



June 2020

## Back to Business: NY Interim Guidance for Outdoor and Takeout/Delivery Food Services

By Bryn Goodman, Glenn S. Grindlinger, and Carolyn D. Richmond

As various regions in New York continue with Phase 2 of the state's reopening, the New York State Department of Health (DOH) issued [interim guidance for outdoor and takeout/delivery food services](#). The guidance applies to all restaurants and food service establishments either to their takeout and delivery operations for businesses in regions that have not yet reached Phase 1 or are in Phase 1 of the reopening process, as well as to outdoor seating spaces for businesses in regions that have begun Phase 2 reopening. To date, dine-in and on-premise restaurant or bar service and large gathering/event venues must remain closed, excluding takeout or delivery for off-premise consumption.

As with New York's [other Phase 2 industry-specific guidelines](#), the DOH issued this interim guidance concerning minimum requirements for reopening (or continued operation in the case of takeout and delivery business) in order to prevent the spread of COVID-19. It addresses precautions and restrictions that businesses are encouraged to adopt along with certain mandates, which are summarized below. All restaurants and food service establishments should read the guidance and keep a signed copy on file.

### Physical Distancing Requirements

The guidance sketches out a vastly different dining and working experience for those patrons and staff who return to restaurants

during Phase 2 reopening. The guidance includes physical distancing requirements for both patrons and staff of any food establishment.

### *Distancing of Guests*

The guidance requires that outdoor food service establishment that are reopening in Phase 2 provide seating only in an open air space, which means space without a fixed roof. All tables for seating must be spaced six feet apart in all directions from "any other table, seat, patron, or pedestrian thoroughfare or corridor." Patrons who are over two years old and medically capable of tolerating a face covering must also wear face coverings *except* while seated. The maximum party size is 10 people. Patrons may be seated at an outdoor bar area provided that a distance of six feet be maintained between parties. Bar area staff must also remain six feet apart, when possible. Pre-ordering is recommended to minimize the amount of time spent by patrons in the restaurant.

If six feet between each table in all directions is not possible, which may be the case when New York City venues begin Phase 2 reopening and especially with respect to pedestrian traffic, then businesses shall erect physical barriers that are at least five feet in height and which do not block emergency and/or fire exits.

Indoor seating is not allowed, but to the extent the indoor space needs to be accessed for use

of the restrooms or payment, the space must allow for access to the indoor space to occur in a socially distanced manner. Those patrons coming to the establishment for outdoor dining should wait in their cars to be seated.

Restaurants should mark the floor to signal six foot spacing in lines for payment or pick-up. Tape should also be placed on the ground to direct people to avoid bi-directional traffic. Patrons waiting to be seated should be notified their table is ready by audio announcements, text messages or notices on screens, *not* by reusable buzzers. For patrons who are ordering for pick-up or delivery, businesses are expected to encourage them to place remote orders and use contactless pick-up.

### ***Distancing of Employees***

Employers must ensure that employees are stationed at least six feet away from each other at all times, unless a core activity (*e.g.* cooking, cleaning, clearing tables, maintenance) requires that a shorter distance be maintained. This includes limiting the use of small spaces, such as walk-in freezers, to one person at a time, unless the others are wearing face coverings; and even with face coverings, occupancy of such small spaces should not exceed 50% capacity. If distancing is not feasible between work stations, employers may erect physical barriers, provided they do not create other safety hazards, such as blocking air flow, heating, cooling or ventilation. Restaurants should mark the floor to signal six foot spacing in lines for clocking in/out

As with other businesses, employers must provide employees with face coverings, which employers must ensure their employees are wearing at all times.

In-person gatherings of staff, including pre-shift meetings, must be limited to the greatest extent possible and should take place via teleconference if possible. If teleconferencing is

not possible, meetings should be held in well-ventilated spaces where social distancing can be observed. Nonessential amenities that promote gathering should be closed (*e.g.* vending machines, communal, coffee machines). Employers should stagger breaks, meals and shift starts/stops to allow employees to observe social distancing in the dining area and kitchen.

Similarly, businesses should limit on site interactions of vendor pickups and deliveries. The number of vendors should be limited to one at a time.

### ***Kitchen Area***

Before employees return to work, businesses should assess kitchen systems to ensure a healthy and safe environment. Businesses are encouraged to reconfigure kitchens to allow for six feet distance or stagger shifts, so that food prep can be done in advance. Kitchen staff should be dedicated to one station throughout their shift and minimize sharing of equipment. Items should be placed on the counter rather than passed hand-to-hand. Employers should discourage kitchen staff from changing workplace kitchen stations unless the area is properly cleaned or disinfected.

### ***Protective Equipment***

The guidance provides that employers must train their employees on how to adequately put on, take off, clean and discard personal protective equipment (PPE). Employers must maintain adequate supply of face coverings, masks, and other required PPE should an employee need a replacement. In general, bandanas or other cloth masks are acceptable face coverings. However, if N95 respirators (or other protective gear) are traditionally required for specific food service activities, a cloth mask would not suffice. Employers cannot require employees to use *their own* face covering, or additional protective equipment (*e.g.* face shield), but they must permit the employee to use their own face covering or additional

protective equipment. Receptacles should be placed around the workplace to dispose of soiled PPE. If gloves are worn they should be replaced frequently, at least when switching tasks, and certainly before and after cleaning and disinfecting tables. If gloves are not worn, employees must frequently wash their hands with soap and water.

