Texas Governor Imposes New Restrictions and Pauses State Reopening

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As the numbers of hospitalizations and positive COVID-19 cases continue to rise across Texas, Governor Greg Abbott has taken steps to reduce steps to reduce further spread of the virus. These measures will result in a temporary "pause" to the Governor's phased-in reopening of the Texas economy, known as "Open Texas."

First, on Thursday, June 25, 2020, Governor Abbott issued Executive Order GA-27, which effectively postpones most elective surgeries and procedures in Bexar, Dallas, Harris, and Travis counties, all of which have seen hospitalization numbers climb in recent days. Procedures that are medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient will be allowed. Executive Order 27, which goes into effect at 11:59 p.m. on June 26, was implemented to avoid the depletion of hospital capacity needed to cope with COVID-19.

Second, on Friday, June 26, Governor Abbott issued Executive Order GA-28, which states that, subject to certain exceptions, "[e]very business establishment in Texas shall operate at no more than" 50% of their listed capacity. The order specifies the following businesses that are subject to this 50% capacity limit as of June 26:

- Amusement parks
- Professional, collegiate, and similar sporting events
- Swimming pools and water parks
- Museums, libraries, zoos, aquariums, and natural caverns
- Rodeos and equestrian events

Notably, this limit applies to restaurants as well. As of June 29, restaurants may offer dine-in services at no more than 50% of their occupancy limits. The previous dine-in limit was 75% capacity.

Consistent with an earlier executive order, the following are exempt from the 50% capacity limit:

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- Essential services—those listed in the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Agency ("CISA") Guidance on the Essential Critical Infrastructure Workforce (v. 3.1 or later)
- Religious services conducted in churches, congregations, and houses of worship
- Local government operations
- Child-care services
- Youth camps, including summer camps, day camps, and overnight camps
- Recreational sports programs for youths and adults

Order GA-28 makes clear that hair salons, barber shops, and similar establishments are not subject to the 50% rule capacity rule, as long as workstations are at least six feet apart. However, bars and tubing/commercial raft services are closed altogether.

Other outdoor gatherings of more than 100 people are "prohibited" unless the local mayor or county judge where the event will occur "approves of the gathering." The mayor or judge may also impose additional "conditions or restrictions" on such gatherings "not inconsistent with this order." Under previous orders, the threshold for local governments to impose these additional restrictions had been gatherings of 500 or more people.

Third, in a proclamation earlier this week, Governor Abbott directed the Texas Health and Human Services Commission (HHSC) to enact emergency rules to provide additional health and safety standards and procedures related to COVID-19 for child-care facilities in Texas.

Dallas County Requires Health and Safety Policies For All Commercial Entities

In addition to these state-wide efforts, Texas counties have taken their own measures to combat the COVID-19 epidemic. On June 19, 2020, Dallas County implemented a new Order requiring all commercial entities within the county to develop and implement health and safety policies in response to the pandemic. At a

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minimum, the health and safety policies must mandate "that all employees or visitors to the commercial entity's business premises or other facilities wear face coverings in an area, or while performing an activity which will necessarily involve close contact or proximity to co-workers or the public where six feet of separation is not feasible." These policies may also include the implementation of other mitigating measures, such as temperature checks and health screenings, to control or reduce the transmission of COVID-19.

Under the Order, commercial entities must post their health and safety policies in conspicuous locations to provide sufficient notice to employees and visitors of all health and safety requirements. A commercial entity that fails to develop such a policy within five days of the effective date of the Order is subject to a $500 penalty. In contrast, the Order makes clear that, consistent with Governor Abbott's Executive Orders, no civil or criminal penalty will be imposed against individuals who do not wear a face covering.

The new Dallas County Order also requires that people ages 10 years old and older must wear a face covering over their nose and mouth when in a public place where it is difficult to keep six feet away from other people, or working in areas that involve close proximity with other coworkers. The Order makes clear that face coverings do not need to be worn in the following circumstances:

- When exercising outside or engaging in physical activity outside
- While driving alone or with passengers who are part of the same household as the driver
- When doing so poses a greater mental or physical health, safety, or security risk
- While pumping gas or operating outdoor equipment
- While in a building or activity that requires security surveillance or screening (i.e. banks)
- When consuming food or drink

The Dallas County Order was approved on a 3-2 vote by Dallas County Commissioners. The Order went into effect on June 19, 2020, and will remain in effect until 11:59 p.m. on August 4, 2020.

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The Dallas County Order follows the passage of similar orders by Bexar and Hidalgo Counties; in public statements, Governor Abbott approved those orders. Bexar County, Hidalgo County, and Dallas County have all seen increases in the number of COVID-19 cases over the last couple of weeks. Harris County, Travis County, and Bastrop County passed similar measures on Friday, June 19, 2020.

For more information, please contact Thomas Allen, Mark Platt, Fred Gaona, or any attorney in the Government Services practice group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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