

CLIENT ALERT

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OPEN FOR BUSINESS IN A PANDEMIC: GUIDELINES FOR HOW TO SAFELY REOPEN AND MAINTAIN A BUSINESS

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States across the nation have started to relax government-ordered closures and stay-at-home directives related to the novel coronavirus (COVID-19). Depending on the state, businesses such as surgical centers, dental offices, restaurants, movie theatres, gyms, golf courses, and salons will be allowed to reopen soon, or have already been allowed to resume operations. However, regardless of the type of business, each state that has moved toward reopening its respective economy has mandated that businesses take the necessary precautions to protect the public and to avoid a resurgence of COVID-19 in the community.

In anticipation of our nation's gradual reopening, businesses will likely face numerous questions as they navigate issues that arise after they resume business operations. The following will address the safety guidelines businesses should adhere to when considering resuming operations.

PLAN FOR SAFETY

The CDC has emphasized that businesses and employers should plan to respond in a flexible way to varying levels of disease transmission in the community and be prepared to refine their business response plans as needed. According to OSHA, most American workers will likely experience low or medium exposure risk levels at their job or place of employment.¹ However, in preparing a plan to reopen, businesses should strive to achieve the following objectives: (1) reduce transmission among employees, (2) maintain healthy business operations, and (3) maintain a healthy work environment. The CDC recommends that, in striving to achieve these directives, businesses should coordinate with state and local health officials so timely and accurate information can guide appropriate responses.

1. Reduce Transmission Among Employees

One of the primary goals of businesses preparing to resume operations is to take active steps to reduce transmission of COVID-19 among employees. The CDC has offered the following guidelines to achieve that goal:

- Actively encourage sick employees to stay home
- Identify where and how workers might be exposed to COVID-19 at work
- Separate sick employees
- Educate employees about how they can reduce the spread of COVID-19

2. Maintain Healthy Business Operations

The plan businesses implement to safely resume operations should also take into consideration how businesses will continue to maintain healthy business operations while remaining in compliance with federal and state guidance regarding the mitigation of the spread of COVID-19. The CDC has offered the following steps to achieve that goal:

- Identify a workplace coordinator who will be responsible for COVID-19 issues and their impact in the workplace
- Implement flexible sick leave and supportive policies and practices

- o The CDC advises that employers should not require a positive COVID-19 test result or a healthcare provider's note for employees who are sick to validate their illness, qualify for sick leave, or return to work, as requiring such documentation may impede operations of overwhelmed health care providers
- Assess essential functions and the reliance that others and the community have on services and products
 - o The CDC advises that businesses should (1) be prepared to change business practices if needed to maintain critical operations, (2) identify alternate supply chains, and (3) communicate with business and supply-chain partners to share best practices
- Determine how the business will operate if absenteeism spikes from increases in sick employees, those who stay home to care for sick family members, and those who must stay home with children who are unable to attend school or childcare programs
- Implement protocols to continue social distancing

3. Maintain a Healthy Work Environment

Finally, the plan businesses implement should include considerations regarding how employers will maintain a healthy work environment once operations resume. In furtherance of that goal, the CDC has offered the following guidelines:

- Consider improving the engineering controls using the building ventilation system by increasing ventilation rates and increasing the percentage of outdoor air that circulates into the system
- Support respiratory etiquette and hand hygiene for employees, customers, and worksite visitors
 - o The CDC advises that businesses should (1) provide tissues and no-touch disposal receptacles, (2) provide soap and water or an alcohol-based hand sanitizer that is at least 60% alcohol, (3) place hand sanitizers in multiple locations to encourage hand hygiene, and (4) encourage the use of non-contact methods of greeting, instead of handshaking
 - o The CDC also recommends that businesses should advise employees to (1) continue to practice active social distancing (specifically, staying six feet away from others when you must go into a shared workspace), (2) avoid touching eyes, nose, and mouth, and (3) wear cloth face coverings
- Perform routine environmental cleaning and disinfection
- Perform enhanced cleaning and disinfection after persons suspected or confirmed to have COVID-19 have been in the workplace
- Discourage unnecessary travel
- Reduce or eliminate in-person meetings and other gatherings

STATE-BY-STATE GUIDELINES: AN EXAMPLE FROM NEVADA

While the guidelines offered by the CDC are meant to apply to a wide variety of businesses and only represent best practices, businesses should prepare to adhere to any guidelines promulgated by their state and local governments, and by any regulatory agencies that govern their business.

On April 28, 2020, Nevada Governor Steve Sisolak issued an emergency directive which at the same time extended Nevada's stay at home order

¹ See [OSHA guidance for employers](#) for more information about job risk classifications.

that was already in place, and eased some restrictions that were ordered through previous directives. For example, the Governor's directive now allows nonessential retail businesses to resume retail sales on a curbside or home delivery basis, and allows certain recreational facilities to reopen, including golf courses and tennis courts. The directive also requires the Nevada Occupational Safety and Health Administration to ensure that all reopening nonessential businesses provide adequate protections and adopt sanitization protocols that minimize the risk of spreading COVID-19 in the workplace. The Governor also announced relaxed restrictions on certain medical, surgical, and dental procedures.

Interestingly, the Governor's directive also grants the authority to the Nevada Gaming Control Board (the "Board") to allow gaming operations to resume when the Board determines those operations can resume safely. This grant of authority comes on the heels of the Board's Policy Memorandum, issued on April 21, 2020, which provides that Nevada gaming licensees must establish and submit to the Board a "Reopening Plan" at least seven days before reopening occurs or as soon as reasonably possible thereafter. In addition to the guidance provided by the Board, the Nevada Health Response has already issued guidelines for reopening golf courses² and retailers engaging in "curbside commerce."³

The lesson from Nevada is any business that is, or will soon be, allowed to resume operations should take care to comply with any state, local, or government agency guidelines that are promulgated to mitigate the spread of COVID-19 and protect the community as we ease back to normalcy. Strict adherence to federal, state, and local guidelines for reopening businesses should reduce the exposure to potential liability resulting from resuming operations.

Dickinson Wright PLLC is a national law firm with attorneys across the country that are ready and able to answer any questions business owners and employers may have as they plan to resume business operations.

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²For more information, see <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/04/Guidance-Best-Practices-for-Golf-4-29-2020.pdf>

³For more information, see <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/04/04.29-curbside.pdf>