



Legal Considerations of Re-opening

Presented for NNYLN

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Lawyers for your workflow.



SEE IT

Legal services for artists, designers, architects, writers, photographers, fine arts, and visionaries. Copyright defense.



BUILD IT

Legal services for construction, business start-ups, licensed professionals, civic organizations, and the built environment.




WORK IT

Legal services for higher education, libraries, archives, museums, and information professionals.



BRING IT.



Hello, brave
library leaders
and workers!

You are...



OPEN WITH RESTRICTIONS

NAICS: 519120

Industry: Libraries and Archives

Your business is located in Erie county, which is in region Western New York.

Your business is currently **permitted to operate with restrictions statewide**. Restrictions that are applicable to your industry are as follows:

Government facilities only; operations as determined by the local government if such government operates the library, or the library district itself as a political subdivision. Local governments are subject to 50% workforce reductions pursuant to EO 202.4. They are encouraged, but not required, to reference and employ the State's curbside and in-store pickup retail guidance to the extent that it applies to their operations.

In order to operate, you must comply with all safety guidelines for your industry, as well as any additional health and safety guidance issued by the state. [Please click here to read applicable guidelines.](#)

If the link above contains guidance specific to your industry, you must affirm that you have read and understand your obligation to operate in accordance with the guidance at the bottom of the document.

Please note that in order to be fully compliant, you must develop a business safety plan.



Grammar matters.

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What does this mean?

Who the hell can say for sure? The writing is very unclear. But here are my conclusions, based on consideration of the text, as informed by other laws governing libraries in New York:

- All libraries that are purely government agencies or political subdivisions were never subject to the 100% workforce orders
- All institutions that identify with NIACS Code 519120 can operate state-wide.
- All libraries in government-owned (NOT library-owned) buildings are subject to their landlord's (the government entity's) conditions
- All libraries that consider themselves part of local government are subject to the 50% workforce reduction

I base this on
THREE
principles that
should govern
all legal
analysis about
New York
Libraries

First: Within certain well-defined limits, based on library type, NY law sets up libraries to assert corporate autonomy

Second: Libraries are legal hybrids that, when faced with a choice, should always choose the legal interpretation that benefits their missions

Third: In most (but not all!) contexts liability claims against even municipal libraries lead to liability against the library, not the municipal entity.

Tip 1

Per the New York Education Law, your board is an independent, responsible entity that governs the library.



Tip 2

One of the most important things right now is to know your library.



Tip 3

At this time, all operational decisions should demonstrably place **SAFETY FIRST**.



Tip 4

Your board must adopt a written and routinely assessed (no less than weekly, and upon any operational changes) **SAFETY PLAN**.



Tip 5

Your board must designate someone, or some small group, as **IN CHARGE** of maintaining and updating your library's Safety Plan.



Tip 6

Since the stakes can be high, decisions about staffing deserve professional input.



Tip 7

Since the stakes can be high, budget decisions deserve professional input.



Tip 8

Since the stakes can be high, public relations actions deserve professional input.



Tip 9

Remember, your board is empowered to suspend or temporarily amend library policies.



Tip 10

Remember, your board can still meet by phone!



Tip 11

Your library's insurance carrier can be a great resource now.



Tip 12

The board must recognize and should pro-actively address the fact that some employees may not be able to return to work.



Tip 13

If a person asserts harm based upon library action (including but not limited to asserted cases of COVID-19), follow the Safety Plan when enacting any response.



Tip 14

There is no guidebook, but whenever possible, use resources from established authorities, and document your sources in your Safety Plan and signage.



Tip 15

Remember: your team knows what's right for your library.



So, about that Safety Plan...

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Please note that in order to be fully compliant, you must develop a business safety plan.

Thank you for using the New York Forward Business Reopening Lookup Tool. For more information on the New York State Forward plan, visit forward.ny.gov.

Visit [Empire State Development's website](#) for frequently asked questions on how the New York Forward re-opening plan impacts businesses.



Each business or entity, including those that have been designated as essential under Empire State Development's Essential Business Guidance, must develop a written Safety Plan outlining how its workplace will prevent the spread of COVID-19. A business may fill out this template to fulfill the requirement, or may develop its own Safety Plan. **This plan does not need to be submitted to a state agency for approval** but must be retained on the premises of the business and must be made available to the New York State Department of Health (DOH) or local health or safety authorities in the event of an inspection.

