

New York Labor Laws and the Impact of COVID-19: Safe Practices to Limit GL Claims and NY Labor Law Exposure



Lewis Brisbois Bisgaard and Smith LLC
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Overview

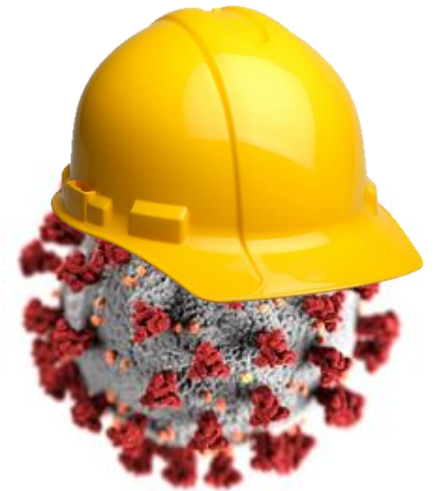
The Novel Coronavirus (COVID-19) has confounded the worlds scientific and medical communities with its unprecedented ease of infection.

The best evidence presently published by the CDC suggests COVID-19 can survive on hard surfaces like steel or plastic for up to 3 days

It can survive in the air where someone has coughed, sneezed or simply spoken without a face mask for 14 minutes → Industry-wide Risks

Easy to see this is NOT business as usual

Return to Work Precautions are essential



Guidelines & Stay at Home Orders

In an attempt to stunt the spread of COVID-19, millions of Americans have been asked to do what would have been unthinkable only a few months ago:

- Don't go to work
- Don't go to school
- Don't leave the house at all (unless you have to).



Essential vs. Non-Essential

For the last 2 Months New York limited construction activities to “Essential Construction” now these restrictions are being lifted

- Medical
- Infrastructure
- Emergencies/ Safety
- Local Law Compliance
- Plumbing, Fire Suppression, Electrical

As of May 26, 2020, this restriction has been eliminated in six New York State regions that have met the necessary metrics

On May 18, 2020, Massachusetts authorized the reopening of construction sites contingent upon meeting COVID-19-related safety measures

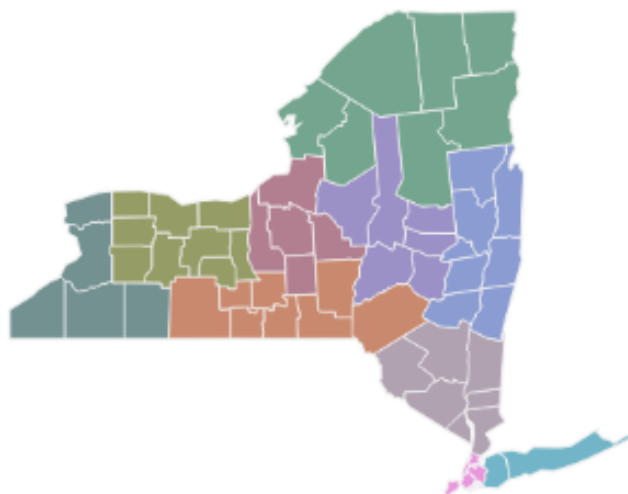


Regional COVID-19 Metrics: Where Regions Currently Stand

Report as of May 26, 2020

Regions

- Capital Region
- Central New York
- Finger Lakes
- Long Island
- Mid-Hudson
- Mohawk Valley
- New York City
- North Country
- Southern Tier
- Western New York



© OpenStreetMap

Metrics Met

Capital Region	7/7
Central New York	7/7
Finger Lakes	7/7
Long Island	7/7
Mid-Hudson	7/7
Mohawk Valley	7/7
New York City	5/7
North Country	7/7
Southern Tier	7/7
Western New York	7/7

	14-Day Decline in net Hospitalizations OR Under 15 new Hospitalizations (3-day avg)	14-Day Decline in Hospital Deaths OR Fewer than 5 deaths (3-day avg)	New Hospitalizations (Under 2 per 100K residents - 3 day rolling avg)	Share of total beds available (threshold of 30%)	Share of ICU beds available (threshold of 30%)	30 per 1k residents tested monthly (7-day avg of new tests per day)	Contact tracers 30 per 100K residents or based on infection rate	Metrics Met
Capital Region	0 2 ✓	12 0 ✓	0.46 ✓	36% ✓	46% ✓	1,904 / 1,085 ✓	Yes ✓	7/7 ✓
Central New York	0 3 ✓	14 1 ✓	0.86 ✓	43% ✓	50% ✓	2,079 / 775 ✓	Yes ✓	7/7 ✓
Finger Lakes	0 5 ✓	12 1 ✓	1.11 ✓	40% ✓	53% ✓	2,343 / 1,203 ✓	Yes ✓	7/7 ✓
Long Island	45 0 ✓	14 7 ✓	0.99 ✓	32% ✓	41% ✓	6,563 / 2,839 ✓	Yes ✓	7/7 ✓
Mid-Hudson	43 0 ✓	12 5 ✓	0.92 ✓	36% ✓	55% ✓	5,225 / 2,322 ✓	Yes ✓	7/7 ✓
Mohawk Valley	0 3 ✓	12 1 ✓	1.10 ✓	49% ✓	61% ✓	1,234 / 485 ✓	Yes ✓	7/7 ✓
New York City	44 0 ✓	37 18 ✓	1.30 ✓	28% ✗	32% ✓	18,950 / 8,399 ✓	Expected ★	5/7 ✗
North Country	33 0 ✓	21 0 ✓	0.00 ✓	53% ✓	51% ✓	945 / 419 ✓	Yes ✓	7/7 ✓
Southern Tier	0 1 ✓	14 0 ✓	0.37 ✓	45% ✓	37% ✓	1,549 / 633 ✓	Yes ✓	7/7 ✓
Western New York	7 0 ✓	14 4 ✓	0.77 ✓	39% ✓	56% ✓	2,880 / 1,381 ✓	Yes ✓	7/7 ✓

Construction is Ongoing

Essential construction includes:

- construction of roads, bridges, transit facilities, utilities, hospitals or healthcare facilities, homeless shelters, or public or private schools;
- construction for affordable housing;
- construction necessary to protect the health and safety of occupants of a structure;
- construction necessary to continue a project if allowing the project to remain undone would be unsafe, provided that the construction must be shut down when it is safe to do so;
- Certain construction for projects in the energy industry;
- construction for existing (i.e. currently underway) projects of an essential business; or
- construction work that is being completed by a single worker who is the sole employee/worker on the job site.

