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COVID-19 Pandemic—New York Provides Guidance on Phase Two Reopening

The Guidance Sets Forth Certain Requirements for the Reopening of Businesses, Including Offices

SUMMARY

Updated June 15, 2021. On June 15, 2021, New York State issued a [press release](#) stating that because 70 percent of New Yorkers aged 18 or older have received the first dose of their COVID-19 vaccination series, the “New York Forward industry specific guidelines—including social gathering limits, capacity restrictions, social distancing, cleaning and disinfection, health screening, and contact information for tracing—are now optional for . . . offices.” The press release added that “businesses are free to choose to lift all or some restrictions, continue to adhere to the State’s archived guidance, or implement other health precautions for their employees and patrons,” and that “[c]onsistent with the State’s implementation of the recent CDC guidance, masks are still required for unvaccinated individuals.”

Additionally, on June 8, 2021, New York State updated the office reopening guidance to incorporate the U.S. Centers for Disease Control and Prevention’s (“CDC”) May 13, 2021 guidance on social distancing and mask wearing for vaccinated individuals. The updated guidance is available [here](#).

Updated May 20, 2021. On May 19, 2021, New York issued “[Implementing CDC Guidance](#),” a summary of the CDC’s May 13, 2021 “[Interim Public Health Recommendations for Fully Vaccinated People](#).” This summary clarifies that businesses may require masks and six feet of social distancing for employees and/or patrons within their establishments or adhere to CDC guidance, which advises that fully vaccinated individuals do not need to wear masks or be socially distanced, but unvaccinated individuals must continue to wear masks and be socially distanced in most settings. In indoor settings where the vaccination status of individuals is unknown, the New York Department of Health strongly recommends masks and six feet of

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social distancing. Additionally, any mask requirements that businesses choose to implement must adhere to all applicable federal and state laws and regulations, such as the Americans with Disabilities Act. Further information on the CDC's guidance is incorporated in this memorandum in the section titled, "Implementing CDC Guidance for Fully Vaccinated People." Also, on May 15, 2021, New York made revisions to its guidance for reopening offices to increase the total permissible number of occupants at any given time from no more than 50% to no more than 75% of the maximum occupancy for a particular area as set by the certificate of occupancy. The 75% maximum occupancy also applies to spaces including elevators, supply rooms, personal offices and vehicles, even when face coverings are worn.

Updated March 18, 2021. On or around March 16, 2021, New York made minor revisions to its guidance for reopening offices. The revised guidance clarifies that non-essential common areas within offices, such as gyms, pools, and game rooms, may reopen in accordance with applicable industry-specific guidance. The updated guidance has been incorporated into this memorandum. Further guidance regarding New York office reopening will be included in our New York Office Reopening Guidance blog post, available [here](#).

Updated December 31, 2020. On December 26, 2020, the New York Department of Health issued [updated guidance](#) on releasing individuals from quarantine as a result of an exposure to COVID-19, and decreases the quarantine period set out in the New York [travel quarantine rule](#) for those who did not complete the optional testing procedures. This guidance reduces the quarantine time for individuals exposed to COVID-19 from 14 to 10 days if no symptoms have been reported during the quarantine period. Although New York has not revised its guidance for reopening offices as of this update, the revised quarantine guidance "supersedes any previous guidance issued related to the length of quarantine." Accordingly, the updated quarantine guidance has been incorporated into this memorandum where applicable.

Updated June 30, 2020. On June 26, 2020, New York made minor revisions to its guidance for reopening offices. The revised guidance clarifies, among other things, (i) how employers should encourage social distancing with respect to non-essential amenities and communal areas; (ii) that although keeping records of the results of employee screening data is prohibited, creating records confirming that individuals were screened is permissible; and (iii) that individuals who screen positive for COVID-19 must not be allowed to enter the office. The revised guidance also discusses screening arrangements that employers may agree to in coordination with building management. The updated guidance has been incorporated into this memorandum.

Updated June 24, 2020. On June 16, 2020, New York updated its guidance for reopening offices, including, among other things, updating the New York Department of Health's guidance regarding when and how to return employees who have been infected with or potentially exposed to COVID-19 to the workplace, as discussed on page 9. These and other updates have been incorporated into this memorandum.

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As part of the effort to reopen non-essential businesses closed in connection with COVID-19, New York State has provided guidance for businesses eligible to reopen during Phase Two, including: offices; real estate; in-store retail; vehicle sales, leases, and rentals; retail rental, repair, and cleaning; commercial building management; and hair salons and barbershops. New York State's Phase Two reopening guidance and requirements are detailed below.

DEVELOPMENT AND POSTING OF SAFETY PLAN

Prior to reopening, all businesses in New York, regardless of industry, must develop written safety plans outlining how the workplace will prevent the spread of COVID-19. The safety plans must be retained on the business premises and be made available to the New York Department of Health ("DOH") or local health authorities in the event of an inspection. In addition, businesses that reopen must conspicuously post their safety plan on site.

The DOH has provided a safety plan template, available [here](#), or businesses may create their own plans.

The safety plans should cover:

1. Physical distancing;
2. Protective equipment;
3. Hygiene and cleaning;
4. Communication of safety measures;
5. Screening processes; and
6. Contact tracing and disinfection of contaminated areas.

INDUSTRY SPECIFIC GUIDANCE

The New York DOH has prepared both summary and detailed industry-specific guidelines for businesses that are permitted to reopen in Phases One and Two. To reopen, businesses must meet minimum required standards set out in the industry-specific guidance. In addition, the business owner/operator (or a designee) (the "Responsible Parties") must affirm that it has reviewed and understands the industry-specific guidelines, and that it will implement them.

New York State has published industry-specific reopening guidelines and affirmation hyperlinks for businesses in the following Phase One industries: [construction](#); [agriculture, forestry, fishing and hunting](#); [retail trade](#); [manufacturing](#); and [wholesale trade](#); and the following Phase Two industries: [offices](#), [real estate](#); [in-store retail](#); [vehicle sales, leases, and rentals](#); [retail rental, repair, and cleaning](#); [commercial building management](#); and [hair salons and barbershops](#). Businesses should review the guidance for their specific industries. The guidance for offices is further detailed below.

New York's "guidelines are minimum requirements only and any employer is free to provide additional precautions or increased restrictions." The guidance also states that the guidelines are based on "the best-known public health practices at the time of Phase [Two] of the State's reopening, and the documentation

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upon which these guidelines are based can and does change frequently.” As a result, employers “are accountable for adhering to all local, state and federal requirements relative to office-based work activities. [Employers] are also accountable for staying current with any updates to these requirements, as well as incorporating [the] same into any office-based work activities and/or Site Safety Plan.”

In addition to New York’s minimum standards, businesses must comply with applicable federal standards, including those issued by the Equal Employment Opportunity Commission (“EEOC”) regarding the Americans with Disabilities Act (“ADA”), Centers for Disease Control and Prevention (“CDC”), Environmental Protection Agency (“EPA”), and the United States Department of Labor’s Occupational Safety and Health Administration (“OSHA”). For additional information regarding these standards, please read our memoranda and blog posts on these topics, as well as the respective agency websites:

- [CDC Issues Guidance for Employers in Office Buildings in Response to COVID-19 Pandemic;](#)
- [DOL’s Request for Reopening Insights from Public and EPA and CDC’s Joint Guidance for Cleaning and Disinfecting Worksites;](#)
- [EEOC Releases Updated Guidance to Employers Regarding ADA-Compliant Practices During the COVID-19 Crisis;](#)
- [OSHA Issues Enforcement Guidance on Recording COVID-19 Cases and on Its Intention to Consider Good Faith Attempts to Comply with OSHA Requirements During the COVID-19 Pandemic;](#)
- [OSHA Issues Revised Enforcement Guidance on Reporting COVID-19 Cases;](#)
- [OSHA Issues General Guidance on Returning to Work;](#)
- [Return-to-Work Considerations for Employers;](#)
- [U.S. Department of Labor Issues Workplace Guidelines for Coronavirus Outbreak, Including Specific Guidance on FMLA, FLSA and FECA;](#) and
- [U.S. Department of Labor Issues New COVID-19 Guidance on FLSA, FMLA, and FFCRA Leave.](#)¹

GUIDANCE FOR OFFICES

New York has issued [detailed guidelines](#) as well as [summary guidelines](#) for offices. These guidelines apply to all businesses whose core functions take place in an office setting, including businesses and entities in the following sectors: professional services, nonprofit, technology, administrative support, and higher education administration. The guidelines may also apply to businesses operating parts of their business functions under different guidelines, such as the front office of a construction company. As mentioned above, businesses are required to affirm that they have reviewed and understand these industry guidelines and that they will implement them. These guidelines “apply to all office-based work activities (essential and nonessential) in operation during the COVID-19 public health emergency until rescinded or amended by the State.”

A summary of the minimum safety guidelines for offices follows.

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A. PHYSICAL DISTANCING.

- Limit the total number of occupants at any given time to no more than 75% of the maximum occupancy for a particular area as set by the certificate of occupancy. If applicable, employers should work with building owners/managers to maintain capacity limits.
- Employers must ensure that a distance of at least six feet is maintained among all individuals at all times, unless safety of the core activity requires a shorter distance.
 - Any time workers or visitors must come within six feet of another person, acceptable face coverings must be worn (ensuring that mouth and nose are covered). Individuals must be prepared to don a face covering if another person unexpectedly comes within six feet.
 - Employers should consider closing any common indoor or outdoor seating areas within the office space, such as reception areas. If such areas remain open, employers must modify the seating arrangements to ensure that individuals are at least six feet apart in all directions (*i.e.*, side-to-side and when facing one another).
- If distance is not feasible between workstations, employers must provide and require the use of face coverings or physical barriers (*e.g.*, plastic shields or walls, strip curtains, cubicle walls or other impermeable dividers or partitions).
 - Employers may modify or reconfigure the use and/or restrict the number of workstations, employee seating areas and desks so that employees are at least six feet apart in all directions.
- Employers should consider implementing strict clean-desk policies so that non-essential items are stored in enclosed cabinets or drawers instead of on desks.
- Employers should limit the use of shared workstations to the extent practicable. To the extent shared workstations remain in use, they must be cleaned and disinfected between users.
- Employers should prohibit the use of small spaces (*e.g.*, elevators, supply rooms, personal offices, vehicles) by more than one individual at time, unless all individuals are wearing face coverings (the summary guidance reflects that this item is mandatory). Employers must restrict access to areas that have reached maximum capacity under distancing guidelines.
 - Even when face coverings are in use, occupancy must never exceed 75% of the maximum capacity of the space or vehicle.
 - Employers must put in place practices for adequate social distancing in small areas, such as restrooms and breakrooms, and should develop signage and systems (*e.g.*, flagging when occupied) to restrict occupancy when social distancing cannot be maintained in such areas.
 - Employers should take additional measures to prevent congregation in elevator waiting areas and limit density in elevators by enabling the use of stairs.
 - To quantify and display utilization of spaces throughout the office, employers may choose to use technology, such as room sensors and real-time dashboards.
- Employers should increase ventilation with outdoor air to the greatest extent possible (*e.g.*, opening windows and doors in individual office rooms), while maintaining safety protocols.
- Employers should implement measures to reduce bi-directional foot traffic using tape or signs with arrows in narrow aisles, hallways, or spaces.
- Employers should post signage and distance markers denoting spaces of six feet in commonly used and other applicable areas, such as clock in/out stations, health screening stations, restrooms, copy rooms, kitchens and reception desks.
 - Employers may consider reminding workers of appropriate social distancing measures, for example, by marking tables in meeting rooms with appropriate distance markers.

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- Employers must post signs throughout the office “consistent with DOH COVID-19 [signage](#)” to remind individuals to:
 - Cover their nose and mouth with a face covering when six feet of social distance cannot be maintained;
 - Properly store and, when necessary, discard personal protective equipment (“PPE”);
 - Adhere to physical distancing instructions;
 - Report symptoms of or exposure to COVID-19, and how they should do so;
 - Follow hand hygiene and cleaning and disinfection guidelines; and
 - Follow appropriate respiratory hygiene and cough etiquette.

B. GATHERINGS IN ENCLOSED SPACES.

- Employers should encourage the use of tele- or video-conferencing for employee meetings whenever possible to reduce the density of in-person gatherings.
 - In-person gatherings should be held in open, well-ventilated spaces with six feet of distancing among participants, or employees should wear appropriate face coverings.
- Employers should encourage social distancing by limiting occupancy to or closing non-essential amenities and communal areas that do not allow for social distancing protocols. If open, employers must make hand sanitizer or disinfecting wipes available next to equipment near such amenities (for example, vending or coffee machines).
- Non-essential common areas, such as gyms, pools or game rooms, may reopen in accordance with any applicable industry-specific guidance. Specifically, gyms and fitness centers must follow the guidelines outlined in the [Interim Guidance for Gyms and Fitness Centers during the COVID-19 Public Health Emergency](#); pool operations must follow the guidelines outlined in the [Interim Guidance for Pools and Recreational Aquatic Spray Grounds During the COVID-19 Public Health Emergency](#); and recreational activities, such as pool and billiards, must follow the guidelines outlined in the [Interim Guidance for Sports and Recreation during the COVID-19 Public Health Emergency](#).

C. WORKPLACE ACTIVITY.

- Employers must take measures to reduce interpersonal contact and congregation through various methods (e.g., adjusting workplace hours, limiting in-person presence to necessary staff, shifting design (i.e., A/B teams), reducing on-site workforce, and staggering arrival/departure times to reduce congestion in lobbies/elevators).
 - Employees that do not need to be in the office may be allowed to collect documents on a case-by-case basis, but such collection should occur “minimally, not with frequency.”
- Employers should create policies that encourage employees to work from home when feasible.
 - Employers may choose to develop return-to-office tiers or waves for employees based on factors such as function, safe transportation and ability to work remotely.
 - Employers may choose to implement best practices for employees to successfully work from home, including: conducting regular surveys of employees to determine what practices are working and what can be improved; providing tips and tricks for employees to enhance remote work sustainability; allowing for employees to set morning and evening boundaries and take regular breaks throughout the day; and informing employees of the resources they have readily available.
- Employers should consider limiting all non-essential travel.

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- Employers must establish designated areas for pick-ups and deliveries, and limit contact to the extent possible.
- Employers should limit worksite interactions and movements of employees, for example by designating separate entrances and exits, or by instructing employees to remain near their workstations as much as possible.

D. PROTECTIVE EQUIPMENT.

- Employers must provide workers with face coverings at no cost, and have an adequate supply of replacement face coverings, in addition to the PPE required for certain workplace activities.
 - Face coverings must be cleaned or replaced after use and may not be shared, following [CDC guidance](#).
 - Employers must allow, but cannot require, employees to use their own acceptable face coverings.
- Employers must train workers on how to use PPE, including how to put on, remove, clean, and discard it.
- Employers must advise workers and visitors to wear face coverings in common areas, including elevators, lobbies, and when traveling around the office.
- Employers must put in place measures to limit the sharing of commonly used objects, like computers, tools, or writing utensils and limit the touching of shared surfaces, or require workers to perform hand hygiene before and after contact with such objects or surfaces.

E. HYGIENE, CLEANING, AND DISINFECTION.

- Employers must ensure adherence to the hygiene, cleaning, and disinfection requirements published by the CDC and DOH, including the [Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID-19](#), and the [STOP THE SPREAD](#) poster.
 - Employers must maintain logs that include the date, time, and scope of cleaning and disinfection.
- Employers must provide hand hygiene stations in the office, as follows:
 - For handwashing, the stations should include soap, running warm water, and disposable paper towels. For hand sanitizing where handwashing facilities may not be available or practical, the stations should include an alcohol-based hand sanitizer containing at least 60% alcohol.
 - Make hand sanitizer available throughout common areas in the office. It should be placed in convenient locations, such as at entrances, exits, and reception desks.
 - Place signage near hand sanitizer stations indicating that visibly soiled hands should be washed with soap and water; hand sanitizer is not effective on visibly soiled hands.
 - Employers should place receptacles around the building for disposal of soiled items, including PPE.
- Employers must provide appropriate cleaning and disinfection supplies for shared and frequently touched surfaces and encourage employees (or cleaning staff) to use these supplies following manufacturer's instructions, before and after use of these surfaces, followed by hand hygiene.
 - For high-touch surfaces, employers should install touch-free amenities such as water fountains, trash cans, and hand dryers.
- Employers must regularly clean and disinfect the building, and more frequently clean and disinfect high-risk areas used by many individuals and frequently touched surfaces. Cleaning and disinfection must be rigorous and ongoing and should occur at least after each shift, daily, or more frequently as needed. Regularly clean and disinfect restrooms, depending on frequency of use.

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- Employers must ensure distancing rules are adhered to by using signage, occupied markers, or other methods to reduce restroom capacity where feasible.
- Employers must ensure that materials and tools are regularly cleaned and disinfected using registered disinfectants, including at least as often as employees or visitors change workstations or move to a new set of materials. Employers should refer to the Department of Environmental Conservation (DEC) [list of products](#) registered in New York State and identified by the EPA as effective against COVID-19.
- If cleaning or disinfecting products or the act of cleaning and disinfection causes safety hazards or degrades the material or machinery, employers must put in place hand hygiene stations between use and/or supply disposable gloves and/or limitations on the number of employees using such machinery.
- Employers must provide for the cleaning and disinfection of exposed areas in the event an individual is confirmed to have COVID-19, with such cleaning and disinfection to include, at a minimum, all heavy transit areas and high-touch surfaces (e.g., touchscreens, printers, keypads, telephones, handrails, door handles, vending machines, and communal coffee stations).
- Follow the CDC guidelines on [Cleaning and Disinfecting Your Facility](#) if someone is suspected or confirmed to have COVID-19:
 - Close off areas used by the person who is suspected or confirmed to have COVID-19.
 - Employers do not necessarily need to close operations if they can close off the affected areas.
 - Shared building spaces used by the person suspected or confirmed to have COVID-19 (e.g., elevators, lobbies, building entrances) must also be shut down and cleaned and disinfected in coordination with the building manager.
 - Open outside doors and windows to increase air circulation in the area.
 - Wait 24 hours (or as long as possible) before cleaning and disinfecting.
 - Clean and disinfect all areas used by the person suspected or confirmed to have COVID-19, such as offices, bathrooms, common areas, and shared equipment.
 - Once the area has been appropriately cleaned and disinfected, it can be reopened for use.
 - Employees without close or proximate contact with the person suspected or confirmed to have COVID-19 can return to the work area immediately after cleaning and disinfection.
 - Refer to DOH's [Interim Guidance for Public and Private Employees Returning to Work Following COVID-19 Infection or Exposure](#) (discussed below) for information on “close or proximate” contacts.
 - If more than seven days have passed since the person who is suspected or confirmed to have COVID-19 visited or used the facility, additional cleaning and disinfection is not necessary, but routine cleaning and disinfection should continue.
- Employers must prohibit shared food and beverages among employees (e.g., self-serve meals and beverages), encourage employees to bring lunch from home, and reserve adequate space for employees to observe social distancing while eating meals.

F. PHASED REOPENING.

- Employers are “encouraged” to phase-in reopening activities so as to allow for operational issues to be resolved before production or work activities return to normal levels, such as by limiting the number of employees, hours, or number of customers available to be served when first reopening.

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G. COMMUNICATIONS PLAN.

- Employers must affirm that the business has reviewed and understands the state-issued industry guidelines, and that it will implement them.
- Employers should develop a communications plan for employees, visitors, and customers that includes applicable instructions, training, signage, and a consistent means to provide employees with information. Employers should work with building management to help facilitate any building-wide communications. Employers may consider developing web pages, text and email groups, and social media.
- Employers should encourage customers to adhere to CDC and DOH guidance regarding the use of PPE, specifically face coverings when a social distance of six feet cannot be maintained, through verbal communication and signage.
- Employers should post signage inside and outside of the location to remind personnel and customers to adhere to proper hygiene, social distancing rules, appropriate use of PPE, and cleaning and disinfection protocols.
- Employers should provide building managers/owners a list of essential visitors expected to enter the building.

