

The Latest Reopening Guidance from New York State

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Working to create economic growth, good jobs and strong communities across New York State.



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	“More-Essential” Industry	“Less-Essential” Industry
Low Infection Risk	Services/product <u>more essential</u> , <u>low risk</u> of workplace or customer infection spread	Services/product less essential, low risk of workplace or customer infection spread
Higher Infection Risk	Services/product <u>more essential</u> , <u>higher risk</u> of workplace or customer infection spread	Services/product <u>less essential</u> , <u>higher risk</u> of workplace or customer infection spread

PHASE 1

- Construction
- Manufacturing and wholesale supply chain
- Select retail – Curbside pickup
- Agriculture/Forestry/Fishing

PHASE 3

- Restaurant/Food Service
- Hotels/Accommodations

PHASE 2

- Professional services
- Finance and Insurance
- Retail
- Administrative Support
- Real estate, rental, leasing

PHASE 4

- Arts/Entertainment/Recreation (“attractive nuisance”)
- Education

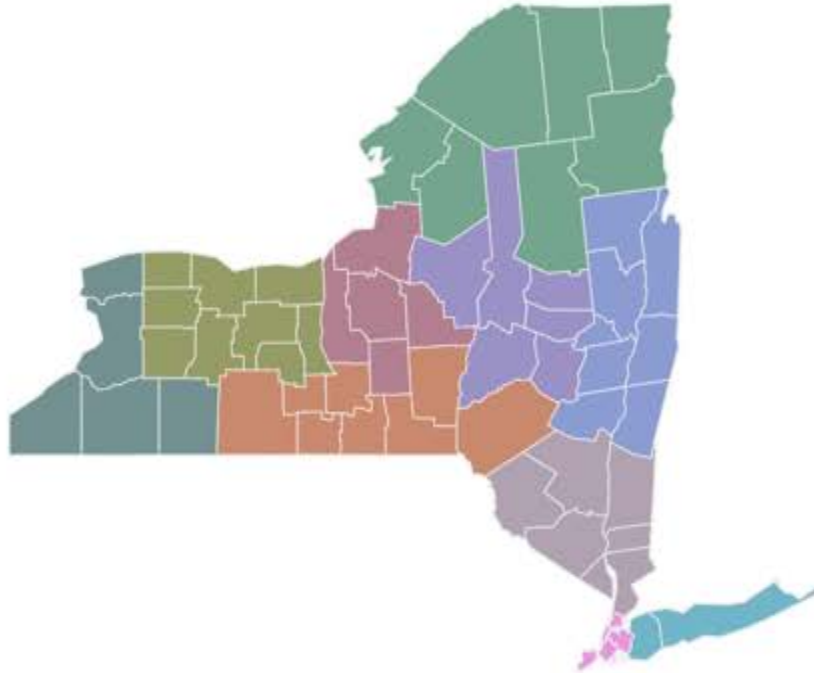
REGION BY REGION STATUS

Regional COVID-19 Metrics: Where Regions Currently Stand

Report a

Regions

- Capital Region
- Central New York
- Finger Lakes
- Long Island
- Mid-Hudson
- Mohawk Valley
- New York City
- North Country
- Southern Tier
- Western New York



Metrics Met

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Report as of May 16, 2020

Metrics Met

Capital Region	6/7
Central New York	7/7
Finger Lakes	7/7
Long Island	5/7
Mid-Hudson	4/7
Mohawk Valley	7/7
New York City	3/7
North Country	7/7
Southern Tier	7/7
Western New York	6/7



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Business Reopening Plans

- Key Documents

- Interim Guidance for [Industry Name] Activities during the COVID-19 Public Health Emergency
 - Detailed minimum requirements
 - Contains link for employers to affirm compliance with the reopening guidance.
- Industry-specific “Summary Guidance”
 - Lists mandatory standards and recommended best practices
- NY FORWARD Business Re-Opening Safety Plan Template
 - Can be used to fulfill the requirement that each re-opening business must develop a written Safety Plan



Obligations of Essential Business

- The State standards contained within this guidance apply to all manufacturing activities – both essential and non-essential
 - Interim Guidance for Manufacturing Activities – Issued 5/14/20
- ESSENTIAL BUSINESSES OR ENTITIES . . . are not subject to the in-person restriction [set forth in Executive Order 202.6]
 - Executive Order 202.6 Essential Business guidance updated 5/16/20
- There is no fixed deadline for essential businesses to “comply” with reopening standards; they should do as soon as possible
 - Discussions with Cuomo Administration counsel’s office
- For Essential Businesses in sectors not covered by Final Guidelines, no specific action necessary at this time



To Reopen, a “Non-Essential” Business must first . . .

- Be in a designated industry and approved region
- Adopt a written reopening plan consistent with state guidance and standards – including applicable Executive Orders
 - Written plans must be maintained and posted on site, but do not need to be submitted to the state
- Fully implement its reopening plan
 - Including required employee outreach and training
- Affirm to the state that the employer has read and understands its obligation to operate in accordance with state guidance
- Stay current, consult the NY Forward website on a periodic basis or whenever notified of the availability of new guidance



People

- *Physical Distancing*

- Work occurring in doors limited to 50% of maximum capacity; unless more needed to safely operate core functions
- Social distancing – 6 feet at all times; unless safe operations of core functions require shorter distance, then -
- Face coverings – including...but not limited to cloth and or disposable masks that cover both the mouth and nose
- Physical barriers between workstations
- Prohibit use of confined spaces (elevators, conference rooms, vehicles) unless face coverings are in use
- One-way hallways
- Signage



People

- *Gathering in Enclosed Spaces*
 - Limit in-person gatherings (meetings, huddles, etc.)
 - Practices for social distancing in confined areas – signage and systems to ensure distancing in breakrooms, restrooms, etc.
 - Consider staggered work, lunch and break schedules
- *Workplace Activity*
 - Limit in-person staff to only those necessary
 - Continue work from home where possible
- *Movement and Commerce*
 - Prohibit non-essential visitors on site
 - Establish designated areas for deliveries/pick-up
 - Limit on-site interactions and movement

Places

- *Protective Equipment*

- Obtain acceptable face coverings and provide to employees, contractors and visitors at no cost
- Employer responsible for maintenance, cleaning and replacing face coverings
- Shall not prevent employees from using their own personal face coverings
- Limit sharing of objects such as tools, machinery, vehicles, etc.
- Train employees on donning, doffing, maintenance and disposal of PPE

Places

- *Hygiene and Cleaning*

- Adhere to hygiene and sanitation requirements as advised the DCD and DOH
- Provide and maintain hand hygiene stations on site
 - Soap, running water, paper towels
 - When not possible – alcohol-based hand sanitizer (at least 60% alcohol)
- Provide appropriate cleaning/disinfection supplies for shared touched surfaces
- Conduct regular cleaning and disinfection of the site; extra cleaning for high risk areas – See DOH guidance
- Ensure regular cleaning/disinfecting of restrooms, equipment, tools
- Prohibit shared food and beverages

Places

- *Hygiene and Cleaning* - Positive case of COVID-19 – CDC guidelines on cleaning and disinfecting
 - Close off area – not necessarily operations
 - Increase air circulation – open doors/windows
 - Wait 24 hours before cleaning/disinfecting – or as long as possible
 - Clean/disinfect all areas used by person (office, bathrooms, common rooms)
 - Workers without close contact can return to work – See CDC guidance “Evaluating and Testing Persons for COVID-19”
 - If more than 7 days have passed since COVID + person was in facility – cleaning may not be needed

Places

- *Phased Reopening*
 - Limit number of employees, hours, customers, etc. when first reopened to allow time to adjust
- *Communication Plan*
 - Affirm that you understand and will implement state-issued industry guidelines
 - Communicate with employees, visitors, and customers. Training, signage, email, social media, etc.

Processes

- *Screening and Testing*

- Implement mandatory daily health screening
- Can be done remotely (telephone, electronic survey, etc.) before employee reports to the site or may be performed on-site
- Staggered to avoid employee congregating
- Key questions:
 - Knowingly been in close or proximate contact in the past 14 days with anyone who has tested positive for COVID or has COVID symptoms
 - Tested positive for COVID in the past 14 days
 - Has experience COVID symptoms in the past 14 days

Processes

- If their answers change during the workday, require employees to report change to supervisors
- Daily temperature checks allowable – Keeping records prohibited
- Protect those taking temperatures/screenings
- For positive employees – must notify DOH
- Must designate a site safety monitor responsible for compliance with plan
- Maintain contact logs

Processes

- *Screening and Testing*
- COVID Symptoms and contact
 - COVID positive employee or those exhibiting symptoms may be subject to 14-day quarantine period
 - COVID positive but asymptomatic – may be subject to 14-day quarantine
 - Employee who is symptomatic after close/prolonged contact with a COVID positive person will be treated as COVID positive
 - Employee who is NOT symptomatic after close/prolonged contact with a COVID positive person will be subject to:
 - Regular monitoring
 - Wear a mask at all times for 14 days after exposure – social distance
 - Disinfect work area

Processes

- *Tracing and Tracking*

- Notify local health department and DOH immediately upon being informed of a positive test by a worker
- Cooperate with tracing efforts of local health department
- Require employees to notify supervisor if identified by local health department as exposed

Employer Plans

- *Must post conspicuously on site*
- *Affirmation*
- <https://forward.ny.gov/industries-reopening-phase#overview>

Business Reopening: Other Issues/Considerations

- Allowable activities (based on region and industry) can take place at businesses not yet authorized to open
 - Construction work (Reopening Phase 1)
 - Administrative office work (Reopening Phase 2)
- Compliance questions should be directed to Regional Control Offices
 - <https://esd.ny.gov/nyforward-faq>
- ESDC developing on-line NAICS-based resource
- Municipal role is oversight, enforcement, but cannot impose additional standards



CARES Act

- Small Business “Paycheck Protection Program”
 - You have until June 30, 2020 to restore in full wages and salaries reduced between 2/15/2020 and 4/26/2020
 - Workforce reduction to be restored by 6/30/2020
- Economic Injury Disaster Loans
- Unemployment Programs



CARES Act – Unemployment Provisions

- Additional \$600 per worker per week available
- Additional payment sunsets 7/31/2020
- Does not apply to someone working from home
- Effective 1/27/2020 to 12/31/2020
- Total cap of 39 weeks
- No one week waiting period



Getting them back from UI

- Claimant must be “ready, willing, and able to work” and actively seeking employment
- If the claimant refuses rehire or fails to report to work, they may become ineligible for benefits
- Your offer of employment must pay at least the Unemployment Insurance cutoff wage (10% lower than the Unemployment Insurance prevailing wage) for similar work
- “Employee relations” concerns

NYS Department of Labor
PO Box 15130
Albany, NY 12212-5130
or fax to: (518) 402-6175



Paid Family Leave Change

- Paragraph (16) of subdivision (a) of section 355.9 of Title 12 NYCRR is hereby amended to read as follows:
- (16) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or continuing supervision by a health care provider. Serious health condition also means a COVID-19 diagnosis by a health care provider.
- Effective 90 days after posting of emergency rule making...June 25, 2020



NYS Emergency Paid Sick Leave (PSL)

Sick Leave Requirements

- 10 or fewer employees (as of January 1, 2020) – must provide unpaid, job protected sick time during an employee's period of ordered quarantine or isolation (and then PFL/DBL)
- 10 or fewer employees with net income of more than \$1 million - must provide five days of paid sick leave (and then PFL/DBL)
- 11 to 99 employees - must provide five days of paid sick leave (and then PFL/DBL)
- 100 or more employees must provide up to fourteen days of paid sick leave (no additions PFL/DBL)
- Paid for by the employer...no reimbursement
- Public employers must provide at least fourteen days of paid sick leave



NYS Emergency Paid Sick Leave (PSL)

Then...for the duration of the quarantine/isolation-less than 100 employees:

- Combination of PFL and DBL to 100% of pay to a maximum of \$2,884.62 (\$150,000 annually)

Example:

- An employee making \$150,000 per year (\$2,884.62 per week) may be eligible for:
 - \$840.70 payment from PFL (60% of average weekly wage to the 2020 maximum benefit amount), and
 - \$2,043.92 payment from DBL (a significant – temporary increase over the current maximum of \$170/wk.)



Federal Emergency Paid Sick Leave

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns
3. Experiencing COVID-19 symptoms and seeking medical diagnosis
4. Caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns
5. Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.



Federal Emergency Paid Sick Leave

- Only applies to employers with less than 500 employees.
- Up to 80 hours of paid sick leave (Part timers paid regular hours worked)
- At regular rate of pay for reasons #1-3 (Capped at \$511/day; \$5,110 total)
- At 2/3 regular rate of pay for reasons #4-6 (Capped at \$200/day; \$2,000 total)
- Provides an exception for employers who are healthcare providers or emergency responders
- This paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers
- This act takes effect April 1, 2020 and remains in effect until December 31, 2020.



Emergency FMLA Expansion

- Only available for an employee to take FMLA leave if their child's school has closed due to the pandemic
- Only businesses with less than 500 employees and all public employers will be covered by the emergency FMLA
- The first 10 days of leave under the FMLA will be unpaid, employees may elect to use their accrued vacation and/or PTO leave during this time
- After the first 10 days of leave, employees would be entitled to two-thirds of their regular rate. Pay would be capped at \$200 per day/\$10,000
- 10 weeks total
- Job protected leave



Federal Emergency FMLA

- Provides an exception for employers who are healthcare providers or emergency responders
- Employees only need be employed for at least 30 days prior to the designated leave
- Exempts small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business...

Health Care Provider/First Responder

Anyone employed at:

Doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.



Health Care Provider/First Responder

Anyone employed at:

An entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider



Health Care Provider/First Responder

Military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.



Federal Emergency FMLA

- The provision of PSL or expanded FMLA would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting PSL or expanded FMLA would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting PSL or expanded FMLA, and these labor or services are needed for the small business to operate at a minimal capacity.
- Department encourages collaboration



Tax Credits For Paid Sick And Paid Family And Medical Leave

- Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, rather than depositing them with the IRS.
- Only those employers who are required to offer Emergency FMLA and Emergency Paid Sick Leave may receive these credits.

[https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#allocable qualified health plan expenses](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#allocable%20qualified%20health%20plan%20expenses)



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Reduction in Pay

- NYS Wage Theft Prevention Act
- Wage Acknowledgment Forms
- <https://labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm>

Resources

- Business Council Coronavirus
<https://www.bcnys.org/managing-coronavirus>
- NY State Covid-19 Leave
<https://www.governor.ny.gov/programs/paid-sick-leave-covid-19-impacted-new-yorkers>
- OSHA
<https://www.osha.gov/>
- EEOC
<https://www.eeoc.gov/>

- New York Health Department
<https://www.health.ny.gov/>
- Centers for Disease Control
<https://www.cdc.gov/>
- World Health Organization
<https://www.who.int/>
- US Dept. of Labor
<https://www.dol.gov/>



Next Webinar

Annual Harassment Training

This one-hour webinar is intended to provide individuals responsible for providing training the tools and strategies necessary to deliver a training program that meets NYS guidelines as defined in the new sexual harassment laws effective October 2019. We will also cover requirements related to the development and communication of the required sexual harassment policy.

Thursday, May 21, 2020

11:00 am. – 12:00 pm

This program has been approved for HRCI certification



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