



States across the country are beginning to reopen or considering reopening following shutdowns in response to the COVID-19 pandemic. Though certain states, such as Georgia, Minnesota, Montana, New Hampshire, South Carolina, and Texas, have already issued orders in this regard, each state has developed (and states will continue to develop) differing standards, requirements, and phases to determine which businesses can open and when. Accordingly, as businesses plan to reopen, it is important to review and consider each state's specific guidance, as well as the guidance of federal, county, and municipal authorities.[\[1\]](#) We have outlined some issues below which businesses may want to consider when reviewing each of the orders and determining when or how to open for business.

## **Who Can Open and When?**

While the standards by which businesses may reopen varies among the states, many jurisdictions have begun to move beyond limiting business operations to "essential businesses," and have transitioned, or are transitioning, to permit certain retail and other operations to recommence with limitations. Georgia, for example, has opened nonessential businesses, such as malls, restaurants, gyms, and theaters, with restrictions, but not bars or nightclubs. Arizona, alternatively, will begin to allow retailers to reopen their physical locations beginning May 8, but indoor shopping malls are required to remain closed for the duration of the stay-at-home order, and any retailers located within an indoor shopping mall whose only entrance is through the shopping mall or other enclosed area may only operate through delivery or curbside service or appointment. Thus, a business with locations in multiple jurisdictions may have notably different opening dates and restrictions to comply with, which creates the need for site-specific policies and procedures.

## **What Does "Open" Mean?**

In preparing a business for reopening, it is important to consider what "open" means, as it will likely not mean "business as usual" yet. For example, in Texas, in-store retail services, dine-in restaurants, movie theaters, and shopping malls were allowed to open May 1 but are only allowed to operate at up to 25% of their total listed occupancy (or 50% of their total listed occupancy if the relevant county is in compliance with Texas Department of State Health Services requirements). In Ohio, previously closed retail facilities were allowed to reopen May 1 only for curbside pickup, delivery, or appointment, limited to 10 customers at any one time. Other jurisdictions allow reopening but require businesses to comply with social distancing requirements.

## **Are Businesses Required to Open?**

Most states' orders have remained silent on whether opening is required. Arizona, however, has specifically stated that retailers are not required to open for business. While states may be unlikely to enact any sort of requirement that businesses must open, businesses should consider whether any contractual requirements mandate reopening. As malls, offices, and other places of business open their doors, businesses should be aware of any lease requirements that require operation, and tenants and landlords should remain engaged in dialogue to avoid any potential defaults. Similarly, businesses should review any loan agreements or financial arrangements to confirm whether these include operating covenants or other provisions which may require the business to reopen as the applicable jurisdictions remove operational restrictions.

## **If a Business Cannot Fully Reopen Due to a Shelter-in-Place Order That Is Still in Effect, Are Any Business Activities Allowed at the Applicable Location?**

In states where shelter-in-place orders are still in effect, some businesses may still be allowed to perform specified operations subject to certain restrictions. Building maintenance or management, for instance, has typically been defined as an essential service in most states to avoid any impacts to infrastructure. Several states, such as Illinois and Delaware, are allowing retail or other non-essential businesses to reopen to the public for the limited purpose of fulfilling telephone or online orders. In Illinois, orders are allowed to be picked up outside the

store or through delivery. In Delaware, curbside pickup is prohibited but businesses may deliver orders. As such, businesses operating in states with shelter-in-place orders should review each order carefully to determine if any of their business operations are permitted.

### **What Are Some Reopening Requirements or Recommended Procedures?**

States with more thorough plans are providing both mandates and recommendations for safe reopening. Others are providing minimal guidance in the form of mandates and referring businesses to the CDC and/or OSHA standards for suggestions. Procedures that businesses may need to implement include screening of customers and employees, increasing sanitation, requiring face coverings, implementing social distancing, and displaying notices and signage. New Hampshire and Georgia are requiring screening of workers for symptoms, with New Hampshire [requiring employers to document](#) the temperature of all employees daily before their shift. Signage reminding customers of best hygiene practices are recommended or required by Iowa, Tennessee, Texas, and many other states. Certain states, including Colorado and Tennessee, are encouraging both employees and customers to wear face coverings, while others, such as Maine, require that all employees and customers wear masks. Certain other states, like Louisiana, have limited their face mask mandates to employees only. Many guidelines are aimed at maintaining at least six feet between patrons.

Several orders provide requirements or guidance on the reopening of specific areas of business. Several states require training for restaurants around the preparation and serving of food, and some only allow in-person dining to take place in outdoor dining locations. In New Hampshire, beauty salons, barbershops, and cosmetology businesses are only allowed to perform specific services for clients, with hair drying being prohibited. North Dakota has established a set of universal protocols as well as industry-specific standards for reopening, which includes partial reopening of certain facilities (e.g., a gym may reopen; however, it may not reopen certain sub-areas like a pool or childcare facility until a later phase).

### **Are There Specific Procedures to Implement Social Distancing?**

Reopening orders emphasize the importance of physical space and provide guidance on how to encourage proper distancing. Georgia's executive order 04.23.20.02 mandates that open sales registers must be at least six feet apart. Utah recommends that retail establishments create one-way aisles and install clear partitions between cashiers and customers. Floor stickers marking the appropriate distance between customers in checkout lines or store-entry lines, as recommended by Tennessee and New Hampshire, can encourage compliance with the six-foot spacing requirement.

### **Are There Any Payment Methods Recommended or Required?**

Some states are even detailing mandatory procedures for reducing contact during payment. Georgia requires stores to suspend the use of the PIN pads, electronic signature capture, and any other credit card receipt signature requirements to the extent permitted by credit card company agreements. Arkansas is requiring either contactless payment systems or the disinfecting of all payment portals, pens, and styluses after each use. Texas recommends contactless payment and Alaska suggests retailers conduct cashless and receipt-less transactions. Other states have simply suggested preferred methods of payment. For example, New Hampshire suggests businesses should

use electronic payment methods, but permits retailers to continue to accept payment by cash or check. Regardless of the method of payment, most reopening orders make one thing clear—frequent cleaning and disinfecting of electronics, checkout lanes, and shared resources is essential.

## **What Are Some Personnel Considerations?**

With regard to personnel issues, most states are requiring that at least public-facing employees wear face masks and receive training on cleaning and disinfecting protocols. As discussed above, a number of states are also requiring that employers test employees at the commencement of their shifts and send home employees with a temperature or signs of respiratory illness. Most states require sick workers stay home; however, only some states, like New York, have adjusted sick leave requirements in light of COVID-19. Additionally, some states, including Montana, are requiring or suggesting that employers take steps to reduce employee congregation by eliminating break rooms and other common areas.

The regulatory landscape is challenging and quickly developing. Each jurisdiction and industry is unique. In this time of disruption and uncertainty, the attorneys at Perkins Coie are here to help clients navigate through these evolving and complex issues.

## **Endnotes**

[\[1\]](#) When formulating plans for reopening, businesses need to comply not only with the state-level orders and guidance, but also with any applicable federal, county, and municipal requirements, including health and licensing boards. Perkins Coie recommends that businesses thoroughly review such requirements to ensure compliance.

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