

This information, as described by the Governor of the State of New York, applies to all businesses engaged in real estate and commercial building activities. Importantly, each Board of Directors should consult carefully with its building manager and building attorney to review every detail of this guidance in order to ensure the health and safety of all residents, employees and visitors to each building.

We are grateful to attorney Robert Sparer, Esq. of the law firm *Clifton Barr Demaria, LLP* for providing the following guidance on re-opening.

On June 8, 2020, New York City entered into Phase One of New York State's four-phase reopening plan, known as "NY Forward", which has published industry-specific guidance for businesses explaining the mandatory requirements related to COVID-19 that businesses must implement as well as its recommendations for safe operations. The requirements also apply to essential businesses that have continued operations under earlier Executive Orders.

Generally, any business which is permitted to reopen or operate under the Phase Two guidelines, must complete the following steps:

1. Read its industry's particularized reopening guidelines;
2. Adopt and implement the mandatory requirements contained in the guidelines;
3. Have its owner or agent complete NY State's online affirmation that affirms that the business will reopen and operate in accordance with State guidelines;
4. Create and post a written business reopening safety plan that must be conspicuously posted in the workplace; and
5. Ensure that mandatory health and safety action are in place and that ongoing monitoring for COVID-19 is in place.

PHASE TWO GUIDELINES

On June 22, 2020 New York City entered Phase Two of NY Forward. The Phase Two guidelines provide requirements and recommendations in a variety of areas, which include: physical distancing, personal protective equipment, hygiene and cleaning, employee communication, screening and testing, tracing and tracking, and safety plans. The NY Forward requirements do not replace or invalidate the requirements of any existing applicable local, state, and federal laws, regulations, or standards. . . .

New York recommends that Employers phase-in their openings, rather than immediately reopen. This provides employers with an opportunity to resolve operational issues as they develop. It should be underscored that unionized employees may have additional rights under a collective bargaining agreement, and a union is likely within its rights to review any safety plan applicable to union employees.

I. PHYSICAL DISTANCING OF INDIVIDUALS IN THE WORKPLACE

A. Limitation of Number of Individuals Present in the Workspace

The guidance requires businesses to take steps to keep workers and visitors physically distant. Employers must limit the number of individuals present in the workplace by implementing the following procedures:

- For any indoor work, limit the number of individuals present in the workspace to 50% of the maximum occupancy for a particular area as set by the certificate of occupancy.
- Ensure a distance of six feet is maintained between all individuals at all times, unless the core activity requires a shorter distance (cleaning, unit inspections, HVAC repairs).
- During activities that may require individuals to be within six feet of another person, or at any time when individuals come within six feet of one another, acceptable face coverings must be worn.
- Ensure that all individuals are prepared to use a face covering if another person unexpectedly comes within six feet of them.

B. Designation of Different Entrances/Exits

The guidance suggests, but does not require, that Employers designate separate entrances and exits for certain individuals. This will limit the amount of on-site interactions. For example, Employers should:

- Designate separate entrances and exits for residents/visitors and employees.
- Designate separate entrances and exits for employees leaving their shift and for employees starting their shifts. Employers of residential buildings must designate separate entrances and exits for residents/visitors and employees.

C. Close Common Indoor/Outdoor Seating Areas and Other Amenities Spaces

Employers must reduce interpersonal contact and congregation by implementing the following:

- Close all non-essential common areas, such as gyms, pools, game rooms.
- If social distancing cannot be maintained in confined areas, such as restrooms, the employer must restrict occupancy.

The guidance recommends that, if feasible, Employers close any common indoor or outdoor seating areas and small indoor areas such as breakrooms, lunchrooms, waiting rooms, clock in/out stations. However, if closure of such areas is not feasible, employers must modify areas to ensure that individuals are at least six feet apart in all directions.

D. Restriction and Modification of Workspaces

Employers must assess their employees' current workspaces and implement the following procedures:

- Design work areas to ensure all workspaces and individuals occupying the workspace are at least six feet apart in all directions.
- If such distancing is not possible, ensure that all shared workspaces are disinfected between different employee's use of the space, and provide the employees with appropriate supplies to allow such cleaning.
- Limit the sharing of objects, such as equipment, machinery, materials, and vehicles, as well as the touching of shared surfaces, such as handrails or touchscreens.

- Require employees and visitors to wear gloves when in contact with shared objects or frequently shared surfaces.
- Require employees and visitors to perform hand hygiene before and after contact with shared objects.

Employers should restrict the number of workstations in the workplace, such as reception desks and concierge desks. Employers may also stagger worker schedules and observe social distancing for any gathering.

