CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: Ohio Governor Issues Order Reopening Some Ohio Businesses

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[Editor's Note: On May 14, 2020, Governor DeWine announced that campgrounds can reopen on May 21, horse racing without spectators can resume on May 22 (this does not include casinos and racinos), low-contact or non-contact sports can resume on May 26, and gyms, fitness centers and pools (but not water parks or amusement parks) can reopen on May 26 as well. Daycare facilities and day camps can reopen on May 31. There are safety protocols or restrictions in place for all reopening businesses. For example, day care facilities will be limited in the number of children per classroom and will have intensified cleaning and handwashing practices. Sector specific operating requirements can be found here.]

[Editor's Note: On May 7, 2020, Governor DeWine announced that restaurants and bars can reopen with outside dining on May 15 and for inside dining on May 21. Additionally, hair salons, barber shops, day spas and similar businesses will be able to open May 15. There will be safety guidelines and best practices for the reopening businesses to follow.]

[This bulletin was updated on May 1, 2020 to include information from the Stay Safe Ohio Order.]

On April 27, 2020, Governor Mike DeWine issued a detailed plan to begin to reopen businesses across Ohio in the hopes of increasing economic activity while managing the risks associated with the COVID-19 pandemic. The governor and the Department of Health issued a subsequent Director's Stay Safe Ohio Order (the "Order") on May 1, 2020. The plan addresses the first phase of reopening to begin on May 1 with healthcare providers; continues with the May 4 reopening of manufacturing, construction, and distribution businesses, as well as general office environments; and concludes with the May 12 reopening of retail businesses. All businesses must follow strict guidelines for reopening. These guidelines will also apply to those businesses that have remained open as essential businesses pursuant to prior orders. A number of businesses remain closed with no set date of reopening, including restaurants, gyms, and personal appearance and beauty businesses.

The May 1 Order will be in effect until 11:59 p.m. on May 29, 2020, unless rescinded or modified by the Director of the Ohio Department of Health. Subject to the lifting of certain restrictions per the reopening plan, the May 1 Order continues the restrictions from the April 2, 2020 Stay at Home Order, which required all residents to stay at home except for essential activities. As such, gatherings remain limited to no more than 10 people and individuals are strongly encouraged to stay at home and continue to work at home whenever possible. The Order does not provide a timeline for the second phase of reopening nor did the governor commit to the types of businesses that we can expect to reopen after May 12.

Ohio has previously announced that all K-12 schools will remain closed through the end of the year. At his news conference announcing the reopening plan, the governor remarked that it is too soon to discuss reopening of camps and daycares. As such, employers should continue to be aware that employees may have childcare challenges even as Ohio begins the process of reopening its economy.

Below are summaries of the guidance for the businesses addressed in the first phase of reopening.

General Guidelines

The plan includes five mandatory protocols for all businesses to follow as employees return to work.

1. Require face coverings for employees and recommend them for clients/customers at all times. At a minimum, face coverings should be cloth/fabric and cover the individual's nose, mouth, and chin.
2. Conduct daily health assessments by employers and employees (self-evaluation) to determine if "fit for duty." Employees' daily self-assessments should include taking one's temperature to monitor for fever and watching for coughing and/or shortness of breath.
3. Maintain good hygiene at all times - hand washing, sanitizing and social distancing.
4. Clean and sanitize workplaces throughout the workday and at the close of business or between shifts.
5. Limit capacity to meet social distancing guidelines.

    a. Establish maximum capacity at 50% of fire code.

    b. And, use appointment setting where possible to limit congestion.

The plan further provides both "mandatory requirements" and "recommended best practices" for each category of businesses reopening in the first phase (other than healthcare).

Healthcare Providers

On May 1, all healthcare providers can reopen. Also on that date, healthcare providers can restart any health procedures that can be done without an overnight stay in a healthcare facility or do not require inpatient hospital admission. This includes regular doctor visits, well-care checks, well-baby visits, out-patient surgeries, imaging procedures, and diagnostic tests. Healthcare providers and facilities that plan to resume providing these services must adhere to infection control practices, have sufficient PPE, and talk with patients about the risk of contracting COVID-19.

Healthcare providers can continue to provide necessary medical procedures that may require a hospital stay as these types of procedures have always been allowed. This includes surgeries and procedures that, if not performed, would cause a threat to a patient's life, a threat of the spread of cancer or the permanent dysfunction of a limb or organ, the presence of severe symptoms causing an inability to perform activities of daily living, and/or the risk of rapidly worsening symptoms.

Dentists and veterinarians can reopen on May 1 if a safe environment can be established.

Manufacturing, Distribution and Construction

On May 4, all manufacturing, distribution, and construction businesses that have not remained opened will be allowed to reopen if they follow certain guidelines. In addition to the mandatory protocols listed above, mandatory requirements for manufacturing, distribution, and construction businesses include:

- Ensure minimum of 6 feet between employees, distributors, and guests, as well as between physical spaces/workstations and, if not possible, install barriers.
- Require face coverings for employees, unless not advisable for health reasons, against documented industry best practices, in violation of the businesses' documented safety policies, there is a functional (practical) reasons for an employee not to wear a face covering, or not permitted by federal or state laws/regulations.
- Personnel should work from home if possible.
- Require employees to stay home if symptomatic.
- Change shift patterns or stagger lunch and break times, as well as disinfect desks and work stations on a daily basis.
- For confirmed cases, employers should immediately isolate and seek medical care for any individual who develops systems while at work. Businesses should contact the local health district about suspected cases or exposures. They should also shut down the shop/floor for deep sanitation if possible.

