

TENNESSEE GOVERNOR AND SHELBY COUNTY (TN) HEALTH DEPARTMENT ISSUE NEW ORDERS AMID “DIRE” COVID-19 SPREAD

Insights
Dec 22, 2020

Following the CDC’s designation of Tennessee as the worst state in the country for new COVID-19 cases by population, Governor Lee issued [Executive Order 70](#) urging all employers to implement remote work arrangements. The Executive Order is effective and enforceable as of December 20 and will remain in effect until January 19, 2021.

Additionally, the Shelby County Health Department issued [Health Order and Directive No. 16](#), which becomes effective on December 26, strongly urging all residents to shelter at home, directing employers to ask non-essential employees to stay home and implement telecommuting practices, and mandating closure of non-essential businesses. The Health Order and Directive will continue through January 22, 2021. What do area employers need to know about these latest developments?

ARE EMPLOYEES REQUIRED TO WORK FROM HOME?

The short answer is no. However, both Governor Lee’s Executive Order and the Shelby County Health Order and Directive strongly urge employees and employers to do so. Specifically, Governor Lee’s Order states that “all employers are strongly urged to take steps to the greatest extent practicable to equip, encourage, allow, or require employees to work remotely or via telework from home.” Likewise, the Shelby County Health Order and Directive dictate that all businesses should ask non-essential employees to stay home and implement telework practices or flexible worksites and hours, as much as feasible.

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WHAT “NON-ESSENTIAL BUSINESS” ARE REQUIRED TO CLOSE IN SHELBY COUNTY?

All businesses, except those specifically excluded by the Health Order and Directive, are required to close their physical locations to the public. See the [Health Order and Directive](#) for the full list of exempt businesses. Exempt businesses may remain open to the public, subject to increased safety measures discussed below.

Businesses not exempted from the Health Order and Directive may continue minimum basic operations for purposes of maintaining the value of any business’s inventory, ensuring security, processing payroll and employee benefits, or other related necessary functions.

WHAT NEW REQUIREMENTS ARE IMPOSED ON SHELBY COUNTY BUSINESSES THAT MAY REMAIN OPEN?

The Health Order and Directive sets out specific additional protocols for certain businesses, including restaurants and others that require in-person interaction with the public. On-site dining service is strongly discouraged. However, restaurants and other businesses that provide on-site dining services may remain open with a number of limitations, as discussed in the [Health Order and Directive](#). Some of these requirements include limiting indoor seating to 25% capacity and limiting food service to 90 minutes.

Additionally, gyms and fitness centers, retail stores, grocery stores, and food cultivation businesses must limit occupancy to 50% capacity. For gyms and fitness centers, the occupancy limit includes staff.

The Health Order and Directive further reiterates previously issued health and safety requirements, including prohibiting customers and employees from entering the building if experiencing COVID-19 symptoms; conducting health screenings and temperature checks of employees prior to each shift; routine cleaning and disinfection of surfaces, equipment, and work areas; mask requirements for employees and customers in accordance with the [Face Mask Directive](#); posting informational signage; gathering information for contact-tracing; and social distancing measures. The full list of requirements may be found in the [Health Order and Directive](#).

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WHAT SHOULD EMPLOYERS DO?

- **Consider Remote Work Arrangements.** To the extent practicable for your business, consider implementing remote work arrangements for all non-essential employees whose job duties enable them to work remotely.
- **Update Policies.** Policies should be in place concerning the use of masks/face coverings; remote work arrangements; protocol for employees who have been exposed to, diagnosed with, or are experiencing symptoms of COVID-19; proper cleaning and disinfection protocols; and social distancing requirements.
- **Train Your Employees on Your Policies and Other COVID-19 Related Concerns.** If you have not already, you should train your employees regarding COVID-19, preventive measures you are taking regarding COVID-19 and imposed safety measures, so that your employees can help you enforce some of the directives, especially if you are a customer-facing business. You should also educate your employees on proper protocol for requiring patrons to wear masks, proper cleaning protocols, imposing social distancing requirements, seating restrictions, limiting groups, building occupancy, and service hours.
- **Put Up Signs.** You should post signage at the entrance of your business and in high-traffic areas informing employees and members of the public of the requirement to wear a mask while inside the business and, if applicable, reduced operational hours and seating/capacity restrictions.

CONCLUSION

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. 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](#).

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 our [Memphis](#) office, or any member of [our Post-Pandemic Strategy Group Roster](#).

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