

San Francisco Continues “Shelter in Place” Order with Limited Expansion of Essential Business Operations

Since the beginning of the shelter-in-place period on March 16, most office tenants in San Francisco have been deemed non-essential and ordered not to open for business except for the conduct of limited “minimum basic operations.” Following Mayor London Breed’s announcement on May 28 that the City would begin a phased reopening of San Francisco, the City provided further [guidance](#) on June 11 for certain Additional Businesses (the “Updated Order”), including the initial reopening of non-essential office tenants on June 15.

The Updated Order for the first time provides specific steps whereby a limited number of employees that a business deems “necessary for operations” may return to working in the office of a non-essential business. There are, however, very strict limitations about who qualifies to come back to an office, as well as what steps must be taken in order to re-open the office at all. In addition, the Updated Order contains a clear warning:

“This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this County, which are necessary to control the public health emergency as it is evolving within the County and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the County will worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that all businesses with facilities that are allowed to operate under the Order comply with the Social Distancing Requirements.”

In light of the foregoing, the Updated Order provides that “office workspaces that are not otherwise permitted to operate under this Order [i.e. Essential Businesses] may open for individuals necessary for operations who cannot work remotely.” The Updated Order makes clear that *any* employee who can telecommute must continue to do so, but leaves it up to the employer to declare which employees are “necessary for operations.” This is made evident in the guidance provided in the Office Health and Safety Plan (discussed below) where the City clarified that office tenants may bring back employees to perform work beyond the Minimum Basic Operations of security and payroll, which had been permitted, since the initial Shelter-in-Place Order took effect.

If an office tenant has less than 20 employees, only the amount of employees that can safely observe social distancing rules, including maintaining at least six feet of distance, are allowed. For offices with more than 20 employees, the total number of employees that may return is the lesser of: (i) 20% of the office’s normal maximum

occupancy; and (ii) the number of people who can follow social distancing rules and maintain at least six feet of distance from one another. These personnel caps are intentionally restrictive and still prevent the vast majority of workers from returning to their offices.

Each office tenant must post the following items at each public entrance: (i) a Social Distancing Protocol (which can be found [here](#)); (ii) an Office Health and Safety Plan (which can be found [here](#)); and (iii) signage that (A) employees must avoid entering an office with COVID systems, (B) social distancing of at least six feet must be maintained, (C) a face covering is required at all times in public areas, and (D) no hand shaking or unnecessary physical contact may be engaged in (sample signs of which can be found [here](#)). Each office tenant must also strictly adhere to the Best Practices (located within the Office Health and Safety Plan referred to above) and the new San Francisco Office Directive (which can be found [here](#)). The employer must also provide copies of each of the foregoing items to, and review them with, all returning employees before they are permitted to return to an office setting. To the extent not already followed, the foregoing requirements are also applicable to all parties who manage and operate commercial office buildings that are, or will become, open. The new signage also appears applicable to office buildings and, for avoidance of confusion, building owners and managers should update their building entrance signage.

While not all aspects of the Social Distancing Protocol apply to office tenants, the Office Health and Safety Plan clarifies those portions that must be complied with in order to safely reopen. These new requirements include:

- Updating office layouts to allow for necessary social distancing, including maintaining six feet of space between personnel;
- All plumbing must be checked using City guidelines to ensure stagnant water is flushed out and water is safe to use;
- To the extent available to a tenant, increase the percentage of outdoor air coming through HVAC systems and require that each individual remove personal fans to stop any spread of potential airborne contaminants;
- Ensuring that face masks are worn in all public areas of an office (but employees need not wear a mask while in a private office);
- Encouraging all third-party vendors and members of the public make appointments before coming into an office;
- Developing a sanitization plan that ensures employees have enough soap and hand sanitizer at all times, as well as making sure that high-touch surfaces (including countertops, refrigerator/freezer doors, drawers in public spaces, and door handles) are disinfected on a regular basis;
- Limiting usage of all common kitchen equipment (such as water fountains, stoves, and water coolers) and that microwaves may only be used if disinfected by employees after each use; and
- Minimizing all non-essential travel for employees between their homes, worksites, and business travel outside of San Francisco.

One item of the Office Health and Safety Plan that is more specifically applicable to office building managers, rather than individual office tenants, is the updated requirements for elevator ridership. Per the new directive, all elevator rides must be limited to the lesser of: (i) four people; or (ii) the number of people who can fit in the elevator while maintaining at least six feet of distance from each other. At peak entry and exit times, however, four individuals may ride in a single elevator car, regardless of whether or not the car allows for six feet of physical distance between riders. Additionally, signage must be posted on each floor that anyone who rides an elevator must have a face covering on at all times. Given that this new elevator language is vague and does not define what is a peak entry or exit time, the practical effect is that for the vast majority of business hours, no more than one or two individuals may be allowed in a single elevator car at one time – posing significant slowdowns in individual employees reaching their respective floors.

Perhaps one of the most important requirements for reopening office spaces is creating a plan for personnel who plan to return to the office. All returning employees must self-assess if they are healthy enough to come in and wellness checks must be reported to management daily. Each returning employee must receive a copy of the one-page Appendix A to the Social Distancing Protocol outlining all self-assessment protocols. All returning employees must tell the employer each day that they are healthy enough and do not have any COVID-19 symptoms, but if an employee cannot provide an in-person affirmative response each day, the employee must notify the employer by phone, e-mail, text or app that they are capable and healthy enough to come to the office.

While not expressly covered by the Updated Order, employers should also develop a plan in the event an employee tests positive for COVID-19. By City Order (which can be found [here](#)) every COVID testing company must report the name of an individual who tests positive to the San Francisco Department of Public Health (“SFPDH”). Upon being notified of a positive test, SFPDH may reach out to an employer to trace contacts that the employee may have had within the office, but the identity of the individual cannot be revealed except in limited circumstances. Whether or not an employee’s identity is known, if an employer is notified that one of its employees has tested positive, employers will need to notify building management so that the building can undertake (or authorize the tenant to undertake) appropriate disinfection of areas within the premises that may have been accessed by the affected person. To the extent an employee’s identity is determined, that person’s office space should be separately quarantined and professionally disinfected before allowing others to come close to, or in, that space once again.¹ It is recommended that buildings and tenants conduct “dry runs” and develop appropriate protocols with expert consultants and legal counsel.

While the new San Francisco reopening guidelines for office tenants are onerous, now is the time for employers to begin to implement plans for the safe and effective ways to re-open their spaces for all employees. Taking the time now to order supplies, educate employees, and develop safety plans will not only ensure an orderly initial re-

¹ It is important to also note that privacy laws must be complied with at all times, including not disclosing the name of an employee who tested positive to any other member of the office or building unless that employee gives permission to do so.

opening, but also significantly decrease the amount of time and stress necessary to comply with further guidance once additional employees are permitted to return.

Buchalter is committed to helping clients navigate through these challenging and rapidly changing times, including the new San Francisco health orders. We have attorneys experienced in adapting and navigating clients through these regulations are here to help however you need. If we can be of assistance, please feel free to contact any of the Buchalter Attorneys below.



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