



Guidelines For Oregon Employers As Phased Reopening Plan Begins

Insights

5.15.20

Governor Brown recently announced that Oregon's businesses will be reopening in three phases. The first phase began on May 15 for counties that have met certain public health prerequisites, including a declining prevalence of COVID-19, contact tracing, availability of isolation facilities, and PPE for first responders (described in more detail here). Counties that cannot meet the prerequisites will remain closed until the prerequisites are met, or until the governor releases additional guidance. If counties, regions, or the state fail to maintain the prerequisites after reopening, the governor may reimpose business closures.

Phase One includes the reopening of restaurants, bars, retail stores, gyms, fitness centers, and personal service providers (salons, tattoo parlors, massages, etc.). Phase Two will consist of higher risk activities, including expanding gathering size and permitting office work. Phase Three will include large gatherings, including sporting events, festivals, and concerts.

After 21 days in Phase One, the Governor's Office will consider approving counties to progress into Phase Two, for which guidance has not yet been released. The state will likely not enter into Phase Three until a reliable treatment or vaccine is available.

On May 14, the governor's office approved 28 counties to enter Phase One, with three county applications still under review. Multnomah County has not yet applied for reopening because it has not met the reopening prerequisites, though it is publicly tracking its progress.

The governor also announced that certain retail stores may be reopened on May 15, even in counties that are not approved to enter Phase One. These retail stores include furniture stores, art galleries, jewelry shops, and boutiques where OSHA's social distancing guidelines may be implemented. Childcare, summer school, camps and youth programs may also be reopened beginning May 15, subject to the state's childcare requirements.

Phase One Reopening

The governor has issued "Phase One" reopening guidance to Oregon employers. The guidance includes requirements, restrictions, and recommendations for employers reopening during Phase One. The new requirements and restrictions will remain in place at least throughout the first phase of reopening, which will last a minimum of 21 days.

If you operate a business that serves food, a retail store in a shopping center or mall, or a business that provides personal services, this article will provide Oregon's limitations and requirements for reopening your business during Phase One, as well as recommendations to help ensure that your staff and consumers remain safe and healthy. Prior to reopening, take care to fully review both the general employer guidance and the sector-specific guidance provided by the Oregon Health Authority, available [here](#).

We operate a business that serves food in a county that has been approved to enter Phase One...

What are the limitations to our operations during Phase One?

- No on-site food/drink consumption after 10 p.m.
- No self-service operations (buffets, salad bars, soda machines, etc.).
- No bar or counter seating, unless six feet is maintained between parties.
- No karaoke machines, pool tables, or bowling.
- No parties greater than 10 people.

What are the requirements for us to operate during Phase One?

- Determine maximum restaurant capacity based on the maximum number of people who can utilize the space while maintaining six-foot distancing between parties.
- Maintain six-foot distancing between members of different parties and employees. People in the same party do not have to be six feet apart.
- Tables should be spaced at least six feet apart. *If six feet of distance cannot be maintained between parties, the restaurant may only provide take-out.* Tables should also be disinfected between parties and should not be pre-set with tableware.
- To the extent possible, provide condiments in single serving packets (e.g. ketchup, salt, pepper, etc.). If not possible, condiment containers should be disinfected between uses in a manner that does not contaminate the condiment.
- Menus should be single-use, laminated (and cleaned between customers), or available by sign or online.
- Ordering and waiting in line. Ensure parties remain at least six feet apart when ordering, utilizing signs to inform customers of distancing requirements and designating where to wait in line.
- Frequently clean common areas, including customer payment devices.
- Face masks. Require employees to wear face coverings and provide such coverings.
- Employees must wash hands frequently. Hand sanitizer may not replace handwashing for employees.

- Employees should wear non-latex gloves when cleaning, paying special care to avoid cross-contamination (e.g. do not change tasks while wearing the same gloves).
- Maximize use of utensils by employees to avoid touching food with bare hands (facilities licensed by the Oregon Department of Agriculture are not permitted to have any bare-hand contact with food per licensing requirements).
- Video lottery terminals, coin-operated arcade machines, and jukeboxes. These machines must be six feet apart. Otherwise, only one machine may be operable per six feet. Customers must request to use machines, which should be disinfected before each use. Ensure there is only one player per machine.

What other recommendations does the state have for our reopening?

