

OHIO BUSINESSES BEGIN REOPENING MAY 1: WHAT DOES IT MEAN FOR EMPLOYERS?

Insights
Apr 28, 2020

Ohio Governor Mike DeWine just unveiled the first phase of a plan to gradually reopen Ohio businesses. It will not be business as usual, however, and the workplace will look vastly different for the foreseeable future. What do Ohio employers need to know about the lifting of restrictions, and what should you do to prepare for the reopening of your business?

WHAT OHIO BUSINESSES CAN BEGIN REOPENING?

- All health care procedures that do not require an overnight stay in hospitals can resume on May 1, along with dental and veterinarian services.
- Beginning May 4, manufacturing, distribution, and construction companies can begin reopening subject to strict operating protocols to protect employees and Ohioans.
- General office environments can also reopen their doors on May 4, although employers must allow office employees to telework as much as possible for the time being.
- Retail businesses can begin reopening May 12, with employees and customers required to wear face coverings. **[Ed. Note: On April 28, 2020, Ohio Governor DeWine relaxed the face covering requirement by making it "strongly recommended" instead of mandatory.]**

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- All other businesses and operations, including K-12 schools, day care centers, restaurants and bars (except carry-out and delivery), and personal care services (i.e., hair salons, spas, barber shops, etc.) remain closed according to existing Stay-at-Home Orders. The governor did not commit to a timeline for reopening other business and stressed he is trying to take a balanced approach between protecting the economy and public health.

REQUIREMENTS FOR REOPENING BUSINESSES

To ensure the safety of employees and the general public, all businesses operating in the state must follow these responsible protocols:

1. Require face coverings for employees and clients/customers at all times. You are not required to provide face coverings to your employees, although doing so will ensure compliance with this requirement. If providing face coverings for all employees is not feasible or practicable, you should communicate the expectation that employees provide their own face coverings before returning to work. **[Ed. Note: On April 28, 2020, Ohio Governor DeWine relaxed the face covering requirement by making it "strongly recommended" instead of mandatory.]**
2. Conduct daily health assessments to determine if employees are "fit for duty." (For example, check for symptoms at entry and follow previous temperature taking protocol).
3. Maintain good hygiene at all times – hand washing, sanitizing and social distancing.
4. Clean and sanitize workplaces throughout workday and at the close of business or between shifts.
5. Limit capacity to meet social distancing guidelines.
 - Establish maximum capacity at 50% of fire code.
 - And, use appointment setting where possible to limit congestion.

The state has also developed [sector-specific operating requirements for businesses eligible to reopen](#). For example, manufacturing, distribution, and construction businesses

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must stagger shift patterns and lunch and break times. Retail businesses must, among other things, clean high-touch surfaces after each use. And operating requirements for office employees include the ability to work from home as much as possible and limited travel.

When a COVID-19 infection is identified in your place of business, you must:

- Immediately report employee or customer infections to the local health district.
- Work with the local health department to identify potentially exposed individuals to help facilitate appropriate communication/contact tracing.
- Shutdown shop/floor for deep sanitation, if possible.
- Professionally clean and sanitize site/location.
- Reopen in consultation with the local health department.

WHAT SHOULD EMPLOYERS DO?

With K-12 schools closed for the balance of the school year, and no timeline for the opening of day care centers, Ohio employees with young children and who have been recalled to work will grapple with the question of childcare and continuity of their child's remote education. You should begin planning now for addressing these employee concerns.

The Families First Coronavirus Response Act (FFCRA) remains in force for covered employers through the end of the year. The FFCRA provides for paid leave (up to certain caps) for eligible employees whose child's school or place of care is closed or child care provider is unavailable. If you are a covered employer and have not done so already, you should develop and distribute an FFCRA policy and request form that meet's the FFCRA's documentation requirements to receive the tax credits. [You should also ensure you are meeting the FFCRA's posting requirements.](#)

For more information on the COVID-19 related tax credits for paid leave, including leave taken by employees due to the closure of schools and child care centers, see: [An Employers Step-by-Step Guide to COVID-19 Related Tax Credits for Paid Leave.](#)

During the Q&A section of the governor's press conference, employers were encouraged to "phase in" vulnerable employees, meaning employees age 65 or older, or employees with underlying health conditions that make them "high risk" if exposed to COVID-19. Such a phased approach, however, must be thoughtful to avoid age and disability discrimination claims by employees who want to return to work.

When recalling employees, consider a return-to-work communication that outlines all the steps you are taking to comply with the Department of Health's safety protocols. Require employees to contact their Human Resources representative before returning to work if they have COVID-19 symptoms or have been diagnosed as having COVID-19. Additionally, encourage employees to contact HR if they have an underlying medical condition or other facts that make them high risk if exposed to COVID-19. Depending on the circumstances and the underlying health condition, there may be an obligation to provide such high-risk employees a reasonable accommodation, including a leave of absence, under state and federal disability laws.

The expansion of unemployment compensation benefits remains intact for those eligible individuals who are requested by a medical professional, local health authority, or employer to be isolated or quarantined as a consequence of COVID-19, even if they are not actually diagnosed with COVID-19.

ADDITIONAL RESOURCES

As you begin 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](#).

CONCLUSION

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' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Cleveland](#) or [Columbus](#) offices, 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 fact situation.