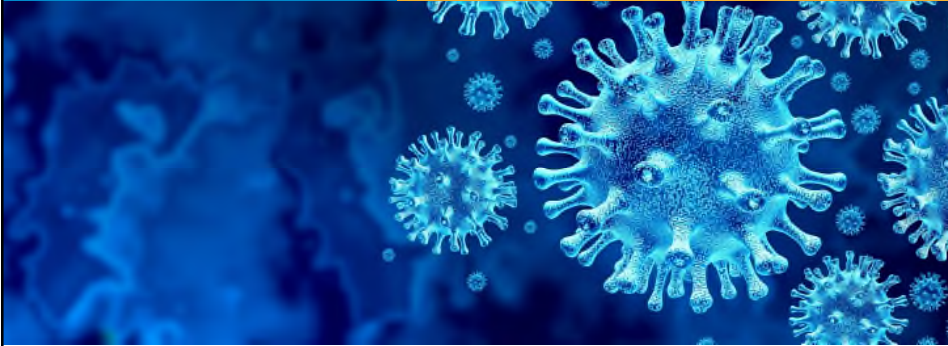



# Bond

**Coronavirus:  
Update and Discussion on Legal  
and Practical Issues**  
April 28, 2020



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& KING ATTORNEYS

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## Introduction



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## FEMA's Public Assistance Program for Entities Affected by COVID-19



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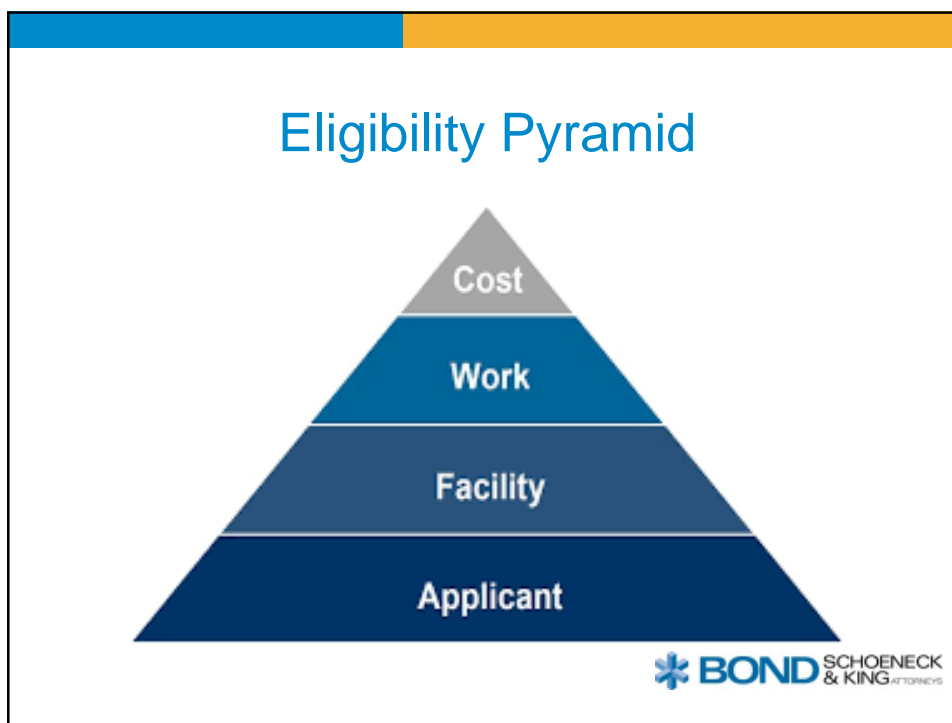
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## FEMA's Public Assistance Program

- March 20<sup>th</sup> – President Trump issued “major disaster” declaration for NY
  - Retro to January 20<sup>th</sup>
- NY entities may be eligible to recoup COVID-19-related costs via FEMA's Public Assistance Program
  - Administered by NY Department of Homeland Security and Emergency Services
- If eligible, normally reimbursed 75% (increased to 100% for COVID-19)



