

Reopening New York, Part III

“Back to School” Edition

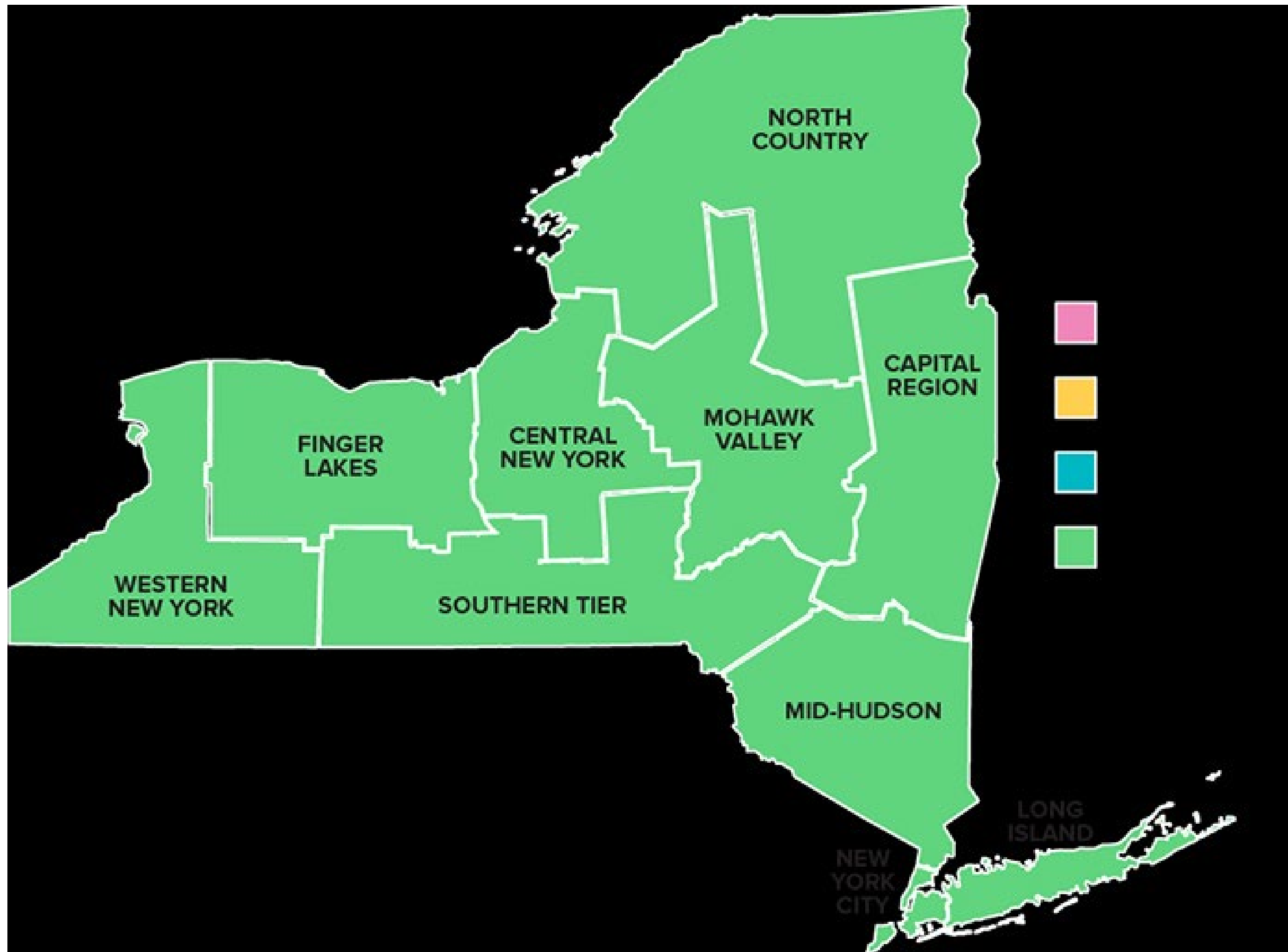
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NYS Reopening Status

- Currently in Phase IV of the Reopening Plan
- NYSDOH has released updates to Detailed and Summary Reopening Guidelines
- Over 5 million confirmed COVID-19 cases in United States
- Approx. half of states have more cases than NY in past week (4th highest population)
- Going backward is still a possibility



All regions in New York have entered Phase 4 of the Reopening Plan.