H. SCREENING AND TESTING.

- Employers must implement mandatory daily health screening of employees and, where practicable, visitors. Such screening is not required for delivery personnel.
 - Screening practices may be performed remotely (e.g., by telephone or electronic survey) before the employee or visitor reports to the office, to the extent possible, or may be performed on site.
 - Screening should be coordinated to prevent employees or visitors from intermingling in close or proximate contact with each other prior to completion of the screening.
 - At a minimum, screening is required for all employees or visitors and must be completed using a questionnaire that determines whether the employee or visitor has: (a) knowingly been in close or proximate contact in the past 14 days with anyone who has tested positive for COVID-19 or who has or had symptoms of COVID-19; (b) tested positive for COVID-19 in the past 14 days; and/or (c) has experienced any symptoms of COVID-19 in the past 14 days.
- Employers should coordinate with building managers to facilitate screening.
 - Employers are responsible for screening their own employees and visitors, unless business and building management have agreed to an alternate arrangement to ensure screening is in effect.
 - Screening best practices include:
 - If space and building configuration allows, screen individuals at or near the building entrance to minimize the impact of an individual suspected or confirmed to have COVID-19.
 - Allow for adequate social distancing while individuals queue for screening and/or building entry.
 - Coordinate with building managers to identify individuals who have completed a remote screening.
 - Use contactless thermal cameras in building entrances, in coordination with building management, to identify potentially symptomatic visitors and direct them to a secondary screening area to complete a follow-up screening.
- Refer to CDC guidance on [Symptoms of Coronavirus](#).

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- Employers must require employees to immediately disclose if and when their responses to any of the aforementioned questions change, such as if they begin to experience symptoms, including during or outside work hours.
 - Temperature checks may also be conducted per [EEOC](#) or DOH guidelines.
 - Employers must maintain the confidentiality of all medical information, including screening data, as required by federal and state law and regulations.
 - Under New York guidelines, employers are prohibited from keeping records of employee health data (e.g., the specific temperature data of an individual), but are permitted to maintain records that confirm individuals were screened and the result of such screening (e.g. pass/fail, cleared/not cleared). Note, however, that EEOC guidance provides that employers who choose to conduct temperature checks before allowing employees to enter the workplace may maintain a log of the results, as long as this information is kept confidential.²
- Employers must ensure that any personnel performing screening activities, including temperature checks, are appropriately protected from exposure to potentially infectious employees or visitors entering the office. Personnel performing screening activities should be trained by employer-identified individuals who are familiar with CDC, DOH, and OSHA protocols.
- Screeners should be provided and use PPE, including, at a minimum, a face mask, and may include gloves, a gown, and/or a face shield.
- An individual who screens positive for COVID-19 symptoms must not be allowed to enter the office and must be sent home with instructions to contact their healthcare provider for assessment and testing.
 - Employers should remotely provide such individuals with information on healthcare and testing resources.
 - Employers must immediately notify the state and local health department about the case if test results are positive for COVID-19.
- Employers should refer to DOH's [Interim Guidance for Public and Private Employees Returning to Work Following COVID-19 Infection or Exposure](#) for information about protocols and policies for returning employees to work after a suspected or confirmed case of COVID-19, or after the employee has been in close or proximate contact with a person suspected or confirmed to have COVID-19:
 - If an employee tests positive for COVID-19, regardless of whether the employee is symptomatic or asymptomatic, the employee may return to work upon completing at least 10 days of isolation from the onset of symptoms or 10 days of isolation after the first positive test if he or she remains asymptomatic.
 - If an employee has had close or proximate contact with a person with COVID-19 for a prolonged period of time and is experiencing COVID-19-related symptoms, the employee may return to work upon completing at least 10 days of isolation from the onset of symptoms.
 - The DOH considers close contact to be someone who was within six feet of an infected person for at least 10 minutes starting from 48 hours before illness onset until the time the person was isolated. The local health department should be contacted if the extent of contact between an individual and a person suspected or confirmed to have COVID-19 is unclear.
 - If an employee has had close or proximate contact with a person with COVID-19 for a prolonged period of time and is not experiencing COVID-19-related symptoms, the employee may return to work upon completing 10 days of self-quarantine.
 - However, if such an employee is deemed essential and critical for the operation or safety of the workplace, upon a documented determination by the person's supervisor and a human resources representative in consultation with appropriate state and local health authorities, the exposed, asymptomatic employee may return to work so long as the employee adheres to the