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## 1st Tier - Applicant

- Governmental Entities
  - Examples
    - States and state agencies
    - Counties
    - Cities
    - Towns
    - Villages
    - School Districts
    - Local Public Authorities
    - Special Districts
- Private, non-profits (PNPs) which provide:
  - Critical services or
  - Non-critical but essential social services to general public

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## 2nd Tier - Facility

- Applicants must:
  - own / operate a facility (building, works, system or equipment) affected by COVID-19;
  - legal responsibility of the applicant;
  - located in area covered by emergency;
  - in use during emergency; and
  - not under the authority of some other federal agency, such as HHS.
  
- Municipalities need not show physical facility affected for this disaster (performing services is sufficient)



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## 3<sup>rd</sup> Tier - Work

- To be eligible, work must fall within the category of “Emergency Protective Measures” and be:
  - Required as a direct result of COVID-19;
  - Legal responsibility of the applicant;
  - Located in a declared county; and
  - Completed within regulatory time limits.
    - Current deadline for completion of work is September 20, 2020, but that deadline may be extended.



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## 4th Tier - Cost

- The cost must be:
  - Reasonable and necessary to accomplish the work
  - Compliant with federal, state and local procurement requirements
  - Reduced by any applicable credits
    - *E.g.*, insurance or other funding
  - At least \$3,300



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## 4<sup>th</sup> Tier – Cost (Cont'd)

- Examples of costs which are **NOT** covered
  - Costs associated with telework, distance learning or arranging for video conferencing;
  - Lost revenue / donations / income;
  - Legal fees; and
  - Costs covered by some other source, including, but not limited to, insurance, HHS, CDC, Medicare, Medicaid, or a pre-existing private payment agreement.

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## 4th Tier – Cost (Cont'd)

- Examples of costs which might be covered:
  - Labor
  - Equipment / materials (e.g., PPE, medical supplies, etc.)
  - Cleaning services
  - Security for temporary facilities
  - Virus testing
  - Purchase and distribution of food/water
  - Administration / management costs
  - Contracts
  - Accessible public service announcements
- *Document everything!!!*



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## How to Apply

- Grants Portal
  - Submit “Request for Public Assistance” (RPA)
    - Currently no deadline for COVID-19
  - Submit “projects”
    - Upload documentation
- Appeal process available



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## CARES Act Part II and PPP Update



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Going from NY on PAUSE to  
NY FORWARD  
Thanks to Caitlin Anderson, Esq.



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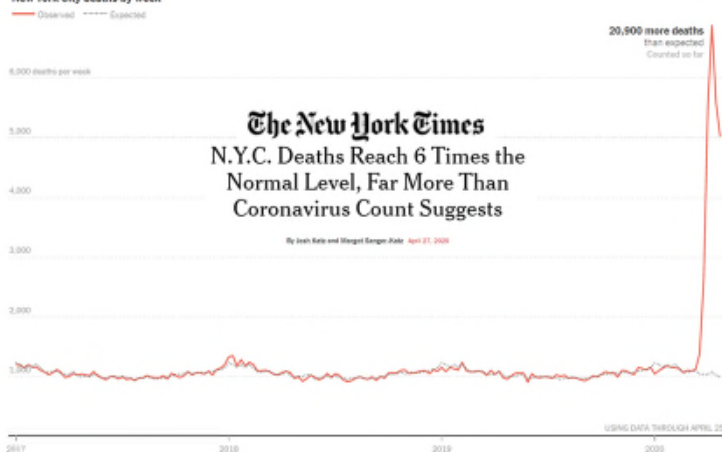