Among the recommended "best practices" are face coverings for guests and distributors, splitting into sub-teams with limited contact across the sub-teams and daily deep disinfection of the entire facility. The governor also recommends providing a stipend to employees for private transportation, but does not provide any details to elaborate.

General Office Environments

On May 4, all offices that have not remained open will be allowed to reopen if they follow certain guidelines. The governor encourages businesses to allow office workers who are able to work from home to continue to do so. In addition to the mandatory protocols listed above, mandatory requirements for general office environments include:

- Ensure minimum of 6 feet between employees and guests, as well as between physical spaces/workstations and, if not possible, install barriers.

- Require face coverings for all employees, unless not advisable for health reasons, against documented industry best practices, in violation of the businesses' documented safety policies, there is a functional (practical) reasons for an employee not to wear a face covering, or not permitted by federal or state laws/regulations.
    - A face covering is not required if an employee is working alone in an enclosed office space.

- Personnel should work from home whenever possible and feasible with business operations.
- Require employees to stay home if symptomatic.
- Reduce sharing of work materials.
- Stagger arrival of all employees and guests.
- Limit travel as much as possible.
- Post signage of health safety guidelines in common areas.
- No buffet in cafeteria.
- Frequently disinfect desks, workstations, and high-contact surfaces.
- Cancel or postpone in person events when social distancing guidelines cannot be met.
- For confirmed cases, employers should immediately isolate and seek medical care for any individual who develops systems while at work. Businesses should contact the local health district about suspected cases or exposures. They should also shut down the shop/floor for deep sanitation if possible.

Among the recommended "best practices" are face coverings for customers and guests, ensuring seating distances of 6 feet or more (including redesigning workstations), conducting a health questionnaire for symptoms at entry, following the temperature taking protocol at work, closing cafeterias and gathering spaces if possible, dividing essential staff into groups and establishing rotating shifts, ensuring an availability of at least three weeks of cleaning supplies, and limiting congregation in office spaces.

Consumer, Retail and Services

On May 12, all consumer, retail, and services businesses that have not remained open will be allowed to reopen if they follow certain guidelines. In addition to the mandatory protocols listed above, mandatory requirements for consumer, retail, and services businesses include:

- Ensure minimum of 6 feet between employees, as well as between physical spaces/workstations and, if not possible, install barriers.
- Require face coverings for all employees, unless not advisable for health reasons, against documented industry best practices, in violation of the businesses' documented safety policies, there is a functional (practical) reasons for an employee not to wear a face covering, or not permitted by federal or state laws/regulations.

- Employees should perform daily self-assessments, including taking one's temperature and watching for coughing or trouble breathing.
- Require employees to stay home if symptomatic.
- Clean high-touch items after each use (e.g., carts, baskets).
- Ensure minimum of 6 feet between customers and guests.
- Specify hours for at-risk populations.
- Ask customers and guests not to enter if symptomatic.
- Stagger entry of customers and guests.
- Discontinue self-service food stations and do not reopen food courts.
- For confirmed cases, employers should immediately isolate and seek medical care for any individual who develops systems while at work. Businesses should contact the local health district about suspected cases or exposures. They should also shut down the shop/floor for deep sanitation if possible.

Among the recommended "best practices" are face coverings for customers and guests while shopping, group employees by shifts to reduce exposure, provide a health questionnaire to customers/guests at the entry point and provide face coverings at entry, increase availability for delivery and curbside pickup, use contact-less payments where possible, and close once a week for deep cleaning.

Currently closed retail establishments and facilities that will restrict their operations to curbside pickup, delivery or appointment-only (limited to 10 customers at any one time), may reopen effective May 1 at 11:59 p.m.

Enforcement

Businesses must provide written justification, upon request, explaining why an employee is not required to wear a face covering in the workplace.

The Order may be enforced by state and local law enforcement. Specifically, pursuant to R.C 3701.352 "[n]o person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event." R.C. 3701.56 provides that "[b]oards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts." A violation of R.C. 3701.352 is a misdemeanor of the second degree, which can include a fine of not more than $750 or not more than 90 days in jail, or both.

The Order further delegates to local health departments the authority to answer questions in writing to the extent any public official has questions regarding what services are prohibited by the Order.

Conclusion

Some of these guidelines and recommendations are less than precise and will require employers to use their best judgment. For requirements that are applicable “if possible,” employers may need to investigate alternate solutions.

Further guidance can be accessed on the Ohio Department of Health Coronavirus (COVID-19) resource page. Benesch will continue to monitor the rapidly developing COVID-19 situation.

For more information on this subject, contact a member of Benesch's Labor & Employment Practice Group.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19’s status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

