

CLIENT ALERT

May 11, 2020

1

RE-OPEN FOR NEVADA: NEVADA OSHA ISSUES GUIDELINES FOR NONESSENTIAL NEVADA BUSINESSES RESUMING OPERATIONS

by Caleb Green and Jennifer J. Gaynor

Nearly two months after Nevada issued closures of nonessential businesses to reduce the spread of the coronavirus pandemic, the state of Nevada is now preparing to return to normal operations. On May 8, 2020, Nevada Governor Steve Sisolak released Nevada Emergency Directive 018 ("Directive 18"), which initiates the reopening of certain nonessential businesses within Nevada through a "phased-in" process. Directive 18 introduced additional reopening guidelines for qualifying businesses and is summarized in the guidance document titled "Roadmap to Recovery for Nevada." Due to the decrease in COVID-19 cases since April 21, 2020, the Governor stated that the trend is strong enough to meet the criteria for Phase One. The new Directive, effective May 9, 2020, will expire on May 30, 2020, unless otherwise ordered.

Notably, the Nevada State Occupational Safety and Health Administration (NV OSHA) has played a significant role in ensuring the safety of the Nevada public as the state gradually gets back to normal. Throughout the statewide response to the COVID-19 pandemic, NV OSHA has and continues to issue and enforce safety, sanitization, and social distancing guidelines for Nevada businesses resuming operations. Namely, the governor has relied upon NV OSHA to guide Nevada's reopening initiative in several Emergency Directives establishing safety measures for various businesses and activities such as grocery stores, financial institutions, recreational activities, and now, through Directive 18, certain nonessential businesses.

Directive 18 requires that: "All essential and nonessential businesses opening or continuing operations in Phase One must adopt measures promulgated by the NV OSHA to minimize the risk of spread of COVID-19, including social distancing and sanitation measures, and abide by all other guidance promulgated pursuant to the Phase One directive."

In addition, Section 10 of Declaration 18 provides that "all businesses must adopt measures that meet or exceed the standards promulgated by NV OSHA to minimize the risk of spread of COVID-19. And that NV OSHA shall enforce all violations of its guidance, protocols, and regulations."

The NV OSHA recommendations/requirements for all essential businesses and nonessential businesses opened during Phase One include, but are not limited to, the following:

General Operations:

- All employers must provide face coverings for employees assigned to serving the public and shall require these employees to wear the face coverings.
- Prohibit gatherings of 10 or more people.
- Promote frequent and thorough hand washing, including providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.

- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces and equipment with Environmental Protection Agency-approved cleaning chemicals from List N or that have label claims against the coronavirus. See: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>
- Provide sanitation and cleaning supplies for addressing common surfaces in multiple user mobile equipment and multiple user tooling. Recommended based on the specifics of a business's services and procedures.
- Conduct daily surveys of changes to staff/labor health conditions. NV OSHA is emphasizing the need for business leadership to be working with and aware of the health and well-being of its staff.
- Ensure that any identified first responders in the labor force are provided and use the needed Personal Protective Equipment (PPE) and equipment for protection from communicable or infectious disease.
- Provide access to potable and sanitary water

The following measures are required to be implemented by the employer when employees are conducting specific job functions where 6 feet of social distancing is infeasible/impractical.

- A Job Hazard Analysis (JHA) may be completed for each task, procedure, or instance that is identified where social distancing is infeasible/impractical. Any JHA drafted for this purpose must be equivalent in detail and scope as identified in Federal OSHA publication 3071. <https://www.osha.gov/Publications/osha3071.pdf>
- A JHA developed for this purpose must identify the task being addressed, hazard being addressed (spread of COVID-19), and controls to be used to address the hazard.
- Any policy, practice, or protocol developed pursuant to the JHA must be as effective or more effective as the 6 feet social distancing mandate in the Declaration of Emergency Directive #003.
- Engineering controls, administrative controls, and PPE identified and developed through the JHA to address the hazard must be supplied by the employer.
- Training must be provided to staff for any policy, practice, or protocol that is used to address the hazard via a JHA.
- Training must be provided to staff for any equipment, engineered process, administrative control, or PPE that was identified and developed through the JHA to address the social distancing requirements or alternative policies, practices, or protocols implemented when social distancing is infeasible/impractical.

Social Distancing during breaks, lunches/dinners, and other slack periods:

- Employers are recommended to monitor employees during break, lunch/dinner, and slack periods to ensure that they are maintaining proper social distancing protocols.
- If an employer representative identifies an instance where proper social distancing protocols are not being followed, the employee will be subject to the employer's existing methods established for ensuring compliance with safety rules and work practices per NAC 618.540(1)(e).
- These observations apply to parking lots, staging areas, and any other location identified by the employer to be a supportive part of the overall business.

CLIENT ALERT

ENFORCEMENT:

NV OSHA emphasizes in this guidance that slowing/addressing the spread of COVID-19 is a required aspect of all activities/tasks/services associated with open businesses and that NV OSHA will continue to enforce or promote the use of identified measures to address this public health crisis. NV OSHA also notes that any guidance that is produced by the State of Nevada to support the Roadmap to Recovery for Nevada will be enforced by NV OSHA.

Specifically, any guidance that pertains to a particular industry sector may/will have a column of “mandatory” measures that apply to that industry sector. Any mandatory measures found in the state’s promulgated guidance will be deemed enforceable if not specifically addressed in previously published guidance, regulations, or memorandums.

Dickinson Wright’s attorneys have considerable experience assisting companies in complying with the various requirements of state, federal, and local laws. The firm remains committed to helping our clients navigate this unprecedented time and remains fully available to provide any assistance that may be required.

Our Government Affairs team is dedicated to keeping you informed of pertinent information as we continue facing the novel coronavirus. We will be providing periodical updates on the matter over the next few weeks.

ABOUT THE AUTHORS



Caleb Green is an Associate in Dickinson Wright’s Las Vegas office. He can be reached at 702.550.4417 or cgreen@dickinsonwright.com.



Jennifer J. Gaynor is a Member in Dickinson Wright’s Las Vegas office. She can be reached at 702.550.4462 or jgaynor@dickinsonwright.com.