Georgia's Move to Eliminate Face Covering Requirement And Other COVID-19 Mitigation Measures Doesn't Mean You Should Relax Safety Standards

Insights
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Some Georgia businesses might believe that Governor Brian Kemp's April 30 Executive Order that further eliminates many of the COVID-19 safety requirements that were present in past executive orders – including removing the facemask mandate and loosening social distancing requirements – means that you can ease off your COVID-19 protocols at the workplace and your place of business. But doing so could open yourself up to significant liability given the guidance from the Occupational Safety and Health Administration (OSHA) that remains firmly in place. While you should make sure you understand all aspects of the governor's latest order, you should not rush to eliminate your safety policies anytime soon. What do employers need to know about this order, and what should employers do as they continue to reopen and operate their businesses?

Differences Between Latest Order And Past Orders

The April 30 Executive Order — effective through May 30 — eliminates many additional requirements from past orders. For example:

- masks and face coverings are no longer required;
- social distancing is now recommended for the general public, but not mandated;
- seating and capacity in restaurants and movie theaters is no longer limited; and
- there are no longer requirements specific to gyms, salons, barbershops, and sporting events.

However, social distancing requirements for workers remain firmly in place. Further, physical barriers at points-of-sale for businesses is still required under state law, and the April 30 Executive Order still allows local governments to require masks under a "Local Option Face Covering Requirement" such as the one currently in effect in Atlanta.

As a reminder, the March 31 Executive Order took away administrative authority in Georgia to close a business for failure to comply with the March 31 Executive Order and eliminated the following state-specific COVID-19 mitigation measures:

- limits on the number of persons in a single location (previously termed as "Gatherings" and limited to 50 people);

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limited to 50 people);

- the shelter-in-place requirement for the medically fragile and those in long-term care facilities;
- the requirement that restaurant and bar seating be six feet apart or separated by partitions (that requirement is now 42 inches or partitions);
- certain sanitation requirements for restaurants and bars, including no longer requiring hand sanitizer for patrons' use;
- critical-infrastructure specific measures (those have been combined with current requirements for all businesses);
- the spatial and capacity restrictions for barbers, salons, tanning facilities, and similar businesses;
- all movie theater-specific requirements except that the six-foot rule of separation for movie theater patrons is now reduced to three feet;
- all specific requirements for bowling alleys, circuses, water parks, schools, camps, long-term care facilities (those facilities must now comply with more specific orders from Georgia's Department of Public Health);
- most childcare-specific requirements; and
- the patron-screening requirement and other sanitation measures for Live Performance Venues.

So What Are Most Employers Required To Do Under Georgia's Executive Orders?

Under the April 30 Executive Order, schools must follow the latest school-specific Georgia Department of Public Health and CDC guidance. Most other employers are still required to take steps to mitigate the spread of COVID-19, and those measures may include:

- any measures that have been proven effective to control the spread of COVID-19;
- screening and evaluating workers who exhibit COVID-19 symptoms;
- requiring workers who exhibit COVID-19 symptoms of to not report to work or to seek medical attention;
- posting signage at the entrances to the facility stating that individuals who have been diagnosed with COVID-19, have symptoms of COVID-19, or had contact with a person that has or is suspected to have COVID-19 within the past 14 days shall not enter the facility;
- enhancing sanitation as appropriate;
- disinfecting frequently touched surfaces regularly, including, but not limited to, PIN entry devices, signature pads, and other point of sale equipment, door handles, and light switches;
- increasing space between workers' worksites to maintain social distancing;
- permitting workers to take breaks and meals outside, in their office or personal workspace, or in such other areas where proper social distancing is attainable;

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- if the organization engages volunteers or has members of the public participate in activities, prohibiting volunteering or participation in activities for persons diagnosed with COVID- 19, having exhibited COVID-19 symptoms, or having had contact with a person that has or is suspected to have COVID- 19 within the past 14 days; and
- ensuring ventilation systems operate properly and increasing circulation and purification of air within facilities as practicable.

What Should Employers Do?

Federal OSHA has jurisdiction over workplace safety issues in Georgia and employers could still be cited under the general duty clause if they fail to follow federal guidance from OSHA and the CDC. Therefore, as we advised employers to do when the CDC eased its COVID-19 guidance, you should still follow the stricter guidance from OSHA applicable to their workplaces — even as more workers and members of the public get vaccinated. So far, OSHA's guidance is based heavily on current guidance from the CDC, and the CDC still recommends the wearing of face coverings. In other words, you should not eliminate your mask mandate for workers or visitors to your business.

Additionally, as discussed here, OSHA is still considering issuing an Emergency Standard for COVID-19. And, as discussed in detail here, OSHA adopted a National Emphasis Program (NEP) on COVID-19 several months ago. Given the increased resources OSHA will use under the NEP to enforce existing safety standards and the Occupational Safety and Health Act's general duty clause, you should follow a five-step plan now to prepare for a visit from OSHA, including adopting a written COVID-19 Policy. The model Virginia COVID-19 response plan is a good starting point for preparing a COVID-19 plan that would comply with Fed-OSHA's guidance.

Conclusion

Despite Georgia eliminating certain Georgia-specific requirements related to COVID-19 mitigation, because the CDC and OSHA have not eliminated all COVID-19 mitigation measures and because Georgia cities can still require face coverings, all employers should continue to monitor and improve worker safety as you continue to bring more employees back to the workplace in the coming months.

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

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