



AN OVERVIEW OF GOVERNOR ABBOTT'S EXECUTIVE ORDER ON REOPENING TEXAS

by Jake Lewis and Jeff Leach, Gray Reed's Back to Business Task Force
April 29, 2020



On Monday, Texas Governor Greg Abbott announced plans for safely reopening some Texas businesses that have been shut down or subject to significantly reduced operations in the wake of the COVID-19 pandemic. As part of those plans, he issued [Executive Order GA-18](#). Here's what businesses need to know:

- **Effective Date and Length** - The Governor's Order is effective as of Friday, May 1, 2020. However, Governor Abbott announced that a second phase of business reopenings is expected as early as May 18, 2020, assuming the state sees "two weeks of data confirming no flare-up of COVID-19."
- **Effect on Local Orders** - The Order supersedes all conflicting local orders and suspends local governments' authority to enforce restrictions not provided for by the Order. Notably, the Order expressly provides that, although individuals are encouraged to wear masks in public, "no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering."
- **Minimum Contact Still in Place** - The Order continues the mandate that, except where necessary to provide or obtain "essential services" or "reopened services," individuals should minimize in-person contact with people outside of their household.
- **Essential Services** - The Order defines "essential services" as those identified as critical infrastructure industries by the Department of Homeland Security's Guidance on the Essential Critical Infrastructure Workforce (version 3.0), including: healthcare, public safety, food and agriculture, energy, water, transportation, public works, communications and information technology, critical manufacturing, hazardous materials, financial services, chemical, defense industrial, commercial facilities, residential/shelter services, and hygiene products and services. Businesses providing these "essential services" are able to reopen or remain open without any restrictions on their operations.
- **Reopened Services** - The Order allows for the reopening of several types of businesses that have been hard hit by the precautionary measures taken to avoid COVID-19 transmission, including in-store retail services, dine-in restaurant services, movie theaters, shopping malls, museums, and libraries. However, to combat potential transmission of COVID-19, each of these establishments is limited to operating at 25 percent of their total listed occupancy. An important note for restaurants, however: dine-in services are only permissible for restaurants that derive less than 51 percent of their gross receipts from the sale of alcoholic beverages.
- **Businesses Remaining Closed** - Although the Governor's Order provides some welcomed news for many large and small businesses alike, there are still several categories of business that must remain closed, including bars, gyms, public pools, bowling alleys, arcades, massage establishments, tattoo and piercing studios, and salons. Tenants in office buildings are still being asked to limit contact between employees by adhering to the guidelines regarding "essential services." However, there may be some light at the end of the tunnel. Despite remaining closed for the time being, Governor Abbott indicated that he hopes these business will be able to open "no later than Mid-May."

Governor Abbott's Order reflects a desire to allow some businesses to begin the path towards safely resuming operations as the state recovers from both the pandemic and the effects of the precautionary measures taking to flatten the pandemic's curve. As the Governor himself noted, the Order gives certain businesses "permission to reopen; [it is] not a requirement." As such, it is important that businesses of all types carefully consider whether reopening is right for them and take sufficient steps to safely resume operations.

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A member of the firm's Back to Business Task Force, Jake focuses on resolving a broad range of employment litigation matters, including defense of employers under Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Family Medical Leave Act and state antidiscrimination laws. He has significant experience handling Department of Labor audits and related litigation involving misclassification of employees and payment of overtime and minimum wage. Jake also prosecutes and defends unfair competition disputes from preliminary injunctive relief through trial, typically involving non-compete agreements, non-disclosure agreements and misappropriation of trade secrets.



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