for employees leaving their shifts and a separate ingress for employees starting their shifts) and movements (e.g., employees should remain near their workstations as often as possible).

### **13 Do I need approval or confirmation from any State agency to reopen or continue operating?**

No.

### **14 If someone on my staff becomes sick, are we required to close the business? If so, for how long?**

Businesses must comply with requirements for cleaning and disinfection if an employee is confirmed to have COVID-19, and therefore may be required to close the business until this process is complete. Additionally, businesses should be aware that they may need to close if they are unable to maintain necessary staffing levels for operations depending on the exposures to other employees that may have occurred in the workplace.

### **15 Has New York issued specific guidance on how to return employees to the workplace following COVID-19 infection or exposure?**

Yes. According to the DOH, New York businesses must take the following recommended precautionary steps before allowing an employee infected with or exposed to COVID-19 to return to the workplace:

1. **Employees who have tested positive for COVID-19 (regardless of whether the employee is symptomatic or asymptomatic)** may return to work after at least **10 days** of isolation (1) from the onset of symptoms or (2) after the first positive test if they remain asymptomatic.
2. **Employees (1) who have had “close or proximate contact” (definition below) with a person infected with COVID-19 for a prolonged period of time and (2) who are experiencing COVID-19 related symptoms**, may return to work after at least **10 days** of isolation from the onset of symptoms.
3. **Employees (1) who have had close or proximate contact with a person with COVID-19 for a prolonged period of time and (2) who are not experiencing COVID-19-related symptoms** may return to work after completing **14 days** of self-quarantine. There are limited exceptions to this recommendation for critical or essential workers, as noted in more detail below.
4. **Employees who, absent close or proximate contact with a person with COVID-19 symptoms, (1) exhibit symptoms associated with COVID-19 upon arriving at work or (2) become sick with COVID-19 symptoms while at work** must be separated and sent home immediately and may only return to work after completing at least **10 days** of isolation from the onset of symptoms, **or** upon receipt of one negative COVID-19 test result.

The DOH defines “close contact” as being within six feet of an infected person for at least 10 minutes during the period beginning 48 hours before the individual’s onset of illness until the individual was isolated. Employees who are unsure of the extent of their contact with someone suspected or confirmed to have COVID-19 are instructed to contact their local health department for clarification.

### **16 Are there any exceptions to the guidelines identified in the prior FAQ?**

Yes. With respect to scenario 3 above, the DOH provides an exception for employees deemed essential and critical for the operation or safety of the workplace (meaning that such employees do not need to complete 14 days of self-isolation before returning to work). These employees – so long as they are exposed asymptomatic employees – may return to work as long as the following protocols are followed prior to and during their work shift:



1. **Regular monitoring:** under the supervision of the employer's occupational health program, the employee must self-monitor every 12 hours for (1) a temperature of 100° Fahrenheit or more and (2) symptoms consistent with COVID-19.
2. **Wearing a mask:** the employee must wear a mask at all times while in the workplace for 14 days after the last exposure.
3. **Social distancing:** the employee must continue social distancing practices, including maintaining a distance of at least six feet from others.
4. **Cleaning and disinfecting workspaces:** the employer must continuously and regularly clean and disinfect all areas, including offices, bathrooms, common areas, and shared electronic equipment.
5. **Maintain quarantine:** the employee must continue to self-quarantine and self-monitor for temperature and symptoms when not at the workplace, for 14 days after the last exposure.

Each of the enumerated steps above should be monitored and documented by the employer and employee on a regular basis (that is, daily and before and after each shift). And employers, in consultation with state and local health authorities, must document the determination that the employee is essential or critical

### 17 Can I refuse entry to someone not wearing a mask on site?

Yes, so long as the refusal is not on a discriminatory basis.

### 18 Governor Cuomo recently issued an executive order requiring individuals entering or returning to New York from certain states to quarantine for a period of 14 days. Does this measure impact the workplace at all?

Yes. On June 26, Governor Cuomo issued an executive order providing that employees who voluntarily travel to such states – i.e. not for work and not at an employer's request – will be ineligible for New York's COVID-19-related paid sick leave benefits. See [here](#) for further information.

### 19 Does an employer have to notify the state or local health department if an employee screens positive for COVID-19 symptoms?

No. While such employee should not be permitted access to the office and should be sent home with instructions to contact their healthcare provider for assessment and testing, employers do not need to contact the state or local health department unless such employee has actually tested positive for COVID-19.

### 20 What screening and related processes are being required by New York State at this time?

#### *Screening and Testing*

- Businesses must implement mandatory daily health screening practices of their employees and, where practicable, visitors, but such screening shall not be mandated for delivery personnel.
  - Screening practices may be performed remotely (e.g., by telephone or electronic survey), before the employee or visitor reports to the office, to the extent possible, or may be performed on site.
  - Screening should be coordinated to prevent employees or visitors from intermingling in close or proximate contact with each other prior to completion of the screening.
  - At a minimum, screening must be required for all employees or visitors and completed using a questionnaire that determines whether the employee or visitor has:
    - Knowingly been in close or proximate contact in the past 14 days with anyone who has tested positive for COVID-19 or who has or had symptoms of COVID-19;
    - Tested positive for COVID-19 in the past 14 days; and/or
    - Has experienced any symptoms of COVID-19 in the past 14 days.

