



San Diego County Introduces Social Distancing And Sanitation Requirements For Businesses (Updated)

Insights

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Like many counties around the state, San Diego County's Public Health Officer has promulgated a series of orders and emergency regulations to tackle the deepening COVID-19 crisis. While the Public Health Order tackles more than just employment-related topics, it does impose social distancing and sanitation requirements on essential businesses which are open to the public.

The Public Health Order imposes an obligation to self-isolate or self-quarantine on any individual in the county experiencing COVID-19 symptoms or who has been exposed to someone who may have COVID-19. There is no requirement for an individual seek a medical opinion. Under the Families First Coronavirus Act (FFCRA), employees who are subject to either a local isolation or quarantine order or caring for an individual subject to such an order are eligible for emergency paid sick leave (EPSL). The County has therefore effectively expanded the pool of employees who can claim that benefit.

The Public Health Order is frequently being amended, and we will update this Legal Alert as changes are made — San Diego businesses should make sure to bookmark this link and check back periodically. The current end date of the Public Health Order is April 30, 2020.

[Ed. Note: A new Public Health Order goes into effect May 1, 2020 and will continue until further notice. This new Public Health Order incorporates many of the provisions of the prior Public Health Order. Updated provisions are discussed in Editor's Notes.]

Essential Businesses Open To The Public Must Implement A Social Distancing And Sanitation Protocol

As of April 7, 2020, all essential businesses must prepare and post the "Social Distancing and Sanitation Protocol" form — or a form required by another governmental entity which contains substantially similar information — in each facility open to the public. The Protocol must be posted at or near the entrance of the relevant facility and be easily viewable by the public and employees. Furthermore, a copy of the Protocol must be provided to each employee performing work at the facility, and proof of implementation of the Protocol must be provided to any authority enforcing the Order upon demand.

The Protocol is three pages long and divided into seven sections.

- Three of the sections — Signage, Measures to Protect Employee Health, and Measures to Increase Sanitation — are meant to apply to all businesses. The Signage section additionally imposes an additional requirement that businesses post signs at each public entrance to the business inform employees and customers to avoid entering the facility if they have a cough or fever, maintain a minimum six-foot distance from other individuals, and not shake hands or engage in any unnecessary physical contact.
- Three of the sections — Measures to Prevent Crowds from Gathering, Measures to Keep People At least Six Feet Apart, and Measures to Prevent Unnecessary Contact — may not apply to all facilities, but are mandatory if potentially applicable to the facility at issue. For example, one such requirement is that customers may not self-serve any items that are food relating. Such a requirement would likely apply to restaurants and grocery stores, but it would likely not apply to a bank.
- The final section requires hospitals and health care facilities to check any staff or visitors for symptoms or temperatures to ensure that they are not ill.

Moreover, the Public Health Order creates a continuing obligation for employers to implement all measures in the Protocol, and to modify the Protocol if current measures are not effective in maintaining proper social distancing and sanitation. The Order comes with a “stick” as the County will close any business which fails to implement social distancing and sanitation.

[Ed. Note: Prior Public Health Orders imposed special requirements for child and daycare providers. As of May 1, 2020, child daycare and childcare providers have to make best efforts to operate under the following conditions: (1) childcare should be in stable groups of 10 or fewer children (with stable meaning the same group of children each day), (2) children should not change from group to group, (3) each group of children should be in a separate room, (4) groups should not mix, and (5) childcare providers should remain solely with one group of children. Additionally, employees must wear face coverings, and child daycare and childcare providers must establish health check and temperature screenings to ensure that children and employees with a temperature of 100 degree or above do not enter the facility.]

[Ed. Note: As of May 1, 2020, private and public golf courses may open for limited use provided that the owner or operator of the golf course completes and implements a Golf Course Physical Distancing & Safety Plan for San Diego County and submits a copy of the plan to the Public Health Officer at least two days prior to opening. Golf courses must conduct temperature screenings of all employees and customers, and anyone with a temperature of 100 degrees or higher must not be permitted to enter the facility.]

Certain Essential Businesses Must Have Employees Wear Cloth Face Coverings

While the CDC has recommended cloth face coverings for the public, the County has made such coverings mandatory for certain businesses. Moreover, it is the obligation of the owners of the business to ensure that employees are complying. The businesses covered by this cloth face covering requirement — and the date the obligation starts — are:

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- April 9, 2020: Employees who may have contact with the public in any restaurant or other essential business that serves food, grocery stores, pharmacy/drug store, convenience store, gas station, bank, or public transportation.
- April 14, 2020: Employees who may have contact with the public in banks or public transportation.