E. Restricted Use of Small Spaces Commonly Used in the Workplace

Unless all employees are wearing acceptable face coverings, Employers should restrict the use of small spaces (elevators, storage units, supply closets) to one individual at a time. Additionally, Employers should implement the following to further protect employees in small spaces:

- Increase ventilation with outdoor air, by opening windows and doors.
- Encourage the use of stairs to prevent congregation in the elevator waiting areas.
- Implement systems to restrict occupancy when social distancing cannot be maintained.

F. Reduce Foot Traffic

Employers should implement measures to reduce bi-directional foot traffic by 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 in any areas in which lines are commonly formed or people may congregate (i.e., reception desks, elevator entrances, escalators, lobbies, kitchens).

G. Posts Signs Throughout Workplace

Employers must post signs throughout the workplace that are consistent with the Department of Health COVID-19 requirements and remind individuals of the following:

- Cover their nose and mouth with a mask or face covering when six feet of social distance cannot be maintained;
- Properly store and, when necessary, discard PPE;
- Adhere to physical distancing instructions;
- Follow hand hygiene and cleaning/disinfection guidelines;
- Report symptoms of or exposure to COVID-19.

H. Employee Meetings and Work Schedules

Employers must take measures to reduce interpersonal contact and congregation. For examples, Employers must perform the following:

- To the greatest extent possible, limit in-person gatherings and reduce interpersonal contact (employee meetings and conferences) and use alternative methods such as video or teleconferencing.
- If video or teleconferencing is not possible, hold all employee gatherings in open, well ventilated spaces and ensure that individuals maintain six feet of social distance between each other.

To ensure social distancing, Employers may also stagger employee's schedules with regard to arrival/departure times, meal breaks, and coffee breaks. The limitation of all non-essential work travel for employees should also be considered.

I. Visits from Subcontractors or Vendors

If subcontractors or vendors visit the workplace, the Employer must implement the following:

- Designate areas for pick up and deliveries, limiting contact to the greatest extent possible.
- Disinfect all areas visited by the subcontractor or vendor.
- Limit the sharing of tools between employees and subcontractors/vendors.

J. Communication with Employees, Residents, and Tenants

Before reopening, Employers must affirm that they reviewed and understand the state issued industry guidelines and confirm they will implement them. The limitation is available online on the NY Forward website. It is important for all Employers to communicate clearly and effectively with all employees, residents, and tenants throughout this time. Employers should perform the following:

- Develop a communication plan for employees, visitors, tenants with applicable instructions, training, signage and consistent means to provide all individuals with information.
- Coordinate with tenants to receive a list of essential visitors expected to enter the building.

K. Shared Beverages and Food in the Workplace

Employers must prohibit shared food and beverages in the workplace, such as coffee pots and buffet meals. Employers should encourage employees to bring food from home.

II. PERSONAL PROTECTIVE EQUIPMENT, HYGIENE, AND CLEANING IN THE WORKPLACE

B. Personal Protective Equipment

Personal Protective Equipment (“PPE”) is vital in protecting against the spread of COVID-19. To ensure the health and safety of employees and contractors, Employers must implement the following procedures:

- Train employees on how to adequately put on, take off, clean and discard PPE.
- If Employers supply contractors with PPE, the same training requirements exist.
- Provide all employees and subcontractors with a face covering while at work at no-cost to the individual. Acceptable face coverings include but are not limited to, cloth-based face coverings (homemade sewn, quick cut, bandana), surgical masks, N95 respirators, or disposable masks that cover both the mouth and nose.
- Ensure face coverings are cleaned and/or replaced after use and that they are not shared.
- Post signage reminding all individuals of the face covering requirement.
- Unless the Employer requires employees to wear specific face coverings due to the nature of work, employees must be allowed to use their own acceptable face coverings.

Additionally, Employers should remind all individuals, including employees, visitors, and tenants to wear face coverings in shared spaces (lobby corridors, elevators, common outdoor spaces). The guidance recommends that Employers install physical barriers (e.g. plexiglass or

similar materials) at points like reception and security desks in accordance with the OSHA guidelines.

C. Employee Hygiene

Employee hygiene, particularly the cleanliness of an individual's hands is important in protecting against the spread of COVID-19. To ensure individuals are practicing good hygiene, the Employer must:

- Adhere to hygiene and cleaning and disinfection requirements of the Centers for Disease Control and Prevention ("CDC") and New York State Department of Health ("DOH").
- Provide and maintain hand hygiene stations throughout the workplace. This may include either a handwashing station, (which must include soap, running warm water, and disposable paper towels) or an alcohol-based hand sanitizer containing at least 60% alcohol for areas where handwashing facilities are not practical.
- Make hand sanitizer available throughout common areas in the workplace.
- Place receptacles around the workplace for disposal of soiled items, including PPE.

