

A ROADMAP TO REOPENING RESTAURANTS: CDC ISSUES FLOWCHART GUIDANCE

Insights
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The Centers for Disease Control and Prevention (CDC) recently released a [flowchart-style decision tool](#) to assist employers in the food service industry reopen during the pandemic. The flowchart addresses what steps restaurants and bars should take to protect customers and employees from the spread of the virus once they reopen. You should consider the following three “benchmarks” contained in the CDC’s restaurant and bars reopening flowchart when evaluating how to reopen your business during the pandemic.

BENCHMARK ONE: PRELIMINARY CONSIDERATIONS

The first, and perhaps most obvious, step on the path to reopening is whether state and local orders permit your establishment to reopen. You should carefully review the most up-to-date local orders before making the decision to reopen. Be aware that in some instances local orders are constantly evolving. Local guidance that may have been current days ago could now be irrelevant or overruled. Double check that the local guidance or order that you are reviewing contains the most up-to-date information available.

The second step established by the CDC is whether you are prepared to protect employees at a [higher risk for severe illness](#). The CDC defines individuals at a “higher risk for severe illness” as being those individuals over 65-years-old or having an underlying medical condition, especially if that condition is not well controlled. Underlying medical conditions include chronic lung disease or moderate to

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severe asthma, severe heart conditions, the immunocompromised, severe obesity, diabetes, chronic kidney disease undergoing dialysis, and liver disease. Aside from defining which employees are at a higher risk for severe illness, the CDC does not define what being prepared to protect these employees means in this context.

We interpret this standard to be speaking to whether you have the personal protective equipment (PPE) and cleaning and sanitary materials necessary to implement policies and procedures required to reopen during the pandemic. These policies are more thoroughly addressed in benchmarks two and three of this alert.

If you have checked your local orders and they allow for reopening and you are prepared to protect employees at a higher risk for severe illness, the CDC guidelines state you are able to move on to benchmark two of the re-opening road map.

BENCHMARK TWO: RAMP UP HEALTH AND SAFETY PROTOCOLS

The CDC recommends implementing enhanced health and safety protocols before reopening to the public. Recommendations in this step can be divided into four distinct categories: (1) promoting healthy hygiene practices; (2) intensifying cleaning, sanitation, disinfecting, and ventilation; (3) implementing social distancing protocols; and (4) training employees on all health and safety protocols.

You should promote healthy hygiene practices, including encouraging employees to wash their hands often, for at least 20 seconds with soap and water. Employees should use hand sanitizer that contains at least 60% alcohol when they cannot wash their hands with soap and water. Employees should also avoid touching their eyes, nose, and mouth with unwashed hands and wash their hands immediately after touching those areas. Healthy hygiene practices also include maintaining six feet of distances from others, wearing face coverings, and covering coughs and sneezes.

You should intensify cleaning, disinfecting, and ventilation within your establishment. According to the CDC's website, COVID-19 is primarily spread person-to-person through respiratory droplets produced when an infected person

coughs, sneezes, or talks. For this reason, you should develop a cleaning and disinfecting plan for reopening. The CDC maintains [in-depth guidance for cleaning and disinfecting businesses and workplaces](#).

Your plan should encourage routine cleaning and disinfecting of surfaces and objects touched by multiple people. All disinfecting should be completed with an [EPA-approved disinfectant](#). Surfaces that are not normally touched or are frequently used by children should be cleaned with soap and water. Items that are frequently touched, but not used by children, should be cleaned with disinfectant, examples include: tables, door handles, light switches, countertops, faucets, and sinks.

If your business has been closed for at least seven days prior to reopening, you will only need to adhere to your normal cleaning standards to reopen. You do not need to “deep clean” prior to reopening because COVID-19 has not been shown to survive on surfaces for longer than seven days. However, you should begin the enhanced policies articulated above immediately upon reopening.

In addition to cleaning and disinfecting protocols, you should encourage social distancing between customers and employees whenever possible. Promote social distancing by beginning (or continuing) drive-through, delivery, and/or curbside pick-up options for customers. Create social distance for in-house dining by spacing tables and stools to allow for six feet of distance between groups of customers, limit party sizes and occupancy levels, and avoid self-serve stations. You can encourage social distancing between employees by restricting employee shared spaces and rotating or staggering shifts.

Finally, you should follow up the implementation of the above procedures with employee training on all new policies and procedures. Failure to provide training will likely lead to inconsistent or failed implementation of all new policies and procedures.

BENCHMARK THREE: CREATE ONGOING MONITORING POLICIES AND PROCEDURES

In addition to the health and safety measures listed in benchmark two, you should also implement policies and procedures for monitoring potential COVID-19 cases at your

workplace and ensuring that employees do not work with COVID-19 symptoms. In order to meet this goal, the CDC recommends implementing procedures to check employees for signs or symptoms of COVID-19 upon arrival to work. The [complete list of symptoms associated with COVID-19](#) can be found on the CDC's website. You should encourage any employee who is sick to stay home. Because of this new policy, you should be prepared for employees to call out sick more frequently. This will require you to monitor employee absences and implement flexible leave policies.

You should create a plan for response if an employee becomes sick with COVID-19. Be sure that your plan is in compliance with regulations relating to the protection of personal data and the right to privacy. If a member of your staff is diagnosed with COVID-19, you should instruct that employee to stay at home until they are cleared to return to work by a physician or public health official. You may want to identify all employees that worked in close proximity with the infected employee and notify them that they may have come in contact with the virus. Be careful not to violate your sick employee's privacy rights while informing others that they may have encountered the virus. You can use [this model notification](#) letter to inform your employees of possible exposure.

You should regularly communicate COVID-19-related developments with local authorities and employees. You should also be prepared to consult with local health authorities if there is an increase of cases in your area or facility.

READY TO REOPEN

According to the CDC, once your restaurant has successfully met the above benchmarks, you will be ready to reopen. Of course, in addition to the CDC recommendations, you should also consult your local guidance regarding policies and procedures recommended or required in your area.

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.

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](#).

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.