

MID-JUNE 2020

THE CHALLENGES OF REOPENING

On June 4, 2020, New York City officials reported no confirmed deaths attributed to the coronavirus, for the first time since the crisis began. Although the final tallies will increase due to reporting lags, daily reports have remained low over the past week. New York City's eventual success in stemming the spread of the coronavirus has been a credit to New Yorkers' compliance with the lockdown measures imposed three months ago.

Those lockdown measures were always meant to be only a "pause," and now a new phase of New York City's response to the coronavirus has begun. On June 8, 2020, the five boroughs of New York City entered "Phase One" of the Governor's "New York Forward" phased program to reopen the economy. The Phase One designation means that activities such as construction and manufacturing were allowed to resume. Non-essential retail was also allowed to resume, but limited to curbside pickup and delivery. New York City is the last part of the State that is still in Phase One, after the Hudson Valley and Long Island entered Phase Two last week.

If the partial reopening under Phase One does not cause a spike in coronavirus cases, it is hoped that New York City will enter Phase Two in late June or early July. When Phase Two begins, businesses such as professional and real estate offices will be allowed to reopen, subject to limitations on occupancy and social distancing. In-store retail operation and some outdoor restaurant dining will also be allowed. It is too soon to tell when progress to Phases Three and Four and a full reopening will occur.

Before reopening, employers are required to prepare a Safety Plan designed to reduce the spread of the virus in the workplace. Employers should consult with counsel to develop a Safety Plan appropriate for their business. The plan should cover topics such as maintaining physical distance between employees and customers or clients, use of masks when distances cannot be maintained, and regular sanitization of surfaces, among many other things. When completed, the Safety Plan does not need to be filed with any government agency, but must be complied with and a copy must be retained in the employer's records.

Co-op and condo boards will also need to revisit their initial emergency lockdown protocols. Some elements of "normal life" will probably return in some form, such as apartment showings, move-ins and move-outs, and visits to the building by personnel such as housekeepers or nannies. However, the need for measures to protect residents and employees will remain for the foreseeable future, not least because many co-ops and condos have significant elderly populations that are particularly at risk from the virus.

The Real Estate Board of New York, 32BJ SEIU, and the Realty Advisory Board on Labor Relations have jointly issued a set of "comprehensive safety and health guidelines for ... residential buildings in New York City, including multifamily rentals, cooperatives and condominiums, as the City enters Phase One and prepares for Phase Two of New York Forward." These can be found at https://rebny.com/content/rebny/en/newsroom/press-releases/2020_Press_Releases/REBNY_32BJ_RAB_Issue_Joint_Industrywide_Guidelines_for_Safety_in_MarketRate_Residential_Buildings_as_New_York_City_Begins_NY_Forward.html

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Boards should continue to properly document their reopening decisions as they are made and to consult with their legal counsel and other professional advisors concerning their rights and obligations to their shareholders or unit owners, other residents, and employees.

SEVERAL GOVERNMENT PROGRAMS MAY ASSIST EMPLOYERS

We have previously reported on the federal government's Payroll Protection Program (PPP) as well as proposed amendments to that program. The Payroll Protection Program Flexibility Act was signed on June 5, 2020. This law makes important changes to the terms of PPP loans. Among other things, employers seeking forgiveness of their loans may now include 24 weeks of covered expenses (but not beyond December 31, 2020) – including payroll expenses, mortgage interest, rent, and utilities – rather than the 8 weeks allowed under the original legislation. To achieve full loan forgiveness, at least 60% (rather than 75%) of the amount must be used for payroll. The remainder can be used for most mortgage interest, rent and utility costs. Payroll expenses include compensation of employees as well as owners (partners) in a business, but subject to a pro-rated maximum of \$100,000 per year for each individual, as well as certain retirement and medical plan contributions for employees. The amendment also provides a safe harbor from reductions in loan forgiveness based on reductions in full-time equivalent employees, to protect borrowers that are unable to rehire individuals who were employees on February 15, 2020 and unable to hire similarly qualified employees for unfilled positions by December 31, 2020.

To have the PPP loan forgiven, the borrower must submit a forgiveness application to the lender within 10 months after the 24-week period expires. The application must include documentation of how the loan proceeds were expended, so it is important to keep careful records as the expenses are incurred. The payment term for new loans after June 5, 2020 has been extended from a minimum of two years to a minimum of five years. Anyone who has not applied for a PPP loan and wishes to do so must act immediately because June 30, 2020 remains the deadline for the Small Business Administration to fund these loans.

The Small Business Administration and the Federal Reserve are also administering other loan programs for businesses that have been adversely affected by the pandemic. Eligibility for these loans may be broader than for PPP loans. However, unlike PPP loans, these loans are not forgivable and will have to be repaid.

Another benefit available to small employers under the CARES Act is the ability to defer the employer's portion of certain payroll taxes from 2020 into 2021 and 2022, without interest or penalties. Employers should consult with their accountants, if they have not already done so, to determine whether they are eligible for this deferral and whether it would benefit them. Previously, employers taking PPP loans were ineligible to take a payroll tax deferral as well, but the new legislation now allows an employer to be eligible for both forms of relief.

New York State has also established a loan program, known as the New York Forward Loan Fund. This program is open to small businesses with up to 20 employees, non-profit groups, and residential landlords of 50 or fewer units, who have expenses associated with the pandemic and who have not received a federal PPP loan or Economic Injury Disaster Loan. These loans will be repayable over a period of five years.

In sum, businesses, non-profits, and landlords may have a number of options for obtaining working capital to assist them. Some of these options may be closing soon, while others are just becoming available. Every business or employer, from the smallest sole proprietorship through major publicly traded companies, should be working with its attorneys and accountants to determine what programs and resources may be right for them.