New York Governor Cuomo’s Order Reducing Workplace Density Due to Coronavirus

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Reopening New York

Governor Cuomo’s reopening plan for New York State continues. As of June 22, 2020, New York City, Mid-Hudson and Long Island are in Phase 2 and all other regions in New York State are in Phase 3. Phase 2 reopening includes, among other things, outdoor dining and office-based businesses. Phase 3 reopening marks the return of restaurants and food services. Each reopening business must develop a written Safety Plan outlining how its workplace will prevent the spread of COVID-19. Such safety plans, a template of which is available here, must be retained onsite and made available to the Department of Health and local authorities in the event of an inspection. Businesses should consult industry-specific guidelines available at the New York Reopening webpage before reopening.

Notably, the State has issued summary guidelines for food services operations. Under the guidelines, food services businesses must, among other things:

- Limit indoor capacity to no more than 50% of the maximum occupancy, exclusive of employees.
• Limit outdoor capacity to maintain table distancing of at least 6 feet.
• Require that employees wear acceptable face coverings at all times.
• Implement mandatory daily health screening of employees and, where practicable, vendors (excluding delivery personnel).
• Clean and disinfect exposed areas in the event a confirmed COVID-19 case, including, at a minimum, all heavy transit and high-touch surfaces.

Reopening businesses must enforce general and industry-specific safety procedures at all times. Reopening businesses are subject to inspection, and could be fined up to $10,000 for a violation.

Notable Executive Action

On June 15, 2020, Governor Cuomo issued Executive Order 202.42, permitting gatherings of up to twenty-five people in all regions that have reached Phase 3 reopening.

UPDATE – May 14, 2020

Reopening New York

New York State remains on PAUSE through May 15, 2020, after which phase one of Governor Cuomo’s reopening plan launches. The phased plan is based on meeting key public health metrics and will reopen New York on a regional basis. Among other things, in order to reopen, a region must: (1) experience a 14-day decline in total net hospitalizations and deaths on a three-day rolling average; (2) have at least 30 percent hospital and ICU beds available and 90 days of personal protective equipment stockpiled; (3) have the capacity to conduct 30 diagnostic tests for every 1,000 residents per month; and (4) have a baseline of 30 contact tracers for every 100,000 residents. New York is tracking these and other metrics for each region online via the Regional Monitoring Dashboard.

Each region will reopen businesses according to the following phases, with at least two weeks in between each phase:

• Phase 1: Construction; manufacturing; wholesale trade; select retail for curbside pickup only; agriculture, forestry, and fishing
• Phase 2: Professional services; finance and insurance; retail; administrative support; real estate, rental, and leasing
• Phase 3: Restaurants and food services
• Phase 4: Arts, entertainments and recreation; and education

Businesses will be required to implement the following measures upon reopening to help lower the risk of spreading the virus: (1) adjust workplace hours and shift design as necessary to reduce density in the workplace; (2) enact social distancing...
protocols; (3) restrict non-essential travel for employees; (4) require all employees and customers to wear masks if in frequent contact with others; (5) implement strict cleaning and sanitation standards; (6) enact a continuous health screening process for individuals to enter the workplace; (7) continue tracing, tracking, and reporting of cases; and (8) develop liability processes.

At present, the North Country, Finger Lakes, Southern Tier and Mohawk Valley Regions have met all seven metrics required to begin Phase 1 when New York State on PAUSE orders expire on May 15.

**Notable Executive Action**

On May 7, 2020, Governor Cuomo issued Executive Order 202.28. Among other things, the Order: (1) bars foreclosures on any residential or commercial mortgage for 60 days beginning June 20, 2020 where the individual or entity owing under the mortgage is eligible for unemployment benefits under state or federal law, or is otherwise facing financial hardship due to the COVID-19 pandemic; and (2) extends other directives implemented in earlier executive orders for 30 days (until June 6, 2020), including, among other things: (i) tolling the time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including the Civil Practice Law and Rules; and (ii) virtual witnessing of wills, lifetime trusts, health care proxies and durable powers of attorney.

**UPDATE - April 17, 2020**

On April 16, 2020, Governor Cuomo issued an Executive Order extending New York’s density-mitigation measures through May 15, 2020. Among other things, the Order also:

- extends the due date for statements of domestic or foreign professional corporations and partnerships whose statements expire on or after March 31, 2020;
- alters filing fees and extends the deadline for offering statements or prospectuses under Section 352-eeeee(2)(a) of the General Business Law; and
- requires public and private transportation users and operators to wear face masks.

In addition, as set forth in a separate Executive Order, individuals must wear masks when in public and unable to maintain social distancing effective April 17, 2020 at 8 p.m.

