Small Business Task Force Proposes Initial Plans to ‘Reopen Alabama Responsibly’

April 19, 2020


The subcommittee has released its “Phase One” recommendations for specific industries. The recommendations, which have been sent to Governor Kay Ivey for consideration, are intended to guide Alabama’s small business owners in implementing measures that align with the economic and health interests of the state of Alabama “to balance both reduction in the spread of COVID-19 and an increase in economic activity.”

Many of the safety measures recommended by the Task Force and subcommittee are similar across industries, such as:

1. monitoring the health of employees and sending home any employee who displays symptoms of COVID-19;
2. limiting the number of people inside a business;
3. continuing social distancing;
4. enhancing sanitation measures; and
5. increasing employee education regarding COVID-19.

The recommendations for several industries include temperature screenings—the taking of employees’ temperatures prior to the employees entering the workplace. Though there has been some reluctance to implementing this practice due to potential data privacy and employment law issues, on March 17, 2020, the Equal Employment Opportunity Commission (EEOC) provided additional guidance for employers with workforces returning to work. The guidance made clear that the implementation of screenings during the present COVID-19 pandemic, including taking temperatures and asking questions about symptoms prior to entering the workplace, is consistent with the Americans with Disabilities Act of 1990 (ADA). The ADA permits inquiries and medical examinations because the coronavirus is considered a direct threat and such inquiries are consistent with guidance from the Centers for Disease Control and Prevention (CDC) and other public health authorities.
Further, employers can require employees to wear protective gear and observe infection control practices. However, when an employee needs a related reasonable accommodation because of a disability under the ADA or a religious accommodation under Title VII of the Civil Rights Act of 1964, the employer should provide modifications when it is feasible and does not cause undue hardship to the business. A reasonable accommodation could include the use of non-latex gloves, modified face coverings for interpreters or others who communicate with employees who lip-read, gowns designed for individuals who use wheelchairs, or modified equipment to allow for the wearing of religious garb.

Due to the length of the Task Force’s report, the following is intended to be a brief summary of Task Force recommendations with a focus on employees. The recommendations, if accepted by Governor Ivey, could be the first step in getting Alabama’s small business owners back in business.

**Retail**

The Task Force recommends opening all nonessential retail immediately. These businesses include, but are not limited to, the following: furniture and home furnishings stores, clothing and accessories stores, shoe stores, luggage stores, department stores, sporting goods stores, bookstores, crafts stores, and music stores.

Employee protection measures include, but are not limited to, the following:

1. Posting a sign on the storefront stating that individuals who have a fever or other symptoms of COVID-19 should not enter the store.
2. Limiting the number of individuals inside the store to 50 percent of fire capacity occupancy or 8 customers per 1,000 square feet.
3. Encouraging customers to use hand sanitizer upon entering the store.
4. Permitting employees to wear face masks or gloves.
5. Ensuring sales registers are at least six feet apart.
6. Ensuring employees access to hand sanitizer or a place to wash their hands.
7. Encouraging customers to make non-cash payments.
8. Frequent cleaning and sanitizing of point-of-sale equipment.
9. Encouraging customers to make non-cash payments.
10. Sanitizing the entrance/exit doors at least three times per day.
11. Encouraging workers to report any safety and health concerns to the employer.

**Restaurants**

The Task Force recommends all restaurants open for business immediately. Employee protection measures include but are not limited to:

1. Posting a sign on the door that no one with a fever or symptoms of COVID-19 is permitted in the restaurant.
2. Limiting the number of customers in the restaurant to those that can be adequately distanced six feet apart.
3. Marking any indoor or outdoor waiting area so that social distancing standards are met, and allowing one member of a party in waiting area while other
members of the party wait in the car.

- Limiting tables to no more than six guests per table.
- Encouraging employees to take a food handler class to learn more about food safety as it relates to COVID-19.
- Permitting employees to wear masks at their discretion.
- Cleaning and sanitizing high customer contact areas (i.e., door entrances) every two hours.

