

JacksonLewis

Last Fridays “Lunch and Learn” Webinar

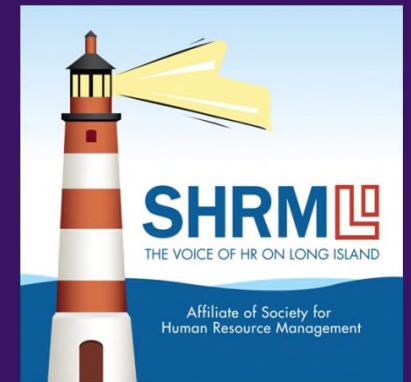
Another Day, Another Development: Phase IV and Governor Cuomo’s Travel Advisory

Henry S. Shapiro

06.26.2020

Jackson Lewis P.C. | Long Island

Henry.Shapiro@jacksonlewis.com | 631-247-4651



Introductory Statement

THE MATERIALS CONTAINED IN THIS PRESENTATION WERE PREPARED BY THE LAW FIRM OF JACKSON LEWIS P.C. FOR THE PARTICIPANTS' OWN REFERENCE IN CONNECTION WITH EDUCATION SEMINARS PRESENTED BY JACKSON LEWIS P.C. ATTENDEES SHOULD CONSULT WITH COUNSEL BEFORE TAKING ANY ACTIONS AND SHOULD NOT CONSIDER THESE MATERIALS OR DISCUSSIONS THEREABOUT TO BE LEGAL OR OTHER ADVICE.

NY Forward – Long Island Update



Long Island entered Phase III on Wednesday, June 24.



Phase III includes “food services” and “personal care”

All restaurants and food services establishments, including food trucks, and other food concessions.

Expands Phase II outdoor dining to include indoor dining with seating for customers, provided that customers can be seated at tables that are appropriately distanced (i.e. 6 feet).



Personal care includes non-hair-related personal care businesses and services, including tattoo and piercing facilities, appearance enhancement practitioners, massage therapy, spas, cosmetology, nail specialty, UV and non-UV tanning, or waxing.

Excludes personal care services that may require customers to remove face coverings (e.g. face massage, facials, face waxing around lip or nose areas, face tattoos, facial makeup, cosmetic lip tattooing, or lip or nose piercings).

Phase IV

- Today, Central New York, Finger Lakes, Mohawk Valley, North Country and Southern Tier moved into Phase IV. Long Island *hopefully* will transition to Phase IV on July 8.
 - Phase IV includes low-risk indoor and outdoor arts and entertainment, film and TV production and higher education.
 - Higher education requires a “reopening plan” as opposed to a “safety plan” that must be submitted for approval. This is unlike any other industry thus far, and the State provided a Reopening Plan Checklist for reference.
- Low-risk indoor and outdoor arts and entertainment includes outdoor zoos, botanical gardens, nature parks, grounds of historic sites and cultural institutions, outdoor / indoor museums, outdoor agritourism/agricultural demonstrations, historical sites, aquariums, art galleries (except retail galleries), and other related institutions or activities.

More on Phase IV



Retail or gift shops associated with these institutions must follow the Essential and Phase II Retail Guidance. Restaurants and bars at any of these facilities must follow the Food Services Guidance. Sports or Recreational Activities at these facilities must follow the industry-specific guidance.



Phase IV will also allow for the number of people who can be at a religious gathering to increase from 25% to 33% (based on the certificate of occupancy for the building), and will allow up to 50 people at a social gathering (limit of 25 for Phase III).

Phase IV . . . Eventually



CURRENTLY, PHASE IV DOES NOT INCLUDE GYMS, SHOPPING MALLS, PLACES OF PUBLIC AMUSEMENT (E.G., AMUSEMENT PARKS, WATER PARKS, CARNIVALS, ARCADES, BOWLING ALLEYS), CASINOS, CONCERTS, MOVIE THEATERS, PERFORMING ARTS IN EXCESS OF THE NON-ESSENTIAL GATHERING LIMIT IN EFFECT FOR THE PARTICULAR REGION (CURRENTLY UP TO 25 PERSONS FOR PHASE III REGIONS), OR OTHER THEATRICAL PRODUCTIONS.