Business owners should refer to the State's industry-specific guidance for more information on how to safely operate. For a list of regions and sectors that are authorized to re-open, as well as detailed guidance for each sector, please visit: forward.ny.gov. If your industry is not included in the posted guidance but your business has been operating as essential, please refer to ESD's [Essential Business Guidance](#) and adhere to the guidelines within this Safety Plan. Please continue to regularly check the New York Forward site for guidance that is applicable to your business or certain parts of your business functions, and consult the state and federal resources listed below.

COVID-19 Reopening Safety Plan

Name of Business:



A. Physical Distancing. To ensure employees comply with physical distancing requirements, you agree that you will do the following:

- Ensure 6 ft. distance between personnel, unless safety or core function of the work activity requires a shorter distance. Any time personnel are less than 6 ft. apart from one another, personnel must wear acceptable face coverings.
- Tightly confined spaces will be occupied by only one individual at a time, unless all occupants are wearing face coverings. If occupied by more than one person, will keep occupancy under 50% of maximum capacity.

STAY HOME.

STOP THE SPREAD.

SAVE LIVES.

- Post social distancing markers using tape or signs that denote 6 ft. of spacing in commonly used and other applicable areas on the site (e.g. clock in/out stations, health screening stations)
- Limit in-person gatherings as much as possible and use tele- or video-conferencing whenever possible. Essential in-person gatherings (e.g. meetings) should be held in open, well-ventilated spaces with appropriate social distancing among participants.
- Establish designated areas for pick-ups and deliveries, limiting contact to the extent possible.

Establish designated areas for pick-ups and deliveries, limiting contact to the extent possible.

List common situations that may not allow for 6 ft. of distance between individuals. What measures will you implement to ensure the safety of your employees in such situations?

[Empty text box for response]

How you will manage engagement with customers and visitors on these requirements (as applicable)?

[Empty text box for response]

How you will manage industry-specific physical social distancing (e.g., shift changes, lunch breaks) (as applicable)?

[Empty text box for response]

C. Communication. To ensure the business and its employees comply with communication requirements, you agree that you will do the following:

- Post signage throughout the site to remind personnel to adhere to proper hygiene, social distancing rules, appropriate use of PPE, and cleaning and disinfecting protocols.
- Establish a communication plan for employees, visitors, and customers with a consistent means to provide updated information.
- Maintain a continuous log of every person, including workers and visitors, who may have close contact with other individuals at the work site or area; excluding deliveries that are performed with appropriate PPE or through contactless means; excluding customers, who may be encouraged to provide contact information to be logged but are not mandated to do so.

Which employee(s) will be in charge of maintaining a log of each person that enters the site (excluding customers and deliveries that are performed with appropriate PPE or through contactless means), and where will the log be kept?

- If a worker tests positive for COVID-19, employer must immediately notify state and local health departments and cooperate with contact tracing efforts, including notification of potential contacts, such as workers or visitors who had close contact with the individual, while maintaining confidentiality required by state and federal law and regulations.

If a worker tests positive for COVID-19, which employee(s) will be responsible for notifying state and local health departments?



III. PROCESS

A. Screening. To ensure the business and its employees comply with protective equipment requirements, you agree that you will do the following:

- Implement mandatory health screening assessment (e.g. questionnaire, temperature check) before employees begin work each day and for essential visitors, asking about (1) COVID-19 [symptoms](#) in past 14 days, (2) positive COVID-19 test in past 14 days, and/or (3) close contact with confirmed or suspected COVID-19 case in past 14 days. Assessment responses must be reviewed every day and such review must be documented.

What type(s) of daily health and screening practices will you implement? Will the screening be done before employee gets to work or on site? Who will be responsible for performing them, and how will those individuals be trained?

If screening onsite, how much PPE will be required for the responsible parties carrying out the screening practices? How will you supply this PPE?



Questions

N Northern New York
Library Network
impact library operations.

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RAQs: Recently Asked Questions

+ Topic: Contact tracing and privacy in libraries - 5/28/2020
Given libraries are preparing plans to reopen, I am looking for a follow up to the 3/19/2020 quest...

Posted: Thursday, May 28, 2020 [Permalink](#)

MEMBER QUESTION

Given libraries are preparing plans to reopen, I am looking for a follow up to the 3/19/2020 question posted to Ask The Lawyer pertaining to being informed that an individual who has been confirmed to have COVID visited one of our libraries. (participated in a program).

With the new tracing protocols (COVID-19) required by Re-Open New York, what, if any, impact will there be on CPLR 4509? Will libraries be required to provide information and if so, to what extent? Currently we require a judicial subpoena in order to provide any information regarding a patron - including identifying if a patron has been in the library.

Your guidance is much appreciated.

Thank you.

