



What California Restaurants Need To Know As Dine-In Service Returns With Significant Restrictions

Insights

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Following his announcement that the state could gradually begin reopening during the first stages of the plan, Governor Newsom issued updated guidance yesterday that includes allowing certain businesses, such as dine-in restaurants, to re-open in counties with state approval. Specifically, the California Department of Public Health and Cal/OSHA issued guidance for the dine-in restaurant industry to support a safe, clean environment for workers and customers.

In approved counties, dine-in restaurant employers should heed these guidelines as they gradually begin to re-open or resume their dine-in operations along with existing takeout and delivery services. The current list of counties that have been approved to have dine-in restaurants reopen [can be found here](#).

How We Got Here

Since March 19, 2020, all Californians have been required to stay home to slow the spread of COVID-19, except as needed to maintain the operations of essential critical infrastructure sectors and sectors the State Public Health Officer may designate as critical. Governor Newsom's Stay-at-Home Order deemed restaurant takeout and delivery operations as an "essential service." Dine-in restaurant service was deemed to be not essential and forbidden. Accordingly, restaurants statewide continued takeout and delivery services and closed their dining rooms or ceased operations entirely.

On April 14, Governor Newsom revealed six indicators the state would consider in 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;
- 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, 2020, the governor also announced four “Resilience Roadmap Stages,” to serve as a guide to 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. Based on the indicators above, the governor determined that the state is ready for Stage 2.

What Does Stage 2 Entail?

While dine-in restaurants are generally not included in the “Early Stage 2,” some may be allowed to reopen in “Expanded Stage 2” depending on their location. On May 12, the governor issued “Resilience Roadmap - Local Variance Attestations” indicating that counties that have met certain criteria in containing COVID-19 may consider increasing the pace at which they advance through Stage 2, but not into Stage 3.

A county must attest to the following criteria: epidemiologic stability of COVID-19; protection of Stage 1 essential workers; testing capacity; containment capacity; hospital capacity; vulnerable populations; sectors and timelines; triggers for adjusting modifications, and your plan for moving through Stage 2. While not required, the California Department of Public Health strongly recommends counties requesting a variance create a county COVID-19 containment plan.

Counties that filed an Attestation that they have met the readiness criteria may open dine-in restaurants in accordance with the state dine-in restaurant industry guidance. Again, a current list of those counties [can be found here](#).

Compliance Measures Applicable To Affected Industries

For all industries able to reopen, 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.
3. Implement individual control measures and screenings.
4. Implement disinfecting protocols.
5. Implement physical distancing guidelines.

Contents Of Written Workplace Specific Plan

To support a clean and safe environment for workers and patrons, the state provided industry specific guidance and a corresponding checklist for the implementation of policies and procedures necessary for dine-in restaurants to prevent the spread of COVID-19. As with other state guidance, some policies mirror those provided across other industries.

However, the guidance also includes specific recommendations for dine-in restaurants, including additional cleaning and disinfecting protocols and physical distancing guidelines specific to dine-in operations, all of which should be thoroughly reviewed before developing a site-specific protection plan. The guidance further clarifies that brewpubs, breweries, bars, pubs, craft distilleries, and wineries should remain closed until those establishments are allowed to resume modified or full operation unless they offer sit-down, dine-in meals, or contract with another vendor to do so, and alcohol is only sold in the same transaction as a meal.

The protection plan should designate an individual responsible for plan implementation. It should include risk assessment and precautionary measures that should be taken to prevent the spread of COVID-19 in the workplace. The plan should provide for training and communication with employees and their representatives about the plan and propose a process to check for plan compliance and record and remedy deficiencies with plan implementation.

Finally, the plan should also articulate a process to investigate COVID-19 cases and identify and isolate workplace contacts of infected employees until tested. Once completed, the plan should be updated as necessary to prevent additional cases in the workplace and strictly adhered to for continued safe operations.

Topics For Employee Training

As with any policy change, COVID-19-specific policies and procedures are only as effective as the training provided to employees to implement them. For this reason, the “guidance” requires that employees be provided training on the following topics: information on COVID-19, including how to prevent the spread of COVID-19 and identifying who is especially vulnerable to the disease; self-screening procedures to follow at home, including temperature and/or symptom checks using CDC guidelines; the importance of not coming to work if employees have COVID-19 symptoms or if someone they live with have been diagnosed with COVID-19; when to seek medical attention if symptoms become severe; the importance of hand washing and of physical distancing, both at work and off work; and proper use of cloth face coverings. These topics may be expanded upon depending on the needs of your specific facility.

Individual Control Measures and Screening

Consistent with Fisher Phillips’ 6 Factors Employers Must Consider When Taking Employees’ Temperatures, the guidance requires restaurants symptom screening and/or temperature checks for employees, vendors, contractors or other workers when they arrive at the restaurant. The inclusion of “workers” likely means the restaurant will need to either symptom screen or temperature those individuals if they are entering the restaurant.

The guidance also recommends encouraging sick or symptomatic workers to stay home. Gloves are recommended but not required. Employees must wear face coverings in any situation which requires them to be within six feet of customers. Restaurants are also encouraged to have dishwashers wear eye protection and employees who clear customers' dishes wear aprons, changing them frequently. Restaurants must also encourage frequent handwashing and use of hand sanitizer.

