

PA Governor Orders Targeted Mitigation Measures, Including Telework Unless Not Possible

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Labor and Employment Alert

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On July 15, 2020, Governor Tom Wolf of Pennsylvania issued an Order (the Governor's Order) that included a requirement for businesses to conduct their operations through employee teleworking unless not possible. The Governor explained that while the Commonwealth's mitigation efforts to date have helped curtail the spread of COVID-19 without overwhelming medical resources, the number of positive cases continues to rise. The Governor reported that the Pennsylvania Department of Health has seen new increases in cases due to community spread and that there remains an urgent need to further efforts to slow this increase to avoid more-stringent strategies per previous Orders. In addition to requiring businesses to continue employee telework where possible, the Governor's Order includes a number of other key directives.

Bars, Restaurants and Private Catered Events

All bars are prohibited from conducting operations unless they offer sit-down, dine-in meals or take-out sales of alcoholic beverages; bar service is prohibited. Occupancy requirements are limited to 25% of stated fire code maximum occupancy for indoor dining (a reduction from the 50% occupancy in the "Green Phase") and a discrete indoor event within a bar is limited to 25 persons.

All restaurants and private catered events must continue to adhere to the Guidance for Businesses in the Restaurant Industry Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public, dated May 27, 2020 and updated on June 17, 2020 (the Guidance). As with bars, occupancy is limited to 25% of the stated fire code maximum (a reduction from the 50% occupancy in the "Green Phase") and a discrete indoor event is limited to 25 persons. Additionally, customers being served must be seated at a table and the maximum occupancy limit *includes* staff. Social distancing, masking and other mitigation measures must be employed to protect workers, patrons and visitors. Alcohol can be served for on-premises consumption in conjunction with a meal. Take-out sales of alcohol for off-site consumption are permitted per Pennsylvania law.

Nightclubs

Nightclubs are prohibited from conducting operations.

Events and Gatherings Other Than Those in the Retail Food Services Industry

Indoor events and gatherings of more than 25 persons are prohibited. Outdoor events and gatherings of more than 250 persons are prohibited. The maximum occupancy limit *includes* staff.

Teleworking

Unless not possible, all businesses are required to conduct their operations in whole, or in part, remotely through individual teleworking of their employees in the jurisdiction or jurisdictions in which they do business. Where telework is not possible, employers may allow employees to conduct in-person business operations, provided that the business fully complies with all substantive aspects of current

and future orders issued by the Governor's Office, the PA Department of Health and the Centers for Disease Control and Prevention (CDC).

Gyms

All gyms and fitness facilities, while permitted to continue indoor operations, are directed to prioritize outdoor physical fitness activities.

Implications for Pennsylvania Employers

Employers must reassess their telework policies and procedures. The Governor's Order differs from previous guidance, including "Green Phase" guidance, which "strongly encouraged" continued telework. The Governor's Order provides that Pennsylvania employers are required to conduct operations in whole, or in part, remotely through employees teleworking in the jurisdiction or jurisdictions in which they do business unless that is not possible, in which case the employees may conduct in-person business operations, so long as the business fully complies with prior applicable orders issued by the Governor's Office, the PA Department of Health and the CDC.

The prior applicable orders include an Order from the Department of Health requiring face coverings when individuals are engaged in work at the workplace and while performing work off-site when:

- interacting in person with any member of the public;
- working in any space visited by members of the public;
- working in any space where food is prepared or packaged;
- working in or walking through common areas; or
- in any room or enclosed area where other people, except for members of the person's own residence or household, are present when unable to physically distance.

There are limited exceptions to the face covering requirement

The Governor's Order is effective July 16, 2020 and further provides that it will be enforced by all Commonwealth agencies. The agencies have been directed to increase enforcement efforts.

To the extent Pennsylvania employers conduct in-person employee operations, it is essential to be familiar with and incorporate the requirements set forth in the Guidance. Those requirements include face coverings, safety signs, limits on occupancy, cleaning protocols and procedures for handling cases of COVID-19. Based on the Governor's remarks during his recent press conference that included heavy criticism for people that have ignored public health orders and the alarming escalation in new coronavirus infections, we anticipate increased enforcement of state and federal requirements. Our attorneys are available to assist in the assessment of telework "when possible" and procedures related to in-person operations when telework is not possible as well as assisting restaurants and other hospitality businesses navigate the stricter operating directives contained in the Governor's Order.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.