

Things are evolving daily, and Zarin & Steinmetz is here to assist you.

### ***Mid-Hudson and Long Island Regions Meet Reopening Guidelines***

Joining seven other NY State Regions that are presently in Phase One of reopening, the Governor announced that [the Mid-Hudson and Long Island Regions can begin to reopen as of May 26, 2020, and May 27, 2020](#),\* respectively. New York City, which meets 5 of the 7 metrics for reopening, is the only Region not yet open.

[Phase One](#)\* includes: construction; agriculture, forestry, fishing, and hunting; retail (curbside or in-store pickup/drop off); manufacturing; and wholesale trade.

Construction is broadly defined, and includes [all residential and non-residential construction](#).\* The State has issued [Construction Guidelines for Employers and Employees](#)\* for both essential construction that has previously been permitted, as well as all construction businesses in Regions permitted to reopen.

If you want to know whether an industry in your Region is open, you can review the current status using the [New York Forward Business Reopening Lookup Tool](#).\*

Note that all businesses or entities are required to “develop a written Safety Plan outlining how its workplace will prevent the spread of COVID-19.” Although the Plan is not required to be submitted to any State agency, it must be kept on the premises in the event of an inspection by the Department of Health. The DOH has prepared a [NY Forward Safety Plan Template](#)\* that can be used for this purpose.

### ***Taking Businesses' Temperature on Reopening NY***

Employers, employees, landlords, and tenants want to ensure the safety of everyone coming back to office buildings. Temperature screening is one of the strategies that [the CDC has stated employers could use to indicate whether a person is potentially infectious](#),\* and to prevent and control the spread of COVID-19.

OSHA’s General Duty Clause, Section 5(a)(1), for example, requires employers to provide their employees with a workplace that is “free from recognized hazards likely to cause death or serious physical harm.” (See, e.g., OSHA, [Guidance on Preparing Workplaces for COVID-19](#)).\* Arguably, a person who is potentially infectious with COVID-19 poses a recognized potential hazard to the workplace. OSHA advises that employers – or presumably landlords administering the screening – should be taking necessary steps to reduce the risk of worker exposure to COVID-19 in the workplace (See, e.g., [id.](#) at 9 (“Prompt identification and isolation of potentially infectious individuals is a critical step in protecting workers, customers, visitors, and others at a worksite.”)). OSHA has also implemented “policies and procedures for immediately isolating people who have signs and/or symptoms of COVID-19,” including moving those people to “designated areas with closable doors [which] may serve as isolation rooms until potentially sick people can be removed from the worksite.” ([id.](#) at 10).

All guidance for employers and employees that has been issued for [businesses permitted to open during Phase One](#)\* has included the requirement that mandatory daily health screening be implemented. Although temperature screening is just one screening tool, it necessarily follows that if temperature screening is included as part of the overall health screening, and if an employee or visitor does not pass the screening, there would seem to be a legal obligation to preclude those individuals from the premises. Similarly, if an individual refuses to submit to screening, that individual should be precluded from the premises.

Some considerations for building owners:

- [Federal EEOC guidelines](#)\* state that under the ADA, testing must be implemented in a nondiscriminatory (and confidential) fashion. Test all employees, as well as anyone else entering the premises, such as contract workers, and visitors, unless doing so would be infeasible.
- Best practices dictate that if temperature screening will be utilized, testing protocols should be developed and implemented, including, for example:
  - How individuals are put on notice that screening will be occurring;
  - What type of thermometer would be used (preference is for non-contact to reduce the need for cleaning between each individual and constant changing of PPE);
  - Who will be conducting the screening (e.g., a trained, third-party medical professional familiar with proper PPE usage and confidentiality laws);
  - What constitutes “passing” and “not passing” (CDC has defined “fever” to be a temperature of 100.4F or higher);
  - Whether re-testing will be permitted in the event the individual does not pass (e.g., 15 minutes after a non-passing screening);
  - How documentation would be kept and confidentiality maintained (e.g., name and “pass” or “not pass,” rather than detailed information);
  - Where an individual would be isolated in the event s/he did not pass (once testing is utilized, if an individual does not pass, that person is now considered potentially infectious and must be precluded from the premises);
  - How to handle individuals who refuse to be tested (e.g., refusal of entry); and
  - How/when to allow individuals to return to the building after not passing (e.g., note from medical professional, 14 days fever free, etc.).
- Consider setting up the testing location outside of the building, for example, in the parking lot. This will limit potential exposure in the building.

On April 27, 2020, [Senate Bill S.8253A](#)\* was introduced in the New York State Senate, which would expressly allow any business to perform body temperature checks on any employee, vendor or customer entering its place of business and remove any person if their temperature is above 100.4 degrees. Businesses who opt into performing temperature checks would be required to post signs about the screening procedure. The Bill is currently in the Senate Consumer Protection committee.

---

### ***Governor Eases Restrictions on Nonpayment and Eviction Proceedings***

Pursuant to [Executive Order 202.28 \(05/07/20\)](#)\*, the moratorium on proceedings for nonpayment and eviction of residential and commercial tenants has been extended for a period of 60 days beginning on June 20, 2020, *only* in those situations where the tenant is “eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic.” This appears to loosen the blanket restriction on all such proceedings that was set forth in [Executive Order 202.8 \(03/20/20\)](#)\*. It appears to make it the responsibility of the tenant to demonstrate to the landlord either: (1) eligibility for unemployment insurance or benefits; or (2) a financial hardship caused by the pandemic. Without such demonstrable proof, a landlord could presumably commence the action, leaving open the possibility of the tenant raising one or both of these factors as affirmative defenses.

