



RESTARTING CALIFORNIA

A Plan From California's Business Community

May 6, 2020

Executive Summary

Governor Newsom's mid-March Executive Order (N-33-20) was enacted to protect the public health during one of the most challenging pandemics in modern history. Based on the historical results for the Spanish flu in 1918-19, this executive order with the similar stay-at-home strategy (including no termination date) has been instrumental in helping to "flatten the curve" to save lives. However, just as in similar results in 1918-19, it does not come without a severe economic and personal cost.

In the weeks since this order's enactment, the economic devastation caused by the COVID-19 pandemic is unlike anything seen in this country since the Great Depression. With all non-essential businesses either closing their doors or severely limiting operations (so called "minimum business operations"), the millions of men and women who work across our great state are in survival mode. California has gone from a full employment economy at 3.2% unemployment to a projected unemployment of almost 20% in just six weeks.

To summarize:

- During the last six weeks, 3.7 million Californians have filed for unemployment insurance, equivalent to 19% of the labor force.
- These numbers only cover wage and salary workers, and the full dimensions of jobs loss will be seen now that workers among the state's 2 million self-employed have begun filing for Pandemic Unemployment Assistance (PUA).
- The shutdown is having an immediate substantial and negative impact on state and local government revenues used to support all public services.
- Cities, with their revenues more dependent on business activity and household consumption, are now projecting a \$7 billion general revenue shortfall during the next the two years. The League of California Cities recently reported that 90% of its member cities are contemplating layoffs or furloughs.
- Recovery from the most recent recession took the longest on record. Jobs in California took 82 months to return to the pre-recession levels, in large part due to state and federal actions that increased regulations, taxes and fees rather than the usual strategies used in past downturns to promote jobs and competitiveness.

During this crisis, the statewide business community has repeatedly voiced support for Governor Newsom's public health measures to limit COVID-19's spread in order to protect and preserve public health and safety.

At the same time, businesses and employers throughout the state have stepped up in amazing and unprecedented ways to support employees, community members and the less fortunate in this time of crisis.

“Unless the Golden State takes the lead in restarting our economy, America’s economy and millions of workers will suffer.”

But six weeks later, the psychological and financial costs are starting to approach the same upward curve as the pandemic models in its earliest days. As the health threat recedes workers grow increasingly anxious by the day wondering how their families will make ends meet if the stay-at-home order continues into late May or June. Most importantly, they worry if the jobs they had prior to the closure will even exist when the order to return to work is given.

Today, California has 29 counties with zero patients in ICU beds and 30 counties with no new COVID positive patients. Now that much more information is available to better understand the virus’ spread and the populations at the greatest risk, it is time to urgently flatten the unemployment curve by a phased-in regional re-opening of California’s economy.

Implicit in this phased re-start is an on-going partnership with public health professionals, government and the business community to establish clear and transparent public health guidelines that businesses can follow to reopen across all sectors of our vast and dynamic economy. These same public health professionals should not be expected to restart a statewide economy on their own. Those groups and individuals with the innovation and real-world experience in job creation and commerce must now lead the way.

Restarting the economy faces huge challenges. According to an April NFIB survey, only 32% of small business owners expect their local economies will return to pre-crisis levels by the end of the year. Thirty-nine percent (39%) expect a return to normal will not happen until 2021, and 29% expect recovery will take longer¹. These sentiments should give the Newsom Administration great concern, as employers are making investment and rehiring plans based on these expectations. Government actions that raise barriers to investment and rehiring even higher than they are today will delay the recovery even further. Business as usual under California’s high operating costs and high cost of living means many households will continue to face long periods of income uncertainty.

Business has engaged with the Newsom administration as it begins to develop a plan for California’s economic recovery starting May 8th. To paraphrase what was written in an April 27, 2020 letter to three West Coast governors, California will be stronger if we work together – and minimizing our concerns will delay the recovery

¹ See NFIB COVID-19 Survey, April 17, 2020, <https://www.nfib.com/assets/Covid-19-survey-loans-2.pdf>

and cost jobs and revenue.² This engagement is even more important with the combination of the three state economies equal to 19% of our national GDP, clearly showing that restarting the West Coast is key to recovering our national economy.

We believe that all California businesses designated as “essential” along with medical professionals and first responders have done a heroic job during the past

“...it will take an estimated one to two weeks or more for a closed business to implement the health and safety procedures necessary to open based on [business] size, sector and unique requirement.”

seven weeks. These essential businesses have quickly innovated mitigation measures and developed best practices that set the foundation for “non-essential” businesses to quickly implement. However, it is important to note that it will take an estimated one to two weeks or more for a closed business to implement the health and safety procedures necessary to open based on their size, sector and unique requirements. Clear guidelines and cost of mitigation measures will play a critical role in their decision to on how many employees they can afford to hire or whether they can re-open at all.

Currently, the Newsom administration has laid out six indicators and four stages in various planning documents in the current Stage 1. Specific and data-informed re-opening guidelines are next to roll out. These guidelines represent the necessary foundation for Governor Newsom to implement Stage 2 and then stage 3 so that California businesses and employees can begin to get back to work and state/local government revenues can begin to recover.

This document outlines the California business community’s recommendations to help restart the economy:

- Set clear expectations and timelines.
- Establish protocols for the continued use of testing, PPE and social distancing to minimize further spread of the disease as businesses re-open.
- Modernize employment laws and regulations to expand opportunities for work at home for the long-term future.
- Address the potential for conflicts between COVID-19 goals and rules, and those established by current law or regulation.

² See April 27, 2020 letter from CA, OR and WA Business Leaders to Governor Newsom, <https://www.awb.org/files/library/covid-west-coast-letter-final-4.pdf>

- Provide clear standards to limit misuse of COVID-19 as a “workplace injury,” in particular to enable employers to maintain the telework options they have used to preserve as many jobs and incomes as possible.
- Work with federal government on changes to health insurance (COBRA) to ensure continuity in health care coverage for all employees.
- Pause the minimum wage increase, particularly in the hardest hit regions.
- Pursue litigation relief by repealing Labor Code Private Attorney Generals Act (PAGA), to remove frivolous litigation risks as employers focus on restarting their business and jobs.
- Enact a regulation freeze for at least six months and potentially a longer period based on reaching specified job recovery or unemployment levels, with an exception for those regulations essential to public health and safety.
- Repeal AB 5 and implement an emergency standard to provide alternative work arrangements that provide both businesses and households with greater flexibility they will need during the economy’s re-start.
- Establish a definitive timeline to sunset executive orders enacted during the pandemic.
- Ensure personal and health privacy requirements for Covid-19 mitigations (including contact tracing) also contain appropriate litigation protections.

