



## TEXAS BEGINS TO REOPEN: WHAT'S NEXT FOR RETAILERS AND FRANCHISEES?

by Gabe Vick and Trenton Patterson, Gray Reed's Back to Business Task Force  
May 1, 2020



As of May 1, 2020, various retailers and restaurants, many of which are franchises, may reopen with certain limitations and under the guidelines outlined by Governor Greg Abbott's [Executive Order GA-18](#). Safely resuming operations under the guidelines will, undoubtedly, prove tricky. Here are answers to a few common questions and practical tips to help business owners navigate hurdles associated reopening.

### **WHAT IF A FRANCHISEE AND FRANCHISOR DISAGREE ABOUT WHETHER AND WHEN TO REOPEN?**

First, check the franchise agreement. Most franchise agreements contain provisions for resolving operational disputes, and provide clear guidance about what decisions are within the sole control of each party. If the agreement is silent on this issue, you may look to other guidance such as the parties' previous course of conduct or industry standards. Other provisions of the agreement, such as a force majeure clause, may also provide guidance as to the parties' obligations, rights and remedies.

### **IF I REOPEN MY BUSINESS, HOW CAN I ENSURE COMPLIANCE WITH THE 25 PERCENT OCCUPANCY REQUIREMENT?**

This is of special concern for business owners, as Executive Order GA-18 allows for penalties of up to \$1000 and 180 days in jail for every failure to comply. Some businesses never approach their posted occupancy limits, so it will help to get a sense of your pre-pandemic "typical" business day capacity. Maintaining 25 percent occupancy will likely require creative adaptations. Such adaptations may include:

- Removing seating to allow for no more than 25 percent occupancy;
- Designating employees to track the number of patrons;
- Designating employees to greet patrons outside of the business, track the traffic in and out, and manage any line or waiting area to enter the business; and
- Generally remind patrons of the new operating parameters, and explain that any inconveniences are the result of efforts to ensure their safety.

### **HOW SHOULD I ENCOURAGE SOCIAL DISTANCING AFTER REOPENING? WHAT IF PEOPLE IGNORE SOCIAL DISTANCING REQUIREMENTS AT MY BUSINESS?**

It is important from both a public health and publicity standpoint that businesses ensure proper social distancing. Ensuring safe practices benefits you and your patrons by providing a safe place to shop, eat or otherwise conduct business. The following steps may prove helpful in making your patrons feel safe:

- Conspicuously post social distancing expectations both inside and outside of the establishment;
- Designate employees to actively monitor for adequate social distancing, and gently remind patrons of these expectations if/when they are not in compliance;
- Make certain that patrons understand that social distancing practices are in place to ensure their safety, as well as the safety of their families and all employees that are present;
- If patrons refuse to comply with social distancing requirements, business owners have a right to refuse service in private establishments; and
- Business owners may also check with local law enforcement to gauge their capacity to assist in removing problematic customers to ensure a safe, enjoyable experience for all.

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COVID-19 has reshaped our perceptions of normalcy, and has proven to be a polarizing issue. As we continue to live in a world driven by technology and social media, it is imperative that business leaders have adequate safety protocols in place to ensure that their patrons and employees remain healthy and willing to return.

### WHAT IF MY EMPLOYEES REFUSE TO RETURN TO WORK?

There are two common reasons provided by employees for their refusal to return to work: (1) fear of exposure to COVID-19; and (2) satisfaction with continuing to collect unemployment benefits. For the latter, this problem is unique to this particular economic crisis because the federal CARES Act provided an additional \$600 per week for unemployed workers and significantly extended the period for collection of unemployment benefits by an additional 13 weeks. For solutions to both of these issues, refer to Gray Reed's "[An Unexpected Hurdle: How to Handle Employees Who Refuse to Return to Work](#)."

### ABOUT THE AUTHORS



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*Gabe is a member of the firm's Back to Business Task Force. With diverse clients ranging from E&P companies and oilfield service providers to product manufacturers and homebuilders, Gabe focuses on resolving complex disputes involving a broad range of issues, including breach of contract, fraud, fiduciary duty, construction defects, liens, premises liability and indemnity.*



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