

**“New York Forward” Phase Two:
Guidance for Nonessential and Essential Office-Based Businesses
on Reopening and Implementing COVID-19 Safety Plans**

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As we previously [reported](#), New York’s plan to reopen, “New York Forward” (“NYF” or “Plan”), authorizes a gradual reopening of nonessential businesses. On May 29, 2020, the state initiated Phase Two of the Plan for those regions where mandated health metrics have been maintained or improved for at least 14 days following the implementation of Phase One in the region.

Phase Two of the Plan authorizes the reopening of additional industries subject to the mandates of accompanying industry-specific guidance (“Guidance”), including one for [office-based businesses](#).¹ The Guidance applies to both (i) nonessential businesses that are allowed to reopen in Phase Two, and (ii) essential businesses that are office-based, but never shut down.

As was true for Phase One industries, the Phase Two guidelines impose myriad obligations on covered New York employers, including, most significantly, a mandate to create a COVID-19 health and safety plan (“Mandated Safety Plan”) for employees and the public.

Employers with office-based operations both inside and outside New York must consider NYF, as well as similar documents and guidance in those other locations, in order to create safety plans that are compliant in each jurisdiction where the employer has employees. Many employers will, of course, strive to create a universal plan that complies in all applicable jurisdictions.

¹ Additional detailed guidance documents are available for the following industries in Phase Two: [Real Estate](#), [Essential and Phase II In-Store Retail](#), [Vehicle Sales, Leases, and Rentals](#), [Retail Rental, Repair, and Cleaning](#), [Commercial Building Management](#), and [Hair Salons and Barbershops](#).

At a Glance: The Key Points of New York's Mandated Safety Plan and Guidance for Office-Based Businesses

All New York employers that are opened or reopening their business must create a comprehensive and detailed Mandated Safety Plan to mitigate the risk of spreading COVID-19. While there is no affirmative obligation to share the Mandated Safety Plan with any government agencies, the Mandated Safety Plan must be written (the state has provided a [template](#)), and must be posted conspicuously on-site. For office-based operations, the Mandated Safety Plan and other implementation plans must include the employer's agreement to:

- **Develop physical distancing protocols**, which include, for example, the following: limiting indoor workforce presence to 50 percent of the maximum occupancy; adopting the “six feet of separation” rule (and/or requiring a face covering, depending on the circumstances); posting distance markers in common areas; minimizing in-person gatherings; limiting the occupancy of tightly confined spaces (e.g., elevators) to one person at a time, if feasible (if not possible, all occupants must wear face coverings); and staggering schedules to the extent possible.
- **Provide personal protective equipment (“PPE”)**, including a face covering free of charge and training to employees and contractors on donning, doffing, and caring for their PPE.
- **Create hygiene and cleaning protocols.** Provide handwashing stations and hand sanitizers, conduct regular (e.g., daily) cleaning and disinfection of the facility, maintain a cleaning log, and limit sharing of equipment, tools, etc.
- **Implement communication practices.** Post signage detailing the safety plan and stressing the employees' obligation to adhere to its mandates, and establish a communication plan for employees and visitors. Ensure that there is clear communication of when someone can return to work after exposure or symptoms of COVID-19.
- **Create a COVID-19 screening process**, and conduct a mandatory health screening assessment (e.g., questionnaire and/or temperature check) before employees and contractors begin work each day and for visitors.
- **Adopt contact-tracing protocols**, including notification to government officials and at-risk individuals when an employee or contractor tests positive for COVID-19, and maintain a continuous log of “every person, including workers and visitors, who may have close contact with other individuals at the work site.”
- **Develop a plan for cleaning and disinfection** in the event an employee or contractor tests positive for COVID-19.
- **Designate a “site safety monitor”** to oversee the safety plan.

An “owner or agent” must affirm online that it has read the Guidance and understands the company's obligation to operate in accordance with the Guidance. The state has provided a [safety plan affirmation form](#) for this purpose.

Note: The Guidance includes industry-specific summary guidelines and detailed guidelines, [Frequently Asked Questions](#) (“FAQs”) and a general business safety plan [template](#). Employers should keep in mind that the mandates and guidelines will likely be amended in subsequent phases. For example, one key mandate of industries opening in Phases One and Two is a limitation on occupancy in indoor work spaces (discussed below). As regions are able to progress to succeeding phases, the occupancy limits presumably will be revised or will be subject to different requirements by industry.

The Office-Based Business Mandated Safety Plan: The Details

Keep in mind these three general rules:

- The Mandated Safety Plan applies to **all nonessential and essential** businesses, even if the essential business was never shut down and therefore is not technically “reopening.”
- Every business must comply with the minimum state standards set forth in the Guidance, as well as applicable federal laws, such as the Americans with Disabilities Act, and regulations and guidelines from such agencies as the Centers for Disease Control and Prevention (“CDC”), the Environmental Protection Agency, and the U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”).
- There are **no exceptions** to the compliance requirements—the state will not issue waivers for any of the Mandated Safety Plan requirements. If, for example, an employer is having difficulty in procuring PPE, the FAQs advise the employer to contact the county Office of Emergency Management for assistance.