Many states began this effort weeks ago and if California is going to take its proper leadership role in leading a national recovery then we must quickly implement guidelines and major policy reforms to re-open in a responsible, phased effort starting on May 8th. The time to act and to get Californians back to work is now.

California’s economy, businesses, workers and families cannot afford to wait.

Protecting Public Health Remains Our Top Priority

Californians were told that the purpose of March's stay-at-home order was to "flatten the curve" and to ensure that hospital systems throughout the state were not overwhelmed by COVID-19 cases. To date, the state's hospitals have not been overwhelmed and, while we cannot entirely stop the virus' spread at this time, we can take steps to protect the most vulnerable populations while allowing businesses throughout the state to progressively re-open.

As various industries, sectors and/or regions return to work throughout California, the Newsom Administration – with guidance from health experts – must institute health and behavioral protocols to limit further transmission (maintaining physical distancing, remote work, hygiene and health-oriented guidelines, contact tracing and reporting information to relevant authorities). Equally important, business owners, employees and customers will all need to be made aware of new policies and procedures to safely engage in commerce.

The following summarizes the over-arching health measures necessary to move from Phase I (where we are now) to Phase III (that point in time – hopefully not in the distant future – where the majority of California businesses are operating and the economy is strong).

Phase I (We Are Here Now)

Slow the Spread: Reduce transmissions of COVID-19 across California by reducing the number of infections. The government mandated "minimum business operations" carried significant costs to business owners, employees and governments at all levels. It cannot continue indefinitely. Steps implemented to protect public safety include:³

- Maintain physical distancing
- Promote telework
- Limit unnecessary travel
- Cancel or postpone meetings and mass gatherings
- Close dining areas in restaurants (encourage takeout or delivery services when feasible)

"As the health threat recedes workers grow increasingly anxious by the day wondering how their families will make ends meet if the stay-at-home order continues into late May or June."

³ Multiple sources address the steps necessary for minimum business operations. See Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html>

Phase II (Parts of the State Are Ready To Enter This Phase Immediately)

Re-starting the economy will take much longer to accomplish than shutting down, even on a phased or limited basis is a complex process that will require business and government alignment. Working in tandem with the business community, the State of California needs to immediately begin incrementally phasing in business operations once the following health prerequisites are met:⁴

- Sustained reduction in cases for 14 days
- Hospitals are safely able to treat all patients requiring hospitalization without resorting to crisis standards of care
- State is able to test all people with COVID-19 symptoms
- State is able to conduct active monitoring of confirmed cases and their contacts

To quote Governor Newsom, "Localism will be determinative."

Consistency is critical. Businesses at a lower risk should be allowed to return to work, provided that they meet specific criteria to re-engage in commercial activities. As soon as possible, the Newsom Administration, working closely with the business community, needs to establish clear protocols for progressive re-opening of businesses that adhere to and

follow health and safety best practices. Governor Newsom has said, "localism will be determinative." These protocols should not get so proscriptive that they hamper or prevent local businesses from re-opening, based on local conditions. California is an integrated economy. Restarting delays in some localities have the potential to affect jobs and income recovery more broadly. This phased opening should be prioritized by targeting businesses, industries or sectors that:

- Can quickly and easily implement health and safety protocols and restore operations.⁵
- Employ large numbers of individuals that were negatively impacted by the shelter in place order.⁶

⁴ See Centers for Disease Control and Prevention, "Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposure in Travel-associated or Community Settings, Updated February 8, 2020, <https://stacks.cdc.gov/view/cdc/85296>

⁵ See p. 2, Los Angeles Economic Development Corporation Letter to Los Angeles County Board of Supervisors, April 24, 2020

⁶ Ibid

Phase III

The third phase should follow behind Phase II's successful progressive implementation and would lead to a broad-based re-opening of most California businesses. In this phase, restrictions on movement and activity, public and workplace safety and trust and monitoring would continue. People at risk from COVID-19 exposure – the elderly, those with compromised immune systems and others – will still need some accommodations. However, from a business perspective, most, if not all, businesses should be encouraged to work normal hours and work shifts. Only symptomatic individuals and members of vulnerable populations would need to additional accommodations.⁷

Important Resources for California:

The national Business Roundtable provided some useful exhibits outlining a framework for approaching these issues. These documents can serve as useful guideposts for the Newsom Administration as we exit Phase I and enter Phase II reopening and head toward Phase III. These five exhibits are attached at the end of this document.⁸

⁷ See April 24, 2020 letter from Business Roundtable to Governor Gavin Newsom

⁸ See Letter to Governor Gavin Newsom with attachments containing "Developing Guidelines for Returning to Work," Business Roundtable, April 24, 2020

Immediate Priorities To Restart California's Economy

To paraphrase a famous quote, "When California sneezes, the rest of America catches a cold." With a \$3 trillion-plus economy, California's economic might is greater than most countries. Unless the Golden State takes the lead in restarting our economy, America's economy and millions of workers will suffer. This reality makes the economic devastation caused by the COVID-19 pandemic so disturbing and harmful to employers, workers and their families – and amplifies the pressure to re-open now.

"Government actions that raise barriers to investment and rehiring even higher than they are today will delay the recovery even further."

The speed and success with which California's economy recovers is important for businesses of all sizes; however, it is particularly important for small and medium-sized businesses, many of whom are owned by females, minorities and immigrant families. Aside from constituting the life blood of many communities, these small businesses are also customers and suppliers of large businesses and employers of individuals. These families are bearing the brunt of our current crisis.

The business community has repeatedly offered to work with the Newsom Administration to develop and implement measures to restart our economy. We are experts in how our industries work and know what is needed to restart in a timely, effective manner. We can partner with the Administration to develop and implement policies and procedures that foster confidence in workers and consumers by creating a common understanding of what must occur to re-open.

