

April 22, 2020

## **COLORADO AND GEORGIA PLAN TO RELAX COVID-19 RESTRICTIONS AND ALLOW SOME BUSINESSES TO REOPEN**

To Our Clients and Friends:

On April 20, 2020 the governors of Colorado and Georgia announced plans to begin easing the restrictions the states imposed in response to the outbreak of COVID-19. Certain businesses will be permitted to reopen so long as they follow state social distancing laws and guidelines designed to limit the spread of the virus. These precautions are intended to keep any increase in COVID-19 cases to a level that can be managed by the states' hospital systems. The plans of each state, as set out in a [slide presentation](#) by the governor of Colorado and an [executive order](#) issued by the governor of Georgia, are discussed below. Colorado urges its citizens to remain at home when they can, and Georgia's plan includes a detailed list of mandatory precautions. In Colorado, there will be a process for local governments to issue stricter local rules based on local conditions; in Georgia such local control is expressly forbidden by the governor's executive order. Colorado and Georgia provide different approaches to emerging from the COVID-19 restrictions and may serve as competing models as other states consider how and when to begin lifting their own COVID-19 restrictions.

### **Colorado's "Safer at Home" Plan Will Permit Some Businesses to Reopen, but Urges Personal Caution and Telecommuting**

On April 20, Colorado Governor Polis announced a plan to scale back the restrictions on business activity currently in effect in the state. The plan, which we expect to be further detailed in the coming days, is designed to allow physical distancing rates — a measure of reductions in person-to-person interactions — which are now at 75%-80%, to decline to, but no further than, 60%-65%. In combination with the other measures the plan will include, the state expects a 60%-65% social distancing rate to keep the infection rate low enough that the outbreak can be managed by the state's medical infrastructure.

According to the Governor's [April 20 presentation](#), Colorado's current stay-home order will be permitted to lapse on Sunday, April 26, 2020 and will be replaced by the new rules. The presentation makes clear that "[t]here will be a process for local governments to modify these standards based on local conditions." *See* Presentation of Jared Polis, Gov. of Colo. (Apr. 20, 2020). Under the new plan the Governor's Office continues to encourage the citizens of Colorado, especially members of particularly vulnerable populations, to stay home as much as possible. The plan includes as well the following mandatory and optional provisions:

#### **Mandatory:**

- Gatherings of more than ten are prohibited
- The sick may not go to work

- Offices may open to up to 50% of staff
- Telecommuting must be maximized
- Retail shops may open for curbside sales. Non-critical in-store sales will be phased in
- Dental care and elective medical services may open with strict precautions to ensure adequate personal protective equipment and the ability to meet critical care needs
- Restaurants remain closed to dine-in business for now, but the state is considering a reduced-capacity reopening
- Bars remain closed
- Child care will reopen with strict precautions but university and K-12 education will remain closed
- Real estate showings may begin but open houses will remain prohibited

**Optional:**

- Face masks are encouraged
- Large workplaces are advised to have symptom and temperature checks

**Georgia’s Executive Order Allows Certain Businesses to Reopen and Requires Compliance With Detailed Precautionary Measures**

Georgia’s plan to reopen its economy — which is set out in Governor Kemp’s *Executive Order 04.20.20.01* — is modeled on the “Opening Up America Again” guidelines issued by the White House. Governor Kemp has presented his plan as a “phase-one” reopening under those guidelines. *See* Ga. E.O. 04.20.20.01. The governor has emphasized that Georgia’s increased hospital capacity will help ensure that the outbreak does not overwhelm the state’s medical infrastructure, and is working to increase testing capacity. The state’s existing shelter-in-place order will remain in effect until April 30, but certain businesses will be permitted to reopen, subject to a detailed list of mitigation measures, on Friday, April 24 and Monday, April 27.

In contrast to the approach taken by Colorado — which allows localities to apply stricter regulations as appropriate — Georgia’s executive order expressly supersedes conflicting local rules. In Georgia, municipalities generally have statutory home rule protections and counties have constitutional home rule protections that are subject to definition by statute. *See* Ga. Const. art. IX, § 2, ¶ I; Ga. Code § 36-35-3. The governor, however, has the emergency power to suspend statutes and has expressly decreed that his executive order will override the statutory home rule provisions on which local and county orders rely. *See* Ga. E.O. 04.02.20.01; Ga. Code § 38-3-51(d)(1).

The details of the April 27 reopening have yet to be announced, but dine-in restaurants, social clubs, and theaters are expected to be permitted to resume operations and be required to comply with the stringent precautionary rules detailed below as well as additional social distancing measures.

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The governor's April 20 executive order announces those businesses permitted to reopen on April 24 and sets out the restrictions applicable to them. The order allows these businesses to reopen for "Minimum Basic Operations," defined to "include remaining open to the public subject to the restrictions of this Order." The order lists twenty protocols with which business must comply.

Pursuant to the governor's executive order, the following businesses may reopen on April 24:

- Gyms
- Fitness centers
- Bowling alleys
- Body art studios
- Barber shops, beauty salons, beauty shops, and the schools for those trades
- Estheticians
- Hair designers
- Persons licensed to practice massage therapy

Each of these businesses must comply with following mitigation measures

- Screening and evaluating workers who exhibit signs of illness, such as a fever over 100.4 degrees Fahrenheit, cough, or shortness of breath
- Requiring workers who exhibit signs of illness to not report to work or to seek medical attention
- Enhancing sanitation of the workplace as appropriate
- Requiring hand washing or sanitation by workers at appropriate places within the business location
- Providing personal protective equipment as available and appropriate to the function and location of the worker within the business location
- Prohibiting gatherings of workers during working hours
- Permitting workers to take breaks and meals outside, in their office or personal workspace, or in such other areas where proper social distancing is attainable
- Implementing teleworking for all possible workers
- Implementing staggered shifts for all possible workers
- Holding all meetings and conferences virtually, wherever possible
- Delivering intangible services remotely wherever possible
- Discouraging workers from using other workers' phones, desks, offices, or other work tools and equipment
- Prohibiting handshaking and other unnecessary person-to-person contact in the workplace

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- Placing notices that encourage hand hygiene at the entrance to the workplace and in other workplace areas where they are likely to be seen
- Suspending the use of Personal Identification Number ("PIN") pads, PIN entry devices, electronic signature capture, and any other credit card receipt signature requirements to the extent such suspension is permitted by agreements, with credit card companies and credit agencies
- Enforcing social distancing of non-cohabitating persons while present on such entity's leased or owned property
- For retailers and service providers, providing for alternative points of sale outside of buildings, including curbside pickup or delivery of products and/ or services if an alternative point of sale is permitted under Georgia law
- Increasing physical space between workers and customers
- Providing disinfectant and sanitation products for workers to clean their workspace, equipment, and tools
- Increasing physical space between workers' worksites to at least six (6) feet.

Gibson Dunn is monitoring the situations in Colorado and Georgia as harbingers of what may come in other states as well.



*Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact your usual contacts or any member of the Firm's Coronavirus (COVID-19) Response Team or the following authors:*

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