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following practices prior to and during their work shift, which should be monitored and documented by the employer and employee:

- *Regular Monitoring.* The employee must self-monitor for a temperature greater than or equal to 100.0 degrees Fahrenheit every 12 hours and symptoms consistent with COVID-19 under the supervision of their employer's occupational health program.
- *Wear a Mask.* The employee must wear a face mask at all times while in the workplace for 14 days after last exposure. Note that New York Department of Health regulations also require "[a]ny employee who is present in the workplace" to "wear a mask or face-covering when in direct contact with customers or members of the public, or when unable to maintain social distance."³
- *Social Distance.* The employee must continue social distancing practices, including maintaining at least six feet of distance from others.
- *Clean and Disinfect Workspaces.* The employer must continue to regularly clean and disinfect all areas such as offices, bathrooms, common areas and shared electronic equipment.
- *Maintain Quarantine.* The employee must continue to self-quarantine for 10 days and self-monitor for temperature and symptoms when not at the workplace for 14 days after last exposure.
- If an employee is symptomatic upon arrival at work or becomes sick with COVID-19 symptoms while at the workplace, absent close or proximate contact with a person with COVID-19, the employee must be separated and sent home immediately and may return to work upon completing at least 10 days of isolation from the onset of symptoms or upon receipt of a negative COVID-19 test result.
- An employee who has responded that he or she has had close contact with a person who is confirmed or suspected of having COVID-19 may not be allowed to enter the site without abiding by the precautions outlined below.
- Employers must review all employee and visitor responses collected by the screening process on a daily basis and maintain a record of such review. Employers must also identify a contact as the party for employees and visitors to inform if they later are experiencing COVID-19-related symptoms, as noted in the questionnaire.
- Employers must designate a site safety monitor whose responsibilities include continuous compliance with all aspects of the site safety plan.
- To the extent possible, employers should maintain a log of every person, including employees and visitors, who may have close or proximate contact with other individuals at the worksite or area, excluding deliveries that are performed with appropriate PPE or through contactless means. The log should contain contact information, such that all contacts may be identified, traced, and notified in the event an employee is diagnosed with COVID-19. Employers must cooperate with state and local health department contact tracing efforts.
- Employers should designate a central point of contact, which may vary by activity, location, shift, or day, responsible for receiving and attesting to having reviewed all employee questionnaires, with such contact also identified as the party for employees and visitors to inform if they later are experiencing COVID-19-related symptoms, as noted on the questionnaire.
 - If employers and building management have agreed to an alternate screening arrangement whereby building management administers screening on behalf of tenants, then building management shall be responsible for maintaining a record of the screening process. Maintaining records of employee health data (e.g., the specific temperature data of an individual) is prohibited; the only records to be maintained on a daily basis regarding the screening process are records

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related to those individuals who were screened and confirmation that no employee or visitor who failed the screening process was granted access.

