

## Illinois Begins—and Chicago Prepares for—Phase 3 of Reopening

May 29, 2020

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On May 5, 2020, Governor J.B. Pritzker released “[Restore Illinois](#)” (“Plan”), a five-phased plan to safely reopen the Illinois economy. Declaring the state ready for the next phase of the Plan, Governor Pritzker recently issued Phase 3 industry-specific [guidance](#) as part of a business “toolkit.” The toolkit includes resources to ensure that employers conduct their business activities in accordance with public health recommendations during the COVID-19 pandemic. The guidance sets forth “Minimum Guidelines” for reopening in 10 industries, along with suggested “Best Practices.” If businesses in the specified industries qualify under the guidelines, much of Illinois’ business sector can transition into Phase 3 beginning on May 29, 2020.

**A note for “essential businesses”:** The Phase 3 materials do not directly address whether essential businesses that never shut down, or only partially shut down, are subject to the health and safety guidelines and best practices applicable to the newly reopening businesses (as discussed below). Recently updated [Frequently Asked Questions](#) issued by the Illinois Department of Commerce and Economic Opportunity state, “All businesses that have employees physically reporting to a work-site must post the [guidance](#) from the Illinois Department of Public Health (‘IDPH’) regarding workplace safety during the COVID-19 emergency.” Further, it is reasonable to assume that all open businesses are subject to a similar standard of health and safety protocols, as tailored by government guidance to their specific industry. We will keep you advised of any developments on this issue.

### The Phased Reopening Framework

Under the Plan’s framework, four health regions have been established: Northeast Illinois, North-Central Illinois, Central Illinois, and Southern Illinois. These regions have the ability to independently move through the five phases, as determined by the COVID-19 positivity rate in each region and other relevant metrics and factors.

In Phase 1 of the Plan (“Rapid Spread”), only essential businesses were allowed to remain open. Phase 2 (“Flattening”) permitted non-essential retail stores to reopen for curbside pickup and delivery. In Phase 3 (“Recovery”), certain industries are allowed to reopen or expand their reopening if they adhere to capacity restrictions, other limitations,

and specific safety precautions. In addition, gatherings of 10 people or fewer are allowed, while face coverings and social distancing remain the norm. In Phase 4, “Revitalization,” larger gatherings will be allowed, additional industries may reopen, and some travel restrictions will be lifted. Finally, in Phase 5 (“Illinois Restored”), the economy will fully reopen, though employers will still need to take safety precautions.

As of May 29, 2020, all regions in Illinois will move to Phase 3. However, Mayor Lori Lightfoot has [announced](#) that Chicago will only begin to reopen starting on June 3, 2020, under its reopening framework. As discussed below, Chicago has issued its own industry guidelines on reopening (“[Cautiously Reopen](#)”). Employers should check whether and when their local municipalities and/or counties will be allowing certain businesses to reopen.

### **Is Your Business Eligible to Open in Phase 3?**

The Illinois guidance provides criteria businesses should use to determine if they qualify for reopening and, if so, whether and which operational limitations apply to them. Specifically, the guidance sets forth eligibility requirements and activity restrictions for businesses in the following 10 industries:

- *Manufacturing*: non-customer-facing facilities in the business of transforming mechanical, physical, or chemical materials, substances, or components into new products, such as plants, factories, and mills.
- *Health and Fitness Centers*: customer-facing facilities, such as gyms and yoga, dance, cycling, Pilates, and barre studios.
  - Services are limited to 1-1 training, and outdoor fitness classes with up to 10 participants; contact activities are prohibited.
- *Offices*: businesses that conduct operations from within non-customer-facing office spaces (stand-alone and within multi-tenant buildings), such as legal, accounting services, architectural/engineering design, and other professional services.
- *Personal Care Services*: hair salons, barber shops, nail salons, spas, waxing centers, and tattoo parlors.
  - Services are limited to those that can be performed while the customer and employee are wearing face coverings; massages and body treatments are restricted to 30 minutes or less.
- *Retail*: customer-facing stores engaged in retailing merchandise and services, such as grocery stores, hardware stores, clothing shops, pharmacies, department stores, and shopping malls.

