



# Bay Area Counties Allow Certain Businesses And Construction Projects To Reopen While Extending Shelter-In-Place Order Through May 31

Insights

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Six Bay Area counties and the city of Berkeley officially announced an extension of the regional COVID-19 Shelter-in-Place Orders through May 31, 2020. The new Orders ease operating restrictions, allowing construction activities and businesses that operate primarily outdoors to resume operations with some restrictions. This kind of movement is giving businesses some hope that they may soon begin to open.

## New Essential Business And Outdoor Business Permitted To Reopen

Businesses in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties, as well as the City of Berkeley, must continue to cease operations unless they are an Essential Business or an Outdoor Business. In addition to the previous Orders, the following businesses are now considered an Essential Business:

- Construction, but only as permitted under the State Shelter Order and if businesses comply with new Construction Safety Protocols.
- Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages that enable owners, employees, volunteers, and contractors for Essential Businesses, Essential Governmental Functions, Outdoor Businesses, or Minimum Basic Operations to work as allowed under this Order. To the extent possible, these childcare-related businesses must comply with the following conditions:
  1. The activities must be carried out in stable groups of 12 or fewer children (“stable” means that the same children are in the same group each day).
  2. Children shall not change from one group to another.
  3. If more than one group of children is at one facility, each group shall be in a separate room. Groups shall not mix with each other.
  4. Providers or educators shall remain solely with one group of children. The Health Officer will carefully monitor the changing public health situation as well as any changes to the State Shelter Order. In the event that the state relaxes restrictions on childcare and related institutions and programs, the Health Officer will consider whether to similarly relax the restrictions imposed by this Order.

Outdoor Businesses are also permitted to re-open. An Outdoor Business is defined as a business that normally operated primarily outdoors prior to March 16, 2020 and has the ability to fully maintain social distancing of at least six feet between all persons. Outdoor Businesses under the Orders specifically include:

1. Wholesale and retail plant nurseries, agricultural operations, and garden centers; and
2. Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services.

Outdoor Businesses must conduct all business and transactions involving the public outdoors. For clarity, outdoor restaurants, cafes, or bars are not considered an Outdoor Business under the Orders.

Further, all businesses are still permitted to operate with Minimum Basic Operations, as long as Social Distancing Requirements are followed. Again, Minimum Basic Operations include:

- Minimum necessary activities to maintain and protect the value of the businesses' inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions.
- Minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its services remotely.
- Minimum Basic Operations do not permit businesses to provide curbside pickup to customers.

### **Additional Operating Requirements For Essential And Outdoor Businesses**

- Essential and Outdoor Businesses are only permitted to allow personnel, who cannot perform their job duties from home, to work outside the home.
- Essential and Outdoor Businesses must, to the extent feasible, scale down their operations to the Essential Business and Outdoor Business components only; provided, however, that mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products.
- Essential and Outdoor Businesses must implement or update their Social Distancing Protocols and follow any industry-specific guidance issued by the Health Officer related to COVID-19. The new Orders have made clear that Social Distancing Protocols must include and implement the following at a minimum:
  - Post signage at the entrance of facility instructing all individuals to:
    - Avoid entering the facility if they have any COVID-19 symptoms;
    - Maintain a minimum six-foot distance from one another;
    - Sneeze and cough into one's elbow; and

- Not shake hands or engage in any unnecessary physical contact.
- Limit the number of people who can enter their facility at any one time;
- Ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete Essential Business activity;
- Require face coverings to be worn by all persons entering the facility, other than those exempted from face covering requirements (e.g., young children);
- If lines form at the business, mark at least six-foot increments to establish and control where individuals are standing;
- Provide adequate hand sanitizers near the entrance of facilities and in other appropriate high-touch areas (i.e. entrances and cashiers);
  - If feasible, implement and provide contactless payment systems or at least provide accessible sanitizers so all payment portals, pens, and styluses can be disinfected;
- • Implement regular disinfecting procedures for cleaning high-touch services; and
- • Implement any other additional social distancing measures required or in use.

The counties have also provided a revised Social Distancing Protocol to guide employers. A copy of the template may be accessed [here](#).

### **Certain Construction Projects Must Implement Construction Safety Protocols**

Finally, construction that resumes will have to comply with new Small and Large Construction Project Safety Protocols, which are provided by the Orders and may be accessed [here](#). Applicable Construction employers must post signage in an area that is visible to individuals, instructing all individuals to:

1. Not touch their faces with unwashed hands or with gloves.
2. Frequently wash their hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60% alcohol.
3. Clean and disinfect frequently touched objects and surfaces such as work stations, keyboards, telephones, handrails, machines, shared tools, elevator control buttons, and doorknobs.
4. Cover their mouths and noses when coughing or sneezing, or cough or sneeze into their elbows.
5. Avoid entering the jobsite and stay home if they COVID-19 symptoms, if they feel sick, or have been exposed to anyone who is sick.
6. Constantly observe their work distances in relation to other staff to maintain the recommended minimum six feet at all times when not wearing the necessary Personal Protective Equipment for working in close proximity to another person.

7. Not carpool to and from the jobsite with anyone except members of their own household units, or as necessary for workers who have no alternative means of transportation.
8. Not share phones or Personal Protective Equipment.

### **What Should Employers Do?**

As you begin the process of reopening and planning to re-open, you should 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 [San Francisco](#) office, or any member of [our Post-Pandemic Strategy Group Roster](#).

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

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