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• May 15

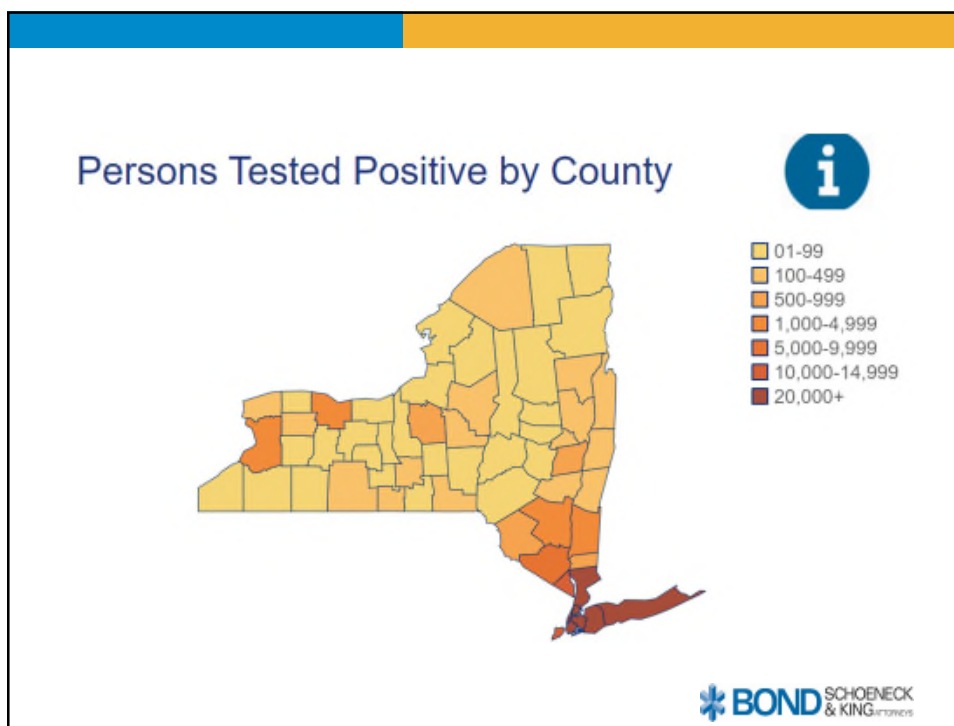
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New York City deaths by week

