



PHILLIPS LYTLE LLP CLIENT ALERT
FOR BNHRA MEMBERS
LABOR & EMPLOYMENT

JUNE 2021



New York State Lifts Most COVID-19 Reopening Guidance

New York State has announced that most COVID-19 industry reopening guidance has been lifted because 70% of the State's adult residents (18 years and older) have received at least one dose of a COVID-19 vaccine. In making the announcement, the State said:

With the removal of the State's minimum standard for reopening, businesses are free to choose to lift all or some restrictions, continue to adhere to the State's archived guidance, or implement other health precautions for their employees and patrons. Businesses are also authorized to require masks and six feet of social distancing for employees and patrons within their establishments, regardless of vaccination status. Any mask requirements that businesses choose to implement must adhere to applicable federal and state laws and regulations, such as the Americans with Disabilities Act.

The areas that remain subject to the State's reopening guidance are fairs and festivals, large-scale performing arts and entertainment, Pre-K to Grade 12 schools, professional sports with fans, and public transportation. Thus, all other industries are now free to discontinue all previously implemented COVID-19 reopening protocols, including employee health screenings, or choose to voluntarily continue to adhere to the prior reopening guidance, or implement other health precautions. The announcement also says that, in accordance with CDC guidance, unvaccinated individuals continue to be responsible for wearing masks.

Although most industries are now free of the New York State COVID-19 reopening guidance requirements, employers should remember that they will soon be required to adopt an airborne infectious disease prevention plan, as required by the New York Health and Essential Rights Act (NY HERO Act).

Under recently passed amendments to the NY HERO Act, the New York State Department of Labor (DOL) must issue model industry plans by July 5, 2021. Employers are required to adopt the model DOL plan for their industry (or an equivalent plan) by August 4, 2021, and provide their plan to employees by September 3, 2021. As of November 1, 2021, employers with at least 10 employees must also permit their employees to form joint labor-management workplace safety committees. More information about the NY HERO Act can be obtained by reading our [prior alert](#) on that new law.

Additionally, health care employers should be aware that despite the lifting of the State's COVID-19 reopening guidance, they must comply with the federal Occupational Safety and Health Administration's (OSHA) recently issued [COVID-19 emergency temporary standard for health care employers](#). Non-health care employers should remember that they remain subject to OSHA's general duty clause, which requires that employers protect their employees from recognized hazards likely to cause death or serious physical harm. Although OSHA has not issued COVID-19 standards outside of the health care industry, it has issued [non-binding guidance](#) for protecting employees from COVID-19 in other settings where all employees are not vaccinated against COVID-19, including:

- Implementing physical distancing for unvaccinated and other at-risk employees in communal areas;
- Providing unvaccinated employees with face coverings; and
- Performing routine cleaning and disinfection.

Thus, non-health care employers no longer subject to the New York State COVID-19 reopening guidance requirements should determine the extent to which, if any, they should continue to adhere to COVID-19 safety measures to satisfy OSHA's general duty clause.



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Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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