[Ed. Note: As of May 1, 2020 all persons two years or older in the County must wear face coverings that comply with California Department of Public Health Face Covering Guidance whenever they are in a business or within six feet of another person who is not a member of their family or household. Persons with a medical or mental health condition, or developmental disability that prevents wearing a face covering are exempt. However, the Public Health Order elsewhere states that essential business shall require employees to wear a face covering effective May 8, 2020. Until this ambiguity is resolved, the best practice is to require employees to wear a face covering effective May 1, 2020.]

Employers should also keep in mind that, just like for other business expenses incurred by employees, they have a duty to reimburse employees for any costs in acquiring cloth face masks.

County Public Health Officer Issues General Isolation And Quarantine Orders

On April 7, 2020, the Public Health Officer issued Isolation and Quarantine Orders which apply County-wide. The Orders are meant to work in tandem with each other, and — critically for employers — the Orders do not require a medical professional to be involved in the decision to isolate or quarantine. Here is what you need to know about the Orders:

Who Do The Orders Apply To?

The Isolation Order applies not only to individuals who test positive for COVID-19 or are told by a physician that they are likely to have COVID-19, but also to any person who has signs or symptoms that are consistent with COVID-19 such as fever, cough, shortness of breath, or trouble breathing. The Quarantine Order applies to any person who has been in close contact with a person either diagnosed with COVID-19 or is likely to have COVID-19.

What Does “Close Contact” For Purposes Of The Quarantine Order Mean?

Close contact means that, between 48 hours before a COVID-19 patient symptoms began and until the COVID-19 patient is no longer required to be isolated, an individual was either within six feet of the COVID-19 patient for more than 10 minutes or had unprotected contact with bodily fluids and secretions of the COVID-19 patient. A COVID-19 patient here means not just a person diagnosed with COVID-19, but someone likely to have COVID-19.

How Long Do Individuals Need To Isolate Or Quarantine Themselves?

It depends. Persons subject to the Isolation Order and who have displayed symptoms must remain isolated until at least 72 hours have passed since recovery *and* at least seven days have passed since symptoms first appeared. Persons subject to the Quarantine Order must remain quarantined for 14

days. If a person subject to the Quarantine Order starts to display COVID-19 symptoms, then the timing requirements of the Isolation Order would start to apply to them.

[Ed. Note: As of April 17, 2020, persons subject to the Isolation Order must remain isolated until the occurrence of one of the following: (1) at least 72 hours have passed since recovery *and* at least seven days have passed since symptoms first appeared, (2) receipt of at least two negative results from an FDA authorized test for COVID-19 from consecutive nasopharyngeal swab specimens collected at least 24 hours apart, *or* (3) a person with laboratory confirmed COVID-19 who has not had any symptoms may discontinue isolation when at least seven days have passed since the date of their first positive COVID-19 diagnostic test and they have had no subsequent illness, although they should continue to limit contact with others for three days following discontinuation of isolation.]

Do I Have To Provide Emergency Paid Sick Leave (EPSL) Under The Families First Coronavirus Response Act (FFCRA)?

Likely yes. The FFCRA permits EPSL to be used by an employee who is subject to a local quarantine or isolation order *or* by an employee who is caring for an individual subject to a local quarantine or isolation order. While an employee previously choosing to self-isolate or self-quarantine without the advice of a doctor or while seeking a medical diagnosis was not eligible for emergency paid sick leave, the Isolation and Quarantine Orders now slot employees into a category requiring coverage, despite that a medical doctor's input is not required.

If I Provide EPSL, Do I Need Documentation From The Employee?

Yes. Despite that employees do not need to seek a medical opinion under the Isolation or Quarantine Orders, employers should still be mindful of ensuring that they comply with DOL required documentation rules for obtaining tax credits for use of EPSL.

Odds And Ends You Should Know

The Public Health Order requires businesses to suspend any policy or procedure requiring doctor verification for sick or other leave approval. This applies to all sick or leave approval — not just that for COVID-19 reasons.

Moreover, employers should be aware that failure to comply with the Public Health Order carries risk. As noted already, the County can shut down businesses that fail to implement an effective Social Distancing and Sanitation Protocol. However, beyond that, violation of any portion of the Public Health Order is a misdemeanor, and employers can face fines and imprisonment.

Conclusion

We 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 Diego office, or any member of our COVID-19 Taskforce. You can also review our

nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

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 fact situation.

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