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Governor Bullock Issues New Directive On Phased Reopening of Montana

Employers should be advised Montana will soon begin a phased reopening after a month-long shutdown in response to the novel coronavirus COVID-19 (“COVID-19”) pandemic. On April 22, 2020, Governor Steve Bullock issued a directive providing Montanans with new guidance for this phased reopening of Montana (the “Directive”). Under Phase One of the Directive, Montana’s stay-at-home order will expire, local schools may choose to reopen, and most non-essential businesses will be allowed to resume operations. The Directive can be found [here](#), and additional guidance interpreting the Directive can be found [here](#).

According to Governor Bullock, the phased reopening of Montana is justified by the underlying public health data. Specifically, “Montana now has one of the lowest per capita rates of infection in the United States.” Accordingly, the Directive provides all Montanans—including employers—with guidance on how to safely reopen, and maintain, business operations during various phases of the COVID-19 pandemic.

Under Governor Bullock’s phased approach, Montana’s stay-at-home directive expires on April 26, 2020. However, “all vulnerable individuals” are directed to continue to follow [Montana’s] stay at home guidance” during the COVID-19 pandemic. Vulnerable individuals include all “people over 65 years of age, people with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, or asthma, and people whose immune system is compromised[.]”

Most non-essential businesses will be permitted to reopen on Monday, April 27, 2020 “with reduced capacity and where strict physical distancing protocols can be maintained.” Restaurants, bars, breweries, distilleries and casinos cannot resume operations until May 4, 2020, however. Gyms, pools, and places of assembly such as movie theaters and concert venues will not be permitted to reopen for the duration of the COVID-19 public health emergency.

In particular, the Directive instructs Montana employers to adopt certain policies to create and maintain a healthy workplace environment for employees during the COVID-19 pandemic. Under Phase One of the Directive, which is set to begin on April 27, employers should:

- “Continue to encourage telework whenever possible and feasible with business operations.”
- If telework is not feasible, employers should “accommodate alternative work schedules such as shift work or staggered schedules” to “adhere to social distancing guidelines.”
- “Close common areas where personnel are likely to congregate.”
- “Enforce strict social distancing protocols.”
- “Minimize non-essential business travel.”
- “Make special accommodations for members of a vulnerable population or those with vulnerable household members.”

The Directive also states that businesses that reopen on April 27 “must adhere to the reopening guidelines for Phase One provided in Appendix A” of the Directive. Appendix A provides employers with more specific reopening and operating guidelines for each phase of the Directive, including guidelines specific to certain industries. For general business operations during Phase One, Appendix A requires in part that:

- “Health assessments must be conducted for all employees at the beginning of each shift.”
- “Waiting areas where adequate physical distancing cannot be maintained must be closed.”
- “Non-household customers should remain physically distanced.”
- Customers should be encouraged to call in advance for an appointment, and businesses should consider using “an online wait listing application.”
- “Physical distancing of 6 feet must be maintained between non-congregate customers,” which may require a “reduction in capacity,” a “reduction of seating in service and waiting areas,” and “systems that reduce the amount of contact time between customers and staff.”

For all phases of the COVID-19 public health emergency, the Directive instructs employers to develop and implement policies that conform with “federal, state, and local regulations and guidance” on a variety of topics, including:

- “Social distancing and protective equipment.”
- “Temperature checks and/or symptom screening.”
- “Testing, isolating, and contact tracing, in collaboration with public health authorities.”
- “Sanitation.”
- “Use and disinfection of common and high-traffic areas.”

In particular, the Directive directs employers to monitor their workforce for COVID-19 symptoms, and to “not allow people with symptoms of COVID-19 to work.” Additional public health information on COVID-19 can be found on websites maintained by the [Montana DPHHS](#) and the [CDC](#).

At present, the Directive establishes a baseline that applies uniformly across the State of Montana. County health officials are permitted to adopt more restrictive guidelines, however. The Directive also identifies what public health factors Governor Bullock will review when considering moving between phases, and contemplates that it may become necessary to “re-implement certain restrictions or take other protective measures” in response to increased COVID-19 activity in Montana.

At both the federal and state level, the regulatory and legislative responses to the COVID-19 pandemic continue to rapidly evolve. Crowley Fleck PLLP recommends employers closely monitor all such changes. If you would like more information on these changes, or Governor Bullock's Directive, please contact Crowley Fleck's Employment Practice Group.

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