Thursday, April 30, 2020

Alabamians are currently under a stay-at-home order that Governor Kay Ivey issued on April 4, 2020, which shut down all non-essential business. On April 28, 2020, Governor Ivey announced at a press conference that she approved a “Safer at Home” order, which goes into effect on Thursday, April 30, 2020, at 5:00 p.m. The order will relax many of the restrictions found in the earlier order and should allow some Alabama employers to put their employees back to work.

Governor Ivey emphasized that the process of reopening Alabama must be a
“thoughtful, methodical process.” Based on the latest coronavirus data, Alabama did not meet the requirements necessary to implement the White House’s Phase One Guidelines for Reopening America Again or the “Reopening Alabama Responsibly” plan suggested by the Alabama Small Business Commission Emergency Task Force. Still, Governor Ivey emphasized the importance of the Safer at Home order in getting Alabama’s economy moving again.

The major changes in the Safer at Home order include:

- all retail stores may open with 50 percent occupancy rate and maintaining social distancing of 6 feet;
- all Alabama beaches are open to gatherings of fewer than 10 persons and while maintaining a consistent 6-foot distance between people from different households; and
- all medical procedures including elective procedures may resume, unless the state health officer determines that such procedures “would unacceptably reduce access to personal protective equipment or other resources necessary to diagnose and treat COVID-19.”

The Safer at Home order keeps in place several previous measures including:

- restaurants, bars, and breweries remain limited to take-out, curbside, or delivery;
- in-person educational institutions remain closed;
- all entertainment venues remain closed;
- all athletic facilities and activities (e.g., fitness centers and commercial gyms) remain closed;
- close-contact services providers (e.g., barber shops, hair salons, nail salons, and tattoo services) remain closed;
- restricted visitation for hospitals and nursing homes;
- child day care facilities must not allow more than 11 children in a room;
- suspension of regular programming in senior citizen centers (except meals though curbside pick-up or delivery);
- non-work related gatherings are limited to no more than 10 people while keeping a 6-foot distance between individuals (this includes “church services, weddings, funeral services, social gatherings, concerts, festivals, sporting events, and similar gatherings”).

Protections for Employees and Customers

All businesses and employers are expected to take reasonable steps, where practicable, to protect their employees and customers by avoiding gatherings of 10 or more, maintaining six feet of separation, and regularly disinfecting frequently used items and surfaces. Further, employers should encourage handwashing, facilitate remote work arrangements, minimize employee travel, and prevent sick employees from coming into contact with other persons.

Recommendations for Individuals
The Safer at Home order encourages Alabamians to “exercise personal responsibility” to aid in slowing the spread of the coronavirus by encouraging them to stay home when possible, and follow good sanitization practices. These recommendations include:

- minimizing travel outside the home;
- wearing face coverings while out in public;
- frequent hand washing;
- “refraining from touching one’s face”;
- “sneezing or coughing into a tissue, or the inside of one’s elbow”; and
- “disinfecting frequently used items and surfaces as much as possible.”

**These recommendations, however, are not mandatory.**

The Safer at Home order mandates that individuals who have tested positive for coronavirus be quarantined in their residence for 14 days or other period of time as directed by the state health officer. Individuals diagnosed with COVID-19 may leave their place of residence only to seek necessary medical treatment.

**Birmingham Adopts a Face Covering Ordinance**

Meanwhile, on April 28, 2020, the Birmingham City Council adopted measures designed to make reopening businesses more protective against COVID-19 transmission. The council unanimously adopted an ordinance requiring all individuals older than two years to use a face covering or mask in public places. The council defines the term “public places” to include any place other than an individual’s home or personal vehicle. The ordinance specifically requires “business owners, managers and supervisors” to ensure that employees, customers, clients, and visitors use face coverings or masks while at places of business. The ordinance makes clear, however, that it does not require businesses to provide face coverings or masks to employees.

Individuals engaging in outdoor exercise, such as jogging, are not required to use a mask, but must don a face covering when “encountering or interacting with groups of people in a park or other public place.” There are a few other limited exceptions to the face-mask requirement, such as for individuals for whom wearing a face mask would pose a greater mental or physical health, safety or security risk. The ordinance lists examples of such individuals, including “anyone who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the cover without assistance.” Patients in medical or dental examination rooms are not required to wear masks when a medical professional is examining the patient’s mouth or nasal area.

The ordinance did not offer much guidance about acceptable face coverings, requiring only that they “cover the nose and mouth of a person to impede the spread of saliva or other fluids during speaking, coughing, sneezing or other intentional or involuntary action.” The ordinance provides that the mask or covering need not be “medical grade” and “may be fashioned from scarves, bandanas or other suitable fabrics.” The ordinance requires that reusable face masks be kept clean and sanitary, and must be washed “at least daily.”
Failure to comply with the face mask ordinance is punishable by a fine of up to $500 and/or 30 days in the city jail. Presumably, business owners, managers, and supervisors who fail to enforce the face mask ordinance in their places of business could be subject to this punishment.

Governor Ivey and the authorities in various municipalities will likely promulgate additional requirements in the weeks ahead.

Critical information for employers is also available via the firm’s webinar programs.
