

# SAN DIEGO COUNTY INTRODUCES SAFE REOPENING PLAN TO COMPLEMENT CALIFORNIA'S RESILIENCE ROADMAP (UPDATED)

Insights  
May 13, 2020

Beginning on May 8, California entered a new phase in response to the COVID-19 crisis: gradually starting to reopen the economy for specified businesses that were not designated as essential. In [Early Stage 2 of the state's Resilience Roadmap](#), each county is authorized to determine the details of the restrictions for the operation of the permitted retail, manufacturing, warehouse and logistics companies. On May 5, San Diego County's Board of Supervisors adopted the Reopen San Diego Business Safety Framework and, over the course of the last several days, the local Public Health Office promulgated an [updated Public Health Order](#) to guide a Safe Reopening Plan.

While Fisher Phillips previously posted a [Legal Alert](#) summarizing San Diego County's response to the COVID-19 pandemic and the regulations essential businesses need to comply with in order to remain open, this Legal Alert focuses on businesses reopening under early Stage 2. In addition to discussing what soon-to-be-opening employers need to know about the Safe Reopening Plan, the alert will summarize the Public Health Order as it exists now. Employers who followed the updates to the prior alert should review this alert carefully for additional updates which are incorporated directly below.

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 Public Health Order is in effect until further notice.

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## REOPENING BUSINESSES PART OF EARLY STAGE 2 MUST IMPLEMENT A SAFE REOPENING PLAN

In conjunction with the State's Resilience Roadmap which went into effect on May 8, the County has adopted the [Reopen San Diego Business Safety Framework](#). The Framework is broken into five categories: (1) employee safety, (2) customer safety, (3) sanitation, (4) physical distancing, and (5) general business practice and communications.

The Framework further requires that employers complete the County's form for a [Safe Reopening Plan](#). This form incorporates the mandates in the Resilience Roadmap and the Framework. However, you should review both the Resilience Roadmap and the Framework while crafting your Safe Reopening Plan in order to ensure compliance with all mandates.

## RETAIL BUSINESSES ALLOWED TO OPEN

- Book, music, and toy stores
- Clothing, shoe, and jewelry stores
- Home and furnishing stores
- Sporting goods stores
- Antique stores

## SCOPE OF PERMISSIBLE RETAIL OPERATIONS

- Delivery
- Curbside pick up

## RETAIL-RELATED BUSINESSES ALLOWED TO OPEN

Manufacturing, warehouse, and logistics companies that support the approved retail entities are permitted to reopen upon completion of a Safe Reopening Plan.

**[Ed. Note: As of May 12, the following businesses are also permitted to reopen:**

213.330.4500

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### Service Focus

Workplace Safety

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### Industry Focus

Hospitality

Retail

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### Related Offices

San Diego

- **Office-based businesses (telework is still strongly encouraged)**
- **Car washes**
- **Pet grooming**
- **Landscaping and gardening businesses**
- **Outdoor museums and outdoor gallery spaces**
- **Shopping malls (outdoor malls only), limited to curbside pickup]**

## **MANDATORY SIGNAGE AND EDUCATION**

- Distribute copies of the Safe Reopening Plan to all employees.
- Post a copy of the Safe Reopening Plan at each public entrance.
- Post signs at each public entrance of the facility instructing employees and customers to avoid entering the facility if they have a cough or fever, wear facial coverings, maintain a minimum six-foot distance from one another, and not shake hands or engage in any unnecessary physical contact.
- Identify and provide contact information for a Health and Safety Coordinator to whom employees and the public may bring questions or comments about the Safe Reopening Plan.

## **MEASURES TO PROTECT EMPLOYEE HEALTH**

- Maximize telework opportunities.
- Instruct employees not to come into work if sick.
- Take employee temperatures upon reporting to work. If 100 degrees or more, employees must not be allowed in the workplace. If a thermometer is not available, employees must be screened for symptoms including a cough; shortness of breath or trouble breathing; or two of the following: fever, chills, repeated shaking with chills, muscle pain, headache, sore throat, new loss of taste or smell.

- Require employees to wear facial coverings if within six feet of others.
- Separate all desks or individual work stations by at least six feet.
- Disinfect break rooms, bathrooms, and other common areas on a regular schedule established by the employer as part of the Safe Reopening Plan.
- Provide employees with Personal Protective Equipment at a level appropriate to employee job duties, which must be established by the employer as part of the Safe Reopening Plan.
- Provide soap and water to all employees in locations identified in the Safe Reopening Plan.
- Contractors and volunteers shall be required to adhere to all employee safety measures.
- Consider and identify other measures specific to the business, to be included in the Safe Reopening Plan.

## **MEASURES TO PROTECT CUSTOMER SAFETY IN RETAIL ESTABLISHMENTS**

- Limiting the number of customers in a store at any one time once Stage 2 expands beyond curbside and outdoor service.
- Require patrons/visitors to wear facial coverings.
- Provide curbside or outdoor service where feasible, once Stage 2 expands beyond curbside and outdoor service.
- Determine additional specific measures appropriate for the business and identify in the Safe Reopening Plan.