Notably, no Executive Order has suspended the obligation of a tenant to pay rent. Although landlords are prohibited from charging late fees for late payments during the period of March 20, 2020 through August 20, 2020, they are still entitled to rent payments. Legislation has been introduced, which would suspend rent payments for 90 days, without any requirement of future repayment, for both residential and commercial tenants that have lost income or closed as a result of the pandemic. Landlords would then be entitled to similarly suspend for 90 days a portion of their mortgage payments, in an amount equal to the lost rent, without any requirement of future repayment. The identical Senate Bill ([S8125A](#))\* and the Assembly Bill ([A10224](#))\* are both presently in the respective Judiciary Committees.

## Update on Status of the Courts

**Supreme Court:** Having met the [Governor's Reopening Benchmarks](#),\* in-person courthouse operations have begun to return in all counties in the State, except for the New York City Region counties. E-filing through NYSCEF, including the filing of new, non-essential matters, has been restored in all counties, including those in the [NYC Region](#).\* Note that by [Executive Order 202.28 \(05/07/20\)](#),\* the Governor extended the toll on statutes of limitation through June 6, 2020.

**First & Fourth Departments:** Both the First Department (by [Administrative Order, dated May 8, 2020](#))\* and the Fourth Department (by [Administrative Order, dated April 17, 2020](#))\* have rescinded their prior respective March 17, 2020 Orders suspending filing deadlines. The new filing deadlines are set forth in each of the new Orders. The requirements for hard copy filing remains suspended.

**Second Department:** By [Administrative Order, dated May 6, 2020](#),\* the Second Department lifted its prior March 17, 2020 Order only to the extent that it suspended the filing deadlines in criminal and actively managed appeals, as well as in motion practice in all matters. New deadlines for those types of matters are set forth in the Order, and are based upon the respective original filing deadlines. The filing deadlines in civil appeals that are not actively managed remain suspended. E-filed matters should be filed through NYSCEF, and non-e-filed matters can be filed through the Court's digital portal. Hard copy filings are being accepted, but are not required.

**Third Department:** By [Administrative Order, dated May 6, 2020](#),\* the Third Department lifted its prior March 17, 2020 Order only to the extent that it suspended deadlines relating to the filing of answering and responding briefs. The new deadlines are set forth in the Order. The deadlines for perfecting appeals remain suspended.

---

## Out and About

We asked some of our attorneys their favorite hiking trails in the region and surrounding areas, as we look ahead hopefully to more recreational sites opening. Here's what they said:\*

*Brad Schwartz:* "For close to home in the Rivertowns, the [Old Croton Aqueduct](#) and [Rockefeller Preserve](#) are nice, easy trails. For a greater challenge, our family enjoys spending a day in Cold Spring and hiking [Bull Hill](#) (moderate) and [Breakneck](#) (difficult)."

*Dan Richmond:* "We go to [Ward Acres](#) in New Rochelle, which has a nice, easy trail system, and [Manor Park](#) in Larchmont, which was designed by Frederick Law Olmsted, and has great views of Long Island Sound."

*David Cooper:* "The County Park at [Ward Pound Ridge Reservation](#) for those of us living in Northern Westchester. It's 4,315 acres of wonderful trails."

*Kate Roberts:* "I would say [Buck Mountain](#) in Lake George. About 6.5 miles round trip but pretty easy. And [Shelving Rock Falls](#) in the Adirondacks. About 6 miles. Very easy and has a waterfall."

*Max Mahalek:* "My recommendations: [Bear Mountain](#) (Rockland/Orange border – easy to difficult), [Stony Point Battlefield Historic Site](#) (Rockland – moderate), [Anthony's Nose](#) (Westchester – difficult), [Westmoreland Sanctuary](#) (Westchester – easy to moderate), [Planting Fields Arboretum](#) (Nassau – easy)."

*Michael Zarin:* "Todd Road (close to home in Northern Westchester), or any other of the many low traffic dirt roads in Westchester; or [Baxter Preserve](#) or any trail associated with the [North Salem Open Land Foundation](#)."

\*Note: Links are to external web sites that friends of our firm may find helpful. They are provided for information only, and do not constitute an endorsement by Zarin & Steinmetz of those organizations, their policies, or their products. Zarin & Steinmetz is not responsible for, does not endorse, nor has any control over the content of linked websites.

**BE STRONG, BE SAFE!!**

*\*Follow Zarin & Steinmetz on LinkedIn or Visit our Website\**  
[LinkedIn](#) | [Website](#)

Edited by [Jody T. Cross, Partner](#)

You have received this e-mail as a friend or client of Zarin & Steinmetz. The information herein is intended for informational purposes only, is not to be construed as either legal advice or as advertising by Zarin & Steinmetz or any of its attorneys, and does not create an attorney-client relationship between you and Zarin & Steinmetz. Please seek the advice of an attorney before relying on any information contained herein.