- Designate employees to manage customer flow. Designate a greeter/host to manage entrance, exits, waiting in line, restrooms, and other common areas to avoid customer congregation. Do not block fire exits.
- Limit serving staff. Limit the number of staff serving individual parties (e.g. assigning the same employee to each party for the entire experience).
- Encourage customers to wear face coverings. Should you choose to make this a requirement for service, you should consult legal counsel to determine enforceability.
- Take reservations. Encourage customers to make reservations and call in advance to verify seating capacity.
- Handwashing stations. Consider staging handwashing stations for customer use and make hand sanitizer available.

For more information on the reopening of businesses that serve food, visit the governor’s guidance, available [here](#).

We operate a retail store . . .

Can I operate if my county has not been approved for Phase One reopening?

Possibly. Standalone retail stores may be opened in counties that have not been approved to enter Phase One, so long as they follow all government guidance. Such stores include furniture stores, art galleries, jewelry shops, and boutiques. Retail stores in malls or shopping centers may not be reopened in counties not approved for Phase One reopening.

What are the requirements for us to operate?

- Determine maximum store capacity to facilitate six-foot social distancing between parties and employees, considering areas in the store prone to crowding, and limit the number of customers to this capacity.
- Frequently clean work and high traffic areas.

- Require employees to wear face coverings and provide such coverings.
- Post signs listing symptoms, who to contact for assistance, and recommendations to stay home and physically distance. The Oregon Health Authority has prepared template signs for business use.

What other recommendations does the state have for our reopening?

- Consider placing clear/glass barriers in front of customer service counters.
- Encourage customers to wear face coverings. If you would like to require customers to wear face coverings, you should consult with legal counsel to determine enforceability.
- Post signs directing one-way flow of traffic where possible and consider designating doors entrance or exit only. Do not block fire exits.
- Designate waiting spaces on the floor using tape or signage.
- Fitting Rooms. Consider whether to reopen fitting rooms. If fitting rooms are reopened, retailers should provide hand sanitizer or a handwashing station near fitting rooms to enable handwashing/sanitization of garments. Prohibit customers from trying on items worn near the face, including scarves, masks, headbands, and eyewear.
- Encourage or require employee handwashing after handling returned merchandise.
- Delivery/Pick Up. Consider providing delivery or pick up options.

For more information on the reopening of retail stores, visit the Governor’s guidance, available [here](#).

Are there any additional requirements for reopening retail stores in shopping centers and malls in counties that have been approved to enter Phase One?

Yes. In addition to implementing the state’s retail store guidance, retail stores in shopping centers and malls are also required to:

- Determine maximum mall/shopping center capacity to facilitate six-foot social distancing between parties and employees and limit the number of customers to this capacity.
- Post signs at entrances, exits, and common areas discouraging groups from congregating and reminding customers to physically distance.
- Ensure that physical distancing is possible in common areas. In food courts and other shared spaces, configure tables and other fixtures to allow six-foot distancing between parties.

For more information on the reopening of malls and shopping centers, visit the Governor’s guidance, available [here](#).

I operate a business that provides personal services (including salons, barbers, tattoo shops, and massage providers) in a county that has been approved to enter Phase One. . .

What are the requirements for us to operate?

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- Prior to appointments, contact clients and ask whether they have had a cough, fever, shortness of breath, or if they have had close contact with anyone with such symptoms or diagnosed with COVID-19. If a client answers in the affirmative, reschedule for after the symptoms/sickness has resolved.
- Record client contact information, including appointment date/time and provider. This information may be used for contact tracing.
- Send home employees who have COVID-19-like symptoms, and prohibit them from returning to work until at least 72 hours after symptom resolution without medication.
- Determine maximum capacity based on the maximum number of people who can utilize the space while maintaining six-foot distancing between parties, and limit services to this capacity.
- Assign one provider per client throughout the encounter.
- Limit use of waiting rooms. If using a waiting room, ensure that the number of people permitted in the waiting room enables six-foot distancing. Providers should also have clients wait in their cars outside.
- Train employees on proper sanitation, handwashing, cough and sneeze etiquette, and use of protective equipment and measures.
- Remove unnecessary contamination hazards, including magazines, menus, snacks, beverages, etc.
- Post signs listing symptoms, who to contact for assistance, and recommendations to stay home and physically distance. The Oregon Health Authority has prepared template signs for business use.
- Cleaning and personal protective measures. Providers should ensure sanitary conditions by following the cleaning and protective measures, including ensuring frequent sanitation and mask wearing. The requirements imposed for personal services are detailed and extensive. To access the full requirements, visit the Governor's personal services guidelines.

I operate a gym or fitness center in a county that has been approved to enter Phase One. . .