Many constructions site have also obtained exceptions

<https://www.enr.com/articles/49241-new-york-city-buildings-commissioner-notes-agency-role-in-covid-19-project-curbs>

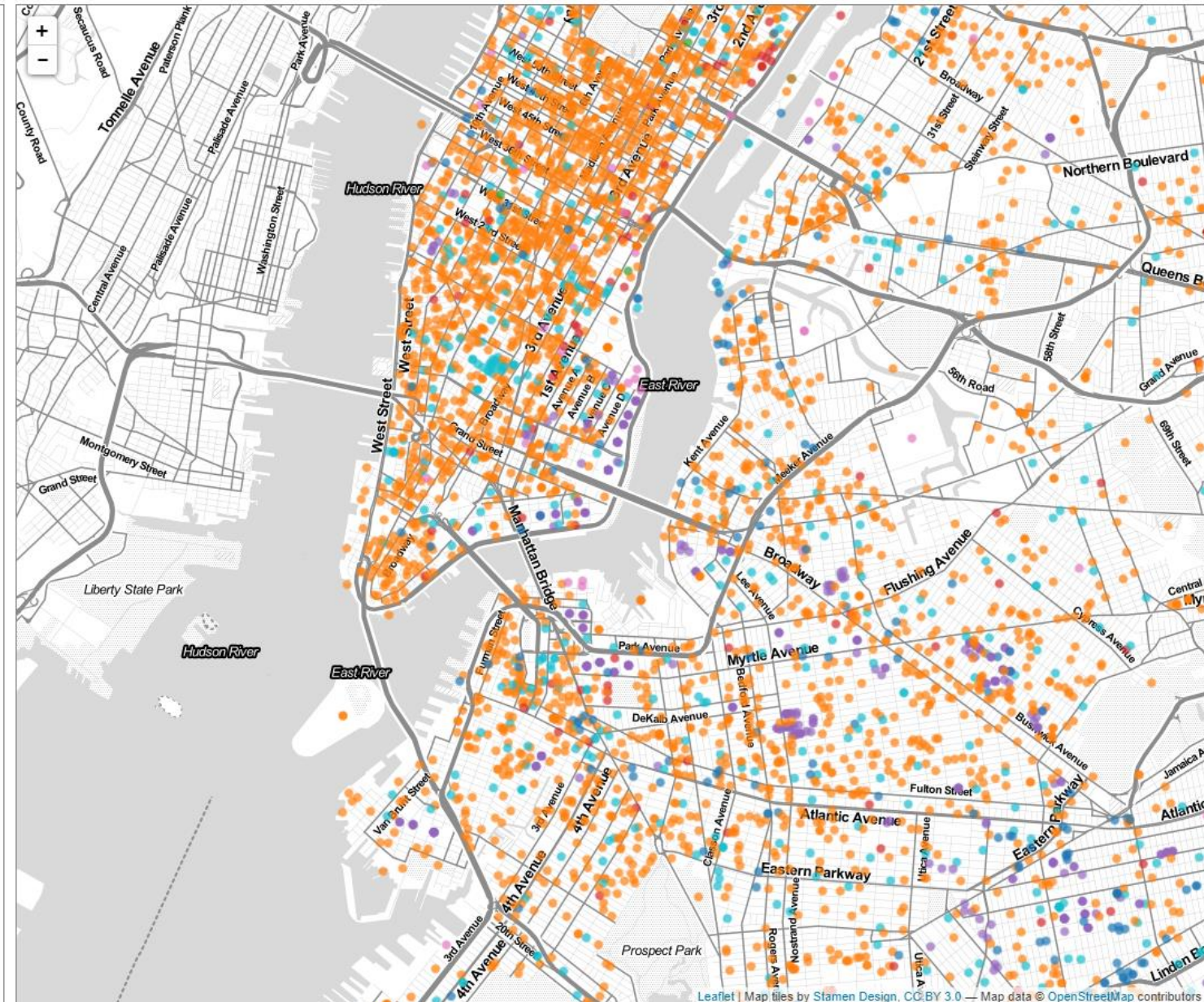
<https://esd.ny.gov/guidance-executive-order-2026>



Essential Active Construction Sites Data Updated 5/27/2020 15:28

CATEGORY

-  Affordable Housing
-  Approved Work
-  Homeless Shelter
-  Hospital / Health Care
-  Public Housing
-  Schools
-  Utility



Reopening of New York Construction

On April 26, 2020, Governor Andrew Cuomo and Mayor Bill DeBlasio outlined a plan to reopening New York State

In [Phase 1](#), construction and manufacturing with a low risk of virus transmission will reopen on a case-by-case basis and by region (NYC – Region 9)



Reopening of New York Construction

DOB inspectors are monitoring construction sites to ensure that workers at open sites are practicing social distancing and that those deemed nonessential remain closed.

Representatives of labor groups and contractor companies are pushing the city to permit 24-hour construction at some locations to reduce the number of laborers on site at any one time.

<https://www.nytimes.com/2020/04/28/nyregion/nyc-construction-coronavirus-safety.html?smid=nytcore-ios-share>



At construction sites that are open, workers are getting their temperature taken before their shift begins. ©New York Times

Cautionary Examples if We Get this Wrong

As of May 19, 2020 More than 230 workers (and counting) on a construction project at a nuclear power facility in Georgia have tested positive for the coronavirus

Meat Packing Plants Across the Country are turning into Hot Zones of Internal Contagion

10 workers at a Boston Construction Site tested positive for COVID-19 after working without masks

Workers go home and can infect others



COVID-19 Claims in Construction

Some laborers have already filed Workers' Compensation claims against employers citing exposure to the Covid-19 in the work place.

Plaintiff's bar will likely seek to institute general liability claims under common law and the New York Labor Law, particularly where "clusters" of laborers develop symptoms at specific construction sites.

Massachusetts claims will likely continue to be based on common law negligence.



Potential Claims Arising Out Of COVID-19

Personal Injury Claims

- Employees or visitors at the site may bring claims against a general contractor and/or owner as a result for losses arising out of being infected with COVID-19 while at the site.
 - More than likely, a claim for negligence will be made that will require a plaintiff to prove that the Owner/General Contractor had notice, actual or constructive, of the hazardous condition at the site (i.e., the COVID-19 pathogen).
 - Ex.: Plaintiff, an employee of a subcontractor at the site, claims that he was infected with COVID-19 due to GC/Owner's negligence in failing to secure, decontaminate or shut down the site and alleges that the GC/Owner knew of the potential to be infected based on various employees becoming sick a week before but failed to take appropriate measures to safely continue the ongoing work.
 - Ex.: Plaintiff, a visitor to the site, claims that the GC/Owner negligently failed to protect him from being infected after allowing him onsite despite a prior cluster of infections of personnel at the site and did not advise the of such potential risk prior to agreeing to visit the site.
 - This does not apply to the claimant's employer due to the Workers' Compensation bar.

Return to Work Checklist

INCREASING EMPLOYEE SAFETY AND REDUCING EMPLOYER LABOR LAW EXPOSURE

Guidelines issued by:

- The Commonwealth of Massachusetts
- NYS Department of Health
- OSHA
- NYC DOB
- The Association of General Contractors (AGC)



Massachusetts' Guidelines for the Construction Industry

Massachusetts has instituted mandatory guidelines for the Construction Industry.

- **Zero Tolerance**

- Any sick employee, must stay home.
- Any employee who feels sick at the job site must go home.
- Any employee observed as sick as the job site must be sent home.
 - Employees should be instructed that even those with mild symptoms of respiratory infection (cough, shortness of breath, sore throat) or fever should stay off work.

- **Self- Certification**

- Prior to starting a shift, all employees must certify to their supervisor that they:
 - Have no signs of a fever or a measured temperature above 100.3 degrees or greater, a cough or trouble breathing within the past 24 hours.
 - Have not had close contact with an individual diagnosed with COVID-19
 - Have not been asked to self-isolate or quarantine by a doctor or public health official.
- Employees who do not self-certify or show symptoms should be directed to leave the job site.