Additionally, Employers should:

- Post signage near hygiene stations explaining that visibly soiled hands must be washed with soap and water, rather than hand sanitizer.
- Make touch-free hand sanitizer available throughout common areas in the building, such as entrances, exits, elevators, and security/reception desks.

D. Cleaning and Disinfecting the Workplace

Due to the large number of employees moving in and out of workplaces on a daily basis, a workplace can be a high-risk area and lead to the spread of COVID-19. As a result, Employers must adhere to the following procedures to ensure the workplace is disinfected and free from coronavirus:

- Adhere to the cleaning/disinfection guidelines set by the CDC and DOH, including maintaining of logs that include the date, time, and scope of cleaning and disinfection.
- Conduct regular cleaning and disinfection of the workplace, and frequently clean and disinfect high risk areas used by many individuals and frequently touched surfaces.
- Ensure cleanings are rigorous and occur at least after every shift or daily.
- Ensure cleanings of high-risk areas, such as bathrooms, are performed more frequently.
- Ensure that shared equipment and tools are regularly cleaned and disinfected using registered disinfectants, including at least as often as employees change workstations or move to a new set of tools. If cleaning products are not used because they would cause a safety hazard or degrade the machinery, the Employer must make hand hygiene stations available between use and/or supply disposable gloves.

Employers should limit the sharing of objects such as tools, laptops, notebooks, telephones, touchscreens, and writing utensils, and touching of shared surfaces. If it cannot do so, Employers should either require workers to wear gloves when in contact with shared objects or frequently touched surfaces or require them to perform hand hygiene before and after contact.

E. Cleaning and Disinfecting the Workplace if an Individual is Suspected or Confirmed to have COVID-19

If an employee, resident, tenant, or visitor of the workplace reports a suspected or confirmed case of COVID-19, Employers must follow the CDC guidelines on cleaning and disinfecting, which currently include the following:

- Close off all areas used by the person suspected or confirmed to have COVID-19; This includes shared building spaces used by the person suspected or confirmed to have COVID-19 such as elevators, lobbies, building entrances, etc.
- Open outside doors and windows to increase air circulation in the area;
- Wait 24 hours until you clean and disinfect. If 24 hours is not feasible, wait as long as possible;
- Clean and disinfect all areas used by the person, such as office space, break rooms, common areas, and shared equipment;
- Once the area has been appropriately cleaned and disinfected, it can be reopened for use;
- Immediately notify all impacted entities of the suspected or confirmed COVID-19 case.

If more than seven days have passed since the person who is suspected or confirmed to have COVID-19 visited or used the facility, additional cleaning and disinfection is not necessary, but routine cleaning and disinfection should continue.

Employers should be mindful that the CDC is regularly updating its guidance on COVID-19 procedures as more information on the disease becomes available.

III. SCREENING PROCESSES

A. Daily Screening of Individuals

All Employers must implement mandatory health screenings of employees and visitors that meet the following standards:

- Require all employees and visitors to complete a questionnaire, either performed remotely or before entering the job site, that asks whether the worker or visitor has:
 - (1) knowingly been in close or proximate contact in the past 14 days with anyone who has tested positive for COVID-19 or who has had symptoms of COVID-19;
 - (2) tested positive for COVID-19 in the past 14 days; or
 - (3) experienced symptoms of COVID-19 in the past 14 days.
- Prohibit entry into the workplace to any individual that answers affirmatively to any of the questions listed above.
- Review and document all responses to the questionnaires.
- If daily screenings are performed at the workplace, the Employer must ensure that employees are not intermingling or in close contact with each other while waiting to complete the screening.
- Screeners must be trained and wear appropriate PPE, including at a minimum, a face covering.

All building managers must ensure tenants are implementing the standards listed above. Employers should also identify a point-of-contact for workers and visitors to inform if they are later experiencing COVID-19 related symptoms. Businesses must document that they have

reviewed the responses to these daily health screenings and records of the daily screenings should be maintained. The city has published a sample screening tracker for employers, but any template that tracks the screening date, reviewer name/signature, the number of employees screened and confirms that employee screening responses were reviewed daily should be sufficient.

The screening of residents of a residential building is not required. However, Employers may encourage residents to share if they have tested positive for COVID-19 and/or are symptomatic.

