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## NYC Indoor Dining: Limited Reopening Is Allowed Under Strict Safety Measures

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Governor Andrew Cuomo announced some long-anticipated and welcome news on September 9 for New York City restaurant owners—beginning on September 30, 2020, restaurants in New York City will be permitted to resume indoor dining at 25% capacity of the Certificate of Occupancy and with strict restrictions. Outdoor dining will still be permitted as long as restaurants maintain compliance with current outdoor dining restrictions.

According to the Governor’s [announcement](#) and the State’s New York Forward [website](#), restaurants that choose to reopen for indoor dining will be subject to strict safety protocols, including:

- Temperature checks at the door for all customers;
- One member of each party of customers will be required to provide contact information for contact tracing if needed;
- No bar service (bars may only be used for making drinks and serving them tableside);
- Masks must be worn at all times when not seated at a table;
- Tables must be six feet apart;
- Restaurants must close at midnight;
- Restaurants should operate with enhanced air filtration, ventilation and purification standards;
- Restaurants should limit air recirculation and allow for outside air ventilation; and
- Restaurants must publicly post their 25% indoor dining capacity and the phone number and text number to report violations (calls can be made to 833-208-4160 to report violations or by texting “VIOLATION” to 855-904-5036).

The 25% rule applies to a la carte dining; for private events, indoor dining is limited to the lesser of 25% of the Certificate of Occupancy or 50 persons. Further, the 25% Certificate of Occupancy threshold applies to each area of an establishment. Therefore, if a restaurant has one area with a Certificate of Occupancy of 100 person (Area 1), and a second area with a Certificate of Occupancy of 75 persons (Area 2), provided a la carte dining is served in both areas, the establishment can have up to 25 guests in Area 1 and up to 18 guests in Area 2.

The State will also be developing a “COVID-SAFE” restaurant standard to assure New Yorkers of COVID-safety and sanitation practices at restaurants. The above guidelines (and the COVID-SAFE restaurant standard when it is released) will be reassessed by November 1, 2020, based on data collected after indoor dining resumes. If the infection rate does not increase, the State may permit restaurants to increase to 50% percent capacity for indoor dining. The State will be monitoring any COVID-19 positivity increase on an ongoing basis and potentially reassess its guidelines if necessary.

While this is welcome news for New York City restaurant owners, it is crucial that employers comply with all applicable federal, state and local laws when bringing back employees who were terminated, laid off or furloughed. Below are some general guidelines for employers to follow and pitfalls to avoid.

### How Do Employers Decide Who Returns to Work?

Even with indoor dining resuming in a limited capacity, most employers will likely not be able to

rehire or bring back from a furlough all of their former employees. Employers must therefore be cautious in determining who to bring back to the workplace to mitigate risk of potential discrimination claims based on the decision not to bring back certain employees. Employers should review our prior [Alert](#) regarding considerations that need to be made when deciding who to rehire or bring back from furlough.

### What Steps Must Be Taken When Bringing Back Additional Employees?

After making a determination about *who* will be brought back to work, employers must be aware of *how* to properly return employees to work. The same process that employers followed when initially reopening should be used here, and will likely differ depending on whether employees were laid off or placed on furlough.

For furloughed employees, the process is fairly straightforward. A letter to furloughed employees inviting them back to work should suffice, but be sure to include details in the letter about the employees' expected hours, rate(s) of pay and continuation or resumption of benefits (*e.g.*, if an employee is recalled within six months, all accrued and unused time under the NYC Earned Safe and Sick Time Act must be reinstated and available for immediate use). If an employee is returning from furlough with a different rate of pay, employers must issue a new rate of pay notice with the new rate.

For employees who were laid off or terminated, the process should be nearly identical to hiring a new employee.

A detailed list of information and tips for reopening restaurants in New York City can be found [here](#), which includes steps to take when bringing back furloughed workers or rehiring employees that were laid off.

### What Else Should Employers Do to Prepare for Indoor Dining?

Employers should also continue to implement and

update their policies, practices and procedures for operating during COVID-19, such as:

- Updating employee handbooks to include COVID-19 leave and safety policies and procedures;
- Preparing and distributing COVID-19 operating guidelines that document the procedures the restaurant is following to keep employees and guests safe (this document was already required to re-open);
- Posting new/updated notices and posters required under federal, state and local law (if you have not already done so);
- Communicating with employees (in writing) the protocols to follow in the event they become ill or potentially exposed to COVID-19;
- Being aware of and prepared to handle accommodation requests related to COVID-19, such as requests for accommodations due to a loss of child care or underlying health conditions;
- Training managers on new employee leave laws;
- Considering to offer new employee resources for coping with the stresses and anxieties associated with COVID-19; and
- Conduct required annual sexual harassment prevention training (which is also required for new hires).

The above information provides only a general overview of issues employers need to consider when indoor dining resumes, though applicable laws, regulations and guidelines are constantly changing. Accordingly, New York City restaurant owners should consult with counsel as they prepare to open for indoor dining on September 30.

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