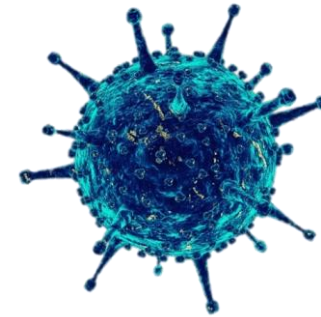
Massachusetts' Guidelines for the Construction Industry

Work Site Risk Prevention:

- 100% glove policy. All construction will be required to wear cut-resistant gloves.
- Wash stations must be installed if there is no access to an indoor bathroom.
- Eye protection (safety goggles/face shields) is recommended.
- In area where social distancing is impossible, all employees should be supplied PPE including a standard face mask, gloves, and eye protection.
- Multi-person activities to be limited where feasible (2 person lifting activities)

On-the-job Guidance

- No handshaking
- Wash hands often with soap or sanitizer
- No Congregation Policy
 - Individuals must implement social distancing by maintaining distance of 6 feet from other individuals.
 - All crews to be kept a minimum of 6' apart at all times.
- Avoid face to face meetings (critical situations requiring in-person discussion must follow social distancing)
- No meetings with more than 10 people.
- At each job briefing/tool box talk, employees are to be asked if they are experiencing any symptoms.
- All areas are to be cleaned and sanitized regularly (at least once a day)
 - This includes:
 - » Restrooms/Porta-potties
 - » Surfaces – door handles, laptops, etc.
 - » Meeting areas (break facilities and any other common areas)
 - » Equipment/Machines



Massachusetts' Guidelines for the Construction Industry

Workers Returning to Work

- All workers who are considered close contacts to a COVID-19 case by public health authorities should not return for 14 days.
- All workers who leave during the work day due to COVID-19 symptoms and develop COVID-19 (confirmed by diagnosis from healthcare provider) shall not return to the job site until either released from isolation by healthcare provider or public health official.
 - In all cases:
 - Keep all employee names confidential as required by law.
 - Other employees may be sent home while a workspace is being cleaned but can return to work after cleaning unless advised otherwise by a health care provider.
 - Other employees should be asked to contact their health provider if they have any questions.
 - Remind other employees to continue to practice proper sanitation and monitor for flu like symptoms.

Identification and Isolation of Infectious Individuals

- Upon learning of an infection, the Contractor must immediately notify the designated COVID-19 Safety Officer, the site safety officer and the owner.
- Contractor must then take immediate steps to sanitize common areas and direct work places.
- Identified areas should remain isolated from workers until sanitation process has been completed and area is deemed safe for use.

NYS Department of Health Guidance

Created to provide owners/operators of construction projects with precautions to help protect against spread of COVID-19

Mirrors OSHA/CDC Regulations

[On May 13, 2020, NYS issued its Interim Guidance for Construction Activities](#)



New York State Mandatory v. Recommendations

Physical Distancing

- 6 foot distance
- Face coverings when distancing not possible
- 1 worker per 250 sq. ft.
- Hoists – 1 worker at a time
- Post markers (tape) or signs
- Limit in person gatherings
- Designated delivery areas

PPE

- Face coverings
- Cleaned/replaced after use
- Limit sharing of objects

Physical Distancing

- Limit in person presence to necessary personnel
- Modify workstations
- Reduce foot traffic
- WFH when possible

Mandatory v. Recommendations

Hygiene

- [CDC compliance/DOH compliance](#)
- Maintain hand hygiene stations
- Provide disinfecting supplies
- Conduct regular cleaning and disinfection every day

Screening

- Mandate that sick employees should stay home
- Mandatory health screening assessment
- On-site screenings
- Safety Plan for cleaning, disinfection, etc.

Hygiene

- Increase ventilation of outdoor air
- Encourage employees to bring lunch from home

Screening

- Perform screening remotely before reporting to the site to the extent possible

Mandatory v. Recommendations

Communication

- Affirm adherence to state-issued industry guidelines
- Post signage throughout the site
- Train all personnel on new protocols
- Notify state/local health departments if worker tests positive
- Post completed safety plans on site

Communication

- *Remote Training Where Possible*

Business Reopening Safety Plan

New York State Requires that you complete a Business Reopening Safety Plan

Critical to be in step with what the State is looking for

Not required to submit for approval if you have your own [Site Safety Plan](#)

But you should have it available at the site if requested during inspection



Enforce and Document!



Need to be able to document that you are enforcing the rules for worker safety, and also in case litigation ensues

Document that instructions and guidelines have been explained and received by workers – Need SIGN OFFS

Send home and document workers who do not comply

Zero Tolerance for Non Compliance

OSHA

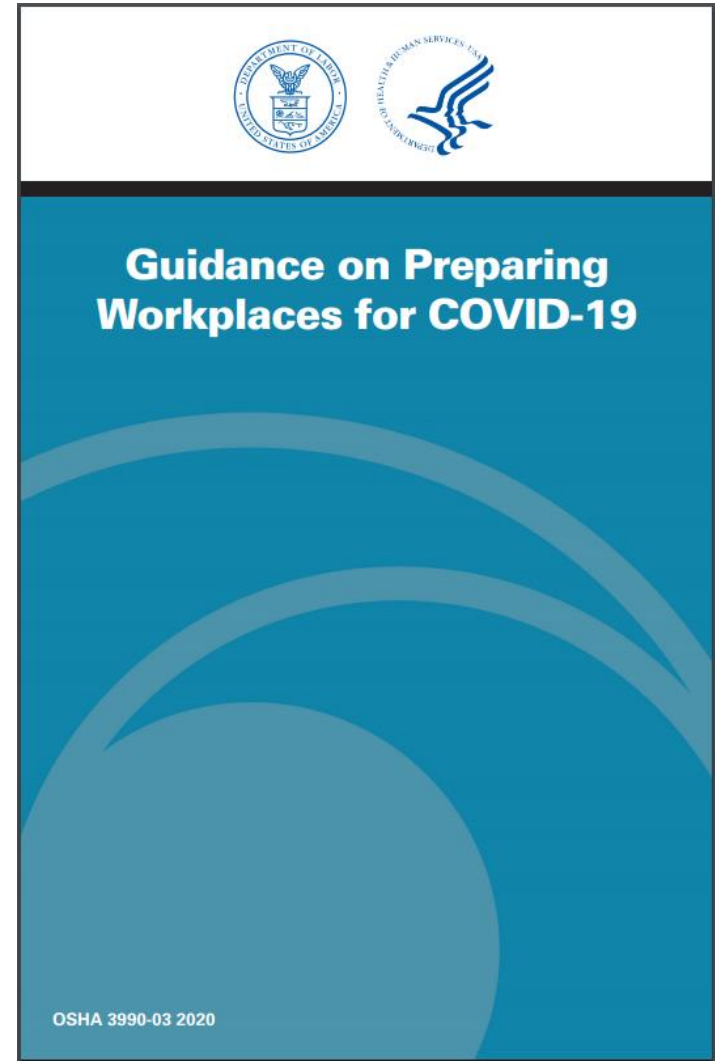
Has not implemented specific guidelines for the Construction Industry since COVID-19.

However, existing OSHA standards apply to protect all workers from COVID-19 type hazards.

Enforcement is discretionary – But Employer's good faith efforts are important

<https://www.osha.gov/Publications/OSHA3990.pdf>

<https://www.osha.gov/memos/2020-04-16/discretion-enforcement-when-considering-employers-good-faith-efforts-during>



OSHA: Guidelines

Develop an infectious disease preparedness and response plan based upon federal, state, local health agencies with specific considerations as to what contamination sources a worker is exposed to;

Implement basic infectious prevention measures, i.e. hand washing and respiratory etiquette;

Develop procedures for prompt identification and isolation of sick people;

Develop, implement and communicate about workplace flexibilities and protections;

Implement workplace controls, i.e. systematically remove workplace hazards;

Engineering control, i.e. air filters and ventilation;

Administrative controls, i.e. mandatory changes in work policies,

Provide Personal Protective Equipment (Masks) based upon the hazard to the worker;

Follow existing OSHA standards



NYC DOB

Likewise, the New York City DOB has issued a [series of guidelines](#) to prevent and remediate the contamination of germs on construction sites.