The mandates are separated into three categories—“**people, places, and processes.**” The following discussion adheres to this structure in summarizing the Guidance. **Office-based employers should review the detailed guidelines for office-based businesses to ensure full compliance.**

“PEOPLE” Mandates/Guidance

- **Physical Distancing**
 - Limit office occupancy to **50 percent of the maximum occupancy** for a particular area “as set by the certificate of occupancy.” Work with the office building’s owners and/or managers to maintain the limited capacity.
 - Maintain six feet of distance between workers at all times. If this is not feasible, individuals must wear a face covering (discussed below under “Protective Equipment”).

- Require everyone to wear a face covering in common areas, e.g., elevators, lobbies, and when traveling around the office.
- When distancing is not feasible between workstations, provide and require the use of face coverings or install physical barriers (e.g., plastic shielding walls) according to rules promulgated by OSHA.
- Close non-essential common areas (e.g., gyms, pools, game rooms) and non-essential amenities in communal or highly-touched areas (e.g., vending machines, coffee stations).
- For essential common areas, (e.g., receptions areas) modify seating arrangements to ensure that individuals are six feet apart in all directions.
- Consider implementing strict “clean desk” policies, and limiting the use of shared workstations and communal equipment. If shared workstations (e.g., “hot-desks”) are unavoidable, they must be cleaned and disinfected between users.
- Limit occupancy in confined spaces (e.g., elevators, supply rooms, personal offices, vehicles) to one person at a time, unless all present are wearing face coverings, in which case occupancy should still be limited to 50 percent of maximum capacity, and strict congregation in elevator waiting areas.
- Make corridors and hallways one-directional, where feasible.
- Use distance markers where people congregate, e.g., elevators and workstations.
- Designate areas for pickups and deliveries to minimize contact with others.
- Post distancing markers/signs in common areas.
- Be aware that, though not mandated, “Best Practice” recommendations include:
 - restricting the on-site workforce to “necessary staff” (although others may enter the premises to pick up documents, etc.);
 - staggering work schedules, adjusting work hours, and continuing telework;
 - limiting non-essential travel;
 - creating separate entrances and exits and one-directional halls; and
 - requiring employees to stay near their workstation as much as possible.

- **Gathering in Enclosed Spaces**

- Limit in-person gatherings as much as possible, and use other methods, such as video or teleconferencing.
- If you must hold meetings, ensure the meeting space is well ventilated and enforce social distancing protocols.
- Establish distancing protocols for bathrooms.

- **Workplace Activity**

- Create policies that encourage employees to work from home when feasible.
- Consider developing return-to-office tiers or waves for employees, based on factors such as function, safe transportation, and ability to work remotely.
- Consider conducting employee surveys to determine which remote working practices are working.

“PLACES” Mandates/Guidance

- **Protective Equipment**

- Provide all required PPE, including face coverings, free of charge to employees and contractors.
- Require face coverings where physical distancing cannot be maintained (cloth-based face coverings are acceptable unless the nature of the work requires a higher degree of protection, e.g., an N95 mask).
 - Allow employees to use their own face coverings if they meet OSHA standards/business needs.
- Make sure that face coverings are (i) cleaned or replaced after use or when damaged or soiled, (ii) properly stored or discarded, and (iii) not shared (see [CDC guidance](#)).
- Train employees and contractors on proper donning, doffing, cleaning, and discarding of PPE.

- **Hygiene and Cleaning**

- Adhere to DOH and CDC hygiene and sanitation requirements, including [“Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID-19,”](#) and the [“STOP THE SPREAD” poster,](#) as applicable.
- Maintain cleaning logs that include the date, time, and scope of cleaning.
- Limit the sharing of objects common in the office setting (including laptops, notebooks, touchscreens, and writing utensils), and the touching of shared surfaces (such as conference tables), or require workers to sanitize or wash their hands before and after contact with shared surfaces.
- Provide hand hygiene stations and make hand sanitizer available throughout common areas in the office, such as entrances and exits and reception areas.
 - Post signage near hand sanitizing stations indicating when it is appropriate to wash hands as opposed to merely using hand sanitizer.
- Place refuse receptacles around the premises for appropriate disposal of dirty items, such as used PPE.
- Consider installing touch-free amenities, including hand sanitizer dispensers and hand dryers.
- Regularly clean and disinfect the work site, including equipment, tools, etc.
 - Conduct more frequent cleaning and disinfection for high-risk areas (such as restrooms).
 - Require cleaning and disinfecting to occur at least after each shift, daily, or more frequently, as needed.
 - Clean and disinfect shared workstations between uses.
- If cleaning or disinfection products cause safety hazards or degrades the material or machinery, ensure that hand hygiene stations and/or disposable gloves are available.
- Develop and implement special cleaning and disinfecting protocols in the event a worker contracts COVID-19.
 - Follow the CDC’s guidelines on [“Cleaning and Disinfecting Your Facility”](#) if someone is suspected or confirmed to have contracted COVID-19.
 - Close down the areas used by the worker who is sick or suspected of having COVID-19, including shared building spaces, e.g.,

elevators and lobbies, and ensure proper cleaning and disinfection before they are reopened. Coordinate with the building manager to complete such hygienic procedures. (Consult the [Phase Two Guidance for Commercial Building Management](#) for more information on appropriate procedures.)

- Discontinue special cleaning after seven days have passed since the person who is sick visited or used the facility.
- Prohibit shared food and beverages (e.g., buffet style meals).
- Consider increasing ventilation of outdoor air while maintaining safety precautions, wherever possible.
- **Phased Reopening**
 - Try to phase in the reopening to allow for operational issues to be resolved before production or work activities return to normal levels.
- **Communications Plan**
 - Submit to the state the online [safety plan affirmation form](#) in which an “owner or agent” of the business attests that the Guidance has been reviewed, is understood, and will be implemented.
 - Develop a communications plan for employees, contractors, and visitors that includes “applicable instructions, training, signage, and a consistent means to provide employees with information.”
 - Work with building management to facilitate any building-wide communications.
 - Consider the use of website, email, and social media.
 - Conspicuously post the full Mandated Safety Plan at the workplace.
 - Provide building managers and/or owners with a list of essential visitors that the business expects to enter the building.

“PROCESSES” Mandates/Guidance

- **“Site Safety Monitor”**
 - Designate “Responsible Parties” to ensure compliance with the state Guidance until it is rescinded. While the building owner will be primarily responsible for overseeing compliance in unleased or common areas, those responsible for individual leased workspaces should coordinate with the building owners and/or management to implement the requirements and

practices detailed in the Guidance. Designate a “site safety monitor” to oversee compliance with all aspects of the site safety plan at the workplace.

- **Screening and Testing**

- Implement mandatory daily health screenings (which may be conducted remotely before an employee reports to the workplace). Screening should be conducted for visitors, where practicable. Responsible Parties should coordinate with building management to complete the daily screenings.
 - If screening on-site, position such screening at or near the building entrance to minimize the impact of someone who will be excluded from the workplace.
 - Structure screenings to avoid congregations of employees.
 - Consider using contactless thermal cameras for temperature screening in building entrances to identify potentially symptomatic visitors and direct them to a secondary screening area.
- Train personnel performing the screenings using, for example, DOH, CDC, and OSHA protocols.
- Conduct a daily review of all employee and visitor responses collected by the screening process, and keep a record of such review.
- At a minimum, require all workers and visitors to be screened to complete a questionnaire that determines whether the worker or visitor has:
 - “knowingly been in close or proximate contact in the past 14 days” with an individual who has tested positive for COVID-19 or who has or had symptoms of COVID-19 (an employee who responds that he or she has had close contact with a person who is confirmed or suspected for COVID-19 may not be allowed to enter the worksite before complying with the precautions outlined below and the employer has documented the employee’s compliance with those precautions);
 - tested positive for COVID-19 in the past 14 days; and/or
 - experienced any symptoms of COVID-19 in the past 14 days (see [CDC discussion of symptoms](#)).
- Require employees to “immediately disclose” if and when their responses to any of the above questions change.
- Consider conducting daily temperature checks, consistent with the [Equal Employment Opportunity Commission’s guidelines](#).

- Be aware that, according to New York’s current Guidance, employers may *not* keep records of employee health data (e.g., temperature data).
- If an employee screens positive for COVID-19 symptoms:
 - do not let the employee enter the workplace—direct him or her to go home and contact his or her health care provider for assessment and testing,² and
 - immediately notify the local health department and DOH.
- Identify a contact for employees to notify if he or she develops symptoms at work.
- Notify the building owner/operator of a positive case, and begin the requisite cleaning and disinfecting procedures.
- Be aware that employers, employees, and contractors, and, in some instances, visitors should take the following actions related to COVID-19 symptoms and contact:
 - “If an employee has COVID-19 symptoms AND EITHER tests positive for COVID-19 OR did not receive a test, the individual may only return to work after completing at least 14 days of self-quarantine.”
 - “Critical” employees and/or visitors may be allowed to return sooner if such action is approved by the local health department.
 - “If an employee does NOT have COVID-19 symptoms BUT tests positive for COVID-19, the individual may only return to work after completing at least 14 days of self-quarantine” (a similar exception for a “critical” employee and also visitors, as described above).
- An employee who has had “close contact with a person with COVID-19 AND is symptomatic” must notify his or her employer and follow the above protocol for a positive case. Further, Phase Two provides that “[e]ven if symptoms are deemed not related to COVID-19, the individual must complete a 14-day quarantine after the contact.”
- If an employee or visitor has had “close contact with a person with COVID-19 AND is NOT symptomatic, the individual must complete a 14-day self-quarantine.” If the employee is a “critical” worker, follow the process for authorizing the individual to continue working. If approved to work, the

² The Phase Two Guidance for [Commercial Building Management](#) provides that “[t]his policy does not apply if the employee or visitor is entering the building for medical evaluation or treatment (e.g., to visit a doctor’s office in the building).”

employee must remain under quarantine at all times when not at work,” and take the following actions:

- *Regular monitoring:* The employee or visitor must take his or her temperature before work to confirm that he or she does not have a fever. If, however, the employee or visitor does not have a temperature or symptoms, he or she should self-monitor “under the supervision of their employer’s occupational health program.”
- *Mask wearing:* The employee or visitor must wear a face mask at all times while in the workplace for 14 days after last exposure and may not share equipment that is used near the face.
- *Social distancing:* The employee or visitor must continue social distancing practices and may not congregate in the break room or other communal areas.
- *Work space disinfecting:* The employer should continue to routinely clean and disinfect all areas, such as offices, bathrooms, common areas, and shared electronic equipment. The employer should also increase the frequency of cleaning and disinfecting highly touched areas.
- *Air Flow:* The employer should work with building maintenance staff to “increase air exchanges in the room or building.”

- **Tracing and Tracking³**

- To the extent possible, maintain an ongoing log of “every person, including workers and visitors, who may have close contact with other individuals at the work site.”
 - Make sure the log contains contact information so that all contacts may be “identified, traced and notified” in the event an employee is diagnosed with COVID-19.
 - Be aware that the log need not include “deliveries that are performed with appropriate PPE or through contactless means.”
- Cooperate with the local health department’s contact-tracing efforts.
- Notify the local health department and DOH immediately upon being informed of any positive COVID-19 test result by a worker or visitor.
 - Inform the health department of all workers and visitors who entered the site “dating back to 48 hours before the employee or visitor first experienced COVID-19 symptoms or tested positive, whichever is earlier,” but they must maintain confidentiality as required by federal and state law.

³ Certain tracing requirements, such as keeping a log, are listed as “recommended best practices” in the summary guidelines, but appear to be required in the detailed Guidance, which employers must affirm.

- Require individuals who have been alerted that they have come into close or proximate contact with a person with COVID-19 to immediately self-report to you and do not permit the individual to remain on, or return to, the work site, until they have completed quarantine, as described above.
- Consider offering optional “tracing and tracking technology,” such as mobile applications, in order “to streamline contact tracing and communication process among their workforce and others.” Work collaboratively with building management with respect to tracing and tacking.

Enforcement

Individuals can file complaints regarding the operation of businesses or gatherings 24/7, through an [online form](#) or by calling a hotline number. Employees are directed to file specific complaints against their employers to the New York State Department of Labor through the agency’s [online form](#).

What New York Employers Should Do Now

We anticipate that the state will issue new guidance as regions move into Phases Three and Four of the NYF initiative. Further, the Mandated Safety Plan has a number of “moving parts”—such as the screening and contact-tracing processes—that may well need to be revised as the medical community’s understanding of the virus continues to evolve. For instance, the CDC recently [advised](#) that 40 percent of asymptomatic COVID-19-positive individuals may nevertheless be transmitting the disease to others.

The bottom line is that, as reopening plans are formulated, employers should do the following:

- Follow advice provided by the Guidance by opening with as small an on-site workforce as possible to allow proper time and space to work out any glitches in the safety plan, as well as in other aspects of the company’s reopening policies, such as staggered work schedules.
- Consider allowing employees who have been successfully telecommuting to continue doing so.
- Take note as other states open their workplaces, so as to be mindful of missteps that that can be avoided once New York progresses in its phased reopening process.
- Proceed cautiously and consult with counsel on potential legal pitfalls, specifically with respect to the Mandated Safety Plan—particularly if you’re opening in more than one state.
- If you have operations both inside and outside of New York, consider not only NYF but also similar documents and guidance in other states to create safety plans that

are compliant in each state where you have employees, or develop a universal plan that complies in all applicable states and cities.

- To keep on top of the most recent developments concerning the COVID-19 pandemic, including changes to the Guidance, regularly check Epstein Becker Green's [Coronavirus \(COVID-19\) Resource Center](#).

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