



Indiana Governor Tightens Restrictions Amid COVID-19 Surge

Insights

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In late September, Indiana Governor Holcomb announced that Indiana could move to Stage 5 of his "Back On Track" COVID-19 plan, which allowed businesses to reopen and operate under a few restrictive measures. Since that time, the number of positive COVID-19 cases has risen significantly and steadily. Indiana's seven-day positivity rate went from 3.9% in late September to 10.6% as of November 13. In light of this, Governor Holcomb issued an Executive Order (EO) today which rescinds Stage 5 of "Back On Track" and imposes a county-based assessment to determine the measures and restrictions needed to counter the spread of COVID-19. What do businesses need to know about this latest development?

Overview Of New Plan

Moving forward, the Indiana State Department of Health will review each county's number of cases per 100,000 individuals and the county's seven-day positivity rate for the prior week. From that data, the agency will assign a numerical score to the particular county which translates to one of four colors:

1. blue - community spread is low (point score of .5 or below);
2. yellow - community spread is moderate (point score of 1 to 1.5);
3. orange - community spread is approaching high levels (point score of 2 to 2.5); and
4. red: community spread is high (point score of 3 or higher).

The EO will go into effect at 12:01 a.m. on November 15 and continue through 11:59 p.m. on December 12, 2020.

General Requirements

The EO restores guidance previously issued under the initial stages of Governor Holcomb's "Back-On-Track" plan, which include the following:

1. Hoosiers are advised to self-quarantine if they or a household member become symptomatic or have been in close contact with a person who tested positive for COVID-19 (individuals who have tested positive for COVID-19 are *required* to self-quarantine under the EO).
2. Residents 65 and older, and those with high-risk health conditions, are advised to limit trips outside their homes.

3. All individuals are required to engage in social distancing (i.e., maintain six feet of separation) with other individuals, unless they are members of the same household.
4. Face coverings must be worn when: (a) inside a business, a public building, or other indoor place open to the public (does not extend to private offices, workspaces, or meetings when six-feet of separation can be maintained); (b) in outdoor spaces when it is not feasible to maintain six feet of separation; and (c) when using public transportation, or while in a taxi, private vehicle or ride-sharing vehicle. Of note, the EO includes several exemptions to the face covering requirement for certain individuals, which includes, but is not limited to, individuals with medical conditions, mental health conditions, or disabilities, as well as individuals for whom wearing a face covering would create a risk to the person related to their work (the full list of exceptions can be found in Section 3(f) of the EO).

Specific Requirements For Indiana Businesses

At the outset, it's important to note that no business will be required to close pursuant to the EO. All businesses, however, must adhere to the following requirements:

COVID-19 Response Plan

All businesses must develop a plan (or re-evaluate existing plans) to implement measures and institute safeguards to ensure a safe environment for employees, customers, clients, and members. Such plans should be in place upon reopening and distributed to employees and posted publicly.

At a minimum, the plans must cover the following: (1) instituting an employee health screening process; (2) employing enhanced cleaning and disinfecting protocols for the workplace, including regularly cleaning high-touch surfaces; (3) enhancing the ability of employees, customers, and clients to wash hands or take other personal hygiene measures, such as using hand sanitizer; and (4) complying with social distancing requirements established by the CDC, including maintaining six feet of separation among employees and members of the general public and/or employing other separation measures such as wearing face coverings or using barriers to create adequate separation. *[Note: this requirement was established in Stage 5 of Governor Holcomb's "Back-on-Track" Plan and should hopefully come as no surprise for most employers.]*

Face Coverings

All businesses must place clearly visible signage at their public and employee entrances notifying individuals that face coverings are required for entry. Further, businesses should require employees to wear face coverings as set forth above. Finally, businesses should only admit those customers, clients, vendors and other visitors who wear face coverings.