Four Phase NYS Reopening Plan

» Phase I

- Construction
- Agriculture
- Retail – (curbside or in-store pickup or drop-off)
- Manufacturing
- Wholesale Trade

» Phase III

- Restaurants/Food Services
- Personal Care

» Phase II

- Offices & Commercial Building Management
- Real Estate
- Essential and Phase II In-Store Retail
- Vehicle Sales, Leases, and Rentals
- Hair Salons & Barbershops
- Outdoor & Take-Out/Delivery Food Services

» Phase IV

- Education – Pre-K-12 & Higher Education
- Low-Risk Indoor & Outdoor Entertainment
- Media Production
- Professional Sports Competitions with No Fans
- Malls

Miscellaneous Statewide Guidelines

- Child Care and Day Camps
- Lake and Ocean Beaches
- Religious and Funeral Services
- Racing Activities & Auto Racing
- Real Estate / Rental & Leasing
- Dentistry
- Prof. Sports Training Facilities
- Public Transportations

What industries are not permitted to reopen?



- Gyms
- Movie Theaters
- Bowling Alleys
- Indoor Dining (NYC)

Employer Obligations

» NYSDOH

NYSDOH has released industry-specific guidance that must be implemented prior to reopening and must continue to be followed.

» OSHA

OSHA's most recent Guidance on Returning to Work

» CDC Guidance

- Covers best practices for social distancing
- Guidelines for cleaning and disinfecting the workplace
- Handling exposures

» Other Tips for Employers

- Educate employees
- Notify staff of positive case
- Stay current on all CDC, NYSDOH, OSHA, DOL, state and local executive orders, and any other guidance that becomes relevant.

Travel Restrictions

Pursuant to Executive Order 205 issued by Governor Andrew Cuomo effective June 25, 2020

- All travelers coming from a state with significant COVID-19 transmission rates must quarantine for a 14-day period last being in covered state
- Restricted states: positive test rate higher than 10 per 1,000 residents over a 7-day rolling average; or a testing positivity rate of higher than 10% over a 7-day rolling average
- List: <https://coronavirus.health.ny.gov/covid-19-travel-advisory>
- Must complete Traveler Health Form upon entering New York.
- \$2,000 fee for non-compliance

Exemption to Travel Restrictions

» Limited Duration

- Duration in restricted state is less than 24 hours
- Stop at rest stop for vehicle, buses, and/or trains
- Lay-overs for air travel, bus travel, or train travel

» Essential Workers

- Requirements vary based on time employee will work in NYS
- Individual employed by an entity included on the NYS Essential Business list
- Certain individual 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
- Any other worker deemed such by the Commissioner of Health

Business Travel

- Limit non-essential domestic and international travel
- Use videoconferencing or tele-conferencing when possible for meetings and gatherings
- Consider developing a policy for Essential Business Travel during the pandemic
- Require employees to conduct a health screening and temperature check before and after travel
- Outline rules for social distancing, PPE, cleaning, sanitizing and disinfection, and notification requirements
- Check the [CDC's Traveler's Health Notices](#) and New York's List of [Restricted States](#)

Will schools reopen in September 2020?

Back To School



Pre-K – Grade 12 (Public and Private)

- Will schools reopen in September?
- Will school be conducted in-person or remote?
- How will this impact businesses?

Status of School Reopening in Fall 2020

- 8/7/20 – Governor Andrew Cuomo announced that schools are can reopen in September if they satisfy NYSED and NYSDOH guidelines
- No “one size fits all” plan
- Schools have discretion on reopening plan details and are choosing different models

School Reopening Models

» **In-Person**

» **Hybrid Model**

» **Virtual/Remote**

In-Person Model

- 100% of students return to in-person learning
- Schools must follow the CDC, NYSED, and NYSDOH Guidelines
- Convenient for employers because all children are back in school full-time (unless it leads to transmission of virus into workplace)
- Employers will need a plan to address employee requests for time off due to:
 - Voluntary quarantine of parent or child
 - Mandatory quarantine of parent or child
 - Student has symptoms or fever and is sent home

Hybrid Models

- Students split into cohorts and alternate between in-person and remote learning
- Examples of Hybrid plans:
 - Cohort A – M,T; Cohort B – Th, F; Deep Cleaning – W
 - Cohort A – M,W; Cohort B – T, Th; Deep Cleaning – F
 - Cohort A & B attend in-person on alternate weeks; attend remote learning on opposite weeks
- Employees with school aged children will need to make childcare arrangements on days with remote learning
- Each school district and each school within the district may have a different hybrid arrangement that must be considered
- Employers should anticipate requests to accommodate unusual circumstances