I. TRACING AND TRACKING.

- Employers must notify the state and local health department immediately upon being informed of any positive COVID-19 test result by an employee in their office.
- In the case of an employee or visitor testing positive, the employer must cooperate with the state and local health department as required to trace all contacts in the workplace, and the state and local health department where the building is located must be notified of all individuals who entered the site dating back 48 hours before the employee or visitor first experienced COVID-19 symptoms or tested positive, whichever is earlier. Confidentiality must be maintained as required by federal and state law and regulations.
 - The employer may offer optional tracing and tracking technology (e.g., Bluetooth-enabled mobile applications) to streamline contact tracing and the communication process among the workforce and others.
- Employers must ensure that in the case of an employee showing symptoms while in the workplace, the building managers are immediately notified with information on where the individual has been throughout the building and notify building management if the symptomatic employee tests positive.
- State and local health departments will implement monitoring and movement restrictions of infected or exposed persons, including home isolation or quarantine.
- Individuals who are alerted that they have come into close or proximate contact with a person with COVID-19, and have been alerted via tracing, tracking or other mechanism, are required to self-report to their employer at the time of alert and shall follow the DOH's [Interim Guidance for Public and Private Employees Returning to Work Following COVID-19 Infection or Exposure](#) (discussed above).

Implementing CDC Guidance for Fully Vaccinated People

On May 19, 2021, New York issued "[Implementing CDC Guidance](#)," a summary of the CDC's May 13, 2021 "[Interim Public Health Recommendations for Fully Vaccinated People](#)." This summary clarifies that businesses may require masks and six feet of social distancing for employees and/or patrons within their establishments *or* adhere to CDC guidance, which advises that fully vaccinated individuals do not need to wear masks or be socially distanced, but unvaccinated individuals must continue to wear masks and be socially distanced in most settings. In indoor settings where the vaccination status of individuals is unknown, the New York Department of Health strongly recommends masks and six feet of social distancing. Additionally, any mask requirements that businesses choose to implement must adhere to all applicable federal and state laws and regulations, such as the Americans with Disabilities Act.

- **Businesses Following CDC Guidance.** Businesses that decide to apply the CDC guidance may apply it to the entire establishment or a separate, designated part of the establishment. Businesses such as offices, that do not congregate patrons and/or that operate below the State's social gathering limit of 250 indoors, and that choose to implement the CDC guidance, may require proof of full vaccination status through paper form, digital application, the State's Excelsior Pass, or, alternatively, may rely upon self-reporting of vaccination status (e.g., honor system).
- **Businesses Not Following CDC Guidance.** For businesses that decide not to follow the CDC guidance, all individuals must wear masks and maintain six feet of social distancing, and business

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capacity is only limited by the space available for patrons or parties of patrons to maintain the required social distance.

ADDITIONAL INFORMATION

Employers reopening as part of Phase Two may also find the following additional guidance and information helpful:

- On May 28, 2020, New York Governor Cuomo signed an [executive order](#) permitting businesses to deny entry to individuals not wearing a face covering.
- On May 29, 2020, New York City Mayor De Blasio [announced](#) that New York City would be delivering up to 2 million face coverings for businesses and workers. Mayor De Blasio also announced that the city intended to issue reopening guidance in the near future.
- New York State has published an [online tool](#) for determining whether a business is eligible to reopen. The tool also provides businesses with the applicable health and safety standards with which businesses must comply.

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ENDNOTES

- ¹ Businesses and their employees must also comply with the mandatory [guidelines](#) for quarantine following travel to any state that does not border New York, US territory, or a CDC level 2 and higher country. Under the guidelines, asymptomatic travelers must quarantine for 10 days after arrival in New York, unless they comply with the following “test out” procedures. For travelers who were out-of-state for more than 24 hours, travelers must obtain a COVID-19 test within three days of departure, prior to arrival in New York. The traveler must, upon arrival in New York, quarantine for three days. On day four of their quarantine, the traveler must obtain another COVID-19 test. If both tests comes back negative, the traveler may exit quarantine early upon receipt of the second negative diagnostic test.

For travelers who were out-of-state for less than 24 hours, the traveler does not need a test prior to their departure from the other state, and does not need to quarantine upon arrival in New York. However, the traveler must fill out a traveler form upon entry into New York, and take a COVID-19 diagnostic test four days after their arrival in New York. Essential workers are exempt from this quarantine requirement.
- ² U.S. EQUAL OPPORTUNITY EMPLOYMENT COMMISSION, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* (May 7, 2020) <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (last visited on June 2, 2020).
- ³ N.Y. Comp. Codes R. & Regs. tit. 10, § 66-3.2(c).

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