While individual industries and sectors will each have specific criteria necessary to begin and sustain business operations, below find top-level priorities that impact the entire business community:

Set Clear Expectations and Timelines

The economy won't restart with the flip of a switch. Businesses are planning for a phased-in restart. This phased approach will look different for varying industries and sectors, and for different regions across our state. The following examples, as of May 2, 2020,⁹ illustrate the need to look at industries, sectors and regions differently:

- Of California's 58 counties, 19 have had no COVID-19 deaths and 41 have experienced less than 10 deaths.

⁹ See COVID-19 Public Dashboard - https://public.tableau.com/views/COVID-19PublicDashboard/Covid-19Public?:embed=y&:display_count=no&:showVizHome=no

- Of California's 2,171 total COVID-19 deaths, Los Angeles County accounts for 1,172 (or 54%).
- The Sacramento region has the lowest reported coronavirus infection rate among the 50 largest metropolitan areas in the country¹⁰.

Businesses also understand that we won't return to "business as usual" – meaning the way we operated before the pandemic. While it's fashionable to talk about the "new normal," we prefer to think of California's imminent re-opening as the "next normal" because life after a successful re-opening will change again once therapeutics to combat the virus come to market or when a successful vaccine is created.

While the business community will work with the Administration to adopt new workplace guidelines that we anticipate will include social distancing, crowd management and infection prevention, it is imperative that:

- Businesses understand what is expected of us, so that we can begin implementing these changes and start the re-opening process immediately. Our goal should be bringing employees back to work, customers back to businesses and providing confidence that ALL will be safe.
- Industries and sectors that have been hardest hit should receive additional support and consideration.

¹⁰ See *Sacramento Bee*, May 2, 2020, <https://www.sacbee.com/news/local/article242451546.html?>

Making A Re-Opening Successful and Sustainable

It is well known that recovery from the most recent recession (which began in 2008-9) was the longest on record. As indicated earlier, jobs in California took 82 months to return to the pre-recession levels, in large part due to state and federal actions that increased regulations, taxes, and fees rather than the usual strategies used in prior downturns to promote jobs and competitiveness. The resulting operating cost increases diverted employer resources that otherwise could have gone to expanding jobs more quickly. And, the resulting cost of living increases meant that many households took much longer to recover their finances as well, with costs for basics such as housing, utilities, fuels and other essentials continuing to outstrip growth in wages in recent years.¹¹

The over-riding goal should be not just to restart the economy, but to take actions that enable a return to pre-COVID business levels as quickly as possible. Those actions include removing cost and regulatory barriers in the way of a return to previous job levels, expanding the work arrangements essential to provide households with options to weather the many challenges they face now and in the immediate future and restoring the incomes that are essential to the welfare of households and that are the basis for state and local government revenues. Specifically, we recommend the following:

Establish protocols to minimize further spread of the disease as businesses re-open.

Returning to business will not be so much a return to normal as it will be establishing a new or next normal. Steps will still need to be taken to protect public and worker safety including testing, use of PPE and social distancing measures that will vary by type of business. Similar to work being done by the California Restaurant Association, standard or model mitigation measures should be developed at the state level along with appropriate notification materials to be displayed to inform the public and employees of the measures being taken and why they are being taken. These mitigation measures must be flexible in order to allow modifications that reflect specific conditions in each business, but they should also provide a base to help ensure that re-opening the economy can continue to move forward once it starts.

Modernize employment laws and regulations to expand opportunities to work at home for the long-term future.

Expanded telework is an option offered by many employers during the past several weeks to keep businesses operating and incomes flowing while keeping employees safe and with flexibility to juggle other family responsibilities during the current crisis. With many workers also dealing with children whose schools are closed, flexibility in the workday is necessary. Even if schools re-start in summer or early

¹¹ For many of the points above, see Coalition Letter to Governor Newsom re: Request for Relief to Create Flexible Work Hours for Telecommuting and Reduce Liability Risks, April 1, 2020

fall, parents will need flexibility in the near-term to juggle dueling responsibilities of employment and supervising an unpredictable school day for their children. Not all jobs are amenable to this arrangement, but many are. Telework has been instrumental in keeping the economy from falling further than it has. As an aside, even before the current crisis, telework provided far more real climate change benefits than any Vehicle Miles Traveled (VMT) mandate envisioned by the regulatory agencies, with the number working at home exceeding those using public transit as a commute option in every year since 2014.

Telework, however, remains an option primarily for higher wage exempt employees. Expansion to lower wage non-exempt employees is limited by the state's labor laws, which open up employers to significant litigation risk if they seek to be more equitable in how this option is provided. In order to provide businesses and employees with certainty they need during Phase II, standards regarding workplace flexibility for businesses instituting telework for their employees must occur, if not longer term to provide more resilience to the economy as we move into the uncertain next few years:

Flexibility on the 8-hour workday mandate. California is only one of the three states that base overtime on an 8-hour workday. The ability of employers to monitor teleworkers in order to comply with this standard is simply impossible without exposing them to severe penalties under state law and harassing litigation under the Private Attorneys General Act (PAGA). Without changing the standard itself, flexibility should be provided to eliminate the current cumbersome notice and voting requirements and permit individual agreements to work any schedule not exceeding 40 hours in a work week before overtime begins. Public workers largely have this flexibility. Private sector workers who need to return to their jobs should have it as well.

However, similar flexibility beyond just telework should be applied more broadly. Many employers will be restarting from essentially a zero cash flow basis, yet the WARN Act filings to date suggest that the overwhelming number intend to bring as many of their workers back as possible. They will need flexibility in order to return to normal job levels. This flexibility would enable them to work with their workers in crafting schedules that address the current time demands on each.

Flexibility on meal and rest break mandate. Businesses able to keep their employees working have a difficult time regulating and enforcing mandated meal and rest breaks while workers are at home. Violations of this mandate are one of the most cited in PAGA threat letters and litigation. Companies should not be forced to lay-off workers simply because of California's outdated and inflexible labor laws.

Address the potential for conflicts between COVID-19 goals and rules, and those established by current law or regulation.

For example, enforcing mandated meal and rest breaks may result in employees and/or customers being exposed in a larger number of contacts than otherwise would result. Various agency enforcement bodies are going to need to have this issue resolved to prevent inadvertent violations

Provide clear standards to limit misuse of COVID-19 as a “workplace injury,” in particular to enable employers to maintain the telework options they have used to preserve as many jobs and incomes as possible.