- Businesses should coordinate with building managers to facilitate screening. Businesses are responsible for screening their own employees and visitors, unless the business and building management have agreed to an alternate arrangement to ensure screening is in effect. Screening best practices include:
  - If space and building configuration allows, screen individuals at or near the building entrance to minimize the impact in case of an individual suspected or confirmed to have COVID-19;
  - Allow for adequate social distancing while individuals queue for screening and/or building entry;
  - Coordinate with building managers to identify individuals who have completed a remote screening; and/or
  - Use contactless thermal cameras in building entrances, in coordination with building management, to identify potentially symptomatic visitors and direct them to a secondary screening area to complete a follow-on screening.
- Refer to CDC guidance for the most up to date information on symptoms associated with COVID-19.
- Businesses must require employees to immediately disclose if and when their responses to any of the aforementioned questions changes, such as if they begin to experience symptoms, including during or outside of work hours.
- In addition to the screening questionnaire, temperature checks may also be conducted per U.S. Equal Employment Opportunity Commission or DOH guidelines. Businesses are prohibited from keeping records of employee health data (e.g., the specific temperature data of an individual), but are permitted to maintain records that confirm individuals were screened and the result of such screening (e.g., pass/fail, cleared/not cleared).
- Businesses must ensure that any personnel performing screening activities, including temperature checks, are appropriately protected from exposure to potentially infectious employees or visitors entering the office. Personnel performing screening activities should be trained by employer-identified individuals who are familiar with CDC, DOH, and OSHA protocols.
- Screeners should be provided and use PPE, including at a minimum, a face mask, and may include gloves, a gown, and/or a face shield.
- An individual who screens positive for COVID-19 symptoms must not be allowed to enter the office and must be sent home with instructions to contact their healthcare provider for assessment and testing.
  - Businesses should remotely provide such individuals with information on healthcare and testing resources.
  - Businesses must immediately notify the state and local health department about the case if test results are positive for COVID-19.
- Businesses must designate a central point of contact, which may vary by activity, location, shift, or day, responsible for receiving and attesting to having reviewed all employees' questionnaires, with such contact also identified as the party for employees and visitors to inform if they later are experiencing COVID-19-related symptoms, as noted on the questionnaire.
  - If the business and building management have agreed to an alternate screening arrangement whereby building management administers screening on behalf of tenants, then building management shall be responsible for maintaining a record of the screening process. Maintaining records of employee health data (e.g., the specific temperature data of an individual) is prohibited; the only records to be maintained on a daily basis regarding the screening process are those individuals who were screened and confirmation that no employee or visitor who failed the screening process was granted access.
- Businesses must designate a site safety monitor whose responsibilities include continuous compliance with all aspects of the site safety plan.

- To the extent possible, businesses should maintain a log of every person, including employees and visitors, who may have close or proximate contact with other individuals at the worksite or area; excluding deliveries that are performed with appropriate PPE or through contactless means. The log should contain contact information, such that all contacts may be identified, traced, and notified in the event an employee is diagnosed with COVID-19. Businesses must cooperate with state and local health department contact tracing efforts.

### *Tracing and Tracking*

- Businesses must notify the state and local health department immediately upon being informed of any positive COVID-19 test result by an employee in their office.
- In the case of an employee or visitor testing positive, the business must cooperate with the state and local health department as required to trace all contacts in the workplace, and the state and local health department where the building is located must be notified of all individuals who entered the site dating back 48 hours before the employee or visitor first experienced COVID-19 symptoms or tested positive, whichever is earlier. Confidentiality must be maintained as required by federal and state law and regulations.
  - As a best practice, businesses may offer optional tracing and tracking technology (e.g., Bluetooth enabled mobile applications) to streamline contact tracing and communication process among their workforce and others.
- Businesses must ensure that in the case of an employee showing symptoms while in the workplace, the building managers are immediately notified with information on where the individual has been throughout the building and notify building management if the symptomatic employee tests positive.
- State and local health departments will implement monitoring and movement restrictions of infected or exposed persons including home isolation or quarantine.
- Individuals who are alerted that they have come into close or proximate contact with a person with COVID-19, and have been alerted via tracing, tracking, or other mechanism, are required to self-report to their employer at the time of alert and shall follow the protocol referenced above.

### **21 Is New York State enforcing the new reopening requirements?**

Yes. See [here](#) for further information.

**Reed Smith is a dynamic international law firm, dedicated to helping clients move their businesses forward.**

Our long-standing relationships, international outlook, and collaborative structure make us the go-to partner for speedy resolution of complex disputes, transactions, and regulatory matters.



This document is not intended to provide legal advice to be used in a specific fact situation; the contents are for informational purposes only.

"Reed Smith" refers to Reed Smith LLP and related entities. © Reed Smith LLP 2020

ABU DHABI  
ATHENS  
AUSTIN  
BEIJING  
BRUSSELS  
CENTURY CITY  
CHICAGO  
DALLAS  
DUBAI  
FRANKFURT  
HONG KONG  
HOUSTON  
KAZAKHSTAN  
LONDON  
LOS ANGELES  
MIAMI  
MUNICH  
NEW YORK  
PARIS  
PHILADELPHIA  
PITTSBURGH  
PRINCETON  
RICHMOND  
SAN FRANCISCO  
SHANGHAI  
SILICON VALLEY  
SINGAPORE  
TYSONS  
WASHINGTON, D.C.  
WILMINGTON

**reedsmith.com**