

CALIFORNIA UNVEILS REOPENING PLAN: WHAT BUSINESSES NEED TO KNOW

Insights
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Following up on his announcement that the state has made sufficient progress to begin the process of gradually reopening workplaces which were not designated as essential, California Governor Gavin Newsom just released the first stages of the plan that will permit certain lower-risk businesses to begin the careful climb back to work. The governor was quick to point out that the state is not out of the woods yet, but employers in the retail, manufacturing, and logistics sectors will be able to reopen their doors to a certain extent as soon as Friday, May 8 – provided they follow strict safety protocols. What do employers need to know as we head towards Stage 2 of the state’s recovery plan?

HOW WE GOT HERE

Currently, residents in the most populous state in the nation are required to stay at home except for essential needs. This has led to the temporary (and permanent, in some cases) closing of many non-essential businesses impacting 70% of the California economy. On April 14, Governor Newsom outlined six indicators the state would consider when modifying the strict Stay-at-Home order. Those indicators include:

- Ability to test, contact trace, isolate, and support the exposed;
- Ability to protect those at high risk for COVID-19;
- Surge capacity for hospital and health systems;

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- Therapeutic development to meet the demand;
- Ability of businesses, schools, and childcare facilities to support physical distancing; and
- Determination of when to reinstitute measures like Stay at Home.

On April 28, the Governor also announced four “Resilience Roadmap Stages” which would serve to guide California in its gradual reopening process:

- Stage 1: Safety and Preparedness
- Stage 2: Lower-Risk Workplaces
- Stage 3: Higher-Risk Workplaces
- Stage 4: End of Stay-at-Home Order

California has been in Stage 1 since the implementation of the Stay-at-Home order on March 16. According to the indicators above, the governor determined the state is ready for Stage 2.

WHAT DOES STAGE 2 ENTAIL?

Stage 2 initially allows some lower-risk workplaces such as bookstores, clothing stores, florists, and sporting goods stores to reopen on Friday, May 8, so long as they meet the guidelines outlined below. Other businesses such as offices, dine-in restaurants, shopping malls, and schools are not allowed to reopen as a part of the first round for Stage 2. However, the governor indicated those industries may be allowed to reopen in a later phase of Stage 2.

COMPLIANCE MEASURES APPLICABLE TO AFFECTED INDUSTRIES

For all industries able to reopen as part of the initial phase of Stage 2, each workplace is required to take the following actions *before* reopening:

1. Perform a detailed risk assessment and implement a site-specific protection plan.
2. Train employees on how to limit the spread of COVID-19, including how to screen themselves for symptoms and stay home if they have them.

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3. Implement individual control measures and screenings.
4. Implement disinfecting protocols.
5. Implement physical distancing guidelines.

CONTENTS OF A WRITTEN SITE-SPECIFIC PROTECTION PLAN

In order for each workplace to ensure its site-specific protection plan is adequate, the state provided [industry-specific guidance](#) for the agriculture and livestock, auto dealership, communications infrastructure, construction, delivery services, energy and utilities, food packing, hotels and lodging, life sciences, logistics and warehousing, manufacturing, mining and logging, office workspaces, ports, public transit and intercity passenger rail, real estate transaction, and retail industries.

The guidance issued by the state provides bullet-point items for each industry as to each of the five action items above. While there are commonalities among the different industry guidance such as proper screening procedures for workers and personnel entering the business, proper use of personal protective equipment, and implementing procedures to ensure physical distancing of at least six feet, the California Department of Public Health and Cal/OSHA included some measures unique to specific industries which should be reviewed in detail before developing a site-specific protection plan.

Once the plan is complete, the state also recommends posting its industry-specific checklist in the workplace to assist with educating employees and customers about the actions businesses have taken to reduce the risk and open for business.

TOPICS FOR EMPLOYEE TRAINING

Common topics across industries for employee training include providing information published by the Centers for Disease Control and Prevention (CDC) on COVID-19, including preventing the spread and who is especially vulnerable; how to self-screen at home, employee temperature and/or symptom checks using CDC guidelines; the importance of not coming to work if employees have COVID-19 symptoms or if they or someone they live with have been diagnosed with COVID-19; when to seek medical

attention; the importance of hand washing, physical distancing; and the proper use of cloth face covers. But as all industries are different, any business seeking to reopen as part of the initial Stage 2 should review the industry-specific guidance and evaluate their workplace for additional topics which should be included.

