

Going from New York on PAUSE to New York FORWARD: Planning Ahead

On April 16, 2020, Gov. Cuomo issued [Executive Order 202.18](#) which extended “NY on PAUSE” until 11:59 p.m. on May 15. “NY on PAUSE” is the term the Governor developed regarding school and business closures. All schools will remain closed. All non-essential business employees must work remotely from the business location. Essential businesses may continue to have their workforce at the business location, but only to the extent that employees cannot perform their work remotely. All businesses and nonprofits must continue to maximize any telecommuting or work from home procedures that they can safely utilize. For more information on NY on PAUSE and Executive Order 202.8, please see [here](#). For Empire State Development Corporation guidance on essential businesses, please see [here](#).

Beyond extending NY on PAUSE, the Governor has begun to outline his thoughts about how New York will get back to business which will involve private businesses “reimagining” the workplace.

The chart below is based on a slide from one of the Governor’s press briefings. The chart places businesses into four different categories based on the risk of infection and the “essential nature” of the industry. The more essential the business is, the higher the earlier likelihood to reopen. The lower the infection risk, the higher the earlier likelihood to reopen. A business that is in the green box would appear to have the highest chance of being among the first to reopen. A business that is in one of the yellow boxes would appear likely to reopen, while a business in the red box would appear to be likely to be among the last to reopen.

	“More-Essential” Industry	“Less-Essential” Industry
Low Infection Risk	Services/product <u>more essential, low risk</u> of workplace or customer infection spread	Services/product <u>less essential, low risk</u> of workplace or customer infection spread
Higher Infection Risk	Services/product <u>more essential, higher risk</u> of workplace or customer infection spread	Services/product <u>less essential, higher risk</u> of workplace or customer infection spread

Although this chart does not reflect any official New York policy at this point, it shows us where New York may be going. Optimally, businesses and nonprofits should begin planning how they can position themselves to be in the “green” box, or at least in the “low infection risk” row.

At this point, we do not know what businesses will be deemed “more-essential” or “less-essential.” That means entities should begin to plan how they can lower the risk of infection at their place of business. **This may need to be a written plan that is submitted to the state, but we do not know at this point.** Developing such a plan preemptively could help your business get back in the workplace quickly.

In developing such a plan, these are some factors workplaces should consider, if feasible:

- **Workplace Precautions:**

- Implement social distancing measures (e.g., desks six feet apart, plant workers six feet apart, etc.).
- Require teleworking or remote working for as many employees as possible and the most vulnerable (e.g., establish a rotating schedule for employees to come in, only allow certain employees to come in). The treatment of "vulnerable" employees must be approached with caution. There is likely to be some governmental guidance in this regard.
- Consider monitoring employee health through temperature scans at the beginning of each shift. This may require revising schedules so that employees arrive at different times, rather than all at once, to avoid unnecessary congregation.

- **Customer Interaction:**

- Implement measures designed to minimize direct contact with customers (e.g., limit the number of customers who may enter your facility).
- Ensure that employees who directly interact with the public have necessary protective supplies (e.g., face coverings as required by Executive Order 202.16).
- If your business primarily interacts with vulnerable populations (e.g., the elderly), develop measures to protect those customers.

- **Proactive Infection Plan:**

- Implement protocols in the event an employee develops COVID-19 symptoms or tests positive for COVID-19.

- **Transportation:**

- If your employees take public transportation, consider supplying them with face coverings and gloves.

The attorneys at Bond, Schoeneck and King are here to help your businesses transition back to work. If you have questions about developing a plan for getting back to work, or if you need assistance developing a proactive infection plan, please contact [Hermes Fernandez](#), [Caitlin Anderson](#) or the attorney in the firm with whom you are regularly in contact.

