

ADVISORY: ARIZONA REOPENING

Arizona Governor Amends “Stay Home, Stay Healthy, Stay Connected” Order



On April 29, 2020, Arizona Governor Doug Ducey issued [Executive Order 2020-33](#), extending Arizona’s “Stay Home, Stay Healthy, Stay Connected” policy through May 15, 2020, with important changes. This latest executive order permits certain nonessential retailers to resume operations in a limited manner starting May 4.

In a [news release](#), Governor Ducey explained that reopening Arizona’s economy will be done gradually, using a “step-by-step approach that’s guided by data and public health.” The governor plans to provide additional guidance next week that will allow restaurants to begin offering dine-in service in May. He also is looking to allow other businesses to reopen throughout May and June, following increased testing and based on the recommendations of public health experts. [In a slideshow](#), the governor shared information on which businesses remain closed and which may operate at this time.

This new executive order follows [Executive Order 2020-32](#), which was issued on April 22, 2020 and permits hospitals, healthcare facilities, medical providers, and dental offices to apply for approval to resume elective surgeries on May 1. The Arizona Department of Health Services (ADHS) has issued an [informational factsheet](#) about applying for approval.

KEY TAKEAWAYS

- People should continue to limit their time away from home except to (1) conduct or participate in Essential Activities (see Section 4 of [Executive Order 2020-33](#)), (2) work, volunteer, or participate in Essential Functions as defined in [Executive Order 2020-12](#), (3) utilize services or products provided by Essential Businesses, or (4) operate as a nonessential sole proprietor or family business as long as the business is not open to serve the public.



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- Businesses that previously were allowed to operate under Executive Order 2020-18 may continue to operate but should implement rules and procedures that facilitate physical distancing and other public health recommendations.
- Beginning May 4, retailers not classified as essential under [Executive Order 2020-12](#) may start operating and offering goods for sale through delivery, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or by appointment, as long as they establish physical distancing protocols and implement best practices to limit the spread of COVID-19 in accordance with the governor's April 29 executive order.
- Effective May 8, nonessential retailers may open their stores to customers, provided that they establish protocols and implement best practices to limit the spread of COVID-19 in accordance with the governor's April 29 executive order and guidance, which must include strict physical distancing, comprehensive sanitation protocols, options for curbside pickup or delivery, and keeping fitting rooms closed to customers.
- Areas where people congregate in an enclosed or a confined area (such as in a shopping mall) must continue to limit operations, and retailers that can be accessed only through an entrance inside a shopping mall or another enclosed area must limit sales to delivery, curbside service, or by appointment.
- The new executive order does not change the restrictions on nonessential service providers, such as restaurants, bars, movie theaters, gyms, tattoo parlors, and hair salons, as provided in [Executive Order 2020-09](#) and Governor Ducey's [additional guidance](#) issued on April 3, 2020.
- Nonessential businesses may continue to operate in ways that do not require in-person, on-site transactions.
- The April 29 executive order prohibits any county, city, or town from making or issuing any order, rule, or regulation that conflicts with the policy, directives, or intent of the April 29 executive order, including any order, rule, or regulation that limits an individual from conducting, participating in, or receiving Essential Services, Essential Activities, or Nonessential Services as outlined in the governor's executive orders.

STEPS TO TAKE

Implement Health and Safety Protocols. While certain retailers may now reopen, they must implement health and safety protocols outlined in the governor's April 29 order, which generally requires all operating businesses to:

- Establish and [implement sanitation measures](#) established by the United States Department of Labor or Arizona Department of Health Services. An ADHS informational factsheet for businesses and employers is available [here](#), and ADHS guidance on a visitor screening protocol is available [here](#).
- Adjust operations to promote physical distancing to the extent possible and consistent with [guidance](#) from the Centers for Disease Control and Prevention (CDC). For instance, offer online services to the extent possible, limit the number of persons in a physical space, and/or limit access to specific facilities or areas to protect against the spread of COVID-19.

Employer Compliance. As businesses reopen and employees are recalled to the workplace, significant compliance and liability concerns arise. Many employers must follow state and federal nondiscrimination statutes and privacy laws, and businesses' current health and safety policies may run afoul of new mandates. Even a good-faith effort to protect the general workforce may result in impermissible discriminatory actions. Employee accommodations, leave requests, contracts for employment, and collective bargaining agreements all raise significant compliance concerns. Businesses should carefully assess their current policies and contracts when reopening, paying special attention to the public health guidance from the CDC and ADHS referenced above.

FOR FURTHER INFORMATION

- Read [our advisory](#) on what Arizona's stