Ready to reopen your business in NY? Here’s what your business must do first

By Kimberly Harding, Eric Ferrante

As certain NY regions begin their phased reopening of non-essential businesses and business activities,¹ the Governor’s Office has issued mandatory guidelines and recommended best practices for each of the “Phase One” industries permitted to reopen (construction; agriculture, forestry, fishing and hunting; retail (curbside/in-store pickup or drop-off); manufacturing; wholesale trade). Notably, the guidelines apply to both non-essential Phase One businesses in regions that are permitted to reopen and essential businesses in these industries throughout the state that were previously permitted to remain open under Executive Order 202.6, as amended.²

As we previously reported, one of these requirements is that each re-opening business must develop a written safety plan outlining how its workplace will prevent the spread of COVID-19. To meet this requirement, the Governor’s Office has developed templates that businesses may complete, or businesses may develop their own safety plans. These plans do not need to be submitted to any state agency for approval; however, they must be retained and posted conspicuously on the premises of the business, and must be made available to the New York State Department of Health (DOH) or local health or safety authorities in the event of an inspection. In addition, businesses must affirm that they have read and understand their obligations to operate in accordance with the detailed reopening guidelines by submitting a New York Forward Business Affirmation Form.

In addition to the safety plan requirement, reopened businesses must also comply with specific requirements intended to mitigate the spread of COVID-19. Although the specific guidelines vary somewhat by industry, generally speaking, they require that employers ensure six feet of physical distance between all individuals, provide proper personal protective equipment for all employees, adhere to cleaning and sanitation requirements, promote employee hygiene, implement screening practices, cooperate in tracing and tracking of positive COVID-19 cases, and communicate plans to


² See our alerts, “New York State on “PAUSE”: Governor orders all non-essential entities to reduce in-person workforces by 100%.” March 21, 2020; and “New York requiring businesses to reduce in-person workforces by 75% and utilize telework.” March 19, 2020.
all employees, visitors, and customers. To assist with implementing these guidelines, the Governor’s Office has promulgated detailed guidelines, as well as summary guidelines that include both the mandatory requirements as well as certain “recommended best practices.”

The state’s website outlines detailed guidelines, summary guidelines, and safety plan templates referenced above for each industry. Although the guidelines are somewhat industry-specific, we anticipate that many of the same requirements will be imposed on industries in Phases Two, Three, and Four. Therefore, it is not too early for industries in these phases also to begin preparing their business safety plans.

Nixon Peabody attorneys have been advising on such plans regularly and are available to assist businesses in each phase and in every region of the state as we all hopefully get back to work soon. For more information on the content of this alert, please contact our Coronavirus Response Team, your Nixon Peabody attorney or:

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