Permit holders are responsible for enforcing physical distancing and safety measures on their job sites.



INDUSTRY BEST PRACTICES FOR
Preventing & Remediating the
Contamination of Germs on
Construction Sites

Good health habits can help stop the spread of germs and prevent respiratory illnesses. Use these tips to protect yourself and others:



Clean and disinfect frequently touched objects and surfaces.

Clean tools and equipment with disinfectant wipes after each use. For larger tools and equipment, wipe or spray down the surface or tool with a solution of 5 tablespoons (1/3 cup) of bleach per one gallon of water. Allow the solution to sit on the surface for 5 minutes to kill all of the germs.



Wash your hands frequently with soap and water for at least 20 seconds.

Practice proper hygiene. Wash hands thoroughly and often using soap and water for at least 20 seconds. If soap and water are not available, use an alcohol based hand sanitizer.



Cover your cough and sneeze with a tissue then throw the tissue in the trash.

Cover your mouth and nose with a tissue when you cough or sneeze. Use the bend of your arm if a tissue is not available.

WAYS TO REDUCE THE SPREAD OF GERMS

- Practice physical distancing by avoiding groups and gatherings and maintaining a distance of at least 6 feet from other people whenever possible.
- Stagger pre-shift meetings, new hire orientations, and other meetings conducted in-person. These meetings should include information on proper hygiene, keeping surfaces clean, and procedures on what to do if a worker feels sick.
- If a worker is symptomatic encourage he/she must stay home. Supervisors should keep a record or log of all employees who are sent home or stay home.
- Provide workers with access to soap and water so they can wash their hands frequently.
- Give co-workers a friendly reminder if you notice they forget to wash their hands, cover their mouth, or wipe down their equipment after each use.

COVID-19

Symptoms of COVID-19 commonly include:

- Fever
- Cough
- Sore throat
- Shortness of breath.

Supervisors should monitor workers for the symptoms listed above. If anyone on the site is symptomatic, send them home and do not let them on the site

NYC DOB: GUIDELINES

Conduct safety trainings with regard to risk factors and controls necessary to address those risks;

Encourage laborers to stay home if they exhibit any symptoms of Covid-19, i.e. fever, chills, loss of sense of smell, dry cough, etc.;

Request laborers to report when they are sick or experiencing said symptoms;

Take temperatures of laborers/employees as they enter the worksite;

Provide measures to promote safe distances between the laborers;

Promote frequent hand washing with sign placement and additional washing stations (and hand soap) throughout the premises;

Ensure laborers have access to and are wearing all necessary PPE, such as respirators/masks to laborers even if their specific work does not require said equipment;

Frequently clean and disinfect high traffic areas at the worksite and implement other regular housekeeping practices.

Investigate! Just as one would be conducted for a workplace injury, an investigation should be conducted for suspected or confirmed cases of COVID-19 and documented accordingly.

Keep a record of confirmed cases of COVID-19, pursuant to 29 CFR 1904.5 and 1904.7 (OSHA)

https://www1.nyc.gov/assets/buildings/pdf/preventing_spread_germs.pdf

DOB ARE CONDUCTING REGULAR INSPECTIONS OF CONSTRUCTIONS SITES TO ENFORCE THESE GUIDELINES



The AGC has mirrored the guidelines set forth by OSHA and the NYC DOB and recommend, *inter alia*, the following:

- All contractors to implement safety plan to protect their employees from COVID-19.
- Prior to starting a shift, each employee shall self-certify (ON SIGN IN) or be examined by a qualified person that they have no fever, no cough/ no trouble breathing, have not had contact with an individual diagnosed with Covid-19, etc.
- Each jobsite must have hand washing stations available for employees when practical.
- Each jobsite shall develop cleaning and disinfection procedures following CDC guidelines.
- All employees must adhere to social distancing protocols by maintaining a minimum distance of 6 feet from other individuals.
- Personnel hoists and elevators shall only be used at 50% capacity and employees must be provided with appropriate PPE.

Where to Get Tested

- [The FDA has approved New York State](#) to authorize the state's 28 public and private labs to begin manual testing for novel coronavirus, or COVID-19. [Link: [Find a Testing Site](#)]
- CityMD – [offering two forms of COVID-19 testing at all locations - the PCR \(Nasal Swab\) test and the Serum Antibody IgG \(Blood Test\).](#)
- [Massachusetts Testing Sites are available throughout the state](#) (Also: [All Testing Sites in MA](#))



Where to Purchase Requisite Signage

SafetySign.com

CDC.gov (for general recommendations)

AGC will be providing signage shortly



Vital Issues Facing the Construction Industry amid Covid-19 Exposure

Can exposure to Covid-19 lead to exposure under the Labor Law?

- Labor Law 200
- Labor Law 241(6) and the Industrial Code
- Labor Law 240 will not be implicated as it requires a fall from a height or a falling object



Labor Law 241(6)

Are there Industrial Code provisions that could be applied with regard to the Coronavirus?

- Construction managers and general contractors may be held vicariously liable irrespective of fault if a plaintiff pleads and subsequently establishes a claim under Labor Law 241(6).
- Fortunately, none of the numerous Industrial Code provisions **explicitly** cover a worker “injured” as a result of contracting COVID-19.



The Industrial Code

Industrial Code 23-1.8 (b)(1) Personal Protective Equipment

- Provides, in part, that where the Industrial Code requires a respirator to be provided, the employer shall furnish and the employee shall use an approved respirator.
- Respirators are required when cleaning coated/painted surfaces (23-1.26(c)), using flame-cleaning or flame-cutting operations (23-1.26(d)), paint spraying (23-2.8(d)), and/or painting removal/sanding (23-2.8).
- There is no indication that respirators are required for any other type of work, or in order to prevent the transmission of viruses or other medical ailments.



The Industrial Code

Industrial Code 23-1.7(g) Air contaminated or oxygen deficient work areas.

- Requires that “the atmosphere of any unventilated confined area ... where dangerous air contaminants may be present ... shall be tested by the employer.... before any person is suffered or permitted to work in such area.”
 - Rule 12-1.3(a) defines air contaminants as “airborne substances, such as dust fibers, fumes, gases, mists, vapors and other impurities.”
 - 23-1.7(g) governs “confined space” work and not general work at a construction site.
 - Reality: there is no practical way to test the environment for Covid19
- As Covid19 is highly contagious, it would be recommended that confined space work be contemplated only with extreme caution where workers are fully independent of each other to limit exposure



The Industrial Code

Industrial Code 23-1.9 Drinking Water and Sanitation

Requires washing facilities with warm water, soap, and individual towels provided for all employees who are required to use or handle **corrosive substances, chemicals, or any other harmful substances.**

It is unlikely that a court will interpret this section in a plaintiff's favor as the coronavirus is not a harmful substance an employee is "required to use or handle."

Nonetheless we would strongly encourage that all work areas have accessible washing facilities with warm water, soap and individual towels and to follow precisely these Industrial Code Rules and any State and Local Guidelines for Wash Stations



Labor Law 200

Codified Common Law Standard of Care/ “Supervision & Control”

Requires “reasonable and adequate” protection

Owner can usually get Summary Judgment because Owners typically do not “**supervise or control**” the “**means or methods**” of contractors’ work.

General Contractor and Construction Manager can usually also prevail using this same standard.

Entitlement to judgment as a matter of law by demonstrating that the subject accident was caused by the means and methods of the employee’s work, that the employee’s work was directed and controlled exclusively by his employer.