INDIVIDUAL CONTROL MEASURES AND SCREENING

Fisher Phillips previously provided [6 Factors Employers Must Consider When Taking Employees' Temperatures](#) and the guidance encourages the practice of providing temperature and/or symptom screenings for all workers at the beginning of their shift (or upon entry of the employer's facility) and of any personnel entering the facility. The guidance also includes some common-sense measures which many businesses have already begun implementing.

They include encouraging workers who are sick or exhibiting symptoms of COVID-19 to stay home, encouraging the use of face coverings especially when employees are in the vicinity of others, and frequent hand washing. Some industry-specific guidance might not be as intuitive, such as limiting entry of a jobsite to only those classified as essential (construction industry) and providing the necessary equipment and accommodations for work crews that may need to respond to utility disruption (energy and utility industry).

CLEANING AND DISINFECTING PROTOCOLS

As expected, the guidance instructs industries to include in their cleaning and disinfecting protocols frequent disinfecting of high traffic areas such as break rooms, lunch areas, and areas of ingress and egress such as handrails; cleaning touchable surfaces between shifts or between users; ensuring delivery vehicles and equipment are cleaned before and after delivery routes and carry additional sanitation materials during deliveries; avoiding the sharing of phones, other work tools, or equipment wherever possible and shared equipment must be disinfected prior to and at the conclusion of use; providing time for workers to implement cleaning practices before and after shifts; ensuring sanitary facilities, restrooms, and handwashing stations with soap, water, paper towels, and hand sanitizers are provided at all sites and workplaces; providing additional

sanitary facilities if necessary; and staggering breaks when feasible to ensure physical distancing.

When selecting cleaning chemicals, employers are encouraged to use cleaning products approved for use against COVID-19 by the Environmental Protection Agency (EPA) and to provide employee training on the manufacturer's directions and Cal/OSHA requirements for safe use. Workers using cleaners or disinfectants should wear gloves as required by the product instructions. Employers are also encouraged to consider installing portable high-efficiency air cleaners, upgrading the building's air filters to the highest efficiency possible, and making other modifications to increase the quantity of outside air and ventilation in offices and other spaces.

Employers should review the state's [Resilience Roadmap](#) for their industry for any additional industry-specific guidance regarding cleaning and safety protocols that must be followed.

PHYSICAL DISTANCING GUIDELINES

All industries permitted to reopen as a part of the initial phase of Stage 2 must implement physical distancing measures to ensure that workers and customers are at least six feet apart. Employers can use physical partitions or visual cues such as floor markings, colored tape, or signs. Where physical distancing cannot be maintained, such as checkout stations, employers must minimize exposure by erecting Plexiglas barriers or strongly encouraging employees and customers to wear face coverings.

Employers must utilize work practices, when feasible, to limit the number of workers in close proximity. This may include scheduling (e.g., staggering shift start/end times) or rotating employee access to a designated area during a shift; closing breakrooms or using barriers or increasing the distance between tables/chairs to discourage congregation during breaks; designating areas to provide or receive deliveries; and adjusting safety meetings procedures by conducting smaller or individual safety meetings, holding meetings outside or in a space allowing for at least six feet of physical distance between employees, or by transitioning meetings and interviews to phone or digital platforms.

Employers in some industries, such as those in the agriculture and auto dealership industries, must follow physical distancing guidelines beyond those outlined above. For example, employers in the auto dealership industry must allow field technicians and personnel to call a “safety stop” when they are reluctant to enter a dwelling, including due to indications of an infected inhabitant in a residence or due to persons unwilling or unable to maintain social distancing.

SOME COUNTIES MAY MOVE SLOWER – OR MORE QUICKLY

Governor Newsom also announced that, while the state will be moving from Stage 1 to Stage 2, counties can choose to continue more restrictive measures and extend their stay-at-home orders beyond May 8 based on their local conditions. Similarly, counties can move more quickly through Stage 2 if they attest that they meet the state's readiness criteria. For this reason, you should make sure to consult the county-specific order for your business location before proceeding with your reopening strategy.

To do so, the county must demonstrate epidemiologic stability and must create a submit a readiness plan which the state will make publicly available. The county plans must address several criteria, including that they have a low prevalence of COVID-19 cases and deaths, they have PPE supplies for essential workers and congregate facilities, they meet testing and contact tracing criteria, their health care system is prepared in case of a sudden rise in cases, and they have plans in place to protect vulnerable operations.

WHAT SHOULD EMPLOYERS DO?

As you begin the process of reopening, 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, including an update early next week when further guidelines are expected to be issued. 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 [California](#) offices, or any member of [our Post-Pandemic Strategy Group Roster](#).

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.