

LEGAL UPDATES

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Safer at Home in Denver: The City's Cautious Re-Opening

On May 9, 2020, the City and County of Denver entered the safer-at-home phase of the response to the coronavirus pandemic. Governor Polis had issued a Safer-at-Home Order last week, but the City's shutdown order, along with those of other cities in the metropolitan area, had remained in place. As of Saturday, Mayor Hancock issued guidance that, in effect, adopted the State's Safer-at-Home restrictions with the addition of a mandatory mask order discussed below. The City and the State will remain in this safer-at-home phase until at least May 26, 2020.

The safer-at-home phase is far from a return to pre-pandemic normal. Mandatory social distancing, prohibitions on gatherings of more than 10 people, forced isolation for the ill and business closures remain in place. Further, temperature and symptom screening, as well as increased protections for vulnerable individuals, are the new normal for critical business and non-critical businesses alike. The State has imposed substantial restrictions on employers during this phase that we detailed earlier. And both the City and State guidance encourage people to stay-at-home and employees to telework.

Despite the City's limited re-opening, the following businesses remain closed to public access: restaurants, cafes, bars and breweries for dine-in or sit-down services; gyms; movie and performance theaters; and horse tracks.

Non-critical retail, office-based businesses and manufacturing, however, may proceed to reestablish in-person operations. These three categories effectively encompass all of those office, retail and manufacturing businesses not designated as "critical" under Public Health Order 20-28 or explicitly prohibited from operating. For example, non-critical retail refers to clothing, home goods and electronics retail businesses.

To resume operations, Denver businesses must comply with the City’s “Face Covering Order,” restrictions on occupancy and social contact, and health-screening requirements. As of May 6, all members of the public in the City, including children age three or older, must wear face coverings outside the home or place of residence when they are inside a commercial or retail business; obtaining healthcare services; or riding or waiting for public transportation.

Office-based and retail businesses also cannot allow more than 50% of their employees to be present in the workplace. Non-critical manufacturing businesses, however, must operate with no more than 10 employees in a production environment. And all of these businesses must maintain six-foot social distancing in addition to implementing the following measures outlined in the City’s Guidance for Businesses:

clean and disinfect all high-touch areas;

post signage for employees and customers on safe hygiene;

ensure proper ventilation;

avoid meetings or groups of more than 10 employees, clients or customers;

limit the number of on-site customers in order to maintain 6-foot distancing;

implement symptom monitoring protocols such as temperature checks;

eliminate, or regularly clean and disinfect, any items in common spaces;

require employees with symptoms to stay home;

accommodate employees who are vulnerable individuals;

provide flexible options for employees with child or elder-care obligations;

use contactless payment solutions when possible;

provide appropriate PPE, like gloves, masks or face coverings, if employees are unable to provide their own; and

deputize a workplace coordinator to address COVID-19 issues.

The most problematic component of the State’s Safer-at-Home Order, and the one that has already been amended since its original issuance, is the requirement for employers to implement symptom monitoring and temperature checks. Under the amended order, large businesses with 50 or more employees in a single location are either to screen on-site or adopt a policy mandating at-home

employee self-screening and daily reporting protocols. Smaller businesses, in contrast, are required to implement protocols, conduct daily temperature checks and monitor employee symptoms to the “greatest extent possible.” When not practicable, employees at these small businesses may conduct self-assessment at home.

Few employers are capable of safely conducting on-site symptom monitoring and temperature checks. In a standard office or retail environment, where employees are unlikely to be trained in use of personal protective equipment, asking one employee to conduct daily checks of other employee’s temperatures is rife with potential for exposure. For those employers, they may avoid some risk by hiring outside nurses. But the more likely outcome is that large employers will comply with the State order by adopting a policy mandating that employees self-screen and report symptoms, and smaller employers will comply by requiring self-assessment at home.

Indoor malls generally remain excluded from the City’s re-opening. Only those stores within indoor malls with exterior entrances may re-open, while all other retail businesses lacking the exterior-entrance option must settle for conducting business by delivery or curbside pickup services.

Personal services, field services and limited healthcare businesses may re-open as well, subject to the above restrictions and certain industry-specific requirements. Personal services refer to those services not essential to one’s health and safety, including personal training, certain pastoral services, dog grooming, body art, hairstylists, barbers, cosmetologists and massage therapists. These businesses may operate by appointment only. Further, no more than 10 people or 50% of the location’s maximum occupancy, whichever is less, may be in a single location. Limited healthcare businesses—such as acupuncture, chiropractic care and physical therapy—must operate under the same restrictions.

Field services, encompassing in-person realty services, may resume operation provided they also keep detailed logs of customer interactions for later contact tracing and provide gloves and masks for all customer interactions.

Contact us

If you have further questions or require more information regarding this update, please contact Chris Ottele, Andrew Glenn or your Husch Blackwell attorney.

COVID-19 Return-to-Work Resource

For the many businesses that partially or completely shuttered their on-site operations due to government-mandated COVID-19 orders, transitioning employees back to the workplace is an

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unprecedented and complex endeavor. Husch Blackwell's Return-to-Work Resource Center provides best practices, answers to common questions and potential issues to consider.