



MAY 28, 2020

PRESENTED BY



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## TODAY'S PRESENTERS



**Jay A. Organek**  
Bond Attorney



**Peter H. Wiltenburg**  
Bond Attorney



REOPENING WESTERN NEW YORK  
Part I

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## NY PHASED REOPENING – OVERVIEW

### Phase One Industries (WNY Since May 19, 2020):

- Construction
- Agriculture, Forestry, Hunting and Fishing
- Retail (curbside pickup only)
- Manufacturing
- Wholesale Trade

### Phase Two Industries (WNY Earliest Date June 2, 2020):

- Professional Services
- Finance and Insurance
- Retail
- Administrative Support
- Real Estate / Rental & Leasing

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## NY PHASED REOPENING – OVERVIEW

### What must a business do before reopening?

- Be in an industry covered by one of the phases.
- Be in a geographic area where opening is permitted.
- Create a workplace safety plan.
- Submit affirmation.

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## NY PHASED REOPENING – OVERVIEW

### Drafting the Workplace Safety Plan

- State has provided basic template.
- Informed by State's detailed guidance particular to industry, comprised of three substantive sections:
  - People
  - Places
  - Processes

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## NY PHASED REOPENING – DETAILED GUIDANCE BY INDUSTRY

### I. PEOPLE

- **Physical distancing/Enclosed Spaces**
  - Masks – all times less than 6 feet apart.
  - Occupancy limitations – generally not more than 50% of max capacity.
  - Plans to address situations where social distancing not possible.
  - Remote meetings/gatherings as often as possible.
  - Measures to reduce interpersonal contact and congregation.
- **Movement and Commerce**
  - Prohibit non-essential visitors on site.
  - Establish designated areas for pickups and deliveries.

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## NY PHASED REOPENING – DETAILED GUIDANCE BY INDUSTRY

### II. PLACES

- **Protective Equipment**
  - Employer must provide face coverings.
  - Measure to limit sharing of objects, otherwise require glove use or sanitizing.
- **Hygiene and Cleaning**
  - Follow CDC and DOH guidance.
  - Must maintain logs of date, time and scope.
- **Communications plan for employees, visitors, and customers**

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## NY PHASED REOPENING – DETAILED GUIDANCE BY INDUSTRY

### III. PROCESSES

- **Screening**
  - Required for all employees and visitors, every day.
  - Questionnaire to determine:
    - Tested positive?
    - Symptomatic?
    - Close or proximate contact with positive or symptomatic person?
  - Temperature checking permitted.
  - Maintain records.
- **Tracking and Tracing**
  - Maintain logs of visitors and employees, with contact info.
  - Notify local health department and DOH, cooperate with tracing.

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## NY PHASED REOPENING – DETAILED GUIDANCE BY INDUSTRY

### IV. COMPLETING THE WORKPLACE SAFETY PLAN

- Highly specific to each industry, employer, and worksite.
- Continuously update.
- Refer to State's basic template for starting point, but incorporate detailed guidance.
- Affirmation must be completed.

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## NY PHASED REOPENING – NEXT STEPS

### Phase Two – Possible by June 2 in WNY

- No guidance yet, but likely similar to Phase One.
- Existing industries guidance contains many common elements.
- Distancing, occupancy, face coverings, hygiene, screening, tracing.
- Employers can begin preparing now.

Check back often: <https://forward.ny.gov/industries-reopening-phase>

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## LABOR CONSIDERATIONS LIKELY TO ARISE

### I. REPOPULATING THE WORKFORCE

- Understand governmental workforce restrictions.
- Decide which employees to bring back, and when.
- Consider any legal requirements affecting employees' ability to resume duties.
- Account for employees who are unable or unwilling to return.
- Responsibility for increased administrative load

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## LABOR CONSIDERATIONS LIKELY TO ARISE

### II. INCREASED ABSENTEEISM

- Anticipate continued absences related to COVID-19.
- Develop plan to operate with higher rate of absence.
- COVID-Related Paid Sick Leave.
  - New York Emergency Paid Sick Leave
  - FFCRA

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## LABOR CONSIDERATIONS LIKELY TO ARISE

### III. EMPLOYMENT POLICIES

- Evaluate whether policies need to be adjusted to operate effectively in the post-COVID-19 world:
  - Attendance
  - Medical leave
  - Personal leave
  - Flexible scheduling
  - Remote work
  - Information technology

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## FREQUENTLY ASKED QUESTIONS

### What should essential businesses do now?

- State's FAQs make it clear that essential businesses must comply with Phase One requirements.
  - If essential business is in a Phase One industry — for example, a manufacturer — follow the manufacturing guidance.
  - If not in a Phase One industry, it's unclear which guidance to follow. Identify common elements across industry guidance and implement those.
- Keep watching for guidance specific to your industry.
- No clear deadline for implementation, but should be reasonably prompt.
- Labor considerations for employees who had been working remotely.