Labor Code section 3600 states that an employer is liable “for any injury sustained by his or her employees arising out of and in the course of employment.” There is no distinction between work done in an office setting or work done remotely from home, and the courts have consistently given broad interpretation of this statute to the benefit of an injured worker. With employees teleworking (now and at some level for the foreseeable future) and with a partial return to work (half-staffing, potential for reduced hours, etc.), the issue of what constitutes a “workplace” injuries must be addressed. Businesses and employers need clear guidance and standards on what can be claimed as a workplace injury. Additionally, as the economy re-opens, it will be essential to clarify if any worker who contracts coronavirus automatically qualifies for workers’ compensation benefits. Various sources estimate that such a broad mandate would impose costs as high as \$33 billion on California employers. The imposition of such extra-ordinary costs on businesses now, in a challenging post-COVID recovery, would significantly slow efforts to restart California’s economy.

Work with federal government to adopt changes to health insurance (COBRA) to ensure continuity in health care coverage for all employees.

Given the job displacement realities associated with COVID-19, maintaining access to healthcare and insurance coverage will be a priority issue – particularly for employees whose businesses that are forced to close or who return to work but with less staff. The state of California will need to work with the federal government to ensure that COBRA remains an option, but becomes an affordable option given the potential surge in short- and medium-term demand.

Pause the minimum wage increase, particularly in the state’s hardest hit regions.

The state minimum wage is scheduled to increase by another \$1 per hour this January, precisely at the time many employers especially small businesses will be struggling to rebuild their sales and provide as many jobs as possible to the workers they had prior to the economic shutdown. The issue is simple mathematics. Taking into account payroll taxes and benefits, an employer with 50 full-time minimum wage employees in December will only be able to cover 46 in January

from the same amount of payroll dollars, and fewer if the greater pressure from wage compaction is taken into account. California is a high cost state in which to live. The most effective solution right now is to take actions that will lower those costs, especially regulations that increase essential costs of living and regulations that severely limit needed additions to housing supply to bring housing costs down. The scheduled minimum wage increase may have some benefits for those who will have a job. But, it will make life in California even more unaffordable for those who will not. The determination to suspend the scheduled increase must be made by July 28, 2020, whether based on the employment, sales and use tax cash receipts, or budget effects criteria.

Pursue litigation relief by repealing Private Attorneys General Act (PAGA) to remove frivolous litigation risks as employers focus on restarting their businesses and creating jobs.

The goal of every business right now, large, medium and small, is to retain as many workers as possible and bring them back in a safe, orderly fashion. Unfortunately, the California Labor Code is a major obstacle to providing these options for workers, especially with the specter of frivolous PAGA lawsuits looming overhead. High-wage jobs are already exempted from many of these requirements and therefore face less of a termination threat; however, low-wage, hourly jobs are most at risk if nothing is done to address these urgent issues. California employers need to focus on bringing their workers back to jobs, not worried that minor paperwork errors puts them at risk of destroying their business and the livelihood of their employees. More than ample enforcement recourse exists within the responsible agencies.

Enact a regulation freeze for at least six months and potentially a longer period based on reaching specific job recovery or unemployment level, with an exception for those regulations essential to public health and safety.

If the goal of the business restart is truly to get our economy functioning again, any effort that detracts from this central purpose needs to be strongly re-evaluated. We reiterate the request made on April 16, 2020¹² that the Administration urgently act to pause non-essential state regulatory functions that will not impact measures designed to protect imminent harm to public safety or human health. Specifically, we urge the Administration to issue an Executive Order temporarily suspending all pending new rulemaking, as well as any rules or amendments first taking effect after your stay-at-home order of March 19, 2020, not urgently needed to protect public health and safety, for all state agencies and commissions for at least six months and potentially a longer period based on the economy reaching specified job recovery or unemployment levels. Since public participation is an integral part of the development of new regulations and proposed rules, regulators must protect due process rights of regulated entities and the public. As businesses direct their focus to providing essential services and protecting their workforce, they will lose

¹² See Coalition Letter to Governor Newsom on April 16, 2020

the capacity to meaningfully contribute to draft regulations or proposals from state agencies, boards, and commissions. Nor is there an accessible platform for stakeholders to participate on a virtual basis that is also equipped to accommodate widespread public comments or participation. Finally, employers should also have an extended period of time to implement regulations that have not yet taken effect, for at least 90 days following the end of both a local and statewide shelter-in-place order.

Repeal AB 5 and implement an emergency standard to provide alternative work arrangements that provide both businesses and households with greater flexibility they will need during the economy's re-start.

The Newsom Administration should look at whatever can be done to expand income opportunities, not limit them. Given the reality of today's and tomorrow's economy, alternative work arrangements will continue to comprise an essential component of the workforce. Nowhere is this importance more strongly demonstrated than the fact that delivery services, including from many California companies built on alternative work arrangements, are now literally lifesavers during this crisis for individuals and households throughout California and will continue to be for those at-risk populations. During recovery from the last recession, workers throughout California relied on a range of work options for financial survival until permanent jobs became available. Households in other states have this income option on a going forward basis. As a result of the overreach of AB 5 a far wider range of jobs were affected than the "gig" workers it first set out to cover; California households will not have this option. We acknowledge that more work needs to be done regarding work arrangements that many workers in the coming months likely will need to survive through this difficult period.

Establish a definitive timeline to sunset executive orders enacted during the pandemic.

The executive orders issued during the last several weeks necessarily were done in a period of limited data and uncertainty. Consequently, they do not have a formal sunset date and are effective until amended or rescinded. This situation adds to the uncertainty faced by employers and increases the difficulty of making reasoned investment and reemployment decisions. Adding sunset dates will make clear which provisions will remain only short-term measures and which are likely to remain in place until normal levels of economic activity are reached. We understand such dates will be based on information available at the moment and are subject to revision depending on the future course of the pandemic. However, sunset dates provide essential guidance employers and households need for their planning and assessment of risks in the current economy.

Ensure personal and health privacy requirements for Covid-19 mitigations (including contact tracing) also contain appropriate litigation protections.

California will need to scale a contact tracing program supported by and coordinated with local public-health systems and health care providers, to trace the background rate of infection across states and identify community spread while an outbreak is small and at a stage in which case-based interventions can prevent a larger outbreak.¹³ The importance of such a program will help communities and public health officials quickly identify “hot spots” and mitigate them – so we do not risk another broad-based stay-at-home order.

