

Puerto Rico Starts on Path to Reopening, Requires Employers to Certify Exposure Control Plan

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On May 1, the Governor of Puerto Rico issued [Executive Order 2020-038](#) (the Order) effectively extending the existing lockdown order, but expanding the scope of services and businesses exempt from limitations on business operations. The Order, which takes effect on May 4 and expires on May 25, also obligates employers to certify the existence of a plan to limit employee's exposure to COVID-19 prior to opening.

Exposure Control Plan and Certification Must Be Submitted to PR DOL

All employers allowed to operate under EO 2020-038 must prepare an Exposure Control Plan to manage the risk of employee contagion of the COVID-19. This Plan should be based on [OSHA's Guidance on Preparing Workplaces for COVID-19](#) and employers must certify they have complied with this mandate before restarting operations.

Employers must submit the Plan to the Puerto Rico Department of Labor and Human Resources, along with a self-certification form. Employers who were already allowed to operate under previous executive orders must submit this certification as soon as possible, but are not prohibited from operating in the meantime.

The PR DOL is responsible for publishing guidelines for submitting the self-certification. To that effect, the PR DOL published Circular Letter [2020-03](#) establishing that an employer's Plan should include the following "essential elements," among others:

1. It must be a written document, specific to the workplace and contemplates the particular tasks, the physical structure and the number of employees.
2. It must be exclusive to a particular workplace.
3. General information about COVID-19.
4. Recommendations issued by local, national, and international health agencies regarding controls to prevent the spread of COVID-19.
5. Establishes the risk classification according to the level of occupational exposure (high risk, medium risk, or low risk).
6. Details the monitoring or screening process of personnel prior to entering the workplace.
7. Indicates the number of employees designated to work per day.
8. Indicates the modifications to the designated areas for eating.
9. Indicates the control measures that will be taken to achieve the physical distance between employees and clients or the public.
10. Indicates how adequate ventilation will be provided to ensure adequate air flows and, in locations with air conditioning systems, effective filtering.
11. Includes and details the method that will be implemented for cleaning and disinfecting the establishment, and the frequency of cleaning and disinfection of the work areas.
12. Details the hygiene methods for employees, such as the areas designated for hand washing, use and distribution (by the employer) of hand sanitizer, alcohol, antibacterial soap, and so on.
13. Instructs frequency for employees to wash their hands.
14. Describes necessary personal protective equipment (PPE) for employees, to be provided by the employer free of cost.
15. Details the procedure in the event of a symptomatic employee or positive diagnosis.
16. Details the practices of monitoring positive cases and the inclusion in the Registry of Injuries and Diseases (Form OSHA 300).
17. Details employer management of employees who are part of high-risk groups (including pregnant women, those over 65 years, and staff with comorbid conditions).

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18. Establishes the compulsory use of naso-buccal covers (masks).
19. Includes evidence of training employees in the correct use, limitations, and disposal of PPE.
20. Includes evidence of discussion of the contingency plan with employees.
21. Includes the designated person to constantly evaluate the work areas in order to monitor the development of new risk areas and needs in relation to the COVID-19 pandemic.
22. Includes the way in which the Plan was discussed prior to its implementation with any union and compliance with the applicable collective bargaining agreement.

Training Requirements for Manufacturing and Construction Sectors

Under the Order, construction and manufacturing operations that were not previously exempt from the lockdown may take place beginning on May 11, as long as strict measures to prevent employee contagion of COVID-19 are implemented and employees are provided orientation and training as to these new measures.

Order 2020-038 also authorized supply of materials for the construction industry, including cement distribution and related products, as well as the supply of material, inventory, and support services for the manufacturing sector.

Other Points

- On May 4 and May 13, from 5:00 a.m.-2:00 p.m., up to five employees of a non-exempt business may go to the workplace to process payroll. On May 5, up to five employees of a non-exempt businesses may go the workplace to pick up equipment to facilitate remote work.
- The mandatory 14-day quarantine remains in effect for persons diagnosed with COVID-19 or with reasonable suspicion of exposure to or infection with the COVID-19.
- All businesses allowed to open to the public must ensure their patrons wear masks or cloths to cover their nose and mouth and maintain six feet of distance. Business also must ensure that employees: wash their hands and use hand sanitizers before, during, and after their shifts; use PPE; and provide patrons with mechanisms to disinfect hands while in their establishment.
- Walking, jogging, bicycling, and walking with children or pets are permitted outside between 5:00 p.m.-3:00 p.m., as long persons maintain six feet between them and use face masks. Beaches, tracks, parks, and gyms remain closed to the public.
- Elective surgeries are permitted in hospitals subject to the adoption of health and safety protocols, which must be certified by the institution. Testing the patient for COVID-19 is recommended prior to undergoing elective surgeries.

Jackson Lewis attorneys are available to assist employers in evaluating issues with new workplace protocols and assessing the labor and employment issues employers must address in the workplace in response to COVID-19.

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