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## FREQUENTLY ASKED QUESTIONS

### How to implement screening?

- Many permissible methods; 3 questions are minimum.
  - Remote methods preferable.
  - Call-in system, app, online form, paper questionnaire all acceptable.
- Passive system, such as sign over doorway, likely not compliant.
  - Guidance likely requires affirmative responses.
  - Employer must review and record responses.
  - Visitors must be screened too.
- Must try to avoid employees intermingling in close contact while waiting to be screened.
- Open question whether employees must be paid for time.
- Customers cannot be required to submit to screening, but can be encouraged to do so.

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## FREQUENTLY ASKED QUESTIONS

### What are the requirements for face coverings?

- Employers must provide them.
  - Not clear what kind.
  - If cloth-based, employers may require employees to launder them. However, may have to compensate employees depending on a number of factors. Must be individualized assessment.
- Generally, employees must wear them when 6 feet of distance cannot be maintained or interacting with the public.
  - Must check industry specifics.

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## FREQUENTLY ASKED QUESTIONS

### What are the requirements for the contact tracing log?

- To the extent possible, employer should maintain log of all employees and visitors who have close contact with others at worksite, including their contact information.
- Does not apply to contactless deliveries with appropriate PPE.
- Customers cannot be required to fill out log, but can be encouraged.

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## FREQUENTLY ASKED QUESTIONS

### What if an employee refuses to return to work?

- **First, we need to know why.**
  - General fear?
  - Higher risk group?
  - Live with someone in higher risk group?
  - Childcare obligations?
- **Second, determine if any laws/agreements/policies apply.**
  - FFCRA or NY Paid Emergency Sick Leave Law?
  - ADA/FMLA?
  - Others?
- **Range of potential outcomes. Treat carefully and consult counsel.**

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## TODAY'S PRESENTERS



**Mark Stebbins, CPA**  
Tax Director, Freed Maxick



**Jeff Zawada, CPA**  
Tax Director, Freed Maxick



## EMPLOYEE RETENTION CREDIT

- Fully refundable tax credit for employers
- Equal to 50% of Qualified Wages (including Qualified Health Plan Expenses) the Eligible Employers pay to their employees
- Credit applies to Qualified Wages paid after March 12, 2020 and before January 1, 2021
- Maximum credit per employee is \$5,000
- Not eligible if you received a Paycheck Protection Program loan



## ELIGIBLE EMPLOYER

### START DATE (no earlier than March 13, 2020):

- Employer carries on a trade or business that was fully or partially suspended during any calendar quarter in 2020 due to an appropriate government order.
- Significant decline in gross receipts during the calendar year quarter (50% reduction in gross receipts)

### END DATE (if earlier than January 1, 2021):

- On the date a government order is lifted.
- If you experienced a greater than 50% decline in revenue in a quarter, the end date is the end of the quarter of which your receipts were 80% or greater than the prior year's quarter.



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## RE-OPENING

- New York was broken out into 10 regions, with each county part of a region.
- Seven metrics must be satisfied to reopen a region into the first of four re-opening phases
- There will be at least two weeks in between each phase. This allows state and local leaders to monitor the effects of the reopening and ensure hospitalization and infection rates are not increasing before moving to the next phase and permitting more economic activity

### PHASE 1

Construction, Manufacturing, Wholesale Trade, Select Retail for curbside pickup, Agriculture, Forestry and Fishing

### PHASE 2

Professional Services, Finance and Insurance, Retail, Administrative Support, Real Estate, Rental and Leasing

### PHASE 3

Restaurants and Food Service

### PHASE 4

Arts, Entertainment and Recreation, Education



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## KEY DATES FOR EMPLOYEE RETENTION CREDIT