Contact tracing will function as an essential part of the effort to ensure trust and build consumer confidence while protecting employees so business operations can continue. However, as a result of this requirement businesses will also need litigation protections to ensure that compliance does not result in unfair and costly litigation.

Other Important Enablers¹⁴

In addition, other enablers will impact the ability of people to return to work, such as safe schools, childcare services and public transportation. Policymakers should put these issues at the forefront of planning efforts.

Schools and summer activities for children. Reopening schools and permitting summer activities for children is essential to enabling employees to return to work. Policymakers should ensure appropriate measures can be taken to safely re-open these activities without jeopardizing the welfare of children, educators or staff.

Childcare Services. The re-opening of childcare facilities with appropriate safeguards in place will enable many employees to return to work with confidence.

Public Transportation. Public transportation is an essential enabler for the return of many individuals to their workplaces. As businesses open, communities will need to adopt measures to adhere to social distancing guidance and protect users from potential exposure, such as limiting ridership, operating with adjusted schedules, more frequent deep cleaning and/or requiring face coverings.

¹³ See “National Coronavirus Response,” American Enterprise Institute, March 28, 2020, p. 5

¹⁴ See Letter to Governor Gavin Newsom with attachments containing “Developing Guidelines for Returning to Work,” Business Roundtable, April 24, 2020

About This Document

This document was created on behalf of California's state, regional and local business organizations and their members, representing all sectors of California's economy. For additional questions, please contact California Business Roundtable or any of the signatories.

Signatories include Associated General Contractors of California, Building Industry Association of Southern California, California Hotel & Lodging Association, California Building Industry Association, California Business Properties Association, California Business Roundtable, California Farm Bureau Federation, California Manufacturers & Technology Association, California Retailers Association, Central Valley BizFed, Engineering Contractors' Association, Fresno Chamber of Commerce, Greater Bakersfield Chamber of Commerce, Inland Empire Economic Partnership, Los Angeles County BizFed, Orange County Business Council, Personal Insurance Federation of California, Southern California Leadership Council, and Valley Industry & Commerce Association.

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Exhibit 1: Example measures to ensure public health and safety

Categories of guidelines, to be adapted and implemented by state and local officials and tailored by environment (e.g., office, retail)

	CATEGORY	MEASURES
Movement and Activity	Workplace activity	<ul style="list-style-type: none"> • Precautions placed on the on-site operations of individuals and business (including access)
	Gathering size	<ul style="list-style-type: none"> • Precautions on gathering of individuals (e.g., meeting size, event size)
	Physical distancing	<ul style="list-style-type: none"> • Precautions on physical proximity to other individuals (including occupancy)
	Movement and commerce	<ul style="list-style-type: none"> • Precautions on the movement of people
Public and Workplace Safety and Trust	Protective equipment	<ul style="list-style-type: none"> • Use of protective gear (e.g., face coverings) outside of the home / at workplaces
	Hygiene and cleaning	<ul style="list-style-type: none"> • Actions taken to disinfect public and private areas, maintain personal hygiene
	Special measures for vulnerable populations*	<ul style="list-style-type: none"> • Adjusted precautions to ensure people most at risk are protected (e.g., special hours at stores)
Monitoring	Screening and testing	<ul style="list-style-type: none"> • Use of health screening (e.g., temperature checks, questionnaires) to manage workplace entry, and protocols for when and how to use diagnostic and serological testing
	Tracing and tracking	<ul style="list-style-type: none"> • Guidelines for contact tracing in the event of a positive case and symptom monitoring
	Communication	<ul style="list-style-type: none"> • Protocols for collecting, reporting, and sharing information regarding COVID-19 response

* See Exhibit 3B for a clarifying question regarding the definition of vulnerable populations.

Exhibit 2A: Guidelines to be tailored by environment | Example: Office

		Phase One*	Phase Two	Phase Three
Movement and Activity	Workplace activity	Limit in-person work and minimize employee contact where possible, e.g., <ul style="list-style-type: none"> Gradual/phased return to in-person work; continue to encourage telework and remote meetings to reduce density in the office Adjusted workplace hours and shifts (if working in-person, leverage A/B teams or staggered arrival/departure) to minimize contact across employees and reduce congestion at entry points; close contacts of infected individuals should telework until safe Limit visitors and service providers on site; shipping and deliveries completed in designated areas 		All work and activities allowed, e.g., <ul style="list-style-type: none"> Normal hours and work shifts Only symptomatic individuals and members of vulnerable populations continue to telework
	Gathering size	Limitations per federal guidance, unless distancing and/or protective equip. measures below are in place		No constraints on gathering size
	Physical distancing	Ensure >6 ft between individuals where possible unless this creates a safety hazard, e.g., <ul style="list-style-type: none"> Close employee common spaces where employees are likely to congregate (e.g., break rooms, eating areas) unless physical distancing can be assured; remove chairs and/or use distance markers to assure spacing (e.g., workstations, conference rooms) Workers assigned designated work areas (e.g., floor, building); improve ventilation for enclosed spaces where possible 		Targeted distancing measures, e.g., <ul style="list-style-type: none"> Employees encouraged to limit time in common spaces Members of vulnerable populations should limit physical contact
	Movement and commerce	Limited travel, e.g., <ul style="list-style-type: none"> Gradual increase in business travel focused on necessary business activities and with safety precautions 	Continued gradual travel increases with safety precautions, e.g., <ul style="list-style-type: none"> Restrictions on travel to/from higher risk areas 	
Public and Workplace Safety and Trust	Protective equipment	Precautionary measures, e.g., <ul style="list-style-type: none"> Face coverings required for all employees unless workplace configuration and/or seating can assure proper physical distancing; gloves highly recommended for employees in frequent contact with others, or who work with food, re-filling office supplies, etc. Physical partitions for workers in high traffic areas or those who cannot be spaced out 		Proactive precautionary measures, e.g., <ul style="list-style-type: none"> Face coverings recommended for all employees, especially members of vulnerable populations Physical partitions for workers in high traffic areas
	Hygiene and cleaning	Cleaning and hygiene standards, e.g., <ul style="list-style-type: none"> Disinfecting of contacted surfaces daily and deep cleaning of exposed areas in event of a positive case Frequent disinfecting of heavy transit areas and high-touch surfaces (e.g., doorknobs, elevator buttons, vending machine, bathrooms) Shared spaces (e.g., conference rooms) cleaned between use and supplied with cleaning products (e.g., sanitizer, disinfecting wipes) 		
	Special measures for vulnerable population	Protection for members of vulnerable populations, e.g., <ul style="list-style-type: none"> Consider accommodations for vulnerable populations, or those interacting with them, to have designated separate workspaces, adjusted hours and provision of additional protective equipment Pursuant to ADA / any state disability laws, work with vulnerable population employees to see if they need any adjustments to their job (e.g., shift to positions with lower contact with other individuals) 		
Monitoring	Screening and testing	Continuous health screening to enter workplace and testing in accordance with CDC guidance, e.g., <ul style="list-style-type: none"> Employees encouraged to self-identify symptoms In order to enter a workplace, employees, service providers, visitors, contractors, etc. are required to complete health screening (e.g., questionnaire, temperature check), either at home or upon entry to the workplace (flexibility needed due to different types of businesses); those who don't pass screening or become ill in the workplace referred to self-quarantine and/or get tested, based on CDC guidance Testing required in accordance with any CDC guidance; for other employees, testing is generally not a pre-condition to work, but permit flexibility for employers to implement additional testing 		
	Tracing and tracking	Conduct contact tracing and tracking procedures within the workplace, e.g., <ul style="list-style-type: none"> If employees test positive for COVID-19, trace likely contacts in the workplace, notify employees to isolate & self-quarantine, per CDC guidance; permit flexibility for employers on presumed positive cases 		
	Communication	Continuous reporting protocols, e.g., <ul style="list-style-type: none"> Notify public health officials, employees, and/or the general public of important health information and relevant safety measures as outlined in government guidelines 		