What are the limitations to our operations during Phase One?

- No contact sports or sports that require shared equipment.
- No water fountains (except water bottle refilling).
- No showers, saunas, steam rooms, pools, or whirlpool areas may be opened.
- No swimming lessons or other aquatic activities.
- No drop-in childcare. If you have children and youth programs, make sure that you are following Oregon's guidance, which will be updated on the Governor's website.

What are the requirements for us to operate during Phase One?

- Record client contact information, including date/time of facility use. This information may be used for contact tracing.
- Determine maximum capacity for different areas of the gym based on the maximum number of people who can utilize the space while maintaining six-foot distancing between parties, and limit services and fitness classes to this capacity.
- Maintain six feet between exercise equipment. If equipment cannot be moved to facilitate physical distancing, it must be blocked from use.
- Gymnasiums may only be used for non-contact sports or individual skills.
- Personal Training. To the extent possible, trainers must be six feet apart from client. Encourage trainers and clients to wear masks and wash hands before and after the session.
- Maintain equipment. Ensure equipment that has not been used during COVID-19 related closures is safe and operational.
- Post signs listing symptoms, who to contact for assistance, and recommendations to stay home and physically distance. The Oregon Health Authority has prepared template signs for business use.
- Designate employees to monitor physical distancing and disinfecting requirements.
- Ventilation. Ensure ventilation systems are operating properly. To the extent possible, increase air circulation using windows, fans, and the like.
- Thoroughly clean prior to reopening. Throughout operations, frequently clean work, high traffic, and commonly touched areas. Clean restrooms twice daily and ensure adequate sanitary supplies.
- Provide handwashing stations or hand sanitizer and encourage use.
- Require clients and employees to wipe down equipment before and after each use with provided disinfectant wipes.

What other recommendations does the state have for our reopening?

- Screen clients prior to entry. Ask whether they have had a cough, fever, shortness of breath, or if they have had close contact with anyone with such symptoms or diagnosed with COVID-19. If a client answers in the affirmative, urge the client to leave and not return until at least 72 hours after symptoms have resolved without medication.
- Encourage at-risk individuals to stay home.
- Consider holding fitness classes/activities outdoors if it can be don't safely, does not violate local ordinances, and six-foot distancing can be maintained. Also consider virtual fitness classes.
- Encourage clients to wear face coverings. If you would like to require clients to wear face coverings, you should consult with legal counsel to determine enforceability.
- Post signs directing one-way flow of traffic where possible and consider designating doors

entrance or exit only. Do not block fire exits.

- Consider placing clear/glass barriers in front of reception counters, or wherever beneficial.
- Consider requiring gym appointments to limit the number of people in the facility.
- Water Bottles. Encourage clients to fill water bottles before coming into the facility.

For more information on the reopening of gyms and fitness centers, visit the Governor's guidance, available [here](#).

What else should I do before reopening my business?

- Be educated on COVID-19 and have a plan. Know the symptoms of COVID-19 and have a plan of action for preventing virus spread when symptoms are recognized in an employee or customer. We recommend you contact legal counsel for assistance in developing a policy for managing customers or employees who exhibit symptoms of COVID-19 in your business.
- Consider health checks. Consider regular health checks (e.g. temperature or symptom screening) or symptom reporting of employees.
- Consider broadly how best to maintain employee and customer health. Consider any methods that could decrease person-to-person contact and permit six-foot distancing, including: encouraging or requiring handwashing and use of face masks, regularly disinfecting common areas, restricting use of shared equipment, increasing physical distance between workers, restricting non-essential meetings, encouraging telework when possible, enhancing sanitation protocols, and considering upgrades to facilities that may reduce virus exposure (e.g. no-touch faucets, air filtration, etc.).
- Post signs
 - Listing symptoms, who to contact for assistance, and recommendations to stay home and physically distance.
 - Directing one-way flow of traffic where possible and consider designating doors entrance or exit only. Do not block fire exits.
 - The Oregon Health Authority has prepared template signs for business use.
- Train employees on safety requirements and expectations.
- Provide handwashing stations/hand sanitizer for employees and customers.

For additional information on the COVID-19 pandemic's impact on employers, we encourage you to review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#), put together by our firm's COVID-19 Taskforce. Likewise, we encourage Oregon employers to review our [legal alert](#) related to the interplay between Oregon leave laws and the Families First Coronavirus Response Act.

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

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 Portland 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 developing situation. It is not intended to be, and should not be construed as, legal advice for any particular situation.

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