

Reopening Updates: Phase Three Guidance, Phase One and Two Updates, Summer Camps and Recreational Activities

There have been numerous developments with reopening this week. First, Phase Three Guidance for Food Services and Personal Care were issued. Additionally, Higher Education Research is now considered a Phase One industry, and the relevant guidance has been issued. Phase One and Two now also include curbside pickup for stores inside of malls. Further, statewide Child Care and Day Camp guidance has been issued. Finally, Empire State Development (ESD) updated the list of permissible outdoor recreation activities. We discuss each of these developments below.

Phase Three Guidance Issued

Five regions (Finger Lakes, Central New York, Mohawk Valley, Southern Tier and North Country) entered Phase Three on June 12. The [Phase Three guidance](#) clarifies which non-essential business may reopen in Phase Three. They are listed below. You can tap on each to find the relevant guidance.

- [Food Services](#) (includes indoor dining)
- [Personal Care Services](#) (includes tattoo parlors, nail salons and massage tables, but does NOT include fitness centers)

Significantly, all the guidance relies on the same four cornerstones: face coverings, social distancing, screening and sanitizing. This needs to be at the center of your business's reopening plan.

There is, however, a significant difference in the occupancy requirement for Food Services. Most other reopening guidance, including the Personal Care Services, contains the 50% occupancy requirement. Customer and workforce presence must be limited to 50% of the maximum occupancy of the space as determined by the certificate of occupancy. **This is different for Food Services. The 50% occupancy limitation for Food Services is measured by customers only. Employees do not count in the 50%.**

Phase One and Two Updates

With all regions of the state having entered Phase One, guidance is still being issued to include new Phase One industries. [Higher Education Research](#) is now considered a Phase One industry. The Higher Education Research guidance is very similar to all other guidance issued: face coverings are required, occupancy is limited, social distancing must be maintained and screening and sanitizing must occur.

In addition, the rules for malls throughout the state now includes curbside pickup. Previously, only stores with external entrances could open. Now, stores without such external entrances may operate, but **only** with curbside pick-up "at or near the general mall entrance." The treatment of malls was a surprise. We thought that malls would open in Phase Two as a part of retail. This serves as a reminder that the reopening process remains fluid.

Remember, if you are an operator of one of the above industries, **you may open immediately in New York as all regions have entered Phase One.** Make sure that you have a plan in place and that you read and affirm the detailed guidance for your respective industry.

Child Care and Day Camp Guidance Issued

[Child Care and Day Camp guidance has also been issued](#). This guidance is effective immediately. The guidance **does not include overnight child care or camp programs**. Child care can be open throughout the state. Day camps are scheduled to open on June 29.

From a 50,000 foot view, the Child Care and Day Camp guidance contains significant differences from the guidance given to other industries. First, it does not require children to wear face coverings, but encourages such practice. Employees **must wear face coverings** and must maintain at least six feet of distance from all other employees at all times, unless safety requires a shorter distance.

Additionally, children are to remain within the same group. Group size must be limited to no more than 10 children per group. Each group should have the same employee or employees assigned to it. Different groups are to have **no or minimal contact with one another**, to the greatest extent possible. Employees should not “float” between different classrooms or different groups of children.

The Child Care and Day Camp guidance also details the types of activities that may occur in those industries, from pool and aquatic activities to hiking and running. For more information, [please see the guidance](#).

Outdoor Recreational Activities Expanded

Finally, the ESD guidance on permissible activities throughout the state has expanded the list of acceptable outdoor recreational activities. Below is the exact language from the guidance. Additions are bolded and in blue:

Outdoor, low-risk recreational activities are permitted so long as social distancing and cleaning/disinfecting measures are in place:

- tennis;
- non-motorized boat use and rentals, such as row boats, kayaks, canoes;
- golf and driving ranges, except miniature (mini) golf, with food and retail services subject to the restrictions that are currently in effect within the region;
- **racket games, such as badminton, pickleball, racquetball;**
- **toss/bowl games, such horseshoes, bocce, bean bag toss, croquet;**
- **flying disc games, such as disc golf and frisbee;**
- **shuffleboard;**
- **aerial rope courses or zip lining;**
- **rope courses including aerial rope courses;**
- **batting cages;**
- **shooting ranges; and**
- **swim classes and swim instruction.**

Remember, if your business is eligible to reopen, you need a plan. 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](#), [Caitlin Anderson](#) or the attorney at the firm with whom you are regularly in contact.



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