**Manufacturing and Industry**

For manufacturing and industry, the Task Force recommends that each organization develop an internal pandemic response team that will implement a “return-to-work” plan. It is recommended that the plan include the following:

- An inbound parts/materials/packages disinfection strategy
- A transportation contamination mitigation strategy
- An on-site health screening strategy
- A social distancing strategy based on the layout and workflow of the facility
- An isolation strategy for a potential COVID-19-infected employee or contaminated facility

**Medical and Health Services**

The task force, with the support of the Medical Association of the State of Alabama, recommends medical and health services, including doctors’ offices and services such as dental and physical therapy, open on May 1, 2020. The recommendations include measures for the protection of staff and patients. The recommendations include, but are not limited to:

- Providing services by appointment only and communicating any necessary personal protective equipment (PPE) requirements to the patient for the appointment;
- Closing the waiting room except that one person per patient will be permitted only if necessary (i.e., parent with child or caregiver for patients with disabilities);
- Requiring persons accompanying patients to wait in the car;
- Requiring temperature checks and health screenings for patients before entering the place of business;
- Requiring that employees use PPEs;
- Limiting the contact between administrative staff and patients, such as eliminating check-in forms when possible and emailing or mailing receipts to the patient; and
- Presenting post-operative instruction and written prescriptions to the patient while wearing gloves.

**Entertainment**
The Task Force identifies four different types of entertainment venues including gaming facilities, exercise facilities, museums, and planetariums. The proposed effective date of implementation and reopening of these entertainment venues is May 1, 2020. The proposed recommendations include, but are not limited to the following:

1. Requiring all staff to use PPE "as deemed necessary"
2. Taking employees' temperatures prior to entering the facility or venue (except for exercise facilities)
3. Encouraging the use of touch-free payment options
4. Frequent cleaning and sterilization of high-touch areas
5. Adding hand sanitizing stations for both customers and employees
6. Ensuring food service areas adhere to the same guidelines as restaurants, including limitation of seating

"Gaming facilities" include racetracks, casinos, and bingo halls. Customers in the venue would be limited to 35 percent of the posted occupancy by the fire marshal. In addition to employees performing regular cleaning of equipment, customer assistance would be expected with cleaning equipment after each use. No food products would be consumed on the premises by employees or customers, and employees and customers would bring their own beverages.

Protective measures for exercise facilities and gaming facilities would include placing equipment and machinery six feet apart to maintain social distance.

**Pharmacies**

While pharmacies are already open, the Task Force has additional recommendations in this regard. Pharmacy personnel are encouraged to wear PPE and increase cleaning measures and supplies for the pharmacy area. Additional measures should be put in place to limit direct contact with customers, such as:

2. Providing drive-through and curbside service for prescription pick up
3. Providing delivery service to customers' homes.

**Commercial Real Estate**

For commercial real estate, regular face-to-face meetings, interactions, and teamwork in close quarters is typical. The Task Force recommends the following practices:

1. Applying field fever tests to employees before being allowed to enter an active construction site
2. Requiring masks if working with others
3. Providing handwashing stations on construction sites
4. Sanitizing all materials and tools delivered by a third party
Having the construction foreman notify all employees verbally and in writing of the measures

In addition to the industries addressed above, the Task Force’s report also includes recommendations regarding the operations of Alabama beaches, summer youth sports, real estate agencies, hair salons, barbershops, waxing salons, body art and tattoo facilities, massage therapy facilities, and childcare facilities.

While the Task Force’s report is being considered by Governor Ivey, employers may want to begin preparing for reopening. Employers will have to determine if they are able to abide by the criteria that will be set forth in the final order. In addition to assessing infrastructure and staffing needs, employers may have to address the operations of their businesses. How to proceed with reopening will depend on how the shuttering was handled and on an evaluation of several elements:

- Eligibility terms of employee benefit plans regarding returning individuals
- ADA considerations
- Criteria for selecting employees to return
- The latest legal developments

It is important to remember that the Task Force’s report only contains recommendations for the governor to consider.

Ogletree Deakins will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm’s Coronavirus (COVID-19) Resource Center as additional information becomes available. Critical information for employers is also available via the firm’s webinar programs.