## **Hygiene, Cleaning, and Disinfection Requirements**

### ***Mealtime Hygiene***

Family meal will be very different as employers must prohibit employees from sharing food and beverages among themselves, and should encourage them to bring food from home. Social distancing must be observed during mealtime.

### ***Hand Hygiene Stations***

Employers must make hand hygiene stations available to employees and hand sanitizer should also be placed in convenient locations, such as at entrances, exits, and cashiers. Hand sanitizer stations should have signage indicating that visibly soiled hands should be washed with soap and water.

For takeout/delivery, hand hygiene stations should be available for customers waiting for food and/or drinks. If pick-up is indoors or in an enclosed space, windows should be opened for ventilation.

### ***Condiments, Menus and Utensils***

Condiments provided to customers must be single-use disposable containers or reusable containers that are cleaned and disinfected. Menus should also be single-use, paper and disposable or displayed on a white board or chalk board. Businesses should also encourage guests to view menus online when possible. Utensils should be pre-packaged or pre-rolled. Employer may not provide unwrapped straws or toothpicks.

### ***Cleaning and Disinfecting***

Employers must provide appropriate cleaning and disinfection supplies for shared and frequently touched surfaces. Restrooms should be regularly cleaned and disinfected. In addition, equipment and tools should be regularly cleaned and disinfected. If someone who visited or worked at the restaurant is suspected or confirmed to have COVID-19 and seven days or fewer have passed since they visited, additional steps must be taken and DOH guidance on the subject can be found [here](#). Employees who were not exposed may return to work after the area has been cleaned and disinfected and is reopen for use. For employees exposed or potentially exposed, the employer should refer to the DOH's [guidance](#) on returning to work following infection or exposure.

### **Food Truck Requirements**

In food trucks and concessions, employers should implement social distancing policies where possible, or restrict occupancy if social distancing is not possible. Employees should wear gloves or regularly use hand sanitizing if there is no access to running water.

### **Employee Health Screening**

As with other industries, food service establishments must also perform daily COVID-19 screenings of all employees, and where applicable vendors, which may include a temperature check.<sup>[1]</sup> For employees and vendors, screenings may be done remotely. The results of such screenings must be reviewed daily, recorded, and maintained. Businesses should consider speaking with counsel about screenings to confirm that the appropriate guidelines are being followed while ensuring each employee's medical privacy. Customers and delivery workers, who are not employees of the restaurant, *may not* be forced to participate in COVID-19 screening regimens.

### **Training for Personnel Conducting Screening**

Personnel who perform screenings, including temperature checks, must be provided appropriate PPE and must be trained by employer-identified individuals who are familiar with DOH, Centers for Disease Control and Prevention (CDC) and United States Department of Labor's Occupational Safety and Health Administration (OSHA) protocols. As with other employers, food establishments must ask employees if within the past 14 days they have tested positive for COVID-19, have experienced COVID-19 symptoms or had close contact with someone who was symptomatic or tested positive for COVID-19.

### **How to Handle Positive Screening Results**

If someone screens positive for COVID-19 symptoms, they should be sent home and instructed to contact their healthcare provider; if they test positive, the employer must notify the DOH and the local health department. The employer should also maintain a log of every person who may have been in close contact with the person who tested positive. The business must work with the DOH to trace all contacts the person may have had in the workplace, including notifying the DOH, to the extent possible, of all individuals who entered the worksite going back 48 hours from when the person first experienced symptoms or tested positive.

### **Self-Reporting Requirements**

Individuals alerted by contact tracing or otherwise that they have come in contact with a person with COVID-19 are required to self-report to their employer and follow protocol described in the guidance. Furthermore, employees must stay home for at least 14 days if they are symptomatic<sup>[2]</sup> and (1) test positive; (2) do not get tested; or (3) had close contact with a person with COVID-19.

### **Safety Plan**

Employers must acknowledge this guidance and develop a communications plan to provide instructions, training and signage, and a consistent means to communicate any changes to employees. Under both Phase 1 and Phase 2, employers are required to create and post a safety plan in the workplace if they reopen. In Phase 2, employers must designate a site safety monitor whose responsibility it is to assess compliance with aspects of the site safety plan. New York State has made a [sample template](#) safety plan that businesses can follow.

For more information about this alert, please contact Bryn Goodman at [bgoodman@foxrothschild.com](mailto:bgoodman@foxrothschild.com) or 212.878.7975, Glenn S. Grindlinger at [ggrindlinger@foxrothschild.com](mailto:ggrindlinger@foxrothschild.com) or 212.905.2305, Carolyn D. Richmond at [crichmond@foxrothschild.com](mailto:crichmond@foxrothschild.com) or 212.878.7983, or any member of the firm's New York Labor & Employment Group.

---

<sup>[1]</sup> This is consistent with the Equal Employment Opportunity Commission's (EEOC) *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act Guidance* discussed in a prior [alert](#) and adopted by the New York City Commission on Human Rights, which permits temperature checks of employees.

<sup>[2]</sup> Employers should refer to [CDC guidance](#) on "Symptoms of Coronavirus" for the most up to date information on symptoms associated with COVID-19, currently they include: fever or chills; cough; shortness of breath or difficulty breathing; fatigue; muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; or diarrhea.