## **MEASURES TO ENSURE SOCIAL DISTANCING OF AT LEAST SIX FEET**

- Post signs outside the store reminding people to stay at least six feet apart even when in line.
- Encourage pedestrian traffic to follow one-way paths.
- Place tape or markings in customer line areas inside and outside stores at six-foot intervals with signs directing

customers to use the markings to maintain social distance.

- Instruct employees to stay six feet away from customers and other employees except when necessary such as to accept payment or deliver goods or service.
- Utilize an appointment system.
- Consider other measures to be identified in the Safe Reopening Plan.

In developing your Safe Reopening Plan, you must refer to your industry's [guidance and checklists](#) as established by the Resilience Roadmap. While not specifically addressed in the Safe Reopening Plan form, the Framework also requires that San Diego businesses minimize non-essential travel and adhere to CDC guidelines on quarantine following travel. Best practice is for you to ensure that you address those two additional factors and list the Health and Safety Coordinator in Section E in the Safe Reopening Plan.

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

## **ESSENTIAL BUSINESSES PREVIOUSLY OPEN TO THE PUBLIC MUST CONTINUE TO IMPLEMENT THEIR SOCIAL DISTANCING AND SANITATION PROTOCOL**

All essential businesses that were open as part of Stage 1 of the California Resilience Roadmap were required to 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. Essential

businesses have a continuing obligation to implement all measures and revise the measures they take if not effective.

## **ALL BUSINESSES MUST HAVE EMPLOYEES WEAR FACE COVERINGS AND CONDUCT TEMPERATURE SCREENINGS**

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. **It is the obligation of the owners of the business to ensure that employees are complying. You should also keep in mind that, just like for other business expenses incurred by employees, you have a duty to reimburse employees for any costs in acquiring cloth face masks.**

Furthermore, employers in essential businesses and reopened businesses must conduct temperature screening and prohibit employees with temperatures of 100 degrees or more from entering the workplace. If a thermometer is not available, employees must be screened for symptoms including a cough; shortness of breath or trouble breathing; or two of the following: fever, chills, repeated shaking with chills, muscle pain, headache, sore throat, new loss of taste or smell.

## **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.

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.

The Isolation and Quarantine Orders were discussed in the [prior Legal Alert for San Diego](#), and no changes have been made as part of the early Stage 2 reopening. Employers who are reopening under early Stage 2 should familiarize themselves with their obligations under those Orders.

## **BUSINESSES WITH SPECIAL REQUIREMENTS**

### **Hospitals And Healthcare Providers (Including Dentists):**

Such healthcare providers may authorize and perform non-emergent or elective surgeries or procedures based on their determination of clinical need and supply capacity, and where consistent with State guidance. Nothing in the Public Health Order prevents physicians and other healthcare providers from conducting routine preventative care provided it conforms to applicable State guidance. Nothing in the Public Health Order prevents dentists or dental hygienists from conducting routine preventative care provided it conforms to any applicable state guidance.

**Daycare and Providers:** Child daycare and childcare providers must operate under the following conditions: (1) childcare should be in stable groups of 12 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. Employees of such businesses and the children being cared for are not required to wear face coverings while present at the daycare or childcare facility. 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. Restroom and other surfaces children regularly contact all must be sanitized with a disinfectant effective against coronavirus on a regular schedule and between groups occupying a particular area.

**Golf Courses:** 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.

**Other Public Or Private Outdoor Recreational Facilities (Other Than Community Pools), Including Recreational Equipment (Such As Bicycle, Boat, Kayak, Equestrian, and Surfboard):** Outdoor recreational facilities must prepare a Safe Reopening Plan which includes a requirement that all equipment be sanitized with disinfectant effective against coronavirus immediately after every use. Outdoor recreational facilities must also limit use of equipment or areas to individuals able to practice social distancing before, during, or after the activity, or members of the same household. Campgrounds may be open provided a vacant campsite separates each occupied campsite, and each campsite is occupied only by members of the same household. Recreational boating is allowed provided all occupants of a boat are from the same household.

## **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, you 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 or Safe Reopening Plan. However, beyond that, violation of any portion of the Public Health Order is a misdemeanor, and employers can face fines and imprisonment.

## **LOOKING FORWARD**

The Resilience Roadmap provides a mechanism for counties to proceed with broader reopening guidelines than currently permitted in San Diego County. According to a statement made by Supervisor Nathan Fletcher on May 7, San Diego County does not and will not in the foreseeable future meet the criteria for moving to the next phase for gradual reopening. No large urban county is able to meet the criteria at this time. However, the San Diego County metrics are trending in the right direction.

If you have locations in multiple counties, you must comply with the reopening requirements in each county. The permitted retail categories, permitted other businesses, allowed scope of retail operations, and required safety and posting measures vary among the counties and reflect differing conditions around the state.

## 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.

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*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.*