Remote Model

- 100% of students participate in remote learning
- High-risk students or students with high-risk family members are permitted to attend 100% remote learning even if school is on another model
- Parents that do not feel comfortable with their child returning in-person may choose 100% remote learning
- Employees with school aged children who are attending remote learning may seek accommodations related to childcare
- Employers need to avoid discriminating in accommodating employees

Workplace Back-to-School Issues



Things to Consider:

- Remote work
- Flexible or alternating schedules
- Job restructuring or accommodations
- Proactive measures
- Education and resources for employees facing these difficult challenges (e.g., EAP)
- Support and understanding
- Consistency to avoid discrimination claims

Paid Leave Laws

- » Federal Families First Coronavirus Response Act (FFCRA)
- » New York State Quarantine Leave
- » New York Paid Sick Leave

FFCRA - Coverage

- State and local government employers
- Private employers with less than 500 employees
- Employees unable to work or telework for covered reasons

FFCRA – Benefits

» Employee's Own Health

Up to 2 weeks of paid sick leave at the employee's regular rate of pay if unable to work due to own health concerns.

» Dependent's Health

Up to 2 weeks of paid sick leave paid at two-thirds of employee's regular rate of pay to care for dependent under quarantine or for a dependent child whose school or daycare is closed.

» Extended FMLA Leave

Up to an additional 10 weeks of paid expanded family and medical leave paid at two-thirds pay for employee employed for at least 30 days to care for dependent child when school or childcare facility is closed due to COVID-19

FFCRA – Qualifying Circumstances

- Employee is subject to federal, state, or local quarantine or isolation order related to coronavirus
- Employee advised by health care provider to self-quarantine due to concerns related to coronavirus
- Employee is experiencing coronavirus symptoms and seeking a medical diagnosis
- Employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order
- Employee is caring for a son or daughter due to school or daycare closure
- Employee is experiencing any other substantially similar condition specified by Secretary of Health and Human Services, Secretary of Labor, and Secretary of Treasury

New York State Quarantine Leave

- Applies all New York public and private employers of any size
- Employee benefits vary based on size of business
- Limited to employees unable to work because of quarantine/isolation orders

NYS Quarantine Leave Eligibility

»» Mandatory Order of Quarantine or Isolation

- Issued by NYS, NYSDOH, local board of health or government authorized to issue order
- Tested positive for COVID-19 or been in close contact with positive case

»» Precautionary Order of Quarantine or Isolation

- If employee exposed to, but no direct contact with a COVID-19 case.
- Can apply pursuant to advice from a treating physician

»» Exceptions

- Employee is not sick and can work remotely
- Order of quarantine or isolation is no longer in effect
- Employee who knowingly travelled to a country designated as level 2 or 3 by CDC, or U.S. state with high positive rate, is not eligible for paid leave

New York Paid Sick Leave

Signed into law on April 3, 2020

- Employees begin to accrue sick leave pay as of September 30, 2020, or upon their hire date if after the effective date
- Employees may use accrued paid sick leave beginning January 1, 2021
- Accrues at a rate of not less than 1 hour per 30 hours worked
- The amount of paid sick leave available to employees depends on the size of the employer

Amount of NYS Paid Sick Leave

» “Small” Employers

- < 5 employees and net income < \$1 million: 40 hours of **unpaid** sick leave each year
- < 5 employees and net income > \$1 million: 40 hours of **paid** sick leave

» “Medium” Employers

- Between 5 and 99 employees: 40 hours of **paid** sick leave each year

» “Large” Employers

- 100+ employees: 56 hours of **paid** leave each year

NYS Paid Sick Situations

When can employees use New York Paid Sick Leave?

- Absences related to mental or physical illness, injury, or health condition of either employee or an employee's family member, regardless of whether such illness, injury or health condition has been diagnosed or requires medical care at the time leave is requested
- Diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of, or need for medical diagnosis of, or preventative care for either the employee or an employee's own family member.
- Absences related to domestic violence

Unpaid Leave Laws

- » Family and Medical Leave Act
- » Americans with Disability Act
- » New York State Human Rights Law

Family and Medical Leave Act

- Entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons
- Includes up to 12 weeks of leave to:
 - Care for the employee's spouse, child, or parent who has a serious health condition; or
 - A serious health condition that makes the employee unable to perform the essential functions of his or her job.

