

## Texas Begins Reopening Businesses; Employers May Be Required To Provide Face Coverings

4.20.20

Texas Governor Greg Abbott issued a series of executive orders on April 17 aimed at beginning the process of reopening the state's businesses. In three orders, Governor Abbott loosened certain business restrictions contained in his original stay-at-home order, closed schools for the remainder of the academic school year, and created a task force of public, private and medical leaders to advise him on how to safely and strategically reopen the state. What do employers need to know about these orders?

### The Details

Beginning Friday, April 24, non-essential retail services may reopen by utilizing a "retail-to-go" model. That means that goods and services may be provided through pickup, delivery by mail, or delivery to the customer's doorstep in strict compliance with requirements developed by the Texas Department of State Health Services (DSHS).

The agency has issued guidance for employers, employees and customers of reopened retail services. Based on the recommendations from the Centers for Disease Control and Prevention (CDC), the DSHS mandates that all employees of reopened retailers must:

1. Be trained on environmental cleaning and disinfection, hand hygiene, and respiratory etiquette;

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2. Be screened before entry into the business for new or worsening cough, shortness of breath, sore throat, loss of taste or smell, fever or a measured temperature greater than or equal to 100 degrees Fahrenheit, or known close contact with a person who is lab-confirmed to have COVID-19;
3. Wash or sanitize hands upon entering the business premises;
4. Wear face coverings; and
5. Maintain at least six feet of separation between one another.

Governor Abbott also relaxed restrictions on medical procedures and surgeries as contained in the original stay-at-home order. Beginning at 11:59 p.m. on April 21, all licensed health care professionals and health care facilities in the state may perform surgeries and procedures that are not medically necessary if the procedure will not deplete hospital capacity or personal protective equipment (PPE) needed to respond to COVID-19. The surgery or procedure will also be permitted if it is performed in a licensed health care facility, and the health care facility certifies in writing to the Texas Health and Human Services Commission that (1) it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients and (2) it will not request PPE from any public source.

### Local Orders Require Face Coverings

While DSHS's guidance only applies to nonessential retailers, many local governments are issuing their own orders requiring that employees of essential businesses wear face coverings. Dallas, Bexar (San Antonio) and Travis (Austin) counties are among the growing number of municipalities that are requiring face coverings at work.

While Dallas's order does not specify whose responsibility it is to ensure that affected employees do in fact wear face coverings, Bexar county's order explicitly states that the employer is responsible for providing face coverings and for training in their use. Similarly, the Travis County order provides that employers shall ensure compliance with the face covering requirements.

In complying with these new responsibilities, you should also be mindful of other legal obligations owed to your employees that may be impacted by these orders, such as OSHA safety requirements and applicable wage and hour laws.

### What Should Employers Do?

As you begin the process of reopening, you should familiarize yourself with our alert: 5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance. You should also keep handy our 4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our FP BEYOND



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THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

### **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 Texas offices, or any member of our Post-Pandemic Strategy Group Roster.

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