

# CORONAVIRUS INFORMATION & UPDATES

June 2, 2020

## Top 9 Operational Challenges for Offices with Phase 3 Guidance from Illinois and the City of Chicago

On May 5, 2020, Governor J.B. Pritzker announced the “[Restore Illinois](#)” plan (the “Plan”), a five-phase plan to safely reopen Illinois. On May 24, 2020, Governor Pritzker and the Illinois Department of Commerce & Economic Opportunity (the “DCEO”) issued [guidance](#) for businesses<sup>1</sup> operating or reopening during [Phase 3](#) of the Plan (the “Illinois Guidance”). During his May 26, 2020 press conference, Governor Pritzker confirmed that the Illinois Guidance is intended to provide the state’s minimum expectations for businesses reopening during Phase 3.

On May 29, 2020, Governor Pritzker issued Executive Orders [2020-38](#) and [2020-39](#) (collectively, the “Orders”), and extended the [disaster proclamation](#) through June 27, 2020. The Orders require businesses to follow all guidance issued by DCEO concerning safety measures during Phase 3, such as the Illinois Guidance, and extend prior orders, notably orders concerning [reinstatement of health care professional licenses](#) and [granting immunity to health care providers](#).

On May 26, 2020, the City of Chicago also issued [guidance](#) for Chicago businesses<sup>2</sup> operating or reopening during Phase 3 of Chicago’s reopening plan (the “Chicago Guidance”). On May 28, 2020, Mayor Lori E. Lightfoot [announced](#) that the City of Chicago will move into Phase 3 of the Reopening Chicago plan on June 3, 2020. Mayor Lightfoot was also expected to extend Chicago’s stay-at-home order through June, but given the ongoing civil unrest in Chicago, Mayor Lightfoot may hold back the city in Phase 2. We anticipate that the City of Chicago’s ultimate requirements for Phase 3 will generally be more restrictive than for the rest of Illinois thereby further complicating plans for reopening by businesses based in Chicago.

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## Top 9 Operational Challenges for Offices Under Phase 3 Guidance from Illinois and Chicago

1. **Civil Unrest.** As Illinois moved into the first day of Phase 3, the City of Chicago saw extensive protests that are ongoing and involved several large gatherings and looting of local businesses. Businesses that were planning to reopen are now faced with massive clean-up efforts, losses, and additional security requirements. It remains to be seen if the Illinois Guidance or the Chicago Guidance will be changed as a result of this civil unrest and potential mass exposure event. At a minimum, we anticipate that the City of Chicago may delay Phase 3 reopening efforts.
2. **Temperature Checks.**<sup>3</sup> Under the Illinois Guidance, all businesses are expected to make temperature checks available for employees. Employers must consider how to acquire devices to safely conduct temperature checks, such as touchless thermometers or infrared/thermal cameras. Moreover, employers must consider how to check employee temperatures safely, such as how to have employees queue without violating social distancing requirements, how to sterilize equipment, how to schedule the checks and whether a health care-trained individual should perform such checks.
3. **Effective Wellness Screening Programs.** Under the Illinois Guidance, all businesses are expected to implement wellness screening programs<sup>4</sup> whereby employees are screened twice per day: once in person as the employee enters the workplace and once mid-shift, either in person or virtually.<sup>5</sup> Employers must consider who the appropriate personnel are to conduct the screening (including third-party contractors), how to formulate targeted screening

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questions that can capture a change in condition, when the screening should occur and how to set up appropriate screening areas. Additionally, employers should consider documenting policies and procedures to facilitate this daily employee screening process.

