

PUBLICATION

Texas Lifts Statewide Mask Order and Reduced Capacity Restrictions

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On March 2, 2021, Texas joined the list of 11 states that have lifted or lessened their COVID-19 restrictions. Governor Abbott issued an Executive Order, to be effective on March 10, 2021, beginning the re-opening of Texas in response to COVID-19. Almost one year ago on March 13, 2020, Governor Abbott issued a disaster proclamation stating COVID-19 posed an imminent threat of disaster for all counties in Texas. Just six days later he issued an Executive Order mandating social-distancing restrictions, and on July 3, 2020, all Texans were ordered to wear a mask inside all commercial properties or other buildings or spaces open to the public and in outdoor public spaces when social distancing was not feasible. Since October 14, 2020, most establishments were restricted from operating with more than 75 percent total occupancy and, in some areas with high hospitalizations, no more than 50 percent occupancy.

On March 10, 2021, the state's mask mandate will be repealed and most establishments can return to 100 percent occupancy. However, there will still be limitations on areas with high hospitalizations. High hospitalization means a Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity exceeds 15 percent. Texas is divided into 22 Trauma Service Areas.

If an area has high hospitalizations, local or county officials may impose restrictions on occupancy – although no restriction may require a business to operate at less than 50 percent total occupancy. The local or county officials may also require face masks be worn in public and require businesses to mandate face masks be worn. However, there can be no fines, confinement in jail, or other penalty for violating such an order. Local or county restrictions must be lifted once hospitalizations are no longer considered high for seven consecutive days.

Regardless of the hospitalization rates of COVID-19 patients, businesses, schools, and college campuses may still require those who enter their premises to wear masks and social distance while in their establishment. In fact, many school districts, businesses, and governmental entities have announced their plans to continue mandates in compliance with the recommendations of the CDC. Law enforcement may act to enforce trespassing laws and remove violators at the request of a business establishment or property owner.

In light of the recent Occupational Safety and Health Administration (OSHA) guidance on steps employers can take to safely allow employees to return to work, it is still recommended that businesses continue to follow the guidance of the Centers for Disease Control (CDC) and require face masks and social distancing, as well as encourage frequent hand washing. Preventive measures such as plexiglass barriers should be continued until more Texans are vaccinated, and until the CDC changes its recommendations. President Biden had ordered OSHA to issue this guidance, or propose new rules, related to COVID-19 and safety in the workplace. He also asked OSHA to target the worst offenders related to a lack of COVID-19 precautions. While President Biden was referring to particular industries that have had severe outbreaks of COVID-19 in their facilities, we are still watching to see how this administration enforces OSHA guidelines for all businesses, especially related to COVID-19 issues. Keeping the preventive measures in place and following the guidance provided by OSHA,

the Equal Employment Opportunity Commission (EEOC), and the CDC will help ensure a business does not run afoul of the general duty to provide a safe and healthy workplace free from recognized hazards.

If you have any questions, please contact one of the authors or your Baker Donelson attorney.