

## Insights

### Getting Back on Track: How Indiana Businesses can Create the Plan Required by Governor Holcomb's Executive Order 20-26 to Keep Employees and Patrons Safe by the May 11, 2020 Deadline

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As Indiana businesses work to reopen and return employees to the workplace, it is critical to understand the obligations under Governor Holcomb's Executive Order 20-26 and its "Roadmap to Reopen" issued on Friday, May 1, 2020. Executive Order 20-26 establishes criteria for the initial stages of reopening Indiana businesses and requires each Indiana business to create a plan as to how it will create a safe environment for its employees, customers, and members. Each business must provide all employees with a copy of the plan and post it publicly. The plan must address at least the following matters:

- Employee medical screening procedures for symptoms of COVID-19
- Enhanced cleaning and disinfecting protocols, including as it relates to high touch surfaces
- Enhanced personal hygiene measures being made available by the business
- Social distancing requirements as established by the CDC

The following are key considerations for businesses when preparing COVID-19 safety plans in advance of the May 11 deadline.

#### OSHA COMPLIANCE

Executive Order 20-26 reminds employers of their legal duty to create a safe workplace for their employees under the Indiana Occupational Safety and Health Act ("IOSHA"), which duty also exists under its federal counterpart, OSHA. OSHA has issued a 35-page document titled "Guidance on Preparing Workplaces for COVID-19" that can be accessed [here](#), and should be reviewed by every business as it develops its plan in accordance with the Governor's Executive Order 20-26. The OSHA guidance addresses the steps of reducing exposure, including by classifying workers as high, medium, and low risk and what the employer must do to protect each category of worker. The OSHA guidance also provides detailed components for creating an infectious disease preparedness and response plan, implementing infection prevention measures, developing policies and procedures for identifying and isolating individuals who are sick, developing and informing workers about workplace flexibilities and protections, and implementing workplace protocols such as engineering controls like installing barriers and maintaining airflow systems, administrative controls like changes to workplace policies, and the use of personal protective equipment, all in an effort to reduce exposure to the

workplace hazard of COVID-19.

## REQUIRED SAFETY PLAN TOPICS

In addition to maintaining compliance with OSHA's guidance, businesses must carefully evaluate each topic identified by Executive Order 20-26 for inclusion in their required plans. These topics include:

(1) *Employee medical screening procedures.* The precise screening procedures to be adopted by a business will depend on the industry in which the business operates. Executive Order 20-26 suggests having employees perform daily self-assessments for symptoms of COVID-19 such as fever, cough, and shortness of breath. The Executive Order also advises employers to immediately send home sick employees and advises that employees should not return to work until they have been fever free for at least 72 hours, other symptoms have improved for at least 72 hours, and at least 7 days have passed since symptoms began. In addition, the Governor's Executive Order specifically encourages screening of real estate professionals who are showing property and requires screening for all restaurant workers.

In addition to the Governor's directives, employers should consult CDC guidance on screening employees relating to COVID-19. A valuable resource for employers is the CDC's "Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19," which can be accessed [here](#). This guidance is updated regularly by the CDC and provides a detailed roadmap for employers to walk through the issues involved in maintaining a healthy work environment, including links to other specific guidance issued by the CDC. Employers should also review the CDC's industry-specific guidance as it relates to screening employees. Examples of such industry-specific guidance includes:

- **Guidance for screening critical infrastructure workers who may have been exposed to someone with suspected or confirmed COVID-19**
- **Return to work criteria for healthcare workers with suspected or confirmed COVID-19**
- **Strategies to mitigate healthcare personnel staffing shortages (April 30, 2020)**
- **Guidance for community pharmacies**

It should be noted that the U.S. Equal Employment Opportunity Commission, the federal agency responsible for the enforcement of the Americans with Disabilities Act, which governs when employers can ask medical questions or conduct medical examinations of their employees, has stated that employers are permitted to engage in these medical screening processes during the COVID-19 pandemic, which includes asking about symptoms, taking employees' temperatures, and even adopting mandatory COVID-19 testing.

(2) *Enhanced cleaning and disinfecting protocols, including as it relates to high touch surfaces.* Executive Order 20-26 directs businesses to frequently perform enhanced cleaning of high touch surfaces, including countertops, railings, door handles, and workstations. It further advises businesses to provide disposable wipes so employees can wipe down these surfaces.

