

April 30, 2020

*COVID-19 Daily Briefing Recap*

## Opening Up America Again

What Do the White House Guidelines Mean for Employers?

Please note that the following is a recap of our COVID-19 Daily Briefing from April 30, 2020. Due to the rapidly evolving nature of the pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s [COVID-19 resource page](#) for updates on workplace impacts and [sign up here](#) to receive invitations to future daily COVID-19 webinar briefings and email updates on ongoing legal and workplace health challenges.

### **The Opening Up America Again Guidelines**

- Issued by the White House on April 16, 2020.
- Three-phased approach driven by specific data.
- Based on input and advice from public health authorities.
- Intended to:
  - Mitigate the risk of resurgence.
  - Protect the most vulnerable populations.
  - Be implemented, at governors' discretion, on a statewide or county-by-county basis.

### **How the Federal Guidelines Work**

#### **Gating Criteria**

- Before reopening, states should consider whether they have met the following objective "gating criteria:"
  - Downward trajectory of influenza-like and COVID-like illnesses within a 14-day period.
  - Downward trajectory of documented COVID-19 cases or positive tests within a 14-day period.
  - Area hospitals have sufficient resources for treatment, testing and PPE.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Reproduction of this material in whole or in part is prohibited without the express prior written consent of Jackson Lewis P.C., a law firm focused on labor and employment law since 1958. Our 950+ attorneys located in major cities nationwide help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse.

- States that are reopening should have preparedness plans in place to protect the health and safety of:
  - Employees and residents in high-risk facilities, e.g., senior care facilities.
  - Employees in critical industries, which are largely defined at the state and local level.
  - Employees and users of mass transit.

### The Federal Guidelines Are Not Binding

- While employers should be familiar with the federal guidelines, states can make their own decisions and are adopting varying guidelines.
- Employers must comply with state and local directives.

## Employer Guidelines

The federal guidelines recommend that states follow the three-phase reopening plan described below and outline suggested employer responsibilities.

### All Phases

During all phases of reopening, employers should:

- Develop and implement appropriate policies regarding:
  - Social distancing
  - PPE
  - Temperature checks
  - Sanitation
  - Business travel
  - Use and disinfection of common and high-traffic areas
- Monitor their employees for symptoms.
- Not allow symptomatic employees to return to the workplace until they are cleared to do so:
  - The specific requirements for clearing employees to return to work may vary at the state and local level.
- Develop and implement policies and procedures for workforce contact tracing following positive COVID-19 tests.

**Please note:** The federal guidelines include additional recommendations for certain types of businesses and organizations, including schools, daycare centers, senior care facilities, hospitals, places of worship, restaurants, bars, movie theaters, sporting venues, and gyms.

### Phase One

States and regions can initiate Phase One when they have satisfied the gating criteria. During this phase of reopening, employers should:

- Return their employees to work in stages:
  - Consider bringing critical operations back first with remaining support workforce to follow in stages.
  - It may be helpful to create a timeline describing the stages of your reopening.
  - Some state and local orders currently limit the percentage of your workforce that can be in the workplace at any one time.
  - **Please note:** If you are reopening in stages, ensure that your selection criteria are based on legitimate, non-discriminatory business reasons.

- Encourage telework.
- Close or limit access to common areas like breakrooms and conference rooms, or enforce strict social distancing protocols.
- Minimize non-essential travel and follow CDC guidelines for isolation upon return from travel.
- Consider providing special accommodations for employees in “vulnerable populations” as defined by the federal guidelines and the CDC:
  - Those aged 65 and above.
  - Those with underlying health conditions, including but not limited to high blood pressure, chronic lung disease, and asthma.
  - **Please note:** Employers must ensure that any actions taken in this regard do not run afoul of the ADA and ADEA anti-discrimination laws:
    - We do not recommend programs that affirmatively ask employees if they have an underlying health condition.
    - Instead, as you provide updates on your reopening plan, invite your employees to raise any concerns they have about returning to work.

## Phase Two

States and regions can initiate Phase Two when they have no evidence of a rebound and satisfy the gating criteria for a second time. During this phase of reopening, employers should:

- Continue to encourage telework.
- Continue to close or limit access to common areas, or enforce strict social distancing protocols.
- Resume non-essential travel.
- Continue to provide special accommodations for employees in “vulnerable populations.”

## Phase Three

States and regions can initiate Phase Three when they have no evidence of a rebound and satisfy the gating criteria for a third time. Once these criteria have been met, employers can return to unrestricted staffing of worksites.

## What Does This Mean For Me?

- The federal guidelines are not binding on states.
- Employers should be familiar with the federal guidelines as they will be the basis for many elements of state and local orders.
- Develop a reopening plan that makes sense for your business; if you have operations across multiple states, you should be familiar with the federal guidelines but you must follow state and local orders in all of your jurisdictions.

## What if I have more questions?

As issues and concerns around COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with [Jackson Lewis' latest available information and resources](#).

If you have any questions, please contact the Jackson Lewis attorneys with whom you regularly work.