- Governor Cuomo signed an Executive Order on March 7, 2020 declaring a disaster emergency in the State of New York. On March 18<sup>th</sup>, the governor signed an amendment to reduce the in-person workforce at any work location of a non-essential business by 50% **effective on March 20<sup>th</sup> at 8pm (Friday)**. On March 20<sup>th</sup>, the governor further amended the reduction in work force for non-essential businesses to 100% effective on March 22<sup>nd</sup> at 8pm (Sunday).
- Western NY Region - *Niagara, Erie, Chautauqua, Cattaraugus and Allegany*  
**PHASE 1** began Tuesday May 19  
**PHASE 2** – 4 earliest projected re-opening dates = Tuesday June 2; Tuesday June 16; Tuesday June 30
- Finger Lakes Region - *Orleans, Genesee and Wyoming, Monroe, Kingston, Wayne, Ontario, Yates and Seneca*  
**PHASE 1** began Friday May 15  
**PHASE 2** – 4 earliest projected re-opening dates = Friday May 29; Friday June 12; Friday June 26



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## PPP FORGIVENESS OVERVIEW

Over an 8-week covered period the loan can be **forgiven** if used for:

1. Payroll costs (**includes furloughed, hazard pay, bonuses** [all subject to \$100,000 cap])
2. Covered mortgage interest payments
3. Rent on covered leases
4. Utilities

There's also a 25% cap reduction on compensation and an FTE ratio reduction that can impact the forgiveness.

NOTE: SBA indicated that no more than 25% can be forgiven on other than payroll costs; and EIDL grant money of \$10,000 will reduce forgiveness amount.



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## PPP FORGIVENESS PAYROLL

**Interim Final Rule issued Friday, May 22 addressed the following “Payroll Costs”:**

- Incurred **and / or** paid during 8-week covered period (56 days);
- Covered period begins date of \$1 loan disbursement; OR
- **Alternative Payroll Covered Period** – first day of the first payroll cycle in the covered period (**administrative ease**).
- Payroll costs incurred during last pay period of either covered period elected is forgiven if paid on or before next regular payroll date (**grace period**).



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## PPP FORGIVENESS - REDUCTION

**Interim Final Rule issued Friday, May 22 addressed the following:**

- Employee Count – FTE Equivalency based on **40-hour test**
  1. 8-week average FTE over covered period OVER EITHER
  2. 4.5 month FTE average for February 15 – June 30, 2019 OR
  3. January and February 2020 FTE average
  4. Employer can elect for all part-time employees a factor of .5 (**administrative ease**).
  5. All FTEs are aggregated for the selected reference period and respective covered period (depending payroll periods selected) to determine the potential reduction quotient.



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## PPP FORGIVENESS – REDUCTION, CONT'D.

**Interim Final Rule issued Friday, May 22 addressed the following:**

- **No reduction in FTE** for employee that declines offer of reemployment or voluntarily resigns or termination for cause. Maintain documentation.
- Compensation reduction – must reduce forgiveness if per employee their compensation was reduced by more than 25%.
- **THERE IS NO DOUBLE PENALTY** – Compensation reduction only applies if FTE reduction does not for the employee (i.e. hourly rate doesn't change only the hours do).
- *No reduction in forgiveness if FTE or compensation reductions are restored by no later than June 30, 2020 when compared to safe harbor period [February 15, 2020 to April 26, 2020].*



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## PPP FORGIVENESS – OTHER COSTS

**Interim Final Rule issued Friday, May 22 addressed the following:**

- Eligible costs must be incurred **and / or** paid to eligible for forgiveness
- Paid during the covered period; **OR**
- Incurred during the covered period and **paid on or before next regular billing date** (even if after the covered period ends).
- Advanced payments of interest on covered mortgage obligations are NOT eligible.



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## PPP FORGIVENESS - PLANNING

### Payroll costs:

1. Maximize the \$100k / employee limit, health insurance and pension funding.
2. Consider the FTE and compensation reduction.
  - a. FTE – consider potential benefit / ease of .5 PT factor
  - b. Alternative Payroll Covered Period
  - c. Reference periods election
  - d. Rehire employees now and / or by June 30
  - e. Increase compensation to a minimum 75% and / or by June 30

### Nonpayroll costs:

1. Opportunity for utilities to have approximately 2 + months of costs eligible.
2. Consider only submitting enough costs to hit 25% threshold.



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# THANK YOU



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