B. Temperature Screenings

Employers may conduct temperature screenings of the employees per the Equal Employment Opportunity Commission and the Department of Health guidelines. New York guidance specifically prohibits Employers from keeping records of temperature data. Under Governor Cuomo's Executive Order No. 202.38, commercial building owners, retail store owners, in their discretion, and those authorized on their behalf to manage public places within their buildings and businesses may require individuals to undergo temperature checks before being allowed admittance. Employers may restrict employees or visitors with a temperature greater than 100.4 from entering the workplace. If Employers elect to perform temperature screenings, the screeners must be trained.

C. Managing Screening Results and Positive Tests

If an employee or visitor tests positive for COVID-19, the Employer must implement the following:

- Prohibit access to the workplace to the individual.
- Immediately notify their local health department and the New York State Department of Health.

To the extent that an employee's screening leads to a decision to send an employee home, an Employer should maintain a record of the testing results. These results should be treated as confidential in the same way as any other employee medical record.

Employers must ensure that an employee in any of the following situations only returns to work after completing a 14-day self-quarantine:

- If an employee has COVID-19 symptoms and either tests positive for COVID-19 or did not receive a test;
- If an employee is asymptomatic but tests positive for COVID-19.

If the employee is critical to the operation or safety of a site and is not symptomatic, the Employer may consult the local health department on the minimum number of days to quarantine before an individual is safely able to return to work.

Employers must ensure that an employee who has had close contact with a person with COVID-19 and is not symptomatic only returns to work after a 14-day self-quarantine. However, if the employee is critical to the operation or safety of a site, the Employer may consult the local health department on the minimum number of days to quarantine before an individual is safely able to return to work.

If the employee returns to work before the 14-day self-quarantine, the Employer must require and record compliance with the following

- The employee should take their temperature before work to confirm that they do not have a fever greater than 100.4°F
- The employee should wear a face mask at all times while in the workplace for 14 days

after last exposure to a person with COVID-19;

- The employee should continue social distancing practices, including maintaining at least, six feet of distance from others; and
- The Employer should continue to clean and disinfect all areas such as office, bathrooms, common areas, and shared electronic equipment routinely and increase frequency of cleaning of high touch surfaces.

D. Records of Daily Screenings

The Employer must review all employee and visitor responses collected by the screening process on a daily basis and maintain a record of such review. If an Employer opts to maintain the screening records for employees, access to the information collected should be strictly limited to employees who have a need to know the information for personnel management purposes.

Appropriate security the measures should be taken to avoid disclosure of that information to other employees or any third parties. To ensure the Employer's cooperation with the local health department in their tracing efforts. Employers should maintain a log of every individual who had close contact with other individuals at the workplace. If a log is maintained, the log should contain contact information, such that any contact may be identified, traced and notified in the event an employee or visitor is diagnosed with COVID-19.

E. Designation of a Central Point of Contact

Employers must designate a site safety monitor whose responsibilities includes the following:

- Ensure continuous compliance with all aspects of the site safety plan;
- Review all employees' and visitors' daily screening questionnaires;
- Review notifications from tenants, residents, and visitors of positive cases and initiate cleaning and disinfection procedures when appropriate.

F. Tracing and Tracking

If a positive COVID-19 test result is reported to an Employer the following procedures must be followed

- Immediately notify the local health department of the positive test result;
- Trace all contacts, including all visitors and employees in the workplace;
- Notify the local health department of all employees and visitors who entered the site dating back 48 hours before the employee's first experience of COVID-19 symptoms or tested positive, whichever is earlier;
- Maintain confidentiality of all information as required by federal and state law.

In the case of an employee or visitor showing symptoms, but has not yet tested positive, the Employer must notify the building managers immediately with information on where the individual has been throughout the building and follow up if the symptomatic employee tests positive.

IV. COMMUNICATION & EMPLOYER SAFETY PLANS

All Employers must conspicuously post completed safety plans on site. Employers should coordinate with tenants to receive a list of essential visitors expected to enter the building. The State has made available a business safety plan template to guide business owners and operators in developing plans to protect against the spread of COVID-19.

While establishing plans to reopen, Employers should be mindful of keeping the lines of communication open with employees about the new processes and expectations for the workplace.

Transparent communications with employees, management and supervisors, along with clearly written policies and reopening plans will facilitate the transition back to work while maintaining a safe and healthy workforce.

While this guidance is applicable to New York's Phase Two reopening, all employers should stay up to date with any changes to state and federal requirements related to workspaces and incorporate those changes into their operations. Documentation of reopening plans, state, federal and local guidance should be retained by all Employers for at a minimum, the duration of the pandemic and after.

Once again, Boards of Directors should maintain close communication with building attorneys and building managers to ensure compliance as well as maintaining the highest standards of health and safety for all residents and employees.