4. Occupancy Limits; Common Areas. Under the Illinois Guidance, businesses operating in office buildings are expected to limit occupancy to 50% of the office's capacity and limit use of break rooms, including by removing furniture and staggering break times. Additionally, under Chicago Guidance, common areas in commercial buildings must be limited to 25% occupancy, and gathering areas where social distancing cannot be achieved are expected to be closed. Monitoring and enforcing common area usage will pose an enforcement challenge to employers and landlords. Employers must consider how to ensure that no more than 50% of capacity is used while ensuring appropriate social distancing. There is also a question of how to implement this limit for an office that includes several floors; such employers will need to consider whether the 50% limit applies to the office in its entirety or to each floor. Employers may need to strategically relocate employees within certain offices or workspaces to fulfill these requirements.
5. Face Coverings. Under both the Illinois Guidance and the Chicago Guidance, employees are expected to wear face coverings when in common areas or if it is not possible to maintain a six-foot social distance. Employers must determine how to ensure that employees comply with face-covering requirements, including in office hallways, common areas, and elevators. Employers should also consider whether they should take action against employees who do not comply with such requirements and whether additional cleaning measures should be in place when employees are found to have violated such guidelines. Finally, employers must consider whether they will provide face coverings for employees who are not able to maintain a six-foot social distance.
6. Elevators. Landlords of multi-tenant buildings and employers occupying their own buildings are expected to limit elevator occupancy such that a six-foot social distance may be maintained at all times. This will require clear signage to show occupancy limits and effective monitoring, possibly requiring a "doorman" concept to usher in employees and visitors. Moreover, employers must consider how employees will queue while waiting for elevators such that six feet of social distancing may be maintained. Employers and landlords in multi-tenant buildings may further want to consider whether elevators can be solely dedicated to a particular employer to protect its employees against the possibility that another tenant is not screening its employees.
7. Physical Workspace. Under both the Illinois Guidance and the Chicago Guidance, employers are expected to ensure that occupied workstations are at least six feet apart. When this is not possible, employers are expected to install physical barriers, such as plexiglass dividers, between workstations.
8. Cleaning Requirements. Under the Illinois Guidance, employers are expected to clean and disinfect premises consistent with [CDC guidance](#) on a weekly basis. Further, both the Illinois Guidance and the Chicago Guidance require that common areas and frequently touched surfaces are cleaned and disinfected regularly, with Illinois Guidance recommending cleaning and disinfecting every two hours. Additionally, employers are expected to provide employees in office buildings with cleaning supplies such that employees may disinfect their workstations at the beginning and end of their shifts. Employers must consider how to acquire and maintain adequate cleaning supplies, how to ensure that required cleanings occur regularly throughout the day, and how to implement mandatory cleaning procedures applicable to all employees.

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9. Logging Visitors. The Illinois Guidance requires employers to log all visitors, including external suppliers, visiting an office building. The Illinois Guidance also requires that tenants screen their visitors, and, in multi-tenant buildings, landlords must screen external suppliers at the loading dock to the extent applicable. Office tenants are also encouraged to take external supplier and visitor temperatures, using a thermometer where possible. Many suppliers and visitors may not wish to be subject to health questions and temperature checks, and office tenants may be forced to make alternative arrangements to accept deliveries and meet with visitors where applicable.

## Remaining Questions for Businesses in Phase 3

The Illinois Guidance and the Chicago Guidance represent minimum expectations for businesses operating in Phase 3, and the Orders require that businesses follow guidance from DCEO and guidance concerning social distancing. Employers should consider whether employees can still continue working remotely and encourage all employees who are able to work remotely to continue doing so. It remains to be seen how strictly the guidelines will be enforced and whether the operational costs of implementing the guidelines will be worth the benefits of bringing some of their employees back. Businesses should also consider how their liability insurance is affected by returning to work and whether failure to adhere to the Illinois and Chicago Guidances could lead to public relations issues. To that end, businesses should also consider their obligations under the Occupational Safety and Health Administration (“OSHA”) [general duty clause](#) and guidance promulgated by CDC.

1. The types of businesses are (1) [manufacturing](#), (2) [health and fitness centers](#), (3) [offices](#), (4) [personal care services](#), (5) [retail](#), (6) [outdoor recreation](#), (7) [service counters](#), (8) [day camps](#), (9) [youth sports](#), and (10) [restaurants and bars](#). The guidance does not vary significantly between types of businesses, and it represents the minimum expectations for businesses operating during Phase 3 of the Restore Illinois plan.
2. The categories of businesses are (1) [education and childcare](#); (2) office and real estate ([commercial buildings and residential buildings](#)); (3) [accommodation and tourism](#); (4) [food service](#); (5) retail ([retail](#), [personal services](#), and [health and fitness clubs](#)); (6) B2B ([manufacturing](#), [construction](#), and [transportation and warehousing](#)); (7) [healthcare](#); and (8) [parks and outdoor attractions](#).
3. We are seeking further guidance from Illinois on how to implement temperature checks and wellness screening program requirements.
4. DCEO has provided a [checklist for wellness screening programs](#) that discusses best practices for conducting workplace wellness screenings for employees. Best practices include (1) conducting in-person health screenings; (2) taking appropriate measures to protect the screener, such as social distancing and impermeable barriers; (3) organizing and completing health screenings in a way that helps maintain social distancing guidelines, such as having multiple on-site screening locations; (4) if conducting temperature screenings, using infrared/thermal cameras or touchless thermometers; (5) following guidance from the Equal Employment Opportunity Commission concerning confidentiality of medical records from health checks; and (6) ensuring that screenings are conducted as privately as possible to prevent stigma and discrimination in the workplace.
5. Chicago Guidance for commercial businesses is less stringent and permits employees to self-screen daily before they enter the workplace.