

## Governor Pritzker's Latest Executive Order Calls for Employers to Reevaluate and Implement Illinois Department of Commerce and Economic Opportunity Guidelines

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May 31, 2020

On Friday evening, May 29, 2020, Governor Pritzker issued an Executive Order stating that businesses “must follow” the detailed Phase 3 reopening guidance recently published by the Department of Commerce and Economic Opportunity. Employers who interpreted the Phase 3 guidance as merely providing recommendations about how to reopen or continue to operate are encouraged to reevaluate their compliance efforts in light of the new Executive Order.

Five days earlier, on Sunday, May 24, 2020, the Illinois Department of Commerce and Economic Opportunity (“DCEO”) released its Phase 3 Business Toolkit (the “Toolkit”), designed to coincide with Phase 3 of Governor Pritzker’s “Restore Illinois” reopening plan. The Toolkit contains a common set of health, safety and reopening guidelines that are, according to the DCEO, “expected and encouraged among all employers,” separate specific guidelines for businesses in 10 different industry categories, and training and posting resources.

However, the language of the Toolkit and the guidelines themselves left employers wondering whether anything contained in them is, in fact, required. For example, while the DCEO’s common and industry-specific guidelines generally distinguish between “minimum guidelines” and “encouraged best practices” for businesses, they do not state that Illinois employers “must” take, or are “required” to take, any particular action. Instead, the guidelines provide that businesses “should” take the steps outlined therein and, even then, in certain circumstances “should” do so only “as practical.” Moreover, the only resource in the Toolkit that refers to the existence of any definitive requirement is the Checklist for Employee Training, which states: “All workers must complete a health and safety training related to COVID-19 when initially returning to work.”

Governor Pritzker’s Executive Order 2020-38 (the “Order”), released Friday evening, May 29, 2020, addresses employers’ questions about whether the guidelines must be followed. The Order states: “Businesses must follow guidance provided or published by the [DCEO] regarding safety measures during Phase III . . . .” The Order further sets forth its own public health requirements for all Illinois businesses and for those in particular industries.

In light of the Order, employers that previously interpreted the DCEO guidelines as providing only “suggestions” as to how to reopen (or to stay open) are encouraged to promptly reevaluate them to determine how to best comply.

If you have any questions regarding the topics discussed in this article, please contact **Elizabeth N. Hall** at +1 (312) 609-7795, **Thomas G. Hancuch** at +1 (312) 609-7824, **Kathryn A. Rosenbaum** at +1 (312) 609-7973, or any Vedder Price attorney with whom you have worked.

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