

New York and New Jersey Issue Reopening Plans for Essential and Nonessential Businesses

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I. New York

New York State issued [New York Forward](#), a detailed reopening plan for the state's nonessential businesses. The plan is set to gradually replace New York's March 20th 'stay at home' [Executive Order](#) that mandated the closure of all in-office personnel functions at nonessential businesses in response to the COVID-19 outbreak.

New York Forward is a four-part phased plan to reopen the state's businesses by region based on achieving specific [health-based metrics](#). Significantly, the plan also sets forth mandatory guidelines for *all* New York employers (including essential businesses that have been operating without interruption), and requires that employers create a Mandatory COVID-19 Safety Plan for employees, business visitors, and the public.

Phased Reopening by Region

New York State has been broken down into 10 regions: Capital Region, Central New York, Finger Lakes, Long Island, Mid-Hudson, Mohawk Valley, New York City, North Country, Southern Tier, and Western New York. In accordance with New York Forward's approach to opening industries and businesses by [region](#), New York City has entered Phase 1, with all other regions in the state (including the Capital Region, Mid-Hudson, and Long Island) already in Phase 2. The New York Forward plan requires that 14 days pass between the beginning of a region's Phase 1 period and its progression to the next phase.

The four phases are divided by industry and outlined below:

Phase One

- Construction
- Agriculture, Forestry, Fishing and Hunting
- Retail (limited to curbside or in-store pickup or drop off)
- Manufacturing
- Wholesale Trade

Phase Two

- Offices
- Real Estate
- In-Store Retail
- Vehicle Sales, Leases, and Rentals
- Retail, Rental, Repair, and Cleaning
- Commercial Building Management
- Hair Salons and Barbershops

Phase Three

- Restaurants
- Food Services

Phase Four

- Arts, Entertainment and Recreation
- Education

Pursuant to the Governor's Executive Orders, dine-in and on-premise restaurants and bars, shopping malls, gyms, indoor movie theaters, and places of public amusement will reopen later under Phases 3 and 4.

The state has provided a [NY Forward Business Reopening Lookup Tool](#) to assist employers in determining whether their business is eligible to reopen.

NY Forward Imposes Mandatory and Recommended Guidelines for All Businesses

The state's New York Forward plan includes published summary guidelines that list mandatory and recommended guidance for each business category. While the state's guidance sets forth minimum requirements, employers are free to implement greater safeguards. Additionally, employers should note that the state's guidance is not identical for each industry, and businesses will need to ensure compliance in line with their sector. While the state has not yet released guidance for businesses in Phases 3 and 4, [Phase 1](#) and [Phase 2](#) guidance is currently available for employers' review.

Before reopening, all businesses must meet the state's industry-specific requirements. There are no exceptions and/or waivers to the compliance requirements listed below.

Online Affirmation Form

All employers must review the state's industry-specific reopening guidelines to help protect against the spread of COVID-19 and complete an [online form](#) that affirms that they have read and understand their obligation to operate in accordance with this guidance.

Create and Post Mandatory Safety Plans

Each business or entity must develop a written Mandatory Safety Plan outlining how its workplace will prevent the spread of COVID-19. A business may utilize the [New York Forward Template](#) or develop its own compliant safety plan.

Additionally, employers' Mandatory Safety Plans must be conspicuously posted in the workplace and retained on the businesses' premises to be made available to the New York State Department of Health (DOH) or local health or safety authorities in the event of an inspection.

While the state's guidelines are similar across all industries, employers should review their industry's specific guidelines to ensure their Mandatory Safety Plan is in full compliance. For instance, the state's [Interim Guidance for Office-Based Work](#)¹ mandates the following:

Physical Distancing:

- Limit the total number of occupants at any given time to no more than 50% of the maximum occupancy for a particular area as set by the certificate of occupancy.
- A distance of at least six feet must be maintained between and among all individuals at all times, unless safety concerns of the business' core activity requires a shorter distance.
- Any time workers or visitors must come within six feet of another person, acceptable face coverings must be worn (ensuring that mouth and nose are covered).
- Prohibit the use/occupancy of tightly confined spaces (e.g., elevators, vehicles) by more than one individual at a time, unless the individuals are wearing face coverings. If occupied by more than one person, keep occupancy under 50% of maximum capacity.
- Post social distancing markers using tape or signs that denote six feet of spacing in commonly used and other applicable areas.
- Limit in-person gatherings as much as possible and use tele- or video-conferencing whenever possible. Essential in-person gatherings should be held in open, well ventilated spaces with appropriate social distancing among participants.

¹ Please note that the state's Interim Office-Based Work guidelines apply to businesses with an office setting despite having a business function under different guidelines (e.g., a front office for a manufacturing company).

- Reduce interpersonal contact and congregation through various methods (e.g., adjusting workplace hours, limiting in-person presence to necessary staff, shifting design (physical barriers between work stations), reducing on-site workforce, and staggering arrival/departure times to reduce congestion in lobbies/elevators).
- Non-essential common areas (e.g., gyms, pools, game rooms) must remain closed.

Protective Equipment:

- 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.
- Train workers on how to don, doff, clean (as applicable) and discard PPE.
- Advise workers and visitors to wear face coverings in common areas including elevators, lobbies, and when traveling around office.
- Limit the sharing of objects such as tools, laptops, notebooks, telephones, touchscreens, and writing utensils, as well as the touching of shared surfaces; or require workers to wear gloves when in contact with shared objects or frequently touched surfaces; or require workers to perform hand hygiene before and after contact.

