

New York Forward: New Guidance Issued Impacting Reopening Industries and All Essential Businesses

This morning, New York released reopening guidance for each Phase One industry (the Guidance). For each industry, the Guidance includes summary guidelines, detailed guidelines and a business safety plan template. The Guidance can be accessed [here](#). To understand what the Guidance and New York's reopening plan means in plain English, read on.

In addition to the Guidance, Empire State Development [has issued general instructions about reopening](#) (the ESD Guidance). Both documents answer some frequently asked questions about reopening, including:

Do essential businesses have to follow the new operating requirements set forth by the Guidance?

Yes. Essential businesses **must** follow the new measures set forth in the ESD Guidance. Despite issuing specific guidance only for Phase One industries, it appears that essential businesses also must follow the new guidance. Largely, it appears that the detailed guidelines issued for each industry are similar. To view an example of such detailed guidance, [click here](#).

Does the Guidance restrict who may come back to work?

Yes. For any work occurring indoors, the workforce presence must be limited to 50% of the maximum occupancy of the **space**, as set by the certificate of occupancy. Supervisors are excluded from this count. For example, if the manufacturing floor of a facility allows for a maximum of 1,000 people, only 500, plus supervisors, are allowed on the floor. This same rule applies to other spaces, such as offices, bathrooms, break rooms, kitchens, etc.

There is a key exception. If a facility requires more employees to "safely operate core functions," additional mitigation strategies (such as social distancing, increased frequency of disinfecting, PPE, etc.) must be utilized. The Guidance cites a "critical assembly line" as an example of such "core functions," but does not provide any further definition of the term. Keep in mind, this is an exception. It should not be regarded as a loophole to reopen fully.

What other in-person work restrictions does the Guidance require?

Employees must maintain social distancing, which is staying six feet apart from others. When an employee cannot maintain social distancing that employee **must wear a face covering**. Such face covering may be cloth unless OSHA standards requires a heightened level of protection.

Can my essential business continue to operate despite either (a) not being in a region set to reopen or (b) not being a Phase One industry?

Yes, but it must follow the Guidance, including preparing a workplace safety plan and having that plan available for inspection. This includes abiding by the 50% occupancy requirement.

Does my business need a reopening plan?

Yes. The state has issued template reopening plans and businesses may develop their own reopening plans. We have been working with many clients to help develop such plans.

What does that reopening plan need to include?

The reopening plan needs have four elements, following the acronym PLAN:

- **Protections** for employees and customers.
 - This may include providing appropriate PPE for employees, spacing out breaks, frequent disinfecting, etc.
- **Layout:** changes to the physical workspace.
 - This may include instituting one-way traffic flows in your facility, limiting access to public areas, placing signage and hand sanitizer throughout the workplace, etc.
- **Adaptive** health protocols.
 - This may include health screenings through temperature checks or questionnaires regarding symptoms. A contact tracing plan should be developed. **Per the Guidance, health data should not be stored.**
- **Notation:** put the plan in writing.

Does the reopening plan required by New York have to be submitted for approval?

No. The plan must be retained on the business premises to be made available to the State Department of Health or local officials on request. In addition, the ESD guidance includes a mandatory affirmation for each industry. In the affirmation, the covered business will be required to acknowledge that the business read and understands the guidance and understands its obligation to comply with the guidance.

The attorneys at Bond, Schoeneck and King can help you develop a reopening plan. Our attorneys have already worked with clients on the development and submission of plans to the state and regional Empire State Development directors. We have also formed a new practice, [COVID-19 Recovery for Business](#) to help clients recover and reopen.

If your industry needs its voice to be heard, now is the time to act. Please contact [Hermes Fernandez](#), [Adam Mastroleo](#), [Caitlin Anderson](#) or the attorney at the firm with whom you are regularly in contact.



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