

Insights

BACK TO WORK: GEORGIA'S REOPENING EXECUTIVE ORDER – RISKS AND GUIDANCE FOR BUSINESSES

Apr 27, 2020

SUMMARY

On April 20, 2020, Governor Brian Kemp signed an [Executive Order](#) which initiates the process of reopening businesses within the State of Georgia on April 24, 2020, and issued a subsequent [Executive Order](#) on April 23, 2020, providing further guidance on the process for reopening (collectively the “Orders”). These Orders, which are quite limited in scope, only grant a small subset of businesses permission to reopen. They do, however, pre-empt all local and city orders that are more or less restrictive than the state-wide Orders.

The Orders, while limited, nevertheless shed light on what the process of reopening will look like for additional business sectors going forward. All companies with locations in Georgia would be wise to invest time planning how they may implement screening, sanitation, and social distancing at their workplace to allow for a timely, safe and compliant reopening.

This Alert will examine what businesses are permitted to reopen, what restrictions exist for those businesses, and advice and guidance for companies that we anticipate will be affected by similar reopening orders in the future.

Businesses that are Permitted to Reopen

The Orders essentially permit businesses in two sectors to begin opening: private practice healthcare providers and certain specified retail businesses in the service sector.

The Orders permit and encourage the following healthcare businesses to reopen and begin treating patients as soon as practicable: medical practices, dental practices, orthodontics practices, optometry practices, physical therapists, ambulatory surgical centers, physicians performing elective surgeries, healthcare institutions, medical facilities, any other healthcare-related facility that elected to cease operations because of COVID-19.

The Orders also permit certain service industries which include gyms, fitness centers, bowling alleys, body art studios, cosmetologists, estheticians, hair designers, and massage therapists to begin in-person “Minimum Basic Operations” on April 24, 2020. The Orders define “Minimum Basic Operations” for these businesses to include allowing the businesses to open to the public.

The Orders continue to allow businesses classified as “Critical Infrastructure” according to the Department of Homeland Security’s Guidance on Essential Critical Infrastructure Workers to remain operational.

The Orders also permit restaurants to resume in-person operations and open with industry-specific restrictions on Monday April 27, 2020.

Restrictions on Reopening

The service industry businesses that are permitted to reopen are mandated by the April 20 Order to implement measures which mitigate the exposure and spread of COVID-19. These measures include:

- **Screening:** Businesses must screen and evaluate workers who exhibit signs of illness, including a fever over 100.4 Fahrenheit, and require such workers to not report to work or seek medical attention.
- **Sanitation:** Businesses must implement enhanced sanitation measures including required handwashing, providing personal protective equipment to their workers, posted notices that encourage hand hygiene, suspending the use of PIN pads and signature requirements where allowed, and providing disinfectant to employees.
- **Social Distancing:** Businesses must encourage social distancing by prohibiting gatherings of workers during working hours, permitting workers to take breaks outside, implementing telework and staggered shifts, holding all meetings virtually, delivering intangible services remotely, discouraging workers from using each other’s equipment or personal devices, prohibiting handshaking, and increasing physical space between workers and each other or customers by at least 6 feet.

Additionally, the April 20 Order explicitly prohibits businesses from allowing more than ten people to be gathered at a single location if the gathering requires people to stand or be seated within 6 feet of any other person.

The April 23 Order provides specific guidance for each type of service industry that is permitted to reopen based on the type of person-to-person contact likely to occur there. For example, retail establishments must limit patrons to 50% of the fire capacity, encourage patrons to use hand sanitizer upon entering, encourage non-cash payments, sanitize entrance and exit doors at least 3 times a day, encourage workers to report any safety and health concerns to employers, install

protective screens or other mitigation measures where work-patron interactions are likely, and provide additional hand sanitizer.

Liability for Claims Arising Out of Actions from the Order

For any business that chooses to reopen, the Order purports to shield such business from liability to third parties based on the actions that the businesses are required to take under the Order. This provision should provide some peace of mind to businesses deciding to reopen to the public so long as they fully comply with the guidance set forth in the Order and any subsequent regulatory pronouncements. Accordingly, businesses that choose to reopen have an added incentive to ensure they are enacting the screening, sanitation, and social distancing measures set forth in the Order.

Guidance for Business Reopening

While the Orders only affect certain sectors, future reopening orders will likely impose similar restrictions and guidance, so companies should consider what measures they will be required to implement. We suggest all businesses begin taking the following measures:

- Determine whether it is financially feasible to reopen if required to comply with the guidance set forth in the Orders.
- Determine what supplies and goods will be required to reopen and develop a plan for sourcing the same.
- Determine whether any physical modifications to the business will be required (i.e. barriers or screening between employees and customers and the spacing of payment terminal and cash registers).
- Develop a process for providing temperature screening for employees who are showing signs of illness and review sick leave policies in order to encourage any employee that is feeling unwell to stay home.
- Determine whether the nature of the business might also require screening of customers and develop a plan for the same including how customer will be informed of such requirement.
- Determine, based on square footage, how many customers can be accommodated at any one time and develop a process for queuing customers outside of the business or a reservation process.
- Identify the measures that can be taken to continue to keep the workplace sanitized in line with CDC, OSHA, and Georgia Department of Public Health guidance documents.
- Review employees' roles/functions to determine which employees can effectively work remotely within an undue impact on the business and evaluate how best to implement shift-

staggering of employees.

- Determine how to best implement the social distancing requirements including any support necessary to continue to maintain teleworking.
- Develop an enforcement mechanism for maintaining social distancing in the business including what notices and strategies can be used to maintain six feet of separation between employees or customers.
- Document each step of the process including the internal analysis and reasons and conclusions reached, the measures the company decides to implement, and the steps taken to execute the action plan.

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MEET THE TEAM



Christopher Paul Galanek

Co-Author, Atlanta

chris.galanek@bclplaw.com

[+1 404 572 6979](tel:+14045726979)

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