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Exhibit 2B: Guidelines to be tailored by environment | Example: Retail

		Phase One*	Phase Two	Phase Three
Movement and Activity	Workplace activity	Limit in-person work and minimize employee contact where possible, e.g., <ul style="list-style-type: none"> Reduced store hours (to enable enhanced cleaning and precautionary operating procedures) Design shifts (A/B teams or staggered arrival/departure) to minimize contact across employees, prevent congestion at entry points Employee handling of merchandise and contactless shopping where possible (e.g., home delivery or curbside staging) Limit visitors and service providers on site; shipping and deliveries completed in designated areas, curbside if possible 		All work and activities allowed, e.g., <ul style="list-style-type: none"> Normal store hours and work shifts
	Gathering size	Limitations per federal guidance, unless distancing and/or protective equip. measures below are in place	Limitations per federal guidance, unless distancing and/or protective equip. measures below are in place	No constraints on gathering size
	Physical distancing	Ensure >6 ft between individuals where possible unless this creates a safety hazard, e.g., <ul style="list-style-type: none"> Visual distancing markers for customers in checkout line; guide flow of store traffic with markers; utilize public address reminders Restrict occupancy to allow 6 ft between patrons, taking into consideration the size of different retail stores Close or reconfigure (if possible) high density areas of stores where employees are likely to congregate (e.g., break rooms) 		Targeted distancing measures, e.g., <ul style="list-style-type: none"> Continue to visually indicate 6 ft separations Members of vulnerable populations should limit physical contact
	Movement and commerce	Limited travel, e.g., <ul style="list-style-type: none"> Gradual increase in business travel focused on necessary business activities and with safety precautions 	Continued gradual travel increases with safety precautions, e.g., <ul style="list-style-type: none"> Restrictions on travel to/from higher risk areas 	
Public and Workplace Safety and Trust	Protective equipment	Precautionary measures, e.g., <ul style="list-style-type: none"> Face coverings required for all employees when 6 ft physical distancing cannot be maintained; gloves highly recommended for employees in frequent contact with others, or who work with food, handle money, etc. Physical partitions at interior or in-store checkout stations where 6 ft between other employees or patrons cannot be maintained 		Proactive precautionary measures, e.g., <ul style="list-style-type: none"> Employees continue to wear face coverings (and gloves) if interacting with customers, physical partitions at checkouts
	Hygiene and cleaning	Cleaning and hygiene standards, e.g., <ul style="list-style-type: none"> Disinfecting of contacted surfaces daily and deep cleaning of exposed areas in event of a presumptive or confirmed positive case Frequent disinfecting of heavy transit areas and high-touch surfaces (e.g., doorknobs, elevator buttons, vending machine, bathrooms) Cashless transactions encouraged as default at checkout Cleaning/hygiene training required for store employees, with new work routines Shared spaces (e.g., break rooms) cleaned between use and supplied with cleaning products (e.g., sanitizer, disinfecting wipes) 		
	Special measures for vulnerable population	Protection for members of vulnerable populations, e.g., <ul style="list-style-type: none"> Designated store hours for vulnerable populations (continued in Phase Two and reduced in Phase Three) Consider accommodations for vulnerable populations, or those interacting with them, to have designated separate workspaces, adjusted hours and provision of additional protective equipment Pursuant to ADA / any state disability laws, work with vulnerable population employees to see if they need any adjustments to their job (e.g., shift to positions with lower contact with other individuals) 		
Monitoring	Screening and testing	Continuous health screening to enter workplace and testing in accordance with CDC guidance, e.g., <ul style="list-style-type: none"> Employees encouraged to self-identify symptoms To enter a workplace, employees, service providers, visitors, contractors, etc. are required to complete health screening (e.g., questionnaire, temperature check), either at home or upon entry to the workplace (flexibility needed due to different types of businesses); employees who don't pass screening/become ill in the workplace referred to self-quarantine and/or get tested, based on CDC guidance Testing required in accordance with any CDC guidance; for other employees, testing is generally not a pre-condition to work, but permit flexibility for employers to implement additional testing 		
	Tracing and tracking	Conduct contact tracing and tracking procedures within the workplace, e.g., <ul style="list-style-type: none"> If employees test positive for COVID-19, trace likely contacts in the workplace, notify employees to isolate & self-quarantine, per CDC guidance; permit flexibility for employers on presumed positive cases 		
	Communication	Continuous reporting protocols, e.g., <ul style="list-style-type: none"> Notify public health officials, employees, and/or the general public of important health information and relevant safety measures as outlined in government guidelines 		