Labor Law 200

However, Under a COVID-19 theory, plaintiffs will likely allege notice of an unsafe condition, e.g. that the Owner or General Contractor should have shut down a construction site, or some portion of the work site, or taken extensive precautions on-site to prevent transmission.

Likely difficult for a claimant to prove he/she contracted the virus on the job site, as opposed to any other location that they regularly encounter in their daily lives.

Virus is widespread New York is a primary epicenter of the virus – so it remains unclear how a potential plaintiff would be able to prove this element of the claim.

However if your work site becomes a place where numerous workers test positive or where it becomes designated as a cluster from multiple infections, then it is too late. Plaintiffs will easily be able to establish that you knew or should have known that the site was dangerous and should have been shut down.



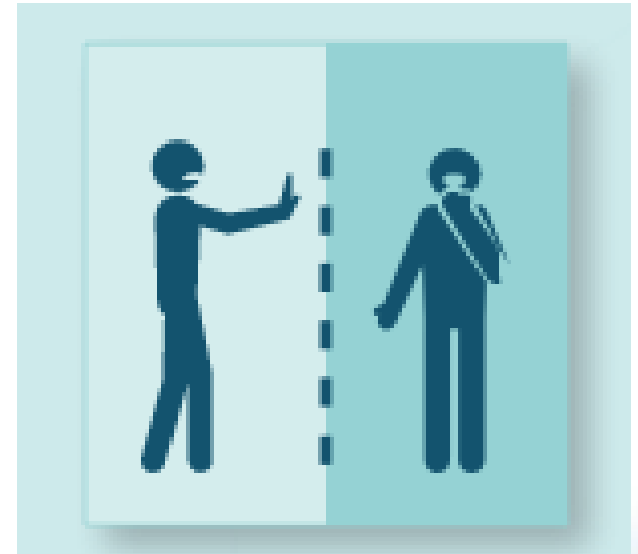
Labor Law Exposure

We cannot stop plaintiffs from suing under the New York Labor Law

Ultimately, it is unlikely that a plaintiff will be able to make out a Labor Law 241(6) claim in New York based on exposure to the virus,

But it is very plausible that a worker could demonstrate the notice requirement of Labor Law 200 negligence if the worksite becomes a source of more than one or two infections.

Therefore, Owners, Construction Managers, General Contractors and Site Safety Contractors must strictly adhere to all relevant government directives and must strictly enforce compliance by all Trades.



Business Considerations:

Mandatory Work Stoppage – Employee Safety

Owners, contractors and subcontractors should prioritize the health and safety of their employees.

- Even if the project is in a state that has not expressly restricted or stopped construction, steps to reduce exposure to workers/laborers at the site should be implemented.
 - OSHA has issued COVID-19 guidance classifying workers into 4 exposure risk levels (most workers will fall in to the lower or medium risk level).



Mandatory Work Stoppage – Compensable Costs

Owners and contractors remain liable for costs incurred for work already performed and affected contractors and subcontractors should immediately seek repayment for work performed.

- Contractors should put the Owner on notice of all compensable costs (such as general conditions) that will continue to accrue during the shutdown.
- All parties should document all additional costs, impacts and delays as a result of the shutdown in case a claim (or its valuation) is disputed in the future.
- All contractors should also keep track of the date they last performed work and be aware of the lien laws and timing requirements in their jurisdictions.
- Owners should reach out to their lenders and seek extensions of completion dates and guarantees.

Applicable Contractual Provisions

Standard form construction contracts will contain Force Majeure and Excusable Delay clauses.

– Delay/Extension of time/Force Majeure

- Most construction contracts contain provisions allowing an extension of time for various issues and conditions, which may or may not be compensable.
- Force Majeure clauses generally excuse a party's performance of its contractual obligations when circumstances beyond the party's control arise inhibiting performance.
 - Some force majeure clauses specifically define epidemics/pandemics, states of emergency or acts of government.
 - Ex.: New York, through an act of government, has halted all non-essential construction work and, if your project is shut down as a result of the act of government, it would be considered an event of force majeure.
- An extension is important for the contractor so that it is not penalized or assessed liquidated damages.



Applicable Contractual Provisions

Contractual Claims

A contractor may bring a claim against the owner for delays and additional general conditions.

An owner may bring a claim against the contractor for failing to timely finish the project or walking off the project (i.e., contractor declares bankruptcy).

Termination by Contractor

If a contractor determines that terminating its work on a halted project is in its best interest, some provisions may be applicable.

- Ex.: A201-2017 form allows the contractor to terminate the contract if work is stopped for 30 consecutive days through no fault of the contractor if a court order or order of a public authority requires the work to stop or if an act of government requires the work to stop.
- If your state has issued a stop work order on construction activities, then after 30 days of the work stopping at the project, a contractor may choose to terminate the contract (after following appropriate Notice requirements).
- Contractors should also review the provisions in its subcontracts prior to terminating to determine any liability the contractor may have to its subcontractors.

Applicable Contractual Provisions

Termination or Suspension by Owner

An owner may decide to suspend work or terminate the contract due to a government shutdown or the pandemic situation.

- An owner has a right to terminate or suspend the contract for its own convenience (in almost every contract).
- If a suspension is exercised, the contractor will be entitled to a cost increase and time extension so long as the contractor is not responsible for a concurrent delay.
- If a termination is exercised, the contractor is generally permitted to recover for all of the work it performed, as well as costs the contractor incurs as a result of the termination and costs associated with terminating its subcontracts.



Doctrine of Impracticability of Performance

The Doctrine requires a party to show that, as a result of an unforeseen event beyond the party's control, although performance may be possible, it is impractical from a commercial perspective.

- The non-occurrence of the event must have been a basic assumption upon which both parties contracted, and
- The impracticability must not be the fault of the party seeking to excuse its performance.
- Rarely successful but there is case law that excusing performance as a result of legal prohibition (i.e., a state's order prohibiting construction projects).
 - *RSB Mfg. Corp. v. Bank of Baroda*, 15 B.R. 650 (S.D.N.Y. 1981).

Conclusion

While the world continues to adapt and implement new procedures and guidelines in order to address all of the effects of the coronavirus pandemic, employers in the construction industry must heed all safety guidelines and recommendations in order to:

1. Reduce the likelihood of COVID-19 transmission,
2. Mitigate general liability and NY Labor Law claims, and
3. Strengthen the defenses to claims of common law negligence by demonstrating strict compliance with all guidelines



QUESTIONS?

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THANK YOU



Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

Standards for Responsible Construction Activities in New York State

No construction activity can occur without meeting the following minimum State standards, as well as applicable federal requirements, including but not limited to such minimum standards of the Americans with Disabilities Act (ADA), Centers for Disease Control and Prevention (CDC), Environmental Protection Agency (EPA), and United States Department of Labor's Occupational Safety and Health Administration (OSHA).

The State standards contained within this guidance apply to all construction activities – both essential and non-essential – in operation during the COVID-19 public health emergency until rescinded or amended by the State.

The following guidance is organized around three distinct categories: people, places, and processes.

