

> Covid-19 Client Alert

What Employers Need to Know As New York UNPAUSES

May 18, 2020

Authors and Key Contacts

If you require any additional information about the regional reopening plan for New York State, or any other employment issue related to COVID-19 or otherwise, please contact any of the attorneys listed below.

Jeffrey P. Englander

Partner & Co-Chair
P (212) 735-8720
jenglander@morrisoncohen.com



Keith A. Markel

Partner & Co-Chair
P (212) 735-8736
kmarkel@morrisoncohen.com



Theresa D'Andrea

Associate
P (212) 735-8751
tdandrea@morrisoncohen.com



John B. Fulfree

Associate
P (212) 735-8850
jfulfree@morrisoncohen.com



Christopher W. Pendleton

Associate
P (212) 735-8783
cpendleton@morrisoncohen.com



Our [previous client alert](#) discussed Governor Cuomo's four-phase blueprint for reopening New York State, which is dubbed as "UNPAUSE" or "New York Forward." At this time, however, the New York State's shelter-in-place order remains in place throughout the state at least until June 13, 2020, except for five of the ten regions in the State: Central New York, Finger Lakes, Mohawk Valley, North Country, and Southern Tier. Because these regions met the [mandated thresholds](#) set forth by the Governor's plan, they were allowed to reopen and enter Phase One on May 15, 2020.

New York State has now provided further guidance on the industries eligible to reopen at each phase. Phase One includes the reopening of construction, agriculture, forestry, fishing and hunting, and retail – limited to curbside or in-store pickup or drop off, manufacturing, and wholesale trade. If, after two weeks, the regions in Phase One continue to see metrics trending in a positive direction, they may initiate Phase Two of the Governor's plan. Phase Two includes the reopening of professional services, retail, administrative support, and real estate/rental & leasing businesses. The reopening of restaurants and other non-essential food services would begin in Phase Three, followed by a final Phase Four that would include arts, entertainment, recreation, and education related establishments.

More importantly, since our last client alert, New York State has issued industry-specific [mandatory guidelines and best practices](#) ("Guidance"). For example, the State has released both [summary](#) and [detailed](#) guidelines that apply to all retail businesses providing curbside and in-store pickup in Phase One. These guidelines apply to retailers within the regions that are permitted to reopen, as well as other areas throughout the state where essential retail businesses were previously permitted to provide curbside and in-store pickup as a component of their essential business or service. Part of the Guidance includes measures to ensure physical distancing at store locations, providing protective equipment to all employees, undertaking mandatory screening of employees, ensuring routine hygiene and environmental cleaning, and fostering communication with the State, employees, and customers, including **affirming to New York State that industry guidelines have been reviewed, and that employers will implement them.** Planning to implement these guidelines was discussed in detail in our [prior client alert](#). Similar guidelines have also been released for each of the other industries eligible to reopen in Phase One.

New York State has also issued a "[Re-opening Safety Plan Template](#)" to serve as further guidance and should be completed by all employers. This safety plan does not need to be submitted to any particular State agency for approval, but

must be retained on the premises of the business and made available to the New York State Department of Health (DOH) or local health or safety authorities in the event of an inspection.

New York State has also published an [FAQ webpage](#) to assist businesses as they reopen. The FAQs provide links to helpful information for employers, including, among other things: (i) whether they are in an industry or region that is permitted to reopen; (ii) where they can find the Guidance for their industry; and (iii) in which Phases will different types of businesses be allowed to reopen. The FAQs also state that essential businesses who have been allowed to operate throughout the COVID-19 pandemic are also required to follow these standards because “[t]he increased measures detailed in the Guidance are in furtherance of public health and safety, and all businesses as well as units of State and local government are required to ensure this standard of safety.”

Significantly, the FAQs make clear that waivers will not be granted. In other words, no “undue hardship” exception exists for any businesses and all employers must comply with these reopening guidelines. As such, employers must, among other things, ascertain how to obtain and have enough protective equipment for all employees in the workplace. Employers can contact their county Office of Emergency Management for assistance in procuring protective equipment, if the business cannot procure an adequate supply of protective equipment on its own.

Retailers will also be interested to learn that FAQ No. 11 defines the term “in-store pickup” as a customer placing an order for specific item(s) by phone or internet in advance, then collecting such order at the retail location. It further provides that the retail location must abide by physical distancing requirements which prohibit occupancy within the location to no more than 50% of the maximum occupancy, including both employees and customers. Customers are only allowed on the premises to retrieve their prearranged order, and may not browse or place an in-person order. Customers must also maintain 6 feet of space from others or wear an acceptable face covering, if unable to maintain such distance

Employers should immediately begin reviewing the mandatory Guidance, the industry-specific guidelines and the FAQs now in order to create a logical, legally-sound Safety Plan that will pass inspection and safeguard your employees and public from harm. Failing to do so could subject the business to future liability, as employers are always required to minimize risks of spreading a known hazard, such as COVID-19, at the workplace, in accordance with their OSHA obligations. The Morrison Cohen LLP Labor & Employment team are here to help as employers contemplate and implement specific-industry guidelines and set up Safety Plans accordingly. We are happy to assist in drafting these Safety Plans or answering any questions you may have about reopening your business or any other employment-related issue.

* * * * *

Morrison Cohen LLP has created the [COVID-19 Resource Taskforce](#), a multidisciplinary taskforce comprised of attorneys with deep expertise in a broad range of legal areas, to assist clients navigating the challenging and uncertain business and legal environment caused by the COVID-19 pandemic. We encourage clients to utilize our capabilities by reaching out to their primary Morrison Cohen attorney contact, who will put you in touch with the appropriate Taskforce person. You may also reach out directly to Joe Moldovan and Alec Nealon, the Taskforce co-chairs:

Joseph T. Moldovan

Chair, Business Solutions,
Restructuring & Governance
Practice
Co-Chair COVID-19 Taskforce
P (212) 735-8603
C (917) 693-9682
F (917) 522-3103
jmoldovan@morrisoncohen.com



Alec Nealon

Partner, Executive Compensation
& Employee Benefits Practice
Co-Chair COVID-19 Taskforce
P (212) 735-8878
C (646) 318-4845
F (917) 522-9978
anealon@morrisoncohen.com

