

ALERTS

Update: Employer Considerations for Returning to the Workplace

June 5, 2020

As a follow-up to our recent *Alert* “Back to the Future: Employer Considerations for Returning to the Workplace,” we are sharing updated advisories recently issued by New York State and the Centers for Disease Control and Prevention (“CDC”), offering guidance on safely reopening offices. The CDC’s most recent guidance updates and supplements its previous guidance on reopening office workplaces. Below we describe some of the key provisions in the state’s guidance.

New York State Updated Interim Guidance for Office-Based Work During the COVID-19 Public Health Emergency

On May 28, 2020, the New York State Department of Health (“DOH”) issued updated “interim guidance” for “all office-based work,” including for both essential and nonessential businesses (“NYS Guidance”). The NYS Guidance provides mandatory requirements for employers and businesses that operate within an “office setting,” including, but not limited to, professional services, nonprofit, technology, administrative support and higher education administration.[1] The NYS Guidance includes many of the suggestions described in our recent *Alert*. The NYS Guidance reiterates that employers must follow all New York State standards and all applicable federal requirements, such as those promulgated by the CDC and the Occupational Safety and Health Administration (“OSHA”). The owner/operator of the business and the building owner with respect to common areas are responsible for ensuring compliance with these

minimum requirements (“Responsible Parties”). While the NYS Guidance applies to regions of the state that are in “Phase Two” of the state’s reopening plan and is based on current health practices for businesses in “Phase Two,” New York City will not enter “Phase One” until June 8, 2020. Because there must be at least two weeks in between phases, New York City may not enter “Phase Two” until at least June 22, 2020.

The NYS Guidance is organized around three categories — *People*, *Places* and *Processes*. With respect to *People*, the NYS guidance requires the below, among other measures detailed in the updated guidance:

- Social distancing of at least six feet must be maintained among individuals at all times, unless safety of the core activity requires a shorter distance.
- *Exception* When, for business purposes, individuals must come within six feet of one another, each individual must don an acceptable face covering^[2] that covers both their mouth and nose.
- At no point may the total number of individuals in an area exceed 50% of such area’s maximum occupancy limit as set by its certificate of occupancy.
- To maintain adequate social distancing, Responsible Parties may modify or reconfigure their workplaces, limit use of shared work stations, consider closing common seating areas (including reception) and may also install physical barriers in accordance with OSHA’s guidelines.
- Responsible Parties must post signs throughout the workplace to remind employees to, among other items, follow hygiene, cleaning and disinfection protocols.
- The use of small spaces, including elevators, supply rooms and personal offices, must be limited to one person at a time, unless all individuals in such space are wearing acceptable face coverings.
- Employers must limit in-person gatherings to the greatest extent possible.
- When absolutely necessary, in-person meetings should be held in open, well-ventilated spaces with adequate social distancing and with all attendees wearing acceptable face coverings.

- Nonessential common areas, such as gyms, pools and game rooms, must remain closed.
- Other common areas, such as copy rooms, kitchens and reception desks, may remain open provided that adequate social distancing, including reducing bidirectional foot traffic and posting signage and distance markers, is implemented.
- Employers should create policies which encourage employees to successfully work from home when feasible.
- All nonessential travel should be limited.
- Employers must take measures to reduce interactions and contact among individuals in an office, including by staggering work schedules, reducing in-office workforce, reducing bidirectional foot traffic and shifting and/or altering workspaces.
- Responsible Parties should limit on-site interactions and movements to limit contact to the extent possible, including by establishing designated areas for pickups and deliveries.

With respect to *Places*, the NYS guidance requires the below, among other measures detailed in the updated guidance:

- Employers must provide all necessary PPE as required for its workplace activities, including appropriate face coverings for their employees, at no cost to the employees.
- Employers must train employees on appropriate donning, doffing, cleaning and discarding of PPE, including that face coverings must be cleaned or replaced after each use and may not be shared.
- Responsible Parties must adopt measures to restrict the sharing of objects, such as laptops and office tools, or require employees to perform hand hygiene before and after every contact.
- Responsible Parties must adhere to the DOH's and the CDC's hygiene, cleaning, air circulation and disinfection requirements.
- Employers must conduct regular cleaning and disinfection of the office.
- If an employee is suspected or confirmed to have COVID-19, Responsible Parties must, following CDC guidelines, close off, and

following 24 hours, if feasible, clean and disinfect areas used by the affected employee, including shared building spaces and restrooms.

- Further, air circulation should be increased in the affected area by opening outside doors and windows.
- Once the affected area has been appropriately cleaned and disinfected, it may be reopened for use.

With respect to *Processes*, the NYS guidance requires the below, among other measures detailed in the updated guidance:

- Responsible Parties must implement mandatory daily health screenings of their employees and, where practicable, visitors.
- Screenings may be done remotely (e.g., by telephone or online survey) by employees or visitors before arriving at the office.
- Screenings must use a questionnaire that determines whether the individual has:
 - 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;
 - Tested positive for COVID-19 in the past 14 days; and/or
 - Has experienced any symptoms of COVID-19 in the past 14 days.
- An individual that answers any of the above screening questions in the affirmative must not be allowed to enter the office and should be sent home with instructions to contact their healthcare provider and/or self-quarantine for at least 14 days.
- Screening should be coordinated to prevent employees or visitors from intermingling and permit for adequate social distancing while employees and visitors queue for onsite screenings and/or building entry.
- Personnel performing screening activities must be provided with necessary PPE and be appropriately protected from exposure.
- Personnel performing screening activities should be trained on CDC, DOH and OSHA protocols.

- In addition to screenings, daily temperature checks may be conducted.
- Contactless thermal cameras in building entrances may be used to identify symptomatic visitors.
- Employers must review all employee and visitor responses collected by the screening process.
- Employers must further designate a site safety monitor who is responsible for continuous compliance with all aspects of the employer's site safety plan.
- Employees that have either tested positive for COVID-19, exhibit symptoms of COVID-19 or have had close contact with a person with COVID-19 must complete a 14-day quarantine before returning to work.
- Responsible Parties must notify their local health department and the DOH immediately upon being informed of any positive COVID-19 test result by an employee in their office.
- Employers must immediately notify building managers of any employees showing symptoms of COVID-19 that have entered the workplace.
- Employers must conspicuously post completed safety plans on site.

More guidance may be issued as the pandemic evolves and as more offices reopen and best practices are developed based on region. Employers should continue to monitor, and comply with, local, state and federal guidelines for reopening their workplaces.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] By its own terms, the NYS Guidance does not address medical offices, including doctors' offices or dentists' offices, or building owners/managers and their employees or contractors.

[2] Appropriate face coverings include, but are not limited to, cloth-based face coverings and disposable masks that cover both the mouth and nose.

This is a fast-moving topic and the information contained in this Alert is current as of the date it was published.

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