- *Outdoor Recreation*: customer-facing establishments primarily engaged in providing outdoor recreational and amusement services, such as driving ranges, outdoor shooting ranges, paintball courses, and outdoor adventure parks.
- *Service Counters*: customer-facing stores providing assorted services for dropped-off goods, such as dry cleaners, electronics repair shops, shoe repair shops, and car washes.
- *Restaurants and Bars*: full-service and limited-service restaurants, snacks bars, taverns, and other food and beverage establishments.
  - Services are limited to outdoor dining and drinking only, and for parties of six or fewer customers.
- The final two industries are *Day Camps* (youth recreational camps) and *Youth Sports* (organizations operating youth recreational sports activities).

Illinois also [issued](#) new and/or revised guidelines for indoor/outdoor tennis, golf, and boating and fishing businesses.<sup>1</sup>

## **The Business Toolkit**

To prepare authorized businesses for reopening, the [business toolkit](#) includes guidelines, signage, training checklists, and other resources for employers. Notably, the toolkit contains three checklists (discussed below) for (1) steps businesses should take to keep workers and others safe at the workplace, (2) content for health and safety training, which is required for employees returning to work, and (3) best practices for conducting employee wellness screenings.

## **The Toolkit's Guidelines**

The guidelines focus primarily on mandated and recommended health and safety measures employers should take to prevent the spread of COVID-19 in the workplace. For each industry covered by Phase 3, the guidelines are divided into “Uniform Guidelines” and “Industry Guidelines.” The guidance topics under each of these sections are further divided into “Minimum Guidance” and encouraged “Best Practices.”

### *Uniform Guidelines*

The term “Uniform Guidelines” is somewhat misleading. Their description suggests that they apply universally across businesses and industries in Illinois, but they contain industry-specific guidance as well. In any event, the Uniform Guidelines are broken down

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<sup>1</sup> In Phase 4, all employees of non-essential businesses will be permitted to return to work, provided health and safety precautions are maintained, accommodations are made for vulnerable employees, and capacity limits for various business (e.g., retailers, health clubs, restaurants/bars, and cinemas and theaters) are followed. In Phase 5, conventions, festivals, and large events can take place.

into three categories: (1) general health, (2) HR and travel policies, and (3) health monitoring.

Generally, the following Minimum Guidelines and Best Practices are contained in the Uniform Guidelines for all industries:

***General Health (may also contain industry-specific guidance)***

- The Minimum Guidelines include, but are not limited to, the following:
  - Allow employees to work from home if feasible.
  - Require employees to wear face coverings when within six feet of others, except where accommodations are appropriate.
  - Instruct employees to maintain social distancing of at least six feet unless such distancing is specifically exempted for certain activities under the Phase 3 guidelines.
  - Provide employees (and customers) with hand sanitizer and/or handwashing capability (e.g., soap, disinfectant, and paper towels).
  - Require employees to wash their hands frequently.

***HR and Travel Policies***

- The Minimum Guidelines include the following:
  - Provide health and safety training related to COVID-19 to all employees “when [they] initially return[] to work,” as set forth in the [Checklist for Employee Training](#).
  - Limit all non-essential business travel.
  - Do not permit employees to report to, or remain at, work if sick or symptomatic.
- Illinois encourages, as a best practice, that employers provide reasonable accommodation for COVID-19 “[vulnerable](#)” employees, including, but not limited to, work from home (if feasible), reduced contact with others, use of barriers to ensure minimum distance, or other accommodations that reduce the risk of exposure to a COVID-19-positive individual. (Employers also should be aware that they may have an obligation to accommodate vulnerable employees under federal and state law.)