I. PEOPLE

A. Physical Distancing

- For any work occurring indoors (e.g. construction within an existing building), no more than 1 worker per 250 square feet is allowed on site, excluding supervisors, unless additional personal protective measures are implemented; or
- A distance of at least six feet must be maintained among workers at all times, unless safety of the core activity requires a shorter distance (e.g. dry walling, glazing, lifting). Any time employees must come within six feet of another person, acceptable face coverings must be worn. Employees must be prepared to don a face covering if another person unexpectedly comes within six feet.
 - Acceptable face coverings for COVID-19 include but are not limited to cloth-based face coverings and disposable masks that cover both the mouth and nose.
 - However, cloth, disposable, or other homemade face coverings are not acceptable face coverings for workplace activities that typically require a higher degree of protection for personal protective equipment due to the nature of the work. For those activities, N95 respirators or other personal protective equipment (PPE) used under existing industry standards should continue to be used, as is defined in accordance with [OSHA guidelines](#).
- The number of work stations and employee seating areas, and their use, may be modified or restricted, so that workers are at least six feet apart in all directions (e.g. side-to-side and when

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

facing one another) and are not sharing workstations without cleaning and disinfection between use. When distancing is not feasible between workstations, the use of face coverings or physical barriers (e.g. plastic shielding walls, in lieu of face coverings in areas where they would not affect air flow, heating, cooling, or ventilation) must be provided and required.

- Physical barriers should be put in place in accordance with OSHA guidelines.
- Physical barrier options may include: strip curtains, plexiglass or similar materials, or other impermeable dividers or partitions.
- The use of tightly confined spaces (e.g. elevators, hoists, vehicles) by more than one individual at a time, unless all employees in such space at the same time are wearing acceptable face coverings, should be prohibited. However, even with face coverings in use, occupancy must never exceed 50% of the maximum capacity of the space or vehicle, unless it is designed for use by a single occupant. Ventilation with outdoor air should be increased to the greatest extent possible, while maintaining safety protocols, and additional measures to prevent congregation in elevator waiting areas and limit density in elevators, such as enabling the use of stairs, should be taken.
- Measures should be put in place to reduce bi-directional foot traffic using tape or signs with arrows in narrow aisles, hallways, or spaces, and post signage and distance markers denoting spaces of six feet in all commonly used areas and any areas in which lines are commonly formed or people may congregate (e.g. clock in/out stations, health screening stations, etc.).
- Signs must be posted throughout the site, consistent with DOH COVID-19 signage. Customized signage specific to a workplace or setting can be developed and used, provided that such signage is consistent with the Department's signage. Signage should be used to remind employees to:
 - Cover their nose and mouth with a mask or cloth face-covering when six feet of social distance cannot be maintained.
 - Properly store and, when necessary, discard personal protective equipment.
 - Adhere to physical distancing instructions.
 - Report symptoms of or exposure to COVID-19, and how they should do so.
 - Follow hand hygiene and cleaning guidelines.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

B. Gatherings in Enclosed Spaces

- In-person gatherings (e.g. shapeups, toolbox talks, safety meetings) must be limited to the greatest extent possible and other methods such as video or teleconferencing must be used whenever possible, per CDC guidance "[Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)](#)". When videoconferencing or teleconferencing is not possible, meetings should be held in open, well-ventilated spaces and it should be ensured that individuals maintain six feet of social distance between one another (e.g. if there are chairs, leave space between chairs, have employees sit in alternating chairs).
- Practices for adequate social distancing in confined areas, such as restrooms and breakrooms, must be put in place, and signage and systems (e.g. flagging when occupied) to restrict occupancy when social distancing cannot be maintained in such areas should be developed; and
- Schedules should be staggered for employees to observe social distancing (i.e., six feet of space) for any gathering (e.g. coffee breaks, meals, and shift starts/stops).

C. Workplace Activity

- Measures should be taken to reduce interpersonal contact and congregation, through methods such as:
 - limiting in-person presence to only those staff who are necessary to be on site;
 - adjusting workplace hours;
 - reducing on-site workforce to accommodate social distancing guidelines;
 - shifting design (e.g. A/B teams, staggered arrival/departure times);
 - prioritizing tasks that allow for social distancing (e.g. steel erection) over those that do not (e.g. dry walling, glazing); and/or
 - avoiding multiple crews and/or teams working in one area by staggering scheduled tasks and using signs to indicate occupied areas.

D. Movement and Commerce

- Non-essential visitors on site should be prohibited.
- Designated areas for pickups and deliveries must be established, limiting contact to the extent possible.
- On-site interactions (e.g. designate an egress for workers leaving their shifts and a separate ingress for workers starting their shifts) and movements (e.g. employees should remain near their workstations as often as possible) should be limited.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

II. PLACES

A. Protective Equipment

- In addition to necessary personal protective equipment (PPE) as required for certain workplace activities, acceptable face coverings must be procured, fashioned, or otherwise obtained, and such coverings must be provided to employees while at work at no cost to the employee. An adequate supply of face coverings, masks and other required PPE should be on hand in the event an employee needs a replacement, or a visitor is in need. Acceptable face coverings include, but are not limited to, cloth (e.g. homemade sewn, quick cut, bandana), surgical masks, N95 respirators, and face shields.
- Face coverings must be cleaned or replaced after use and may not be shared. Please consult CDC [guidance](#) for additional information on cloth face coverings and other types of personal protective equipment (PPE), as well as instructions on use and cleaning.
 - Note that cloth face coverings or disposable masks shall not be considered acceptable face coverings for workplace activities that impose a higher degree of protection for face covering requirements. For example, if N95 respirators are traditionally required for specific construction activities, a cloth or homemade mask would not suffice. OSHA standards for such safety equipment must be adhered to.
- Employees must be allowed to use their own acceptable face coverings, but cannot be required to supply their own face coverings. Further, this guidance shall not prevent employees from wearing their personally owned additional protective coverings (e.g. surgical masks, N95 respirators, or face shields). Compliance with all applicable OSHA standards is required.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

- Measures should be put in place to limit the sharing of objects, such as tools, machinery, materials, and vehicles, as well as the touching of shared surfaces, such as railings and fences; or, require workers to wear gloves (trade-appropriate or medical) when in contact with shared objects or frequently touched surfaces; or, require workers to sanitize or wash their hands before and after contact.
- Workers must be trained on how to adequately put on, take off, clean (as applicable), and discard PPE, including but not limited to, appropriate face coverings.

B. Hygiene and Cleaning

- Adherence to hygiene and sanitation requirements as advised by the CDC and DOH, including "Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID-19," and the "STOP THE SPREAD" poster, as applicable, is required. Cleaning logs that include the date, time, and scope of cleaning must be maintained.
- Hand hygiene stations must be provided and maintained on site, as follows:
 - For handwashing: soap, running warm water, and disposable paper towels.
 - For sanitizer: an alcohol-based hand sanitizer containing at least 60% alcohol for areas where handwashing facilities may not be available or practical.
- Appropriate cleaning / disinfection supplies for shared and frequently touched surfaces must be provided, and employees should be encouraged to use these supplies before and after the use of these surfaces, followed by hand hygiene.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