Hygiene and Cleaning Protocols:

- Adhere to the hygiene and sanitation requirements from the Centers for Disease Control and Prevention (CDC) and Department of Health (DOH) and maintain cleaning logs on site that document date, time, and scope of cleaning.
- Provide and maintain hand hygiene stations in office, including handwashing with soap, running warm water, disposable paper towels, and lined garbage can, as well as an alcohol-based hand sanitizer containing 60% or more alcohol for areas where handwashing is not feasible.
- Provide and encourage participants to use cleaning/disinfection supplies before and after use of shared and frequently touched surfaces, followed by hand hygiene.
- Regularly clean and disinfect the site and more frequently clean and disinfect high-risk areas used by many individuals and for frequently touched surfaces.
- Rigorous cleaning and disinfection must occur at least after each shift, daily, or more frequently as needed.
- Prohibit shared food and beverages (e.g., buffet meals).

Communication:

- If a worker or visitor was in close contact with others at the office location and tests positive for COVID-19, the employer must immediately notify state and local health departments and cooperate with contact tracing efforts, including notification of potential contacts, such as workers, visitors, and/or customers (if known) who had close contact with the individual, while maintaining confidentiality required by state and federal law and regulations.
- Maintain a continuous log of every person, including workers and visitors, who may have close contact with other individuals at the work site or area.
- Post signage inside and outside of the office location to remind personnel and customers to adhere to proper hygiene, social distancing rules, appropriate use of PPE, and cleaning and disinfecting protocols.
- Establish a communication plan for employees and visitors with a consistent means to provide updated information.
- Train all personnel on new protocols and frequently communicate safety guidelines.

Screening:

- Implement mandatory health screening assessment (e.g., questionnaire, temperature check) for employees, contractors, and other visitors. The assessment should, at a minimum, ask about: (1) COVID-19 symptoms in the past 14 days; (2) positive COVID-19 tests in the past 14 days; and (3) close contact with confirmed or suspected COVID-19 case in the past 14 days. Responses must be reviewed and documented daily.
- Employees who are sick should stay home, or return home if they become ill at work.
- Coordinate with building managers to facilitate screening. Tenants are responsible for screening their own employees and visitors, unless Responsible Parties² and building management have agreed to an alternate arrangement to ensure screening is in effect.
- On-site screeners should be trained by employer-identified individuals familiar with CDC, DOH, and OSHA protocols and wear appropriate PPE, including, at a minimum, a face covering.

² According to The Interim Guidance for Office-Based Work During the COVID-19 Public Health Emergency, Responsible Parties are, “the owner/operator of the business with office-based functions, or another party as may be designated by the owner/operator shall be responsible for meeting these standards.”

- Have a plan for cleaning, disinfection, and contact tracing in the event of a positive case.

In addition to the above mandates, the state's guidelines offer a number of recommended best practices including that employers limit on-site interactions and non-essential travel, stagger work schedules and conduct daily temperature checks per the U.S. Equal Employment Opportunity Commission or DOH guidelines.

II. New Jersey

Similar to New York, Governor Phil Murphy has unveiled a [three-stage approach](#) to reopen the State of New Jersey. New Jersey's process for lifting restrictions is guided by six principles and key metrics. New Jersey will enter new stages based on data that demonstrates improvements in public health and the capacity to protect the public. New Jersey is currently in Stage 1 and is on track to enter Stage 2 on Monday, June 15.

The three-stage approach is divided by activity and is outlined below:

Stage 1

In Stage 1, restrictions are relaxed on low-risk activities. Low-risk activities include: state parks and forests, golf courses, drive-in businesses and car gatherings, non-essential construction, non-essential retail (curbside pickup), public and private beaches, boardwalks, lakes and lakeshores, and outdoor recreational businesses (e.g., horseback riding and tennis). Professional sports teams can practice and engage in games, and elective surgeries and invasive procedures may resume.

Additionally, outdoor gatherings are limited to 25 individuals.

Stage 2

In Stage 2, moderate-risk activities can restart on a staggered basis and include:

- June 15: Child care centers, outdoor dining, nonessential retail stores reopen for indoor shopping, and motor vehicle commission agencies reopen for pick-up and drop-off services. Please note that both [child care centers](#) and [outdoor dining](#) have mandated requirements prior to reopening.
- June 22: Organized sports activities, hair salons and barbershops, and swimming pools.
- June 29: Motor vehicle commission agencies begin to offer behind-the-wheel road tests and resume issuing new licenses and permits.
- July 6: Youth day camps and summer programs can operate, and modified outdoor graduation ceremonies begin.

In Stage 2, additional phased-in businesses and activities, with adherence to safeguarding and modification guidelines, will include: in-person clinical research/labs, limited fitness/gyms, limited in-person government services, and museums/libraries.

Stage 3

In Stage 3, higher-contact activities can restart. Phased-in businesses and activities, with adherence to safeguarding and modification guidelines, may include:

- Expanded dining
- Critical in-office work
- Limited entertainment
- Expanded personal care
- Bars with limited capacity

In addition to its reopening plans, New Jersey issued precautions that apply to businesses at all stages. These precautions include that:

- Work that can be done from home should continue to be done from home.
- Clinically high-risk individuals who can stay at home should continue to do so.
- All residents and businesses should follow state and federal safeguarding guidelines: wash hands; wear masks in public; respect social distancing; minimize gatherings; disinfect workplace and businesses; and no mass gatherings.

Employers will need to quickly review and work to comply with these new mandates. Employers should anticipate the state's release of additional guidance in the coming weeks as these states continue to progress through their reopening plans. Employers should regularly consult with counsel for the latest developments, as new guidelines are issued frequently.

If you have questions about these mandates, please contact **Blythe E. Lovinger** at +1 (212) 407-7770, **Jonathan A. Wexler** at +1 (212) 407-7732, **Monique E. Chase** at +1 (212) 407-7774 or any other Vedder Price attorney with whom you have worked.

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