The CDC has also issued guidance on this issue in its "Reopening Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes," which can be accessed [here](#) and is part of the larger Opening Up America Again plan issued by the White House. This guidance directs continued general cleaning with soap and water and disinfection of commonly touched surfaces with EPA-approved products and advises as to alternate disinfectants that may be

used if EPA-approved products are unavailable. The guidance also contains links to sanitation guidance for specific industries and types of locations, such as restaurants, health care facilities, transportation, and schools, among others, that should be consulted by businesses and incorporated into their individual plans.

(3) *Enhanced personal hygiene measures being made available by the business.* Executive Order 20-26 discusses increasing the ability of employees and customers to wash their hands and use hand sanitizer and providing additional items such as tissues and no-touch trash receptacles. Along these lines, the Governor's Order also recommends businesses having posters that advise on appropriate sneeze and cough etiquette, proper hand hygiene, and encouraging sick employees to stay home. Printable posters are available from the CDC and can be found [here](#).

The CDC recommends washing hands with soap and water for at least 20 seconds, particularly after visiting a public place, blowing your nose, sneezing, or coughing. If soap and water are not available, the CDC recommends using a hand sanitizer that contains at least 60% alcohol. Finally, the CDC advises that individuals should not touch their nose, mouth, or eyes with unwashed hands. This guidance, which also advises on avoiding close contact, covering one's face and nose with a cloth cover, covering coughs and sneezes, and disinfection can be found in numerous CDC publications, including the "Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19" discussed above, which can be accessed [here](#).

(4) *Social distancing requirements as established by the CDC.* While many CDC publications discuss social distancing, the most comprehensive is the CDC's guidance titled "Social Distancing, Quarantine, and Isolation," which can be accessed [here](#). In this guidance the CDC explains that the recommendation (for individuals outside of your home) is to remain at least 6 feet from other people and avoid gathering in groups and crowded places. The CDC advises that these rules apply both indoors and outdoors, regardless of whether one is symptomatic, and are especially critical for those in higher risk groups. Other tips for social distancing recommended by the CDC, many of which are also mentioned in the Governor's Executive Order, include employees working from home to the extent possible, marking 6-foot distances for employees, customers, and members who may be entering a business, offering separate business hours for vulnerable populations, using grocery delivery services, avoiding public transportation, and wearing a face cover when around others.

## **ADDITIONAL CONSIDERATIONS**

Executive Order 20-26 also sets specific COVID-19 safety requirements for certain types of businesses as they reopen, which also need to be included in those businesses' plans. These requirements will take effect once a county reaches Stage 2 of the Governor's plan and are permitted to reopen, which will occur on May 4, 2020 for most businesses, except those in Marion and Lake County, which will likely move to Stage 2 on May 11, 2020, and Cass County, which will likely move to Stage 2 on May 18, 2020.

With respect to retail businesses, once in Stage 2, they can reopen but must limit customers to no more than 50% off occupational capacity, should limit hours of operation and create separate hours for vulnerable populations, should require face coverings for employees and consider requiring them for customers, must comply with sanitization and social distancing requirements, and limit malls to more than 25% of occupancy capacity around common areas.

With respect to restaurants (including country clubs, social clubs, and wineries), which are able to reopen one week after entering Stage 2, ongoing restrictions include limiting in-person dining to 50% of capacity and encourage reservations be used, seating must be at least 6 feet apart and limited to 6 people each, self-service stations must be closed, and employees must be screened for COVID-19 before working and must



wear a face covering. Additionally, live music is prohibited.

Personal services businesses such as salons, spas, and tattoo parlors may reopen one week after entering Stage 2, with the following limitations: workstations must comply with social distancing and be cleaned after each client, services are by appointment only, and the employee and client must wear face coverings if practicable.

As Indiana businesses develop their required plans for keeping employees and visitors safe by May 11, one additional, key piece of guidance is the White House's Opening Up American Again plan, which can be found [here](#). Based on this guidance, which notably not only contains a logo for the White House but also that of the CDC, there are additional topics that should be included in Indiana businesses' written plans beyond the minimum topics required by Executive Order 20-26, including adopting a phased approach to returning employees to work, closing common areas for a period of time, limiting non-essential business travel, and the need to provide accommodations to vulnerable populations.

If your Indiana business requires further assistance developing its plan for creating a safe environment for employees, customers, clients, and members, please contact **Amy J. Adolay** or a member of Krieg DeVault's **Labor and Employment Practice Group**.

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