- Regular cleaning and disinfection of the work site must be conducted, as well as more frequent cleaning and disinfection for high risk areas used by many individuals and for frequently touched surfaces. Cleaning and disinfecting must be rigorous and ongoing and should occur at least after each shift, daily, or more frequently as needed. Please refer to DOH's "[Interim Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID-19](#)" for detailed instructions on how to clean facilities.
 - Regular cleaning and disinfecting of restrooms must be ensured. Restrooms should be cleaned more often depending on frequency of use.
 - Distancing rules must be adhered to by reducing restroom capacity where feasible.
 - Equipment and tools must be regularly disinfected using registered disinfectants, including at least as often as workers change workstations or move to a new set of tools. Refer to the Department of Environmental Conservation (DEC) [list of products](#) registered in New York State and identified by the EPA as effective against COVID-19.
 - If cleaning or disinfection products or the act of cleaning and disinfecting causes safety hazards or degrades the material or machinery, hand hygiene stations must be put in place for in between uses and/or disposable gloves must be supplied.
- Cleaning and disinfection of exposed areas must be provided for in the event of a positive case of COVID-19 of a worker, with such cleaning to include, at a minimum, all heavy transit areas and high-touch surfaces (e.g. shared tools, machines, vehicles, handrails, portable toilets).
- CDC guidelines on "[Cleaning and Disinfecting Your Facility](#)" if someone is suspected or confirmed to have COVID-19 infection are as follows:
 - Close off areas used by the person who is sick.
 - Operations do not necessarily need to be closed, if affected areas can be closed off.
 - Open outside doors and windows to increase air circulation in the area.
 - Wait 24 hours before you clean or disinfect. If 24 hours is not feasible, wait as long as possible.
 - Clean and disinfect all areas used by the person who is sick, such as offices, bathrooms, common areas, and shared equipment.
 - Once the area has been appropriately disinfected, it can be opened for use.
 - Workers without close contact with the person who is sick can return to the work area immediately after disinfection.
 - Per CDC's "[Evaluating and Testing Persons for Coronavirus Disease 2019 \(COVID-19\)](#)," considerations when assessing close contact include the duration of exposure (e.g. longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g. coughing likely increases exposure risk as does exposure to a severely ill patient).
 - If more than seven days have passed since the person who is sick visited or used the facility, additional cleaning and disinfection is not necessary, but routine cleaning and disinfection should continue.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

C. Phased Reopening

- Reopening activities are encouraged to be phased-in so as to allow for operational issues to be resolved before production or work activities return to normal levels. A limited number of employees and hours, when first reopening should be considered so as to provide operations with the ability to adjust to the changes.

D. Communications Plan

- Affirmation that the state-issued industry guidelines have been reviewed, are understood, and that they will be implemented, must be provided.
- A communication plan for employees, visitors, and customers should be developed that includes applicable instructions, training, signage, and a consistent means to provide employees with information. Development of webpages, text and email groups, and social media should be considered.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

III. PROCESSES

A. Screening and Testing

- Mandatory daily health screening practices must be implemented.
 - Screening practices may be performed remotely (e.g. by telephone or electronic survey), before the employee reports to the work site, to the extent possible; or may be performed on site.
 - Screening should be coordinated to prevent workers from intermingling in close contact with each other prior to completion of the screening.
 - At a minimum, screening should be required of all workers and visitors and completed using a questionnaire that determines whether the worker or visitor has:
 - (a) 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,
 - (b) tested positive for COVID-19 in the past 14 days, or
 - (c) has experienced any symptoms of COVID-19 in the past 14 days.
- According to the CDC guidance on "[Symptoms of Coronavirus](#)," the term "symptomatic" includes employees who have the following symptoms or combinations of symptoms: fever, cough, shortness of breath, or at least two of the following symptoms: fever, chills, repeated shaking with chills, muscle pain, headache, sore throat, or new loss of taste or smell.
- Employees should be required to immediately disclose if and when their responses to any of the aforementioned questions change, such as if they begin to experience symptoms, both during work hours or outside of work hours.
- Daily temperature checks may also be conducted per Equal Employment Opportunity Commission or DOH guidelines. Keeping records of employee health data (e.g. temperature data) is prohibited.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

- Any personnel performing screening activities, including temperature checks, must be appropriately protected from exposure to potentially infectious workers or visitors entering the site. Personnel performing screening activities should be trained by employer-identified individuals who are familiar with CDC, DOH, and OSHA protocols.
- Screeners should be provided and use PPE, including at a minimum, a face mask, and may include gloves, a gown, and/or a face shield.
- An employee who screens positive for COVID-19 symptoms should not be allowed to enter the worksite and should be sent home with instructions to contact their healthcare provider for assessment and testing. The local health department and DOH must be immediately notified about the suspected case. Information on healthcare and testing resources should be provided to the employee.
- An employee who has responded that they have had close contact with a person who is confirmed or suspected for COVID-19 may not be allowed to enter the worksite without abiding by the precautions outlined below and documentation of the employee's adherence to those precautions has been done.
- All employee and visitor responses collected by the screening process on a daily basis must be reviewed and a record of such review must be maintained. A contact as the party for workers to inform if they later are experiencing COVID-19-related symptoms, as noted in the questionnaire, must be identified.
- A site safety monitor must be designated whose responsibilities include continuous compliance with all aspects of the site safety plan.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

- To the extent possible, a log of every person, including workers and visitors, who may have close contact with other individuals at the work site or area must be maintained; excluding deliveries that are performed with appropriate PPE or through contactless means. Log should contain contact information, such that all contacts may be identified, traced and notified in the event an employee is
- Employers and employees should take the following actions related to COVID-19 symptoms and contact:
 - If an employee has COVID-19 symptoms AND EITHER tests positive for COVID-19 OR did not receive a test, the employee may only return to work after completing a 14-day self-quarantine. If an employee is critical to the operation or safety of a site, the local health department and the most up-to-date CDC and DOH standards on the minimum number of days to quarantine before an employee is safely able to return to work with additional precautions to mitigate the risk of COVID-19 transmission may be consulted.
 - If an employee does NOT have COVID-19 symptoms BUT tests positive for COVID-19, the employee may only return to work after completing a 14-day self-quarantine. If an employee is critical to the operation or safety of a site, the local health department and the most up-to-date CDC and DOH standards on the minimum number of days to quarantine before an employee is safely able to return to work with additional precautions to mitigate the risk of COVID-19 transmission may be consulted.
 - If an employee has had close contact with a person with COVID-19 for a prolonged period of time AND is symptomatic, the employee should notify their employer and follow the above protocol for a positive case.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

- 1) Regular monitoring: As long as the employee does not have a temperature or symptoms, they should self-monitor under the supervision of their employer's occupational health program.
 - 2) Wear a mask: The employee should wear a face mask at all times while in the workplace for 14 days after last exposure.
 - 3) Social distance: Employee should continue social distancing practices, including maintaining at least, six feet distance from others.
 - 4) Disinfect and clean work spaces: Continue to clean and disinfect all areas such as offices, bathrooms, common areas, and shared electronic equipment routinely.
- If an employee is symptomatic upon arrival at work or becomes sick during the day, the employee must be separated and sent home immediately, following the above protocol for a positive case.

B. Tracing and Tracking

- The local health department and DOH must be notified immediately upon being informed of any positive COVID-19 test result by a worker at the site.
- In the case of a worker or visitor testing positive, cooperation with the local health department is required to trace all contacts in the workplace, and the local health department must be notified of all workers and visitors who entered the site dating back to 48 hours before the worker began experiencing COVID-19 symptoms or tested positive, whichever is earlier, but confidentiality must be maintained as required by federal and state law and regulations.

Reference: NYS Interim Guidance for Construction Activities During COVID-19 Emergency

- Local health departments may, under their legal authority, implement monitoring and movement restrictions of infected or exposed persons including home isolation or quarantine.
- Employees who are alerted that they have come into close or proximate contact with a person with COVID-19, and have been alerted via tracing, tracking or other mechanism, are required to self-report to their employer at the time of alert and shall not be permitted to remain or return to the work site.

IV. EMPLOYER PLANS

Completed safety plans must be conspicuously posted on site. The State has made available a business reopening safety plan template to guide business owners and operators in developing plans to protect against the spread of COVID-19.

