

Insights, News & Events

KENTUCKY'S NEW REQUIREMENTS FOR RESTAURANTS

Insights
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According to Kentucky Governor Beshear's Health at Work Phased plan, restaurants can reopen on May 22, 2020 at 33% capacity. On May 14, 2020, Governor Beshear issued interim [Requirements for Restaurants](#) outlining the additional requirements that restaurants in Kentucky need to meet to reopen and remain open. These restaurant-specific requirements touch on additional steps for social distancing, cleaning, disinfecting and personal protective equipment (PPE). These requirements were issued with the acknowledgment that they will likely change after receiving additional input from the restaurant industry. Nevertheless, restaurateurs would be wise to start making compliance preparations now.

GENERAL SAFETY PROTOCOLS

Every covered business must meet strictly adhere to the [Healthy At Work Minimum Requirements for All Entities](#) in addition to industry specific requirements to reopen and remain open. These include continuing telework for employees who are able to perform their job duties remotely, instituting a phased return to work, enforcing social distancing, providing PPE including masks, limiting face-to-face interaction, providing sanitation and ensuring proper sanitation as well as temperature checks among other requirements.

LIMIT FACE-TO-FACE INTERACTION IN RESTAURANTS

The requirements indicate that restaurants must limit the number of customers present in their establishment to 33%

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of the maximum permitted occupancy of seating capacity. This standard is assuming that all individuals in the restaurant can maintain six feet of space between the other tables (either inside or outside). No person can be within six feet of a person seated at another table or booth. Restaurants are also required to scrutinize the party size of its guests limiting the size to 10 or fewer and not allowing patrons who do not reside in the same household to sit at the same table.

In the event a restaurant is not able to maintain at least six feet of space between tables at 33% capacity, the restaurant must limit its capacity to the number of individuals in the restaurant to the greatest number that permits proper social distancing (*i.e.*, at least six feet of space). The guidance also encourages restaurants to consider the installation of portable or permanent non-porous physical barriers (*i.e.* plexiglass shields) between tables.

Restaurants are also required to implement measures to limit customer movement through the restaurant as possible. To this end, restaurants are encouraged to inform customers they may travel to entries, exits, and the restroom, unless health and safety require otherwise. All children's play areas or common areas should be closed.

Contactless payment options are encouraged and to the extent possible restaurants should demark six feet of distance between customers and employees (except at the moment of payment and/or exchange of food and drink). Restaurants should ensure any receipts can be completed electronically via e-signature or creating a procedure whereby restaurant employees can complete the receipt for the customer within the customer's view.

When dealing with an influx of customers, restaurants should create a plan to establish to ensure proper social distancing for those waiting to be seated. This includes requiring customers to wait in their cars, demarking spots six feet apart or considering reservation-only business model or call-ahead seating. To this end, when it has reached capacity, restaurants should only permit a new customer inside only after a previous customer has left the premises on a one-to-one basis.

As with the Health At Work Minimum Requirements, the guidance encourages continued work from home as

possible for individuals who can perform work from home (*i.e.* accounting staff) and continued curbside services as well as online or phone ordering as the greatest extent possible.

MASKS AND OTHER SAFETY REQUIREMENTS

Restaurants should ensure that employees wear face masks for any interactions with customers, co-workers, or while in a common travel area (*e.g.*, aisles, hallways, loading docks, breakrooms, bathrooms, entries and exits). Contractors, vendors, and drivers of the restaurant should also wear face coverings or masks while at the location.

Restaurants should establish a policy as to whether to serve customers who do not adhere to the business' policy on requiring masks. Though customers will have to remove their masks to eat, restaurants may choose not to serve those customers who refuse to wear a mask while away from their table (*i.e.* entering, exiting, going to the restroom).

To reduce cross-contamination, restaurants should discontinue the use of tablecloths and cloth napkins and are encouraged to use disposable menus, napkins, table cloths, utensil and condiments. Self-service drink stations should be discontinued and any unwrapped items (*e.g.*, straws, sweeteners, creamers). Salad bars or buffet style dining should also be discontinued. If not possible, restaurants should prohibit customer self-service and require that employees provide the buffet service with the proper PPE.

Restaurants should also limit the number of individuals in a restroom and ensure that frequently touched surfaces are appropriately disinfected including workstations, seating areas, etc. Restaurants are required to provide hand sanitizer, handwashing facilities, and tissues in convenient locations and establish a cleaning and disinfection process that follows CDC guidelines when any individual is identified, suspected, or confirmed COVID-19 case.

Restaurants must also train employees to properly dispose of or disinfect PPE, ensure that gloves are available and worn to the extent possible and establish procedures for disinfecting tables, seating, dining ware. Restaurants are required to place conspicuous signage at entrances and throughout the restaurant alerting staff and customers to occupancy limits, six feet of physical distance, policy on

face coverings, and that no one with a fever or symptoms of COVID-19 be permitted in the restaurant.

CONCLUSION

As previously indicated, these requirements will likely change in the coming weeks. Fisher Phillips will continue to monitor the rapidly developing 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 [Louisville](#) office, 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 situation.