**UPDATE - April 6, 2020**

On April 6, 2020, Governor Cuomo issued an Executive Order extending New York’s density-mitigation measures through April 29, 2020. In addition, among other things, the Order provides for the virtual witnessing of wills, lifetime trusts, health care proxies and durable powers of attorney - provided certain conditions are met -
UPDATE - March 22, 2020

Governor Cuomo’s latest density-mitigation Executive Order has been made publically available. In addition to the mandate that all employees of non-essential businesses stay home effective tonight at 8:00 p.m., the Order requires all businesses to utilize telecommuting or remote procedures to the maximum extent safely possible. In addition, the Order provides that, through April 19, 2020:

1. time limits for the commencement, filing, or service of any legal action, notice, motion or other process or proceeding as prescribed by the procedural laws of the state, including the Civil Practice Law and Rules, are tolled;

2. the Vehicle and Traffic Law is modified to the extent that driver licenses, non-driver identification cards, and registration certificates expiring on or after March 1, 2020 need not be renewed; and

3. subsection (a) of Section 602 and subsections (a) and (b) of Section 605 of the Business Corporation Law are modified to the extent they require meetings of shareholders to be noticed and held at a physical location.

In addition, the Order: (i) provides that there shall be no residential or commercial evictions or foreclosures for a period of ninety days and (ii) expands the authority of the Commissioner of Taxation and Finance to abate late filing and payment penalties pursuant to section 1145 of the Tax Law, granting the Commissioner the ability to authorize abatement of interest, for a period of 60 days for taxpayers who are required to file returns and remit sales and use taxes by Mach 20, 2020, for the sales tax quarterly period that ended February 29, 2020.

Further, on March 21, 2020, Governor Cuomo signed Executive Order 202.9, temporarily modifying the Banking Law and empowering the Superintendent of the Department of Financial Services to promulgate emergency regulations relating to the outbreak of COVID-19. Click here for our analysis of New York State’s relief efforts in connection with Banking and Financial Services.

Also, the Governor has announced “Matilda’s Law” - named for his mother - to protect New York’s most vulnerable populations, including individuals age 70 and older and those with compromised immune systems or underlying illnesses. The measure, which has not yet been reduced to Executive Order or otherwise, requires this group of New Yorkers to stay home and limit home visitation to immediate family members or close friends in need of emergency assistance and sets forth specific directions for visitors. Click here for the Governor’s press release concerning Matilda’s Law. Click here for a summary of Matilda’s Law provided by New York’s coronavirus webpage.

We are monitoring this very fluid situation in New York and will provide updates for the industry as they become available.

UPDATE - March 20, 2020
Late last night, Governor Cuomo’s March 19 Executive Order – prohibiting nonessential businesses from having more than 25% of their workforce report to work – was released. Separately, the Empire State Development Corporation (“ESDC”) issued guidance for determining whether a business is subject to the workforce reduction. As set forth in the ESDC’s guidance, essential businesses include, among others, health care operations; essential infrastructure and manufacturing; news media; financial institutions; and certain retail, construction, and essential services operations. The ESDC also detailed restrictions on requesting designation as an essential business.

Earlier today, however, Governor Cuomo announced a further increase to New York’s density-reduction mandate, requiring all employees of non-essential businesses to stay home. This latest measure will take effect Sunday, March, 22, 2020. The Governor distinguished this measure from a shelter in place directive, but urged New Yorkers to “remain indoors to the greatest extent.” The Governor’s Office has not released an official order reflecting today’s increased density-mitigation measure, nor has the Cuomo Administration updated its guidance concerning “essential businesses.” We are closely monitoring this very fluid situation and will provide updates as they become available.

**UPDATE - March 19, 2020**

Earlier this morning, Governor Cuomo increased New York State’s density-reduction mandate, prohibiting businesses state-wide from having more than 25% of their workforce report to work. As such, 75% of a business’s workforce must stay home. This does not include essential services. As set forth in yesterday’s Executive Order, which was made public late last night, essential services include:

[E]ssential health care operations including research and laboratory services; essential infrastructure including utilities, telecommunication, airports and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals; essential retail including grocery stores and pharmacies; essential services including trash collection, mail, and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public.

The Order further advises that any business seeking an “essential” designation should request an opinion from the Empire State Development Corporation. The Governor’s Office has not released an official order reflecting today’s increased density-mitigation measure, nor has the Cuomo Administration indicated when this measure is supposed to take effect. We are monitoring this fluid situation and will provide updates as soon as possible.

**ORIGINAL ALERT - March 18, 2020**
On Wednesday March 18, 2020, Governor Andrew Cuomo delivered a press conference concerning New York State’s continued efforts to mitigate the spread of COVID-19. In addition to strongly urging businesses to have their employees work from home, the Governor announced “a mandatory state-wide requirement that no business can have more than 50% of their workforce report to work outside of their home.” Governor Cuomo indicated that the mandate will not impact essential services, including, but not limited to, “food, food delivery, pharmacies, healthcare, shipping, supplies, etc.” The Executive Order, by which the mandate will take effect, has not yet been released. Nor has the Cuomo Administration issued an official press release on this unprecedented measure. We are monitoring the Governor’s press releases and Executive Orders closely and will provide an update as soon as possible, including any further guidance on “essential services.”

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