



Update from Benesch's **Labor & Employment** Practice Group

Trump Administration Announces Guidelines for “Opening Up America Again,” Including Recommendations for Employers



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On April 16, 2020, the Trump administration published “Guidelines: Opening Up America Again.” The Guidelines are not binding; individual states must decide if and/or how to incorporate the Guidelines. The Guidelines include recommendations for employers, which are the focus of this Alert, as well as for individuals in their daily lives. Even though advisory, employers should be prepared to follow the practices outlined in the Guidelines to mitigate the risk associated with returning to operations as COVID-19 business restrictions are eased.

Gating Criteria

The Guidelines articulate a three-phase approach to returning to normal business operations, with a three-pronged “gating criteria” that states/regions should meet prior to entering the first phase:

- **Symptoms:** Within a 14-day period, there should be a downward trajectory of (1)

influenza-like illnesses reported and (2) COVID-like cases reported.

- **Cases:** Within a 14-day period, there should be a downward trajectory of (1) documented COVID-19 cases, or (2) positive COVID-19 tests as a percent of total tests.
- **Hospitals:** Hospitals should be treating all patients without crisis care and there should be a robust testing program in place for at-risk healthcare workers, including antibody testing.

***The guidelines offer no specific numbers/ ranges as to what is a “downward trajectory.”*

Three Phases

Once the gating criteria are satisfied, states/regions are encouraged to proceed through three phases of progressively eased restrictions. The applicability of each phase is:

- **Phase One:** States/regions that satisfy the gating criteria.
- **Phase Two:** States/regions that can satisfy the gating criteria a second time (i.e., for a second 14-day period with no evidence of rebound).
- **Phase Three:** States/regions that can satisfy the gating criteria a third time (i.e., for a third 14-day period with no evidence of rebound).

Vulnerable Individuals

The Guidelines recommend more stringent protocols for “vulnerable individuals,” who are defined as:

- “Elderly” individuals (no age specified), and
- Individuals with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised.

***The Guidelines recommend that those individuals who return to work/public activities and live with, or regularly interact with, these “vulnerable individuals” isolate themselves from vulnerable individuals.*

Employer Guidelines—All Phases

The Guidelines recommend that through all phases of reopening (and perhaps beyond), employers adopt policies addressing:

- Social distancing and protective equipment
- Temperature checks
- Testing, isolating, and contact tracing
- Sanitation
- Use and disinfection of common and high-traffic areas
- Business travel

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- Workforce monitoring for indicative symptoms
- Barring symptomatic employees from physically returning to work until cleared by a medical provider.

Beyond these overarching recommendations, the Guidelines address specific actions for employers at each phase:

Phase One Recommendations for Employers

- Employers should continue to encourage telework whenever possible.
- Common areas where personnel are likely to congregate should either be closed, or strict social distancing protocols should be followed.
- Non-essential travel should be minimized, and CDC guidelines regarding isolation following travel should be followed.
- “Special accommodations” should be “strongly consider[ed]” for employees who are Vulnerable Individuals.

Phase Two Recommendations for Employers

- Telework should continue to be encouraged whenever possible.
- Common areas should continue to be closed, or *moderate* social distancing protocols should be followed.
- Non-essential travel can resume.
- Special accommodations for personnel who are Vulnerable Individuals should continue to be considered.

Phase Three - Return to Unrestricted Staffing

Only after a state/region has satisfied the Phase Three criteria is it recommended that businesses return to unrestricted staffing.

This table summarizes the Guideline’s key phased recommendations for employers:

Topic	Phase One	Phase Two	Phase Three
Telework	Encourage whenever possible	Encourage whenever possible	Resume unrestricted staffing of worksites
Common area	Closed, or follow strict social distancing	Closed, or follow moderate social distancing	
Non-essential travel	Minimized	Can resume	
Vulnerable population	Special accommodations	Special accommodations	

Guidance for Specific Businesses

The Guidelines also provide reopening guidance tailored to specific types of employers:

Employer	Phase One	Phase Two	Phase Three
Schools	Remain closed	Can reopen	Remain open
Senior Care Facilities and Hospitals	Visits should be prohibited	Visits should be prohibited	Visits can resume
Large Venues (e.g., restaurants, churches, theaters)	Operate under strict physical distancing protocols	Operate under moderate physical distancing protocols	Operate under limited physical distancing protocols
Gyms	Can open with strict physical distancing, sanitation protocols	Can open with strict physical distancing, sanitation protocols	Remain open with standard sanitation protocols
Bars	Remain closed	Operate with diminished standing room occupancy	Operate with increased standing room occupancy

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Key Takeaway—Be Prepared

Ultimately, businesses should look for the state and local governments where they operate to issue binding protocols for a return to normal operations. However, we would expect that these federal Guidelines will be an important resource for the state and local officials crafting the operable rules. And, from a risk management perspective, these Guidelines represent government-endorsed best practices that employers should consider regardless of the specific rules that are implemented where they operate. For those employers who are returning employees to work, whether in part or total, new procedures, e.g., temperature checks; masks, will need to be considered as the “new normal.”

For More Information

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