FMLA – COVID-19 Issues

- An employee with a serious health condition may not take FMLA solely to avoid exposure to COVID-19
- Covers an employee with a “serious health condition,” or an employee who needs to care for a covered family member with a serious health condition
- COVID-19 might qualify as a “serious health condition” if symptoms require treatment
- Employees might now need to care for family members with non-COVID-19 serious health conditions

Disability Accommodations

ADA & NY HRL

- Employers must provide reasonable accommodations for employees and job seekers with disabilities
- Exceptions may be made for accommodation requests that pose an “undue hardship” on the employer
- Individuals with certain medical conditions are believed to be at higher risk of suffering severe illness if they contract COVID-19
- Employers must be prepared to engage in an interactive process (“cooperative dialogue” in NYC) in response to employee requests from an accommodation to reduce the risk of exposure to the coronavirus

Unemployment Insurance

- March 27, 2020 CARES Act temporarily expanded unemployment benefits
- Expanded the list of employees that were eligible to collect unemployment
- Included additional \$600 per week, on top of regular unemployment benefits, to all recipients, which expired at the end of July
- Other temporary benefits remain in place until the end of 2020
- Presidential “Memorandum” offers up to \$400 in additional unemployment benefits
- Gov. Cuomo called Trump action a “nonstarter”

Stay Updated!

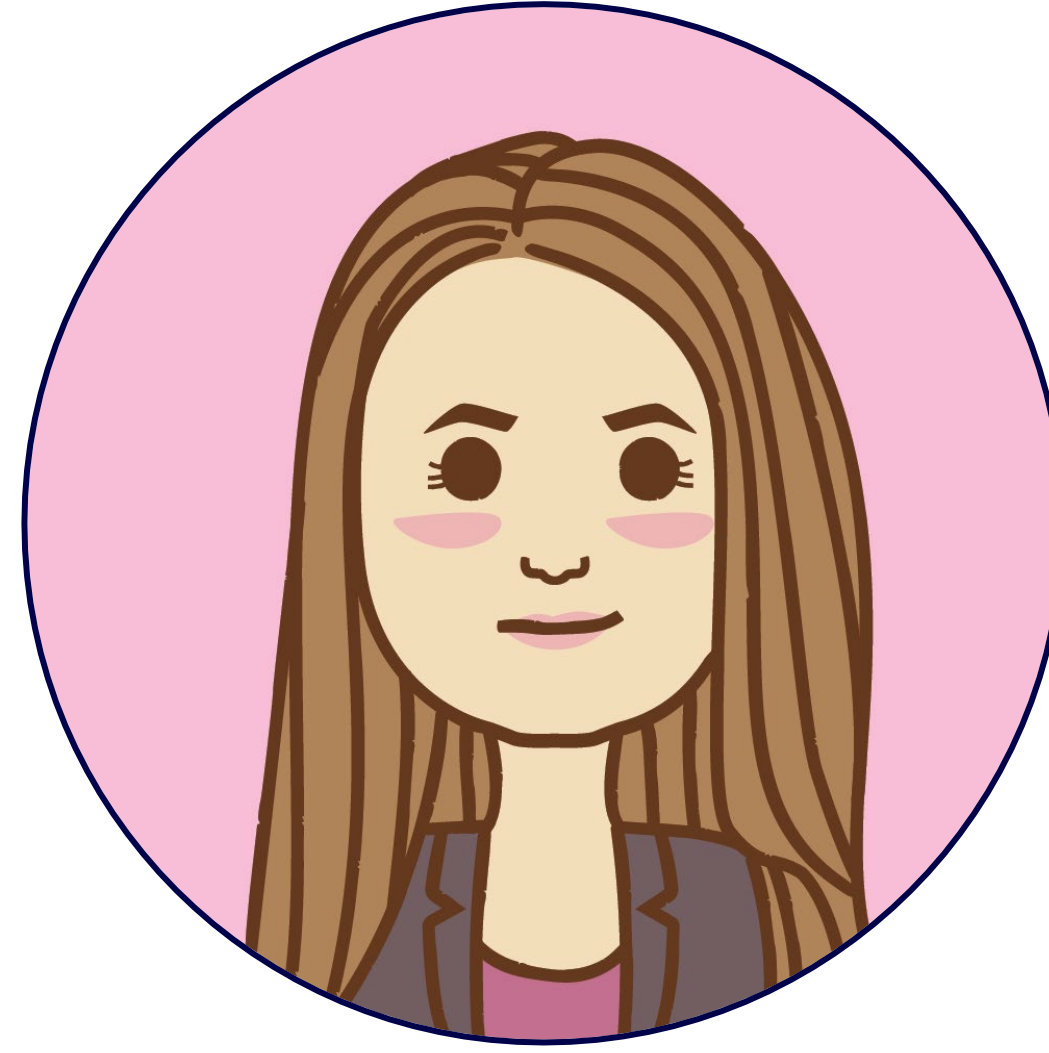
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Thanks for your time!

Questions?

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