



What Florida Employers Need To Know About Latest Re-opening Order

Insights

9.27.20

Florida Governor Ron DeSantis issued an executive order pre-empting any local COVID-19 ordinance that prevents a business from operating or an individual from working, or that allows restaurants to operate at a minimum of 50% capacity. Fisher Phillips has reviewed [Executive Order 20-244](#), which is summarized below.

The order brings the entire state of Florida into Phase 3 of the governor's economic recovery plan. This includes the South Florida counties of Miami-Dade, Broward, and Palm Beach, which were previously eased into the Governor's Phases 1 and 2 plans after the rest of the state. The new order eliminates the previous restrictions imposed in the Governor's Phase 1 and Phase 2 orders, providing that all businesses and services may reopen at full capacity, despite any county or city orders that say otherwise.

The governor's order takes direct aim at local orders restricting the capacity of restaurants and food service establishments. However, it does not mandate that counties allow restaurants to open at full capacity. Instead, it allows local governments to restrict restaurants to some capacity between 50% and 100%. Any local government limiting restaurant capacity to less than 100% must:

1. "Quantify the economic impact of each limitation or requirement on those restaurants" and
2. Explain why the limitation is necessary for public health.

The governor's order also suspends fines and penalties against *individuals* for violations of orders associated with COVID-19.

What Does This Mean For Employers?

The order confirms that businesses that were often still closed due to local orders, such as bars and entertainment venues, may re-open. Now, all businesses in Florida may open their doors.

Although local governments still have the ability to keep restaurant capacity at less than 100%, the governor's order sets a high bar for them to do so. Local governments are expected to have a hard time limiting restaurant capacity below 100%. Restaurants should continue to monitor their local conditions and requirements but can take comfort that the governor's order favors them opening at full capacity.

Although *individuals* may no longer be fined, the order does not suspend fines and penalties against *businesses*. Until there is more clarity from municipalities, businesses are advised to ensure that their employees, guests, and patrons comply with applicable requirements from their city or county for social distancing, requiring masks, social distancing, etc.

Nevertheless, local governments are expected to change their requirements in response to the order. Accordingly, employers should continue to keep a close eye on their local governments' requirements as they develop.

Although the order notes an employee's "right to work," this does not mean that employees may refuse to wear masks or other facial coverings. Employers can continue requiring employees to wear masks. In fact, if local orders require masks, employers *must* make sure their employees comply; businesses can still be fined for noncompliance.

What Should Employers Do Now?

As businesses reopen, employers should be mindful of minimizing liability, which requires a careful eye toward health and safety. Employers should continue to have a plan in place to establish a safe workplace and communicate that plan to employees. Employees will likely still have concerns about returning to work and will want assurances that it is safe to do so. Written plans detailing what to do in specific situations will help employees navigate common, but difficult, situations, such as when a fellow employee has tested positive.

Employers should continue to follow the safety recommendations of the CDC and local health officials. Generally, this requires effective implementation of social distancing, facial coverings and other personal protective equipment, sanitizing, isolation and quarantine of confirmed or suspected positive individuals, and communication. It is critical that those in your business — patrons and employees alike — feel safe.

Employers must also remain mindful of their existing obligations. These will vary across the state but may include such things as reporting to local health officials when you have an employee that has tested positive and taking temperature checks. Many local governments have specific requirements that vary by industry. Restaurants and gyms, for example, often have their own set of requirements to follow.

Employers must also remember to continue to comply with leave requirements under the Families First Coronavirus Response Act (FFCRA), which requires certain employers to provide leave for employees who test positive, are seeking treatment, or who are caring for children whose schools are closed. This may include individuals over the age of 65 and those with underlying health conditions, who are particularly vulnerable to infection and who may express the most concerns about returning to work.

However, it is unclear whether the governor is continuing to urge employees over 65 or with underlying health conditions to remain sheltered. If so, such employees may be entitled to paid leave

underlying health conditions to remain sheltered in place, such employees may be entitled to paid leave under the FFCRA if they choose to stay home. If the governor is not continuing this recommendation, then such employees may not be entitled to paid leave. Given the ambiguity of the order, it is important that employers seek the advice of counsel when facing this question.

Conclusion

Because the situation is rapidly changing, it is critical that employers continue to monitor for new guidance and requirements from the Governor and their local governments.

As you continue the process of reopening, you should also familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in any of our [Florida offices](#), or any member of [our Post-Pandemic Strategy Group Roster](#).

This Legal Alert provides an overview of a specific development. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Service Focus

Workplace Safety and Catastrophe Management

Industry Focus

Hospitality

Related Offices

Fort Lauderdale

Orlando

Tampa