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Exhibit 2C: Guidelines to be tailored by environment | Example: Manufacturing

		Phase One*	Phase Two	Phase Three
Movement and Activity	Workplace activity	Limit in-person work and minimize employee contact where possible, e.g., <ul style="list-style-type: none"> Gradual/phased return to in-person work, continuing to adjust operations and work scheduling (A/B teams or designated arrival/departure) to reduce density in the facility, minimize contact across employees and prevent congestion at entry points Limit visitors and service providers on site; shipping and deliveries completed in designated areas, outside the facility if possible 		All work and activities allowed, e.g., <ul style="list-style-type: none"> Normal hours and work shifts
	Gathering size	Limitations per federal guidance, unless distancing and/or protective equip. measures below are in place		No constraints on gathering size
	Physical distancing	Ensure >6 ft between individuals where possible unless this creates a safety hazard, e.g., <ul style="list-style-type: none"> Visual distancing markers on workstations to delineate 6 ft separations; markers throughout facility to guide movement of individuals Close or reconfigure (if possible) high density areas of facilities where employees are likely to congregate (e.g., break rooms) to allow physical distancing, cafeterias may operate to feed employees with physical distancing and appropriate hygiene measures Workers assigned designated work areas (e.g., floor, building, factory zone); improve ventilation for enclosed spaces where possible 		Targeted distancing measures, e.g., <ul style="list-style-type: none"> Continue to visually indicate 6 ft separations Employees encouraged to limit time in common spaces Members of vulnerable populations should limit physical contact
	Movement and commerce	Limited travel, e.g., <ul style="list-style-type: none"> Gradual increase in business travel focused on necessary business activities and with safety precautions 	Continued gradual travel increases with safety precautions, e.g., <ul style="list-style-type: none"> Restrictions on travel to/from higher risk areas 	
Public and Workplace Safety and Trust	Protective equipment	Precautionary measures, e.g., <ul style="list-style-type: none"> Face coverings required for all employees when 6 ft physical distancing cannot be maintained, except where doing so may introduce a safety hazard to the employee; gloves highly recommended for cleaning or for individuals working with food Recommend physical partitions separating workstations that cannot be spaced out, where feasible 		Proactive precautionary measures, e.g., <ul style="list-style-type: none"> Face coverings recommended for all facility employees, especially members of vulnerable populations
	Hygiene and cleaning	Cleaning and hygiene standards, e.g., <ul style="list-style-type: none"> Disinfecting of contacted surfaces daily and deep cleaning of exposed areas in event of a positive case Frequent disinfecting of heavy transit areas, heavy machinery and high-touch surfaces (e.g., doorknobs, handrails, shared tools, bathrooms) Ensure access to handwashing facilities on site, including soap and running water, wherever possible and encourage frequent handwashing, or supply employees at workplace location with adequate cleaning products (e.g., sanitizer, disinfecting wipes) 		
	Special measures for vulnerable population	Protection for members of vulnerable populations, e.g., <ul style="list-style-type: none"> Consider accommodations for vulnerable populations, or those interacting with them, to have designated separate workspaces, adjusted hours and provision of additional protective equipment Pursuant to ADA / any state disability laws, work with vulnerable population employees to see if they need any adjustments to their job (e.g., shift to positions with lower contact with other individuals) 		
Monitoring	Screening and testing	Continuous health screening to enter workplace and testing in accordance with CDC guidance, e.g., <ul style="list-style-type: none"> Employees encouraged to self-identify symptoms In order to enter a workplace, employees, service providers, visitors, contractors, etc. are required to complete health screening (e.g., questionnaire, temperature check), either at home or upon entry to the workplace (flexibility needed due to different types of businesses); those who don't pass screening or become ill in the workplace referred to self-quarantine and/or get tested, based on CDC guidance Testing required in accordance with any CDC guidance; for other employees, testing is generally not a pre-condition to work, but permit flexibility for employers to implement additional testing 		
	Tracing and tracking	Conduct contact tracing and tracking procedures within the workplace, e.g., <ul style="list-style-type: none"> If employees test positive for COVID-19, trace likely contacts in the workplace, notify employees to isolate & self-quarantine, per CDC guidance; permit flexibility for employers on presumed positive cases 		
	Communication	Continuous reporting protocols, e.g., <ul style="list-style-type: none"> Notify public health officials, employees, and/or the general public of important health information and relevant safety measures as outlined in government guidelines 		

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Exhibit 2D: Guidelines to be tailored by environment | Example: Construction

