

San Francisco Moves to Lowest COVID Tier in California, Begins Process of Reopening Non-Essential Offices; Other Bay Area Counties Slower to Follow

By Jonathan August and Manuel Fishman

On October 20, 2020, San Francisco County was upgraded to the “minimal” tier within the California COVID-19 tracking system, meaning it has the fewest restrictions on reopening all businesses as promulgated by the State of California. In order to qualify for the “minimal” tier, a county must have an infection rate of less than one daily new positive COVID case per 100,000 residents and have a positive test rate of less than 2% for two consecutive weeks. This least-restrictive tier permits businesses like bars and restaurants to open up to 50% capacity, schools to fully open for in-person instruction, and for non-essential offices to reopen their doors.¹

State law, while providing base levels of guidance for each type of business, permits counties to adopt reopening protocols that are stricter than the State requirements. As it has done throughout the COVID-19 pandemic, San Francisco has instituted greater limitations in order to continue curbing the spread of COVID-19. Perhaps the most impactful of these restrictions affects non-essential offices, which will continue to see significant constraints during the reopening phase.

While the State of California permits non-essential offices to open in full, with modifications for face coverings, workplace safety plans, and daily health screenings for all individuals who come to an office, San Francisco has placed a cap on the total number of occupants as the lower of either 25% of maximum occupancy or only so many people as can remain six-feet apart. Thereafter, so long as the COVID-19 case rate remains stable or continues to improve for 30 days, San Francisco will consider increasing the maximum percentage permitted in offices to 50%. The County still encourages all individuals who can telecommute to do so and discourages in-person meetings or the use of conference rooms for those that do return to their offices.

Despite the positive news and low rate of infection within San Francisco, Mayor London Breed announced on Friday, October 30 that the County’s plan to increase indoor restaurant capacity to 50%, along with the reopening of indoor pools and locker rooms at fitness centers, would be put on hold following an increase in hospitalizations and positive

¹ Any county may move into a lower, or higher, tier based on the previous two-week rolling average of hospitalization and positive COVID case rates, so it is imperative that as counties move into less restrictive tiers, they work to maintain their lower infection rates.

cases. Given this increase in positive COVID cases, it is unlikely that non-essential offices will be permitted to go beyond the current 25% occupancy limit in the near future.

In addition to limiting the number of individuals who may enter an office workspace, San Francisco has increased the signage requirements as well. All employers must post signage in breakrooms and cafeterias that: (1) COVID-19 is transmitted through the air and that the risk is higher indoors; (2) seniors and those with health risks should avoid indoor settings with crowds; and (3) that all employees may report COVID protocol violations anonymously either by phone to 311 or at the San Francisco health violation website. The heightened risk signage requirement discussed as (1) above must also be placed “conspicuously” within each office workplace and at all public entrances to an office or office building. This is a new requirement for office building owners and managers. Furthermore, all office workplaces must update their Social Distancing Protocol and Health and Safety Plan to the latest version promulgated by the San Francisco Department of Public Health.²

These new signage requirements are designed to accomplish two tasks at the same time. First and foremost, the new signage is intended to provide further information on the spread of COVID-19 to allow employers and employees to make smart decisions about reopening their offices. Second, the new signage is specifically designed to give further peace of mind to employees who may not fully feel comfortable being back in their office workspaces, while also providing them an anonymous outlet to report violations so as to not be retaliated against by an employer.

While San Francisco County has experienced the most rapid decline in positive COVID cases and hospitalizations, the surrounding Bay Area counties have also begun to see significant decreases as well. As of the date of this article, Alameda, Contra Costa, Marin, San Mateo, Santa Clara, and Santa Cruz counties are all within the “moderate” or third least restrictive tier. This is a new status for several Bay Area counties. Like San Francisco, these counties are all permitted to reopen non-essential office workspaces, provided they comply with the State-required modifications. While Contra Costa, Marin, San Mateo, and Santa Cruz Counties, for example, are permitting offices to reopen so long as they follow state guidelines, Alameda and Santa Clara Counties are not permitting non-essential offices to reopen in any capacity.³ This divergence in reopening policy is a rare split for the Bay Area counties, which have been coordinating their COVID responses together for the majority of the pandemic.

Regardless of the new signage requirements and ability for employees to return to their offices in small amounts, it is our belief that most employees will continue to work from home and telecommute so long as they are able to do

² Signage templates can be found at: <https://sf.gov/outreach-toolkit-coronavirus-covid-19>, while the updated Social Distancing Protocol is available as Appendix A to the latest Shelter-in-Place Order at: <https://www.sfdph.org/dph/alerts/files/C19-07-Shelter-in-Place-Health-Order.pdf>, and the updated Health and Safety Plan is available at: <https://www.sfdph.org/dph/alerts/files/2020-18-Offices-Health-and-Safety-Plan.pdf>.

³ Contra Costa, Marin, San Mateo and Santa Cruz Counties require that all offices meet the minimum reopening guidelines set forth by the State, which are found here: <https://files.covid19.ca.gov/pdf/guidance-office-workspaces--en.pdf>.

so. We also anticipate that as more employees do return to their offices over time, both the State of California and County of San Francisco will revise their guidance and policies on how offices may safely reopen. Accordingly, it is encouraged to have a member of an employer's human resource team continuously monitor health department reopening guidelines and reach out to counsel to discuss any changes as they appear in order to ensure that all requirements are being timely satisfied.

Buchalter is committed to helping our clients assess their rights with respect to COVID-19 and stands ready to assist in navigating these uncharted waters.



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