"THERE ARE SOME THINGS THAT DON'T FIT NEATLY INTO A PHASE THAT ARE GOING TO REQUIRE FURTHER STUDY AND WE'RE GOING THROUGH THAT RIGHT NOW." THERE WILL NOT BE A NEW "PHASE" BUT THAT THESE INDUSTRIES AND ISSUES WILL BE TREATED SEPARATELY AND DISTINCTLY AS NY EVALUATES WHAT IS HAPPENING IN OTHER STATES AND REFINES GUIDELINES TO MAKE SURE IT IS NOT GOING BACKWARDS.

Phase IV . . . Eventually (Cont'd)

- The Governor's Office also indicated a fear that air conditioning may recirculate COVID-19 rather than scrub it from the air as part of the reason to keep gyms, movie theaters, shopping malls, etc. closed for the time being.
- There have been several whispers that it could be several weeks or months into Phase IV until some of these businesses can open.
- As expected, many local leaders are not happy as they expected Phase IV to cover these industries from the outset.

The Travel Advisory



On Wednesday, the Governors of NY, NJ and CT jointly announced a “travel advisory” for their respective states.



It took effect as of 12:01 am on Thursday, June 25.



While there are several layers to unfold, in sum for NY, “If you have traveled from within one of the designated states . . . you must quarantine when you enter New York for 14 days from the last travel within such designated state, provided on the date you enter into New York State that such state met the criteria for requiring such quarantine.”

Restricted States – For Now



Restricted states are decided based on objective data – designation is based upon a seven-day rolling average, of positive tests in excess of 10%, or number of positive cases exceeding 10 per 100,000 residents.



Current Restricted States:

Alabama
Arkansas
Arizona
Florida

North Carolina
South Carolina
Texas
Utah

Executive Order 205

Another EO – what fun! Very congratulatory!

“All travelers entering New York from a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven-day rolling average, will be required to quarantine for a period of 14 days consistent with Department of Health regulations for quarantine.”

“[A]dditional protocols for essential workers, or for other extraordinary circumstances, when a quarantine is not possible, provided such measures continue to safeguard the public health.”

“Any violation of a quarantine or isolation order issued to an individual pursuant to the Commissioner of the Department of Health's travel advisory by a local department of health or state department of health may be enforced pursuant to article 21 of the public health law, and non-compliance may additionally be deemed a violation pursuant to section 12 of the public health law subject to a civil penalty of up to \$10,000.”

Exclusions to the Advisory



The requirements of the travel advisory do not apply to any individual passing through designated states for a limited duration (i.e., less than 24 hours) through the course of travel. Examples of such brief passage include but are not limited to: stopping at rest stops for vehicles, buses, and/or trains; or lay-overs for air travel, bus travel, or train travel.