Social Distancing And Sanitation Requirements

In addition to the standard social distancing and sanitation requirements that we should all be familiar with by now (see Section 4(c) of the EO for a refresher), all businesses must take *proactive* measures to ensure compliance. This includes: (a) designating with signage, tape, or by other means six feet of space for employees, customers, and clients; (b) having hand sanitizer and

sanitizing products readily available for employees and customers; (c) continuing to implement separate operating hours for elderly and vulnerable customers and continue offering online and/or curbside pickup; and (d) posting online whether a facility is open and how to best reach the facility and to continue services by phone remotely.

Additional Guidance For Indiana Businesses

Under the new EO, all businesses are *encouraged* to adopt and/or take the following actions:

1. Utilize policies regarding telework and remote work when reasonable and practicable;
2. Ensure sick leave policies are flexible, up to date, and non-punitive;
3. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19-type symptoms;
4. Actively encourage sick employees to stay home until they are free of a fever and symptoms for the requisite time periods recommended by the CDC. You should also consider suspending any policies that require a healthcare provider's note to validate the illness or return to work employees who are sick with acute respiratory illnesses;
5. Promptly separate employees who appear to have an acute respiratory illness from other employees;
6. Reinforce key messages to employees regarding staying home when sick, coughing and sneezing etiquette, and proper hand hygiene, which can include placing posters in areas on these key messages where they are likely to be seen;
7. Regularly perform enhanced environmental cleaning throughout the workplace; and
8. Be prepared to change business practices, if needed, to maintain critical operations.

Restaurants, Bars, And Other Food/Beverage Establishments

Restaurants, bars, and similar establishments can remain open under the new EO, but must adhere to certain guidelines. First, patrons must remain seated while consuming food and/or drink, Second, capacity limits are no longer based on a percentage of overall occupancy. Instead, seating must be arranged so that six feet of distance can be maintained between individuals, households, or parties.

Social Gatherings

While perhaps of little consequence to businesses on a day-to-day basis, with the holidays (and possibly holiday parties) around the corner, it's worth mentioning that the EO has detailed guidance for social gatherings based on the designation of the county where the business is located (the EO, however, does recommend that such gatherings be postponed or cancelled):

1. Counties designated as blue may have a total of 250 individuals present.
2. Counties designated as yellow may have a total of 100 individuals present.
3. Counties designated as orange may have a total of 50 individuals present.

4. Counties designated as red may have a total of 25 individuals present

For any event where the total number of invited or requested individuals is expected to exceed the number of permitted attendees, the host of the event must submit a safety plan to the local health department at least seven days in advance of the event and receive approval from the local health department before proceeding. This requirement goes into effect on November 22. Review [Section 7\(f\) of the EO](#) for details on what must be included in the safety plan.

Special Measures Or Restrictions For Counties Based On Color Designation

As noted above, each county will be assigned a color based on community spread. Businesses located in counties designated as blue or yellow must adhere to the restrictions and guidelines as discussed above.

Businesses located in a county designated as orange or red have additional obligations. In addition to adhering to the above, they are required to reduce the number of employees and personnel permitted to congregate in common areas or breakrooms and should take additional measures to ensure social distancing is achieved in these areas. Additionally, restaurants and retail businesses located in a county designated as red are encouraged to promote phone/online ordering with curbside pickup.

Enforcement

The state Health Department, Indiana Department of Homeland Security, Alcohol & Tobacco Commission, local boards of health, and other state and local officials or law enforcement officers are permitted to take all available administrative and enforcement actions against businesses that do not comply with the new EO. The following incremental steps are recommended for such enforcement bodies:

1. Verbal order to cease unsafe practices;
2. If a business fails to comply with a verbal order, the health department shall issue an order to cease the unsafe practice;
3. If a business continues to operate in an unsafe manner, the relevant official should issue an order to close the business;
4. If an order to close a business is issued, the business shall be reported to the Secretary of State and to any relevant licensing, permitting, or certifying board for consideration of revocation proceedings; and
5. If an order to close a business is issued, the matter should be considered for referral to the local prosecuting attorney.

Conclusion

We will continue to monitor the rapidly developing COVID-19 situation in Indiana 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 [Louisville, Kentucky](#) office, or any member of [our Post-Pandemic Strategy Group Roster](#).

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

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