

## Phase Four is Not the End: It's Just the Next Beginning

With five regions of New York State expecting to begin Phase Four this Friday, June 26, there is one question at the top of many people's minds: what's next? The answer to that question is clear. The core restrictions will remain in place. They are not tied to the phases of reopening. Face coverings must continue to be worn. Social distancing will continue. Sanitizing must occur frequently. Screening must continue. Phase Four does not mean the end of following industry-specific guidance documents. And, as Executive Order 202.43 indicates, the state is entering a new era of enforcement. Read on to find out more about recent executive orders and what lays beyond Phase Four.

### Executive Order 202.42

Even with the core restrictions and requirements continuing, the rules continue to evolve. [Executive Order 202.42](#), issued on June 15, 2020, increases the size of "non-essential gatherings" in New York. This executive order allows for gatherings of up to 25 individuals in regions that have entered Phase Three. Nevertheless, in accord with New York standards, social distancing and disinfection protocols must be followed.

The increased size of non-essential gatherings does not open the door for prohibited activities. Businesses that are required to remain closed in Phase Three (e.g., bowling alleys, gyms, the interior of malls, etc.) cannot use Executive Order 202.42 to reopen. We expect there will be additional guidance on those businesses that remain closed issued this week with the Phase Four materials.

### Executive Order 202.43

During the weekend of June 13, 2020 photos emerged of crowds of unmasked people standing outside of bars in New York City. In response, Gov. Andrew Cuomo issued [Executive Order 202.43](#) on June 18, 2020. Among other things, this executive order places new responsibilities upon businesses selling alcoholic beverages, including restaurants, bars, convenience stores, liquor stores and other entities licensed to sell alcoholic beverages at retail (Licensed Premises). Licensed Premises must "inspect, monitor, and otherwise supervise the area" within 100 feet of its business. Such supervision must ensure that any consumption of food or beverage complies with the following:

1. local open container ordinances;
2. social distancing; and
3. face covering requirements.

For example, if a business allows outdoor seating on the sidewalk, the business is responsible for what occurs within 100 feet of that seating area. If a group of people are standing and drinking within 100 feet of the premises, not wearing face coverings and not practicing social distancing, the business must break up the gathering. If not, the business's liquor license may be in jeopardy.

The penalty for failing to enforce the above is steep: the Licensed Premise may no longer sell or serve alcoholic beverages. In other words, the business may lose its liquor license. Presumably, this would be enforced by the State Liquor Authority, although the executive order does not state who will enforce its measures.

The significance of Executive Order 202.43 cannot be overstated. It demonstrates the governor's intention to enforce the rules. In this executive order, the governor states his willingness to go after the licenses of those businesses that fail to enforce social distancing and the use of face coverings – especially if that failure leads to a gathering. The governor could extend this precedent to other licenses, privileges or business activities being restricted or revoked. The governor has also pointedly said that state government has received 25,000 complaints of violations. We have also seen many instances in which the State Attorney General has contacted businesses to investigate compliance.

### Phase Four and Beyond

As the state moves through the four phases, the core principles remain: social distancing, the wearing of masks, sanitizing and tracing. The four phases are about the opening of businesses and activities, not about lifting personal restrictions. Just as importantly, as the four phases unfold, with few exceptions the phases do not change the standards applicable to businesses or activities covered in prior phases. For example, Phase Two authorized offices to reopen. Reaching Phase Three and Phase Four have no effect on office reopenings. The standards applicable to office reopenings remain in effect. Businesses must continue to follow the industry guidance applicable to its operations once Phase Four commences.

We expect these restrictions to continue to evolve. Some may change in the coming months, but the changes, if any, are to come. The state continues to publish an enormous volume of guidance documents regarding reopening.

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 you have questions, or want to effect the standards applicable to your industry, please contact [Hermes Fernandez](#), [Caitlin Anderson](#) or the attorney at the firm with whom you are regularly in contact.



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