New York Forward Phase 2: Guidance for Commercial Landlords and Office Tenants in New York City

Monday, June 8, 2020

In late May, guidance for Phase 2 of Governor Cuomo’s New York Forward re-opening plan was issued. New York City is expected to enter into Phase 1 on June 8th, and thereafter Phase 2, provided certain thresholds are satisfied. The mandatory guidelines issued for commercial landlords and office tenants in connection with Phase 2 are detailed and onerous, and therefore it is recommended that both landlords and tenants in New York City proactively begin to implement the measures required by the guidelines, including communicating with building management in order to streamline the re-opening process for their respective buildings and office spaces.

The Phase 2 guidance sets forth guidelines concerning office space, retail space, commercial building management, repair and cleaning services, as well as vehicle sales and multi-family residential buildings. For purposes of this publication, we
have focused on the State of New York’s mandatory summary guidelines specific to real estate and commercial building management as a guide for commercial landlords and office tenants.

**MANDATORY GUIDELINES FOR LANDLORDS**

Landlords and building managers are primarily responsible for satisfying the commercial building management mandatory guidelines with respect to vacant spaces and common areas within a commercial building. In order to implement the Phase 2 guidelines for commercial building management, landlords must prepare a written safety plan outlining the steps intended to be taken in order to prevent the spread of COVID-19 within their buildings. The New York Department of Health has issued a safety plan template (found [here](#)) and which landlords may utilize. Alternatively, landlords may prepare their own safety plan. Safety plans do not need to be submitted to any governing authority for approval, however they must be retained in the building and made available to the New York State Department of Health or other local health or safety authorities in the event of a building inspection. The written safety plan are intended to ensure that commercial buildings have cleaning, disinfection and contact tracing plans in place prior to reopening so as to both prevent the spread of COVID-19 and be prepared in the event there is a positive case(s) in the building.

The re-opening of commercial buildings will be limited to fifty percent (50%) of the maximum occupancy for each office space and common area within the building. All persons within the building must wear a face covering if social distancing of at least six (6) feet is not possible to maintain. Landlords are required to provide employees with face coverings at no cost. Landlords must install physical barriers at the security desks in lobby and reception areas of buildings to minimize contact between building occupants and visitors and security guards and desk attendants. Additionally, elevator capacity must be limited to less than fifty percent (50%) of maximum capacity, and all individuals on an elevator must wear a face covering. Prior to re-opening of commercial buildings that have been entirely unoccupied during the state-wide shutdown, landlords must complete checks, tasks and assessments of a building’s systems including but not limited to mechanical systems, water systems, elevators and HVAC.

Landlords must implement daily health screenings for their employees and building visitors, including inquiries regarding COVID-19 symptoms in the past 14 days, positive COVID-19 testing in the past 14 days; and close contact with confirmed or suspected COVID-19 cases in the past 14 days. Such screenings may be done on site or remotely. Responses from employees and visitors must be reviewed and documented on a daily basis. Landlords must also designate a point of contact who is responsible for reviewing the screenings on a daily basis, communicating with tenants regarding presumed-positive and positive cases and initiating cleaning procedures. Additionally, landlords must designate a site safety monitor to oversee all aspects of the written safety plan not only for landlords but also for tenants of the building.

Landlords should coordinate with tenants and building management in order to enforce the building and elevator capacity limits, ensure that physical distancing is
observed, facilitate daily screenings of occupants and visitors to the building and to
develop a communication and contact tracing plan with respect to possible COVID-
19 outbreaks within the building.

**MANDATORY GUIDELINES FOR TENANTS**

Tenants are primarily responsible for satisfying the commercial building
management mandatory guidelines with respect to their leased space in a
commercial building. As is required for landlords, tenants must also prepare a
written safety plan outlining plans to prevent the spread of COVID-19 within their
leased space. The requirements with respect to a tenant’s safety plan are identical
to those as set forth above with respect to landlords.

Staggered work schedules and flexible work arrangements will continue to be
encouraged. Tenants are required to provide their employees with a face covering at
no cost. Common areas such as kitchens and gathering spaces must remain closed,
and shared food and beverages are prohibited. The guidelines require tenants to
implement the same daily health screenings required by landlords, and therefore,
landlords and tenants should coordinate and streamline such screenings and devise
a plan for sharing information in a manner that observes relevant privacy laws as
well.

Landlords and tenants must also certify their compliance with the above commercial
building management mandatory guidelines on the state’s business
affirmation portal. Landlords, tenants and building managers should be working to
ensure they will be able to comply with these mandates and implement new policies
that will allow them to remain compliant on a going forward basis. We expect that
further information with respect to cost allocation for COVID-19 prevention
measures and how best to communicate and handle an outbreak within a commercial
building will continue to evolve. Mintz will continue to monitor and analyze the
rapidly changing legal landscape.

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