Restaurants must also increase the distance between tables and chairs in employee breakrooms to provide for social distancing and post signs reminding customers of the importance of wearing face coverings while in public.

Cleaning And Disinfecting Protocols

Increased cleaning and sanitation efforts are key to making both employees and customers feel safe and preventing the spread of COVID-19. Cleaning procedures utilized prior to the pandemic, no matter how thorough, will fall short of the standard required now.

Required measures now include thorough cleaning in high traffic areas (customer waiting areas, break rooms, host stands, entry ways, and stairways). Restaurants are also required to frequently disinfect commonly used surfaces and shared equipment, such as POS systems, receipt trays, busser tubs, light switches, water pitcher handles, phones, toilets, and hand washing stations.

Restaurants must also frequently clean items touched by patrons, especially those that might attract contact from children. The "guidance" identifies those as candy and toy vending machines, decorative fish tanks, display cases, decorative fountains, etc. Hand sanitizer and other sanitary supplies readily must also be made available for customers and employees, ensuring sanitary facilities stay operational and stocked at all times with products approved for use against COVID-19 on the [Environmental Protection Agency \(EPA\)-approved list](#).

Additional industry-specific requirements include the following:

- Provide disposable or digital menus to patrons. Where that is not possible, then regular menus must be sanitized after each use and must not remain at the customer's table.
- Provide table settings to customers as needed instead of pre-setting the table.
- Supply shared condiments only as needed or in single serving containers.
- Pre-roll all utensils in napkins.
- Provide take-out containers to customers to pack their own leftovers.
- Placing soiled table linens in sealed bags until sanitized.
- Discontinuing use of shared entertainment items.
- Clean each dining area thoroughly between customers. This includes the table, chairs, booths, high chairs, etc.

- Provide mints or after-meal candies and toothpicks only as needed.
- Discontinue any table-side food preparation or presentation.
- Discontinue use of areas such as utensil dispensing areas and beverage machines.

The “guidance” and checklist also recommend that employers adjust or modify hours or quotas to implement new cleaning practices before, during, or after shifts; install hands-free devices such as contactless payment systems, timecard systems, and automatic handwashing systems; consider improvements to air filtration and ventilation; and provide hand sanitizer at all customer and employee entrances and contact areas.

Physical Distancing And Capacity

Until the state has entered Stage 4 (and the Stay-at-Home Order has been lifted), dine-in restaurant employers must implement and follow physical distancing measures to ensure at least six-foot distance between workers and customers, including the use of physical partitions, floor markings, and signs; reconfiguration of breakrooms and kitchens; adjusting in-person meetings to conform to the six-foot distance protocol; and staggering employee breaks in compliance with wage and hour regulations.

Rather than place an artificial capacity percentage on restaurants in California, the “guidance” provides that six feet of distance between seated customers must be maintained, regardless of how much that reduces your capacity.

Additionally, restaurants should prioritize outdoor seating and curbside pickup, provide to-go/delivery options, provide for contact-less pick-up and delivery, encourage customer reservations, ask customers to wait in their cars for restaurant seating, notify customers seating has become available through text message, remove tables and chairs from dining areas and use signs to show that they are unavailable or install physical barriers to separate patrons, close bar areas, screen guests for symptoms, limit the number of patrons at a single table, and escort parties to tables one party at a time.

Restaurants should also prop open doors or automate opening if possible, hosts should remind patrons waiting for seating about social distancing protocols, and patrons should not be seated within six feet of employee work and/or food and preparation areas. Additionally, all bar areas, buffets, and salad bars must remain closed.

The Industry Guidance also requires a set of clearly visible rules for customers and restaurant personnel at the restaurant entrance(s) that are to be a condition of entry. The rules could include instructions to use hand sanitizer, maintain physical distance from other customers, avoid unnecessary touching of restaurant surfaces, contact information for the local health department, and changes to restaurant services. The signage should also discuss proper face covering usage and current physical distancing practices in use at the restaurant. Whenever possible, the rules should be available digitally, include pictograms, and included on/with menus. Finally, the Industry

Guidance provides that customers should be screened for symptoms upon arrival, asked to use hand sanitizer, and to bring and wear a face covering when not eating or drinking.

What Should Dine-In Restaurant Employers Do?

Governor Newsom has allowed counties to decide whether to adopt measures more restrictive than the state guidelines or to begin the process of re-opening by submitting a publicly available readiness plan attesting that the specific county meets the state's readiness criteria. Dine-in restaurant employers should: (1) modify existing operations or prepare for reopening in accordance with the new state guidance for Dine-In facilities; and (2) complete and post the Cal/OSHA COVID-19 General Checklist to educate employees and customers about the actions restaurant facilities have taken to reduce the risk of spreading COVID-19 while resuming business during the pandemic.

Of course, modifications to local and county orders may impose stricter guidelines to any of the above categories and should be implemented and enforced. Not only must restaurant employers heed industry-specific guidance, but you must also pay particular attention to evolving industry guidance relating to the services you offer. We further recommend you review prior alerts that can be found [at our COVID-19 Resource page](#), with particular attention towards the following alerts: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#); our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#); and if applicable, our [State-by-State Restaurant Guide to Reopening](#).

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 [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.

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