

> Covid-19 Client Alert

Some New York State Regions Have Entered Phase Two of UNPAUSE with New York City on Track to Enter Phase One on June 8, 2020

June 1, 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



On Friday, May 29, 2020, New York Governor Andrew Cuomo implemented Phase 2 of his four-phase blueprint for reopening New York State, dubbed “UNPAUSE” or “New York Forward.” Governor Cuomo also stated that New York City is “on track” to reopen on June 8, 2020, under the restrictions set forth in Phase 1 of his reopening plan, detailed in our [previous client alert](#).

Pursuant to the Governor’s latest [Executive Order](#), effective May 29, 2020, Central New York, Finger Lakes, Mohawk Valley, North Country, and Southern Tier regions have entered Phase 2 (the “Phase 2 Region(s)”),¹ which allows for the reopening of professional services, retail in-store shopping, administrative support and information technology businesses, real estate services, building and property management, leasing, rental, and sales businesses, barbershops and hair salons (limited services), motor vehicle leasing, rental, and sales businesses. Phase 2 Region employers must review the State’s [industry-specific mandatory guidelines and best practices](#) (“Guidance”) specific to Phase 2 in order to implement and comply with the requisite [Safety Plan](#).

For example, the State has released both [summary](#) and [detailed](#) guidelines that apply to both in-store essential retail business activities (such as grocery stores, pharmacies, and hardware stores) and Phase 2 Region in-store non-essential retail businesses activities (such as clothing stores). The State requires these Phase 2 Region employers to implement the following measures, including, but not limited to:

- ensuring physical distancing at store locations, limiting the workforce and customer presence to **no more than 50% of the maximum occupancy**, inclusive of customers, who must maintain 6 feet of space from others and wear an acceptable face covering;
- providing protective equipment to all employees **at no-cost to the employee**, including acceptable face coverings such as homemade cloth masks or surgical masks, unless the nature of the work requires stricter personal protective equipment;
- implementing mandatory health screening assessment of employees (*e.g.*, questionnaire, temperature check) before employees begin work

¹ The Governor further stated that so long as virus-related deaths continue to decrease and contact tracing remains online, the Long Island and Mid-Hudson Regions of New York State can enter Phase 2 as early as next week.

each day, including asking employees and essential visitors (but not customers) about any (1) COVID-19 symptoms in past 14 days, (2) positive COVID-19 test in past 14 days, and/or (3) close contact with a confirmed or suspected COVID-19 case in past 14 days;

- ensuring routine hygiene and environmental cleaning, including providing and maintaining hand hygiene stations on-site for handwashing with soap, water, and paper towels, as well as an alcohol-based hand sanitizer containing 60% or more alcohol for areas where handwashing is not feasible; and
- maintaining communication with the State, employees, and customers, including affirming to New York State that industry guidelines have been reviewed and implemented, and that the employer's completed Safety Plan has been conspicuously posted on site.

Importantly, the Guidance also makes clear that certain businesses must remain closed, including indoor shopping malls, dine-in and on premise restaurant or bar services (excluding take-out or delivery), large gathering/event venues (including, but not limited to, establishments that host concerts or conferences), gyms, fitness centers, and exercise classes, video lottery and casino gaming facilities, movie theatres (except drive-ins), and places of public amusement, whether indoors or outdoors (including, but not limited to amusement parks, zoos, and bowling alleys).

New York State has also updated its [FAQ webpage](#) to assist Phase 2 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 which have been allowed to operate throughout the COVID-19 pandemic are 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." To ascertain if a non-essential business in a region is permitted to re-open, or an essential business throughout the State was previously permitted to remain open, New York State has created the "[New York Forward Business Reopening Lookup Tool](#)." As a reminder, and also discussed in our [previous client alert](#), the FAQs make clear that waivers will not be granted to employers, so employers must ensure that they are meeting Guidance requirements applicable to their businesses.

Employers should immediately review the mandatory Guidance, the industry-specific guidelines, and the FAQs now in order to safeguard both employees and the public from harm. Employers in Phase 2 Regions should revisit their Safety Plans now to ensure that they meet the Phase 2 requirements, such as retail employers creating a safety plan to ensure that it will have no more than 50% of occupancy at any given time. 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, in the workplace, in accordance with their obligations under the Occupational Safety and Health Act (OSHA). The Morrison Cohen LLP Labor & Employment team is here to help as employers contemplate, implement, and update specific-industry guidelines and Safety Plans accordingly.

Governor Cuomo Hints that New York City May Reopen June 8, 2020

To date, New York City is the only region to not receive the green light from Governor Cuomo to enter Phase 1. Encouragingly, however, Governor Cuomo announced to the press on May 29, 2020, and [confirmed by a recent Tweet](#), that New York City is "on track" to reopen on June 8, 2020, but will have to follow the restrictions set forth in [Phase 1 of his reopening plan](#), which allows retail stores to open for curbside or in-store pickup only, and nonessential construction, wholesale trade, agriculture, forestry, fishing hunting, and manufacturing to all resume. Although Governor Cuomo has yet to release an executive order giving effect to his comments, the Morrison Cohen LLP Labor & Employment team will continue to keep employers updated on all new developments. In the meantime, if you have any questions about these Phase 1 or 2 Region(s) or the requirements for reopening, or any employment-related issue, please feel free to contact the above-referenced Labor & Employment attorneys.

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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

