

# New York State Issues Guidance for Re-Opening of Businesses

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New York State has issued detailed guidance on Governor Cuomo’s “New York Forward” Plan, under which the State will re-open in four phases on a regional basis. The guidance includes additional information regarding: (1) when regions will be permitted to begin a phased re-opening; (2) which businesses are included in each of the four phases; (3) what is required of businesses in order to re-open; and (4) how compliance will be enforced. Below is a summary of what employers need to know about the guidance.

## When Are Regions Able to Re-Open?

After the PAUSE Order expires on May 15, regions may begin a phased re-opening provided they satisfy seven criteria, which are explained in more detail in our previous post. According to the Plan, these criteria ensure that re-opening will only proceed in a region 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.
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- The State has developed a Regional Monitoring Dashboard to track the progress of each region. According to the Dashboard, five regions – Central New York, Finger Lakes, Mohawk Valley, North Country, and the Southern Tier – have satisfied the seven criteria discussed above, and thus will be able to enter the first phase of re-opening upon the expiration of the PAUSE Order. By comparison, as of May 14 New York City and Long Island have only

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satisfied four of the seven criteria.

## Which Businesses Are Included in Each Phase?

Within each region, non-essential businesses will be permitted to re-open in four phases with a two-week period in between each phase to monitor hospitalization and infection rates. If these indicators become problematic, a regional oversight institution will have the authority to slow down or stop the re-opening process. Businesses that typically draw a large number of visitors from outside the region are required to remain closed throughout the re-opening.

Notably, the re-opening guidance only applies to non-essential businesses. Businesses already deemed essential by the Empire State Development (ESD) Corporation's guidance – and those that support essential businesses – have remained open during the shutdown and will continue to remain open during the phased re-opening. However, all businesses (including essential businesses) will be required to implement health and safety plans, as discussed in more detail below.

### Phase One: Construction, Agriculture, Retail, Manufacturing, and Wholesale Trade

During phase one, businesses considered to have a greater economic impact and a lower risk of infection will be permitted to re-open. According to the reopening guidance, this includes the following businesses:

- **Construction** – including 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.
- **Agriculture, Forestry, Fishing & Hunting** – including greenhouse, nursery, and floriculture production; other animal production; other crop production; support activities for animal production; support activities for crop production; and support activities for forestry.
- **Retail for Delivery and Curbside Pick-Up and Only for the Following Businesses** – clothing stores; direct selling establishments; electronics and appliance stores; electronic shopping and mail-order houses; furniture and home furnishing stores; florists; general merchandise stores; health and personal care stores; jewelry, luggage, and leather goods stores; lawn and garden equipment and supplies stores; office supplies, stationery, and gift stores; used merchandise stores; shoe stores; sporting goods, hobby, musical instrument and book stores; and other miscellaneous retailers.
- **Manufacturing** – including the manufacturing of apparel, computer products, electronic products, electric lighting equipment, fabricated metal products, furniture and related products, leather and allied products, machinery, nonmetallic mineral products, paper, petroleum and coal products, plastics and rubber products, and wood products; printing and related support activities; textile mills; textile product mills; and other miscellaneous manufacturing.
- **Wholesale Trade** – including wholesale electronic markets and agents and brokers; and

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merchant wholesalers of: apparel, piece goods, and notions; chemical and allied products; furniture and home furnishing; household appliances and electrical and electronic goods; machinery, equipment, and supplies; metals and minerals (except petroleum); paper and paper products; professional and commercial equipment and supplies; miscellaneous durable goods; and miscellaneous nondurable goods.

## **Phases Two, Three and Four: Businesses with Greater Risk and/or Less Economic Impact**

If infection and hospitalization rates remain stable during phase one, regions will proceed to subsequent phases in which businesses considered to have less economic impact and a higher risk of infection will re-open. In phase two, in-person professional services, retail, administrative support, and real estate rental and leasing functions will resume. The third phase includes restaurants and food services. In the fourth phase, in-person arts, entertainment, recreation, and education functions will resume. Additional guidance as to which businesses fall into each of these categories will likely be issued as re-opening proceeds.

## **What is Required of Businesses in Order to Re-Open?**

Every business must develop a health and safety plan to protect employees and consumers, make the physical workspace safer, and implement processes that lower risk of infection. These requirements apply to all businesses, including essential businesses that remained open during the shutdown. In developing their health and safety plans, employers must consider three main factors:

- **Protections for Employees and Customers** –including adjustments to workplace hours and shift design as necessary to reduce workplace density, enacting social distancing protocols, and restricting non-essential travel for employees.
- **Changes to the Physical Workspace** – including requiring all employees and customers to wear masks or face coverings if in frequent close contact with others and implementing strict cleaning and sanitation protocols.
- **Processes That Meet Our Changing Public Health Obligations** – including screening individuals when they enter the workplace or reporting confirmed positive cases to customers.

For each industry in phase one, the State has released on its website: (1) a summary of which safety practices are mandatory and which practices are recommended, (2) a detailed interim guidance document, and (3) a business safety plan template. According to these materials, phase one employers must, in addition to a number of other precautions:

Post social distancing markers that denote six feet of spacing in commonly used areas;

- Provide acceptable face coverings at no cost to employees and maintain an adequate supply of replacements;
- Conduct regular cleaning and disinfecting at least after every shift, daily, or more frequently as needed; and more frequent cleaning and disinfecting of shared objects, surfaces, and high-

transit areas;

- Post signage throughout the worksite to remind personnel to adhere to proper hygiene and cleaning practices, social distancing rules, and appropriate use of personal protective equipment (PPE);
- Implement mandatory health screening assessments before employees begin each workday and for essential visitors, which must be reviewed and documented every day, asking about: (1) COVID-19 symptoms; (2) positive COVID-tests; and (3) close contact with a confirmed or suspected COVID-19 case within the past 14 days;
- If an employee tests positive for COVID-19, immediately notify state and local health departments and cooperate with contact tracing efforts, while maintaining confidentiality required by applicable state and federal law and regulations; and
- Implement a plan for cleaning, disinfecting, and contact tracing in the event of a positive case.
- After developing a health and safety plan, employers must post the plan in a conspicuous place on-site and affirm via an online form that they have read and understand their obligation to operate in accordance with the State's guidance.

## How Will Compliance Be Enforced?

Employers should not delay in making preparations regarding their safety plans, particularly with respect to procuring PPE and other materials that are necessary to operate safely. According to an FAQ issued by the ESD Corporation, businesses that cannot fully comply with the guidance will not be issued waivers because of the ongoing health and safety concern. Moreover, the guidance explicitly states that "if your business cannot procure the required protective equipment, then your business cannot operate safely." Businesses that are having trouble complying because they cannot procure an adequate supply of PPE are encouraged to contact the county Office of Emergency Management.

The Governor's website is currently inviting individuals to submit complaints against businesses that do not comply with the guidelines through an online form. These complaints will be reviewed by a team of investigators from multiple state agencies and then referred to local authorities, which will then be responsible for responding to the alleged violations. For continued or egregious non-compliance, local law enforcement will be empowered to enforce the guidelines. Compliance with the re-opening guidelines will also be monitored by an oversight institution to be appointed within each region.

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