



Washington's New Restaurant Requirements: Dine-In, Stay Healthy (UPDATED)

Insights

5.18.20

Washington Governor Inslee just issued a [restaurant/tavern guidance](#) to help your business prepare for Phase II of his progressive, [four-phase plan](#) to reopen the state. These new guidelines allow restaurants to re-open for dine-in service provided they comply with the guidelines once the governor gives the go ahead for Phase II, currently anticipated for the beginning of June. No restaurants may operate until they can meet and maintain all requirements. What do you need to know about these requirements, each designed to reduce the risk of COVID-19 infection, along with key recommendations for dealing with your returning workforce?

General Safety Protocols

Every covered business must ensure strict adherence to all measures established by the governor's guidance, the Department of Labor & Industries (L&I) Coronavirus (COVID-19) Prevention: General Requirements and Prevention Ideas for Workplaces, and the Washington State Department of Health Workplace and Employer Resources & Recommendations (DOH). You should make hand sanitizer available at entries for all staff, as well as guests, assuming supply availability.

Face Masks: Staff And Guests

Every restaurant employee not working alone must wear a facial covering unless their potential exposure dictates a higher level of protection under L&I safety and health rules. Statewide, all businesses are strongly encouraged to require their customers to use cloth face coverings when interacting with their staff. The guidance "strongly suggests" that customers wear a cloth face covering anytime they are not seated at the table, such as while being seated, leaving, or using the washroom. All businesses are **required** to post signs their entrance that strongly encourages customers to use cloth face coverings when inside the business.

You also should check your local counties or municipalities for additional rules. King County and the City of Seattle just issued a [directive](#) requiring most adults to wear face coverings over their noses and mouths when they will be at (1) indoor public settings, or (2) outdoor public locations and cannot maintain six feet of social distancing. It also has posting requirements.

Seating And Physical Distancing

All parties and tables must total five or fewer guests. Total guest count must no more than 50% of the maximum building occupancy as determined by the fire code. Outdoor seating is permitted but must also be at 50% capacity, although it does not count toward the building occupancy limit.

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In the absence of a physical barrier or separation wall, tables and booths for all seating, including outdoor, must be placed far enough apart to ensure at least six feet of distancing from adjacent guests. The establishment must also limit the number of staff serving any given table, with a strong preference for only one staff per each table. If the establishment does not offer table service, it must have protocols in place to ensure at least six feet of social distancing at food and drink pick-up stations.

All establishments must also have a plan to ensure six feet of social distancing in lobby/waiting areas and payment counters.

Guest Logs

To facilitate contact tracing, restaurants that offer table service must create and maintain daily log of all customers log for 30 days. The log must include each guest's name and telephone or email. **[Ed. Note: May 16, Washington's Governor announced that this log would be voluntary, and it would be sufficient to collect contact information for just one person per household. If the list is not used within 30 days, it must be destroyed. It cannot be used for marketing purposes.]**

Prohibited Operations And Other Requirements

- All menus must be single use.
- Bar seating must be closed.
- Buffets and salad bars are not permitted.
- Any condiments typically left on the table (ketchup, soy sauce, etc.) must be single-use or sanitized after each use.

Employee Safety And Health

Restaurants must also follow L&I's numerous COVID-19 requirements to protect workers. The full list, included in the guidance and available from L&I, includes protocols for hand-washing, personal protective equipment requirements, house-keeping, pre-shift employee symptom screening, social distancing, and communication about how to prevent coronavirus transmissions and the establishments' own safety policies and protocols. Employers must also screen employees for signs/symptoms of COVID-19 at start of shift and send sick employees home immediately. Restaurants must also cordon off and clean any areas where an employee with probable or confirmed COVID-19 illness worked until the area and equipment is cleaned and sanitized, following the deep cleaning guidelines set by the CDC.

New Cause Of Action?

The guidance specifically provides that a worker may refuse to perform unsafe work, including hazards created by COVID-19, and makes it clear that "it is unlawful for [an] employer to take adverse action against a worker who has engaged in safety protected activities."

It is unclear whether this expands current anti-retaliation protections for safety-related protected

activities. At the very least, it suggests a clear public policy that could arise in a wrongful termination context. L&I's Division of Occupational Safety and Health (DOSH) continues to have authority to enforce all issues regarding worker safety and health, which presumably includes the guidance's requirements.

Employees who decide to leave the worksite because they do not believe it is safe to work due to the risk of COVID-19 exposure may have access to some leave or unemployment benefits. You also must continue to provide high-risk individuals per the governor's [existing proclamation](#) with their choice of access to available employer-granted accrued leave or unemployment benefits if an alternative work arrangement is not feasible.

Other Recommendations Regarding Employees

While not mandatory requirements, here are some additional items you should consider:

- Save copies of all recall and rehire letters to assist with CARES Act/[PPP loans](#) forgiveness, and to address issues such as paid leave balances, changes in pay, existing handbook policies, and new required safety protocols.
- Prepare a Families First Coronavirus Response Act compliant policy and leave request and approval forms
- Determine and prepare your policy regarding COVID-19 symptom checking and temperature testing.
- Consider any modifications to your paid leave policies and communicate any changes to your employees in writing.

For more analysis regarding labor or employment issues you may encounter as you re-open or ramp up your business, please visit our [Post-Pandemic FAQs](#).

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 [Seattle](#) 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 fact situation.

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