

LEGAL UPDATES

PUBLISHED: JUNE 4, 2020

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Labor & Employment

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Governor Polis's "Safer at Home and In the Vast, Great Outdoors" Order Opens Up Parts of Colorado's Recreation Sector, While Continuing Restrictions on Office-Based Businesses

On June 2, 2020, Governor Polis issued Executive Order D 2020-091, "Safer at Home and in the Vast, Great Outdoors" (the "EO"). The order continues to strongly encourage such now-familiar precautions as social distancing and face coverings in public, but opens up certain recreational activities in the "vast" Colorado outdoors, which can be enjoyed while maintaining social distance. To that end, recreational sports leagues, swimming pools, gyms, recreation centers, outdoor equipment rentals, guided fishing and hunting, rafting and Jeep tours, and ski resort activities are allowed to resume with restrictions. Houses of worship are also allowed to resume indoor services at 50% occupancy.

Consistent with the EO's directives, the Colorado Department of Public Health and Environment (CDPHE) issued a fifth amended Public Health Order (PHO) with detailed requirements for Colorado residents and businesses. By and large, not much changed in this PHO for most Colorado employers with the exception that additional businesses, largely in the recreation sector, will soon be required to provide emergency paid sick leave to their employees under the Colorado HELP Law. The law provides for up to two weeks' leave, paid at two-thirds the employee's regular rate of pay, who experience COVID-like symptoms and seek to be tested, or who are instructed by a healthcare provider to quarantine. The EO directs the Colorado Department of Labor and

Environment (CDLE) to expand the HELP law's applicability to employers that are reopening under the EO.

The EO and PHO continue to protect "vulnerable individuals" (persons at risk of severe illness from COVID-19):

- individuals who are 65 years and older;
- individuals with chronic lung disease or moderate to severe asthma;
- individuals who have serious heart conditions;
- individuals who are immunocompromised;
- pregnant women; and
- individuals determined to be high risk by a licensed healthcare provider.

The EO removed language from the prior EO that had encouraged vulnerable individuals to stay home except to perform necessary activities (such as doctor visits or grocery shopping) or work at essential businesses. Instead, the new EO urges vulnerable individuals to stay at home as much as possible, limit their social interactions, remain at least six feet from others not in their household, and wear face coverings in public. Not surprisingly, the prior mandate that vulnerable individuals cannot be compelled to provide in-person work continues in effect. Employers must also continue to accommodate vulnerable individuals, employees living with vulnerable individuals and employees with childcare responsibilities.

The EO directed CDPHE to specifically identify the businesses, industries, sectors, activities, or events that remain closed. The PHO continues the closure of:

- bars, taverns, brew pubs, breweries, microbreweries, distillery pubs and wineries;
- cigar bars;
- movie and performance theaters except for drive in movie theaters, opera houses, concert halls and music halls; and
- casinos, amusement parks and arcades.

All other businesses or activities not addressed in the EO or the PHO are permitted to operate in accordance with "general guidance" from CDPHE concerning group limitations, social distancing requirements, and sanitation and cleaning protocols.

The restrictions imposed under prior iterations of the PHO as applied to restaurants, critical businesses, non-critical retail and office-based businesses, personal services, limited healthcare settings, and non-critical manufacturing, are largely unchanged and continue in effect. Non-critical retail and office-based businesses remain subject to the 50% operational-capacity restriction. In addition, all businesses, with some exceptions, must:

deputize a workplace coordinator(s) charged with addressing COVID-19 issues;

maintain six foot separation between employees and discourage shared spaces;

clean and disinfect all high touch areas;

post signage for employees and customers on good hygiene;

ensure proper ventilation;

avoid gatherings of more than 10 people; and

implement symptom monitoring protocols, conduct daily temperature checks and monitor symptoms in employees at the worksite to the greatest extent possible.

In addition, employers with over 50 employees in a location must continue to screen all employees for symptoms, either by setting up onsite symptom screening stations or creating a business policy that requires daily at-home self-screening and reporting of the results to the employer before entering work.

Contact us

If you have further questions or require more information regarding this update, please contact Stacey Bowman, Erik Dullea, Chris Ottele 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 unprecedented and complex endeavor. Husch Blackwell's Return-to-Work Resource Center provides best practices, answers to common questions and potential issues to consider.