Additional safety information, guidelines, and resources are available at:

New York State Department of Health Novel Coronavirus (COVID-19) Website
<https://coronavirus.health.ny.gov/>

Centers for Disease Control and Prevention Coronavirus (COVID-19) Website
<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Occupational Safety and Health Administration COVID-19 Website
<https://www.osha.gov/SLTC/covid-19/>

Reference: NY Forward Safety Plan Template

**Department
of Health**

NY FORWARD SAFETY PLAN TEMPLATE

Each business or entity, including those that have been designated as essential under Empire State Development's Essential Business Guidance, must develop a written Safety Plan outlining how its workplace will prevent the spread of COVID-19. A business may fill out this template to fulfill the requirement, or may develop its own Safety Plan. **This plan does not need to be submitted to a state agency for approval** but must be retained on the premises of the business and must be made available to the New York State Department of Health (DOH) or local health or safety authorities in the event of an inspection.

Business owners should refer to the State's industry-specific guidance for more information on how to safely operate. For a list of regions and sectors that are authorized to re-open, as well as detailed guidance for each sector, please visit: forward.ny.gov. If your industry is not included in the posted guidance but your businesses has been operating as essential, please refer to ESD's [Essential Business Guidance](#) and adhere to the guidelines within this Safety Plan. Please continue to regularly check the New York Forward site for guidance that is applicable to your business or certain parts of your business functions, and consult the state and federal resources listed below.

COVID-19 Reopening Safety Plan

Name of Business:

Industry:

Address:

Contact Information:

Owner/Manager of Business:

Human Resources Representative and Contact Information, if applicable:

Reference: NY Forward Safety Plan Template

I. PEOPLE

A. Physical Distancing. To ensure employees comply with physical distancing requirements, you agree that you will do the following:

- ☐ Ensure 6 ft. distance between personnel, unless safety or core function of the work activity requires a shorter distance. Any time personnel are less than 6 ft. apart from one another, personnel must wear acceptable face coverings.
- ☐ Tightly confined spaces will be occupied by only one individual at a time, unless all occupants are wearing face coverings. If occupied by more than one person, will keep occupancy under 50% of maximum capacity.

STAY HOME.

STOP THE SPREAD.

SAVE LIVES.

- ☐ Post social distancing markers using tape or signs that denote 6 ft. of spacing in commonly used and other applicable areas on the site (e.g. clock in/out stations, health screening stations)
- ☐ Limit in-person gatherings as much as possible and use tele- or video-conferencing whenever possible. Essential in-person gatherings (e.g. meetings) should be held in open, well-ventilated spaces with appropriate social distancing among participants.

Reference: NY Forward Safety Plan Template

- ☐ Establish designated areas for pick-ups and deliveries, limiting contact to the extent possible.

List common situations that may not allow for 6 ft. of distance between individuals. What measures will you implement to ensure the safety of your employees in such situations?

How you will manage engagement with customers and visitors on these requirements (as applicable)?

How you will manage industry-specific physical social distancing (e.g., shift changes, lunch breaks) (as applicable)?

Reference: NY Forward Safety Plan Template

II. PLACES

A. Protective Equipment. To ensure employees comply with protective equipment requirements, you agree that you will do the following:

- ☐ Employers must provide employees with an acceptable face covering at no-cost to the employee and have an adequate supply of coverings in case of replacement.

What quantity of face coverings – and any other PPE – will you need to procure to ensure that you always have a sufficient supply on hand for employees and visitors? How will you procure these supplies?

- ☐ Face coverings must be cleaned or replaced after use or when damaged or soiled, may not be shared, and should be properly stored or discarded.

What policy will you implement to ensure that PPE is appropriately cleaned, stored, and/or discarded?

Reference: NY Forward Safety Plan Template

- ☐ Limit the sharing of objects and discourage touching of shared surfaces; or, when in contact with shared objects or frequently touched areas, wear gloves (trade-appropriate or medical); or, sanitize or wash hands before and after contact.

List common objects that are likely to be shared between employees. What measures will you implement to ensure the safety of your employees when using these objects?

B. Hygiene and Cleaning. To ensure employees comply with hygiene and cleaning requirements, you agree that you will do the following:

- ☐ Adhere to hygiene and sanitation requirements from the [Centers for Disease Control and Prevention](#) (CDC) and [Department of Health](#) (DOH) and maintain cleaning logs on site that document date, time, and scope of cleaning.

Who will be responsible for maintaining a cleaning log? Where will the log be kept?

- ☐ Provide and maintain hand hygiene stations for personnel, including handwashing with soap, water, and paper towels, or an alcohol-based hand sanitizer containing 60% or more alcohol for areas where handwashing is not feasible.

Where on the work location will you provide employees with access to the appropriate hand hygiene and/or sanitizing products and how will you promote good hand hygiene?

Reference: NY Forward Safety Plan Template

- ☐ Conduct regular cleaning and disinfection at least after every shift, daily, or more frequently as needed, and frequent cleaning and disinfection of shared objects (e.g. tools, machinery) and surfaces, as well as high transit areas, such as restrooms and common areas, must be completed.

What policies will you implement to ensure regular cleaning and disinfection of your worksite and any shared objects or materials, using [products](#) identified as effective against COVID-19?

C. Communication. To ensure the business and its employees comply with communication requirements, you agree that you will do the following:

- ☐ Post signage throughout the site to remind personnel to adhere to proper hygiene, social distancing rules, appropriate use of PPE, and cleaning and disinfecting protocols.
- ☐ Establish a communication plan for employees, visitors, and customers with a consistent means to provide updated information.
- ☐ Maintain a continuous log of every person, including workers and visitors, who may have close contact with other individuals at the work site or area; excluding deliveries that are performed with appropriate PPE or through contactless means; excluding customers, who may be encouraged to provide contact information to be logged but are not mandated to do so.

Which employee(s) will be in charge of maintaining a log of each person that enters the site (excluding customers and deliveries that are performed with appropriate PPE or through contactless means), and where will the log be kept?

Reference: NY Forward Safety Plan Template

- ☐ If a worker tests positive for COVID-19, employer must immediately notify state and local health departments and cooperate with contact tracing efforts, including notification of potential contacts, such as workers or visitors who had close contact with the individual, while maintaining confidentiality required by state and federal law and regulations.

If a worker tests positive for COVID-19, which employee(s) will be responsible for notifying state and local health departments?

III. PROCESS

A. Screening. To ensure the business and its employees comply with protective equipment requirements, you agree that you will do the following:

- ☐ Implement mandatory health screening assessment (e.g. questionnaire, temperature check) before employees begin work each day and for essential visitors, asking about (1) COVID-19 [symptoms](#) in past 14 days, (2) positive COVID-19 test in past 14 days, and/or (3) close contact with confirmed or suspected COVID-19 case in past 14 days. Assessment responses must be reviewed every day and such review must be documented.

What type(s) of daily health and screening practices will you implement? Will the screening be done before employee gets to work or on site? Who will be responsible for performing them, and how will those individuals be trained?

If screening onsite, how much PPE will be required for the responsible parties carrying out the screening practices? How will you supply this PPE?

Reference: NY Forward Safety Plan Template

B. Contact tracing and disinfection of contaminated areas. To ensure the business and its employees comply with contact tracing and disinfection requirements, you agree that you will do the following:

- ☐ Have a plan for cleaning, disinfection, and contact tracing in the event of a positive case.

In the case of an employee testing positive for COVID-19, how will you clean the applicable contaminated areas? What products identified as effective against COVID-19 will you need and how will you acquire them?

In the case of an employee testing positive for COVID-19, how will you trace close contacts in the workplace? How will you inform close contacts that they may have been exposed to COVID-19?

Reference: NY Forward Safety Plan Template

IV. OTHER

Please use this space to provide additional details about your business's Safety Plan, including anything to address specific industry guidance.

