

CLIENT ALERT

White House Issues Guidance on “Opening Up America Again”

April 17, 2020

On April 16, 2020, the White House published non-binding guidelines for states and localities to consider in determining when and how to reopen businesses, schools, and other gatherings, and lift other COVID mitigation restrictions. Entitled “Opening up America Again” (Guidelines), the Guidelines are a set of recommendations for a three-phased reopening in jurisdictions that satisfy broad “gating criteria” based on evaluation of data related to symptoms, COVID cases, and hospital loads and capacity. The Guidelines do not have the force of law or federal regulation. State and local officials do not have to apply any of the criteria in determining how to lift restrictions or require that employers satisfy any of the White House recommendations discussed below. Nevertheless, it’s reasonable to assume that a number of jurisdictions will incorporate some of the criteria and a phased implementation methodology contemplated by the Guidance.

The Guidelines issued by the White House do not recommend any timeline for when the first phase of reopening ought to begin. The Guidelines do, however, put the onus on states to ensure “core” preparedness, advising that before the first phase states should have in place the ability to deploy testing for symptomatic individuals and trace contacts of people testing positive for COVID, and also that states should “independently” be able to provide PPE and critical medical equipment for its health care system to handle “a dramatic surge” in need. The Guidelines do not address how states or localities are to acquire the testing and tracing capacity, how it would be paid for, or how states should address the shortage of PPE and critical medical equipment.

Gating Criteria

The White House has proposed gating criteria to be satisfied at the state or regional level before state and local officials proceed to a phased opening.

The gating criteria are:

1. Symptoms: downward trajectory of influenza-like illnesses (ILI) reported within a 14-day period **and** downward trajectory of covid-like syndromic cases reported within a 14-day period; **and**
2. Cases: either downward trajectory of documented cases within a 14-day period **or** downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests); **and**
3. Hospitals: treat all patients without crisis care **and** robust testing program in place for at-risk healthcare workers, including emerging antibody testing.

The Guidelines acknowledge that the criteria may need to be tailored for local circumstances in light of variances within states (*e.g.*, between metropolitan vs. rural areas). Governors are encouraged to work on a regional basis, something governors in six Northeastern states, seven Midwestern states, and the three Pacific coast states have already commenced.

Employer Roles & Responsibilities During All Three Phases

The Guidelines also suggest that employers assume responsibility for monitoring their workforce for symptoms of COVID and also develop procedures for workforce contact tracing following an employee's positive test for corona virus. The Guidelines do not address the how such testing capacity would be made available to employers or who would fund it.

The Guidelines recommend that, during each phase, an employer should:

- Develop and implement appropriate policies, in accordance with federal, state, and local regulations and guidance, and informed by industry best practices, regarding such topics as social distancing and protective equipment; sanitation; and business travel;
- Monitor its workforce for indicative symptoms, including prohibiting symptomatic people from physically returning to work until cleared by a medical provider; and
- Develop and implement policies and procedures for workforce contact tracing following employee COVID+ tests.

Phase One

Once states and regions have satisfied the gating criteria, the Guidelines recommend that states proceed with Phase One of the reopening.

During Phase One, the Guidelines recommend that employers:

- Continue to encourage teleworking, whenever possible and feasible with business operations;
- If possible, return to work in phases;
- Close common areas or enforce strict social distancing protocols;
- Minimize non-essential travel and adhere to CDC guidelines regarding isolation following travel; and
- Strongly consider special accommodations for personnel who are members of a vulnerable population (*e.g.*, elderly individuals and individuals with serious underlying health conditions).

The Guidelines recommend that following types of entities remain closed during Phase One:

- Schools and organized youth activities (such as daycare) that are currently closed; and
- Bars.

While the Guidelines propose that the following types of entities be allowed to reopen during Phase One, it should come with heightened protocols:

- Large venues(*e.g.*, sit-down dining, movie theaters, sporting venues, places of worship) would operate under strict physical distancing protocols; and
- Gyms would open if they adhere to strict physical distancing and sanitation protocols.

With respect to the health care industry, the Guidelines propose that during Phase One:

- Visits to senior living facilities and hospitals should be prohibited.
- Elective surgeries can resume, as clinically appropriate, on an outpatient basis at facilities that adhere to CMS guidelines.

Phase Two

The Guidelines recommend that only once states and regions have no evidence of a rebound of COVID during Phase One and satisfy the gating criteria for a second time should they proceed with Phase Two of the reopening.

During Phase Two, the Guidelines recommend that employers:

- Continue to encourage teleworking, whenever possible and feasible with business operations;
- Keep common areas closed or enforce moderate social distancing protocols; and
- Strongly consider special accommodations for personnel who are members of a vulnerable population.

The Guidelines also propose that non-essential travel can resume during Phase Two.

The Guidelines propose that the following types of entities may reopen during Phase Two:

- Schools and organized youth activities (such as daycare) that are currently closed; and
- Bars must operate with diminished standing-room occupancy, where applicable and appropriate.

The Guidelines propose that the following types of entities may remain open during Phase Two either with the same heightened protocols or a moderate relaxation of protocols:

- Large venues can operate under moderate physical distancing protocols; and
- Gyms can remain open if they adhere to strict physical distancing and sanitation protocols.

With respect to the health care industry, the Guidelines propose that during Phase Two:

- Visits to senior living facilities and hospitals should continue to be prohibited.
- Elective surgeries can resume, as clinically appropriate, on an outpatient and in-patient basis at facilities that adhere to CMS guidelines.

Phase Three

The Guidelines propose that only states and regions that have no evidence of a rebound during Phase Two and satisfy the gating criteria a third time proceed to Phase Three of the reopening.

During Phase Three, the Guidelines recommend that employers be permitted to resume unrestricted staffing of worksites.

Only during Phase Three do the Guidelines propose that visits to senior care facilities and hospitals resume. The Guideline recommends the restrictions remain on only the following limited set of employers:

- Large venues can operate under limited physical distancing protocols;
- Gyms can remain open if they adhere to standard sanitation protocols; and
- Bars may operate with increased standing room occupancy, where applicable.

Tracking the Reopening Beyond the White House Guidance

The Guidelines provide only broad stroke recommendations for states to consider in determining when and how to lift COVID mitigation restrictions. The meaningful details and decisions will be up to the governors. The challenge of tracking the reopening planning and roll-out requirements for multi-state employers may be somewhat easier than the often conflicting shut down orders, as governors in certain parts of the country have pledged to coordinate and cooperate in assessing reopenings within their regions.

A link to the Guidelines can be found [here](#).

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