## **Health Monitoring**

- The Minimum Guidelines include the following:
  - Make temperature checks available for employees, and encourage their use.
  - Implement a wellness screening program to verify the absence of COVID-19 symptoms. The [Checklist for Wellness Screenings](#) provides guidance on best practices, wellness screening questions, and post-screening practices.
  - Instruct employees who contract COVID-19 to consult with their doctor and return to work only after the conditions provided in the guidelines are met.
  - Follow [guidance](#) from the Centers for Disease Control and Prevention (“CDC”) on cleaning and disinfecting the premises upon confirmation of an employee’s positive COVID-19 test.
  - Notify employees who have been exposed to a COVID-19-positive individual at the workplace (e.g., a co-worker or visitor to the premises), where appropriate.
  - Direct employees who have had close contact with a co-worker or anyone else diagnosed with COVID-19 to consult with their doctor, quarantine for 14 days, and seek a diagnostic test.

## **Industry Guidelines**

The industry-specific guidelines cover a range of additional topics, from the physical workspace to external interactions. The categories listed below apply to all 10 industries, except that “Customer Behaviors” is not applicable to manufacturing and offices. The broad categories of guidance are as follows (***although employers should ensure they comply with the applicable industry-specific guidelines***):

- *Physical Workspace*—post signs, and implement social distancing protocols and other appropriate physical or procedural changes at the workplace.
- *Disinfecting/Cleaning Procedures*—establish cleaning and sanitation practices.
- *Staffing and Attendance*—comply with and/or establishing rules concerning maximum occupancy, minimizing contact, and social distancing.
- *External Interactions*—implement policies concerning interactions with individuals outside of the organization (non-customers or external suppliers).
- *Customer Behaviors*—establish protocols for interacting with customers (does not apply to offices and manufacturing).

A general checklist for all employers covering both the Uniform Guidelines and Industry Guidelines is included in the toolkit, and can be found [here](#).

## Chicago Industry Guidelines for Reopening

As part of Chicago's "[Be Safe Chicago](#)" framework and "[Protecting Chicago](#)" plan to guide the city's reopening process, Mayor Lightfoot issued industry-specific safety guidelines on May 26, 2020. Starting on June 3, 2020, the following industries will be allowed to open (or, in certain instances, remain open):

- Childcare centers and family childcare
- Non-lakefront parks (no contact sports)
- Libraries and other city services
- Office-based jobs, professional services, and real estate services
- Hotels/lodging
- Outdoor attractions (e.g., boating—not including the Playpen, non-Lakefront golf courses)
- Non-essential retail
- Personal services (e.g., hair/nail salons, barbershops, tattoo parlors)
- Restaurants and coffee shops (outdoor dining only)
- Manufacturing, construction, and warehousing
- Hospitals, dentists, and community mental health centers
- Federally Qualified Health Centers
- Public transit, regional transit, taxis and rideshare
- Gyms (outdoor and 1:1 personal training only)

Each [industry-specific guideline](#) contains "recommended guidance" for that industry and is broken down into general categories. For example, the general guidelines for [offices in commercial buildings](#) are as follows:

- *Social Distancing*—encourage social distancing, i.e., at least six feet in common areas.
- *Gathering Size*—limit the use of common areas where large gatherings may occur.
- *Protective Gear*—require face coverings in common spaces and high-traffic areas.
- *Hygiene Requirements*—provide hand sanitizer at ingress and egress points, where possible.
- *Entry Access*—evaluate and adjust ingress and egress points to maximize social distancing and limit physical contact, e.g., contactless building check-in, where practical.
- *Cleaning Standards*—clean daily, and more frequently in high-traffic areas.

