

[Labor & Employment Law Daily Wrap Up, WHITE HOUSE NEWS— President unveils COVID-19 reopening plan, \(Apr. 17, 2020\)](#)

Labor & Employment Law Daily Wrap Up

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The three-phase plan includes guidelines for employers and individuals at each phase.

After initially asserting that the authority to "reopen the country" rested solely in his hands, President Trump has walked it back and left that authority to the states, saying in written remarks for a press briefing about his [new reopening guidelines](#), "Governors will be empowered to tailor an approach that meets the diverse circumstances of their own states. Every state is very different If they need to remain closed, we will allow them to do that. And if they believe it is time to reopen, we will provide them the freedom and guidance to accomplish that task—and very, very quickly—depending on what they want to do."

Most constitutional scholars agree that the President lacks the authority to tell states whether to reopen or remain closed in response to the COVID-19 pandemic.

Trump also encouraged "states to work together to harmonize their regional efforts."

The White House has issued guidelines for a three-phase recovery that outlines, in each phase, the criteria to be met before a state or region proceeds to a phased reopening, how states should prepare, and the responsibilities of persons and employers at each phase.

Gating criteria. Under the guidelines, before states or regions begin a phased reopening, they should meet proposed "gating criteria." As to symptoms, states or regions should see downward trajectories of both influenza-like illnesses (ILI) and COVID-like syndromic cases reported within a 14-day period. There should also be a downward trajectory of either documented cases or positive tests as a percent of total tests (with a flat or increasing volume of tests) within a 14-day period. Further, under the gating criteria, hospitals should be treating all patients without crisis care and have a robust testing program in place for at-risk healthcare workers, including emerging antibody testing.

The guidance acknowledges that state and local officials may need to tailor application of the criteria to local circumstances. Where appropriate, governors should work on a regional basis to satisfy the criteria and to progress through the phases outlined.

Core state responsibilities. The guidance lays out the core preparedness responsibilities for states, which may represent an indication that the federal government's role will be minimized in terms of providing the tools necessary to mitigate the risk of COVID-19 spread.

Testing and tracing. The following are the criteria for testing and tracing:

- Ability to quickly set up safe and efficient screening and testing sites for symptomatic individuals and trace contacts of COVID+ results;
- Ability to test Syndromic/ILI-indicated persons for COVID and trace contacts of COVID+ results; and
- Ensure sentinel surveillance sites are screening for asymptomatic cases, and contacts for COVID+ results are traced (sites operate at locations that serve older individuals, lower-income Americans, racial minorities, and Native Americans).

Healthcare systems. States should also have the healthcare system capacity to quickly and independently supply sufficient Personal Protective Equipment and critical medical equipment to handle dramatic surge in need, as well as the ability to surge ICU capacity.

Planning. Further, states should have plans in place to:

- Protect the health and safety of workers in critical industries;
- Protect the health and safety of those living and working in high-risk facilities (e.g., senior care facilities);
- Protect employees and users of mass transit;
- Advise citizens regarding protocols for social distancing and face coverings;
- Monitor conditions and immediately take steps to limit and mitigate any rebounds or outbreaks by restarting a phase or returning to an earlier phase, depending on severity.

Three-phase approach. The guidance outlines three reopening phases:

1. For states and regions that meet the gating criteria;
2. For states and regions with no evidence of a rebound *and* that satisfy the gating criteria a *second* time; and
3. For states and regions with no evidence of a rebound *and* that satisfy the gating criteria a *third* time.

Employers at all phases. During *all phases*, the guidelines instruct employers to develop and implement appropriate policies, in accordance with federal, state, and local regulations and guidance, and informed by industry best practices, regarding:

- Social distancing and protective equipment;
- Temperature checks;
- Testing, isolating, and contact tracing;
- Sanitation;
- Use and disinfection of common and high-traffic areas; and
- Business travel.

Employers should also monitor their workforce for indicative symptoms and should not permit symptomatic people to physically return to work until cleared by a medical provider. Further, employers should develop and implement policies and procedures for *workforce* contact tracing following an employee COVID+ test.

Employers at Phase One. Under the guidelines, at Phase One, *all employers* should:

- Continue to *encourage telework*, whenever possible and feasible with business operations;
- If possible, return to work in phases;
- Close *common areas* where personnel are likely to congregate and interact, or enforce moderate social distancing protocols;
- Minimize *non-essential travel* and adhere to CDC guidelines regarding isolation following travel; and
- Strongly consider *special accommodations* for personnel who are members of a *vulnerable population*.

Vulnerable individuals include the elderly and people with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy.

Specific employers. The guidelines instruct the following for specific employers during Phase One:

- *Schools and organized youth activities* (e.g., daycare, camp) that are currently closed should remain closed;
- *Visits to senior living facilities and hospitals* should be prohibited, and those who do interact with residents and patients must adhere to strict protocols regarding hygiene;
- *Large venues* (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under strict physical distancing protocols;
- *Elective surgeries* can resume, as clinically appropriate, on an outpatient basis at facilities that adhere to CMS guidelines;
- *Gyms* can reopen if they adhere to strict physical distancing and sanitation protocols; and
- *Bars* should remain closed.

Employers at Phase Two. At Phase Two all employers should:

- Continue to *encourage telework*, whenever possible and feasible with business operations;
- Close *common areas* where personnel are likely to congregate and interact, or enforce moderate social distancing protocols;
- *non-essential travel* can resume; and
- Strongly consider *special accommodations* for personnel who are members of a *vulnerable population*.

Specific employers. The guidelines lays out the following for specific employers during Phase Two:

- Schools and organized youth activities (e.g., daycare, camp) can reopen;
- *Visits to senior care facilities and hospitals* should be prohibited, and those who do interact with residents and patients must adhere to strict protocols regarding hygiene;
- *Large venues* (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under moderate physical distancing protocol;
- *Elective surgeries* can resume, as clinically appropriate, on an outpatient *and* in-patient basis at facilities that adhere to CMS guidelines;
- *Gyms* can remain open if they adhere to strict physical distancing and sanitation protocols; and
- *Bars* may operate with diminished standing-room occupancy, where applicable and appropriate.

Employers at Phase Three. At Phase Three *all employers* can resume *unrestricted staffing* at worksites. As to special employers:

- *Visits to senior care facilities and hospitals* can resume, but those who interact with residents and patients must be diligent regarding hygiene;
- *Large venues* (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under limited physical distancing protocols;
- *Gyms* can remain open if they adhere to standard sanitation protocols; and
- *Bars* may operate with increased standing room occupancy, where applicable.

Guidelines for individuals. The guidelines also address practices for individuals through each phase of reopening. Notably, at *every phase*, individuals should:

- Wash their hands with soap and water or use hand sanitizer, especially after touching frequently used items or surfaces;
- Avoid touching their face;
- Sneeze or cough into a tissue, or the inside of their elbow;
- Disinfect frequently used items and surfaces as much as possible; and
- Strongly consider using face coverings while in public, and particularly when using mass transit.

Those who feel sick should stay home and not go to work or school, and contact and follow the advice of their medical provider.

News: WhiteHouseNews Covid19 FedTracker LaborEmployment Safety GCNNews