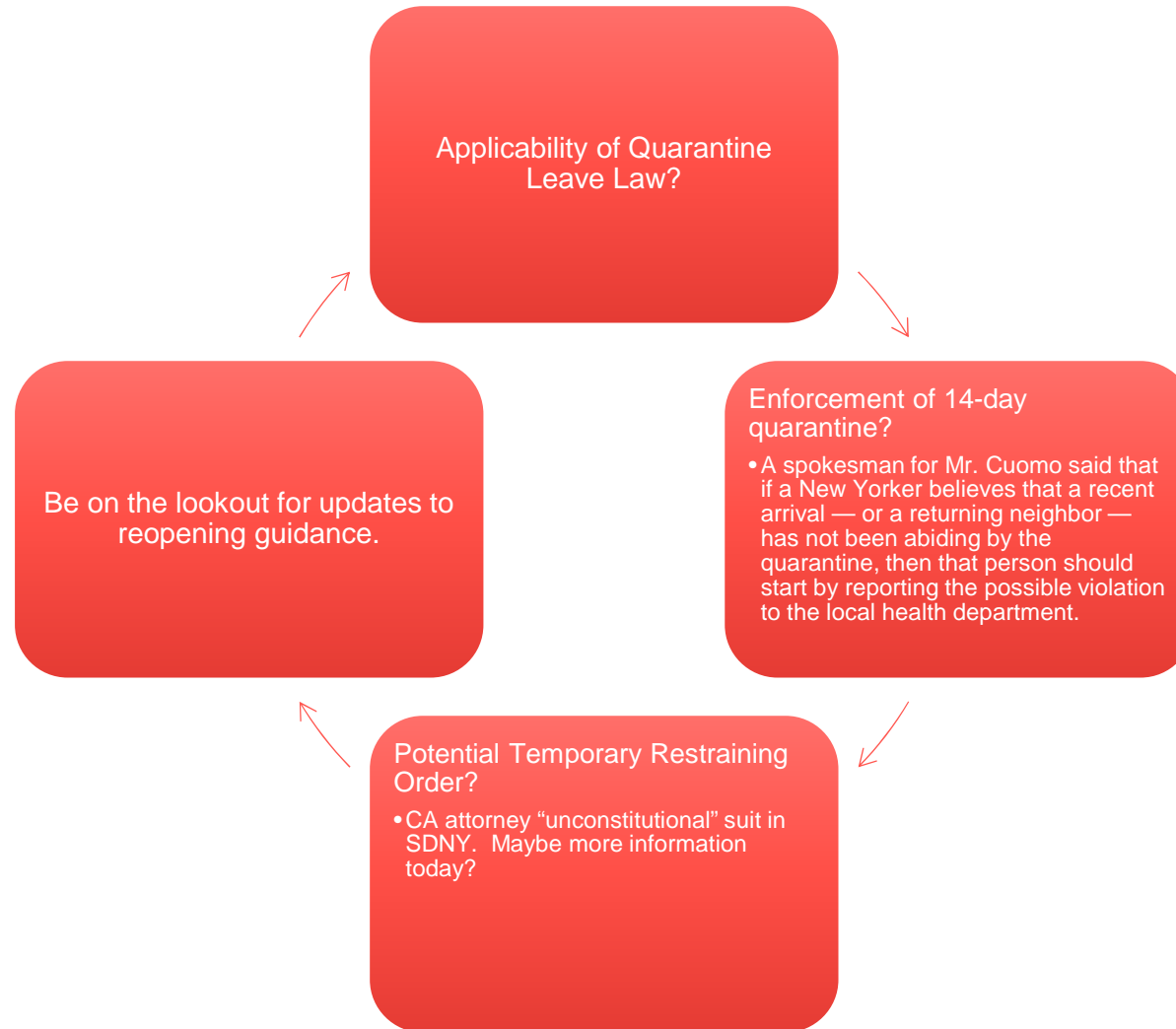


BUT, the travel advisory requires all New Yorkers, as well as those visiting from out of state, to take personal responsibility for complying with the advisory in the best interest of public health and safety.

Exclusions (Cont'd)

- Exceptions to the travel advisory are permitted for **essential workers** and are limited based on the duration of time in designated states – short term (less than 12 hours); medium term (less than 36 hours); long term (greater than 36 hours).
- Essential workers and their employers are expected to comply with previously issued DOH guidance regarding return to work after a suspected or confirmed case of COVID-19 or after the employee had close or proximate contact with a person with COVID-19.
- An “essential worker” is (1) any individual employed by an entity included on the Empire State Development (ESD) Essential Business list; or (2) any individual who meets the COVID-19 testing criteria, pursuant to their status as either an individual who is employed as a health care worker, first responder, or in any position within a nursing home, long-term care facility, or other congregate care setting, or an individual who is employed as an essential employee who directly interacts with the public while working

Closing Thoughts



JacksonLewis

Thank **you.**