- *Visual Guidance*—post signage at entry/exit points and any other high-traffic common areas.
- *Workplace Design*—simplify workplace conditions to minimize contact between people.
- *Flexible Models*—provide ample opportunities for flexible working models, where appropriate, e.g., work-from-home strategies and partial-capacity office densities to reduce in-office space occupancy.
- *Operation Resiliency*—minimize personal contact by limiting furniture use in common areas.
- *Travel Guidelines*—promote cautious use of public transportation and travel, e.g., employees travelling via mass transit systems should fully adopt social distancing and required personal protective equipment (or “PPE”) protocols.
- *Testing and Tracking*—follow [guidance](#) from the Chicago Department of Public Health (“CDPH”) and the CDC for [testing](#) and [tracing](#) protocols.

**Note:** Though most of the industry guidelines contain only recommended guidance, childcare centers have specific reopening requirements (see the “Reopening Approach” section following the recommended guidance).

Chicago employers are encouraged to complete the reopening [self-certification process](#) (by completing and submitting an online survey) to earn a “Be Safe. Chicago” badge of approval. Although such self-certification is not required, it may be prudent to do so from both a legal and human resources perspective.

### **CDPH Guidance for Businesses and Employers**

On May 6, 2020, the CDPH issued [updated guidance](#) for businesses and employers as they reopen or continue to operate during the pandemic. Though similar in many respects to the city’s reopening guidance, the CDPH’s latest advice clarifies some of the city’s reopening guidance and provides additional measures for Chicago businesses to consider, such as the following:

- Designate a workplace coordinator who will be responsible for COVID-19 issues and their impact at the workplace.
- For multi-site employers, provide local managers with the authority to take appropriate actions outlined in the company’s COVID-19 response plan based on local conditions.

There is also specific [additional guidance](#) for food service businesses and grocery stores.

**Note:** This guidance may be further updated as Chicago nears the date for its reopening.



## **Employer Mandates or Recommendations?**

Though the Illinois guidance does not explicitly mandate action by employers, stating most times that employers *should* perform certain identified tasks in the Minimum Guidance, the checklists contained in the toolkit indicate that certain tasks are indeed required, such as implementing health and safety training for employees and developing wellness screening programs. Given the fact that the Minimum Guidance for each category is separated from the “encouraged” Best Practices, employers should consider the Minimum Guidance for each category as just that, the *minimum* steps they should take to comply with the Phase 3 reopening.

In contrast, for employers located in Chicago, the city’s guidelines appear to be simply recommendations (with the exception of childcare centers). However, there are inconsistencies throughout the “recommended guidance,” which suggests that the guidelines are actually mandates. For example, certain guidelines state that face coverings “must” be worn in any indoor common spaces, but that same guidance is located on a page specifically marked as “Recommended Guidance.” Hopefully, this will be clarified through supplemental guidance or FAQs. Similarly, the CDPH guidelines are fashioned as “guidance,” but, here too, it is unclear whether they are, in effect, mandates from a compliance perspective. Unless or until this issue is clarified, employers should be wary of disregarding the agency’s guidance. Moreover, employers located in Chicago must still comply with the state’s reopening requirements, which are consistent with Chicago’s recommendations.

## **What Illinois and Chicago Employers Should Do Now**

As Illinois employers prepare to reopen, they should:

- carefully review the guidance relating to their specific industry and determine if they qualify to open during Phase 3 and, if so, what measures they need to take before reopening (such as developing training and a wellness screening program);
- proceed cautiously, as a rush to reopen could well result in missteps;
- consider reopening in phases, with as small an initial on-site workforce as possible, and allow employees who have been successfully teleworking to continue doing so, at least for part of the workweek and perhaps on staggered schedules;
- consult with counsel on potential legal pitfalls, especially if employers operate in more than one state and are seeking to create a “universal” health and safety plan (e.g., New York State recently issued its own reopening guidance (see [Epstein Becker Green’s Act Now Advisory](#)), with which employers with operations in both states will need to comply); and
- continue to monitor guidance from the CDC, the Illinois Governor’s Office, and their local governmental agencies, as well as Epstein Becker Green’s regularly updated



[Coronavirus \(COVID-19\) Resource Center](#), since both the science and the law on the COVID-19 pandemic continue to evolve.

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