		Phase One*	Phase Two	Phase Three
Movement and Activity	Workplace activity	Limit in-person work and minimize employee contact where possible, e.g., <ul style="list-style-type: none"> Adjust work scheduling, hours and shifts (A/B crews or designated arrival/departure) to reduce density at the work site, minimize contact across employees and prevent congestion at entry points Limit visitors and service providers on site; shipping and deliveries completed in designated areas to minimize interactions Organize the placement of materials to minimize movement on the work site 		All work and activities allowed, e.g., <ul style="list-style-type: none"> Normal hours and work shifts
	Gathering size	Limitations per federal guidance, unless distancing and/or protective equip. measures below are in place		No constraints on gathering size
	Physical distancing	Ensure >6 ft between individuals where possible unless this creates a safety hazard, e.g., <ul style="list-style-type: none"> Identify choke points where workers are likely to congregate (e.g., break areas, hallways, hoists, stairways) and close these spaces or ensure 6 ft distancing policies are in place, such as markers to direct movement – unless it is a safety hazard to maintain distance Workers assigned designated work areas 		Targeted distancing measures, e.g., <ul style="list-style-type: none"> Identify choke points and ensure distancing policies are in place Members of vulnerable populations should limit physical contact
	Movement and commerce	Limited travel, e.g., <ul style="list-style-type: none"> Gradual increase in business travel focused on necessary business activities and with safety precautions 	Continued gradual travel increases with safety precautions, e.g., <ul style="list-style-type: none"> Restrictions on travel to/from higher risk areas 	
Public and Workplace Safety and Trust	Protective equipment	Precautionary measures, e.g., <ul style="list-style-type: none"> Face coverings for workers in frequent contact with others, in close quarters, or where 6 ft physical distancing is not possible (e.g., elevator or hoist operators) 		Proactive precautionary measures, e.g., <ul style="list-style-type: none"> Face coverings recommended for all workers on site, especially members of vulnerable populations
	Hygiene and cleaning	Cleaning and hygiene standards, e.g., <ul style="list-style-type: none"> Disinfecting of contacted surfaces daily (where possible) and deep cleaning of exposed areas in event of a positive case Frequent disinfecting of heavy transit areas and high-touch surfaces (e.g., shared tools, machines, vehicles, handrails, portable toilets) Ensure access to handwashing facilities on site, including soap and running water, wherever possible and encourage frequent handwashing, or supply employees at workplace location with adequate cleaning products (e.g., sanitizer, disinfecting wipes) Provide training to workers on up-to-date safety information and precautions 		
	Special measures for vulnerable population	Protection for members of vulnerable populations, e.g., <ul style="list-style-type: none"> Consider accommodations for vulnerable populations, or those interacting with them, to have designated separate workspaces, adjusted hours and provision of additional protective equipment Pursuant to ADA / any state disability laws, work with vulnerable population employees to see if they need any adjustments to their job (e.g., shift to positions with lower contact with other individuals) 		
Monitoring	Screening and testing	Continuous health screening to enter workplace and testing in accordance with CDC guidance, e.g., <ul style="list-style-type: none"> Employees encouraged to self-identify symptoms In order to enter a workplace, employees, service providers, visitors, contractors, etc. are required to complete health screening (e.g., questionnaire, temperature check), either at home or upon entry to the workplace (flexibility needed due to different types of businesses); those who don't pass screening or become ill in the workplace referred to self-quarantine and/or get tested, based on CDC guidance Testing required in accordance with any CDC guidance; for other employees, testing is generally not a pre-condition to work, but permit flexibility for employers to implement additional testing 		
	Tracing and tracking	Conduct contact tracing and tracking procedures within the workplace, e.g., <ul style="list-style-type: none"> If employees test positive for COVID-19, trace likely contacts in the workplace, notify employees to isolate & self-quarantine, per CDC guidance; permit flexibility for employers on presumed positive cases 		
	Communication	Continuous reporting protocols, e.g., <ul style="list-style-type: none"> Notify public health officials, employees, and/or the general public of important health information and relevant safety measures as outlined in government guidelines 		

* Guidelines should apply to non-essential services upon reopening. Essential services should come into compliance with any issued guidelines as soon as possible, but will require adequate time to implement and critical resources in place prior to enforcing in guidelines issued for Phase 1.

Exhibit 3A: Key questions for developing guidelines | Movement and activity

	CATEGORY	EXAMPLE QUESTIONS
Movement and Activity	Workplace activity	<ul style="list-style-type: none"> What non-essential workplaces should re-open in each phase, recognizing that flexible workplaces (e.g., telework) and work hours (e.g. staggered shifts) will be widely implemented where possible?
	Gathering size	<ul style="list-style-type: none"> How should gatherings be defined, relative to the nature and size of the environment (e.g., multi-level office building vs. factory floor), particularly in workplaces where the number of customers and/or employees exceed current CDC guidance? When should gathering size restrictions be adapted to reflect other precautions in place (e.g., protective equipment usage, distancing), particularly in workplaces where stated limits are not feasible?
	Physical distancing	<ul style="list-style-type: none"> When the minimum physical distance is not possible to achieve (e.g., due to workplace configuration or other workplace safety considerations), what measures can be used to allow for proximity without risking exposure (e.g., partitions for cashiers)? What are recommended approaches for reducing constriction points, such as access times, alternating in-person and virtual shifts, and governance of elevator / stairwell / other constricted areas?

Exhibit 3B: Key questions for developing guidelines | Safety and trust

	CATEGORY	EXAMPLE QUESTIONS
Public and Workplace Safety and Trust	Protective equipment	<ul style="list-style-type: none">How should protective equipment usage and provision vary in specific circumstances, including: differences between customer-facing roles and non-customer-facing roles, types of approved equipment, exemptions when protective equipment creates safety risks from visibility restrictions/communication impairment, and situations where work in close quarters is unavoidable?
	Hygiene and cleaning	<ul style="list-style-type: none">What are the procedures, schedules, and types of disinfectants recommended for COVID-19 cleaning at workplaces? How do these procedures vary across situations (i.e., routine cleaning vs. deep cleaning an area after known exposure to a positive case)?What occupancy, cleaning and disinfection protocols should be in place where there is a suspected or confirmed case?
	Special measures for vulnerable population	<ul style="list-style-type: none">Does the definition of vulnerable individuals from the recent Opening Up America Again federal guidance apply in this context? If so, does the CDC definition of 65 or older apply when considering "elderly individuals" in Opening Up America Again?What actions are recommended to protect vulnerable individuals and their caretakers, including extra protections at work if they cannot work from home, and how should employers resolve any conflicts between such actions and the Americans with Disabilities Act, Equal Employment Opportunity Commission guidance, and similar regulation and federal policies?

Exhibit 3C: Key questions for developing guidelines | Monitoring

	CATEGORY	EXAMPLE QUESTIONS
Monitoring	Screening and testing	<ul style="list-style-type: none">• What are recommended health screening tools (e.g., temperature checks, health questionnaires)?• Who should be screened (e.g., employees, vendors, customers) in accordance with the Americans with Disabilities Act (ADA), HIPAA, and similar laws and regulations?• Who should be tested and at what frequency?
	Tracing and tracking	<ul style="list-style-type: none">• What are the appropriate actions when it is identified that employees have come in contact with an infected individual?• Can employers require the use of tracing apps for workers and/or customers? What technology solutions are appropriate?• How should these policies be designed to account for Americans’ privacy and relevant laws and regulations (e.g., ADA and HIPAA)?
	Comm-unication	<ul style="list-style-type: none">• What data should be collected and used with respect to COVID-19, in compliance with data privacy laws and with whom should the data be shared with (e.g., alerting local officials after every positive test)?• What guardrails should be put in place to ensure that data collected for COVID-19 monitoring is not used for other purposes and deleted after a certain timeframe (if applicable)?• When and how (including format and content) should impacted parties (e.g., employees, public health authorities, general public) be notified in the case of a COVID-19 outbreak and implementation of appropriate safety measures?