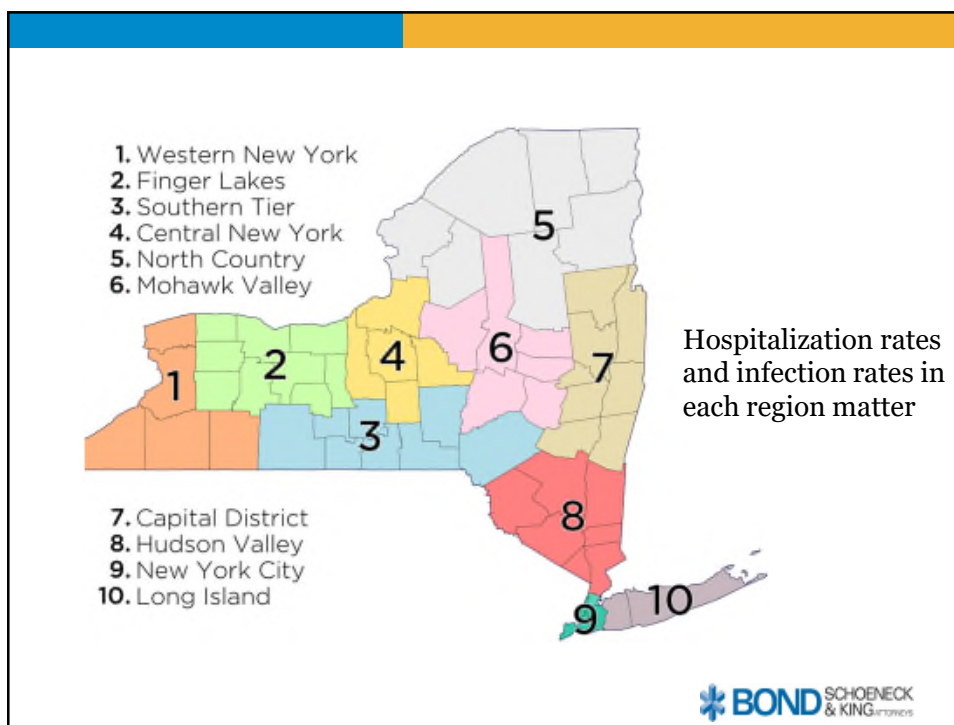


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## Steps towards Reopening

- Hospital Elective Surgeries
  - If area has capacity
  - Restrictions on elective surgery will remain in place in Bronx, Queens, Rockland, Nassau, Clinton, Yates, Westchester, Albany, Richmond, Schuyler, Kings, Suffolk, New York, Dutchess, Sullivan, Ulster, Erie, Orange and Rensselaer Counties



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## Steps towards Opening

- Executive Order 202.24, April 25, 2020
  - Pharmacists may administer tests for COVID-19
- Department of Health Interim Guidance, April 26, 2020
  - Expansive list of individuals who may be tested
    - Health Care Workers, Essential Workers with direct public interaction



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## May 15<sup>th</sup> – Un-PAUSE Regional Analysis

1. CDC guidelines – 14 day decline
2. Industries – Phase 1: Construction/Manufacturing
3. What business precautions will be in place?
4. Healthcare capacity – ICU, flu season, stockpile?
5. Testing regimen?
6. Tracing system?
7. Isolation facilities?
8. Regional coordination? (Schools, transportation, testing, tracing)
9. No “attractive nuisances”
10. Regional “Control Room”



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## NY FORWARD

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



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## Reopening Considerations – Components of a Reopening Plan



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## New York Plan to “Un-Pause”

- **Phase I:** Construction and Manufacturing with Low Risk
- **Phase II:** Matrix: More Essential, Lower Risk

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



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## Employer Plans on Workplace Infection Risk

- Employers will need to develop a comprehensive plan before they can reopen
- Measures taken to lower infection risk → open earlier
- Plan for a new normal: “There is no return to yesterday”
- Employer Specific and Fact Dependent
- Disease Transmission Analysis: People, Places, Processes



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## Components of a Reopening Plan

- Workplace Safety
- Proactive Infection Plan
- Employee Relations
- Communication and Training



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## Communication and Training

- Return-to-Work Communication
- Training (Especially for Supervisors)
- Workplace Signage
- Customers/Contractors/Vendors/Visitors
- Response to Positive COVID-19 Cases
- Employee Feedback and Periodic Review



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## Avoiding Employment Discrimination Claims Related to Coronavirus



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## Seven Reminders to Avoid Discrimination Claims Related to Coronavirus

1. Educate Your Workforce Regarding Special Issues Related To COVID-19
2. Harassment Claims Based On Race And National Origin Directed At Employees Who Tested Positive Or Presumptive Positive Warrant Special Attention



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## Seven Reminders to Avoid Discrimination Claims Related to Coronavirus

3. Don't Overlook Potential Whistleblower Claims Under OSHA Based On COVID-19 Related Safety Issues
4. Reasonable Accommodations May Be Required Under NY Human Rights Law And Potentially ADA
5. Document Objective Basis For Employees Returning To Work From Layoff



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## Seven Reminders to Avoid Discrimination Claims Related to Coronavirus

6. Train Supervisors And Managers Before Its Too Late
7. Update Discrimination/Harassment Policies As Appropriate



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- FEMA's Public Assistance Program for Entities Affected by COVID-19  
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- Reopening Considerations – Components of a Reopening Plan  
Katie Schafer, [kschafer@bsk.com](mailto:kschafer@bsk.com)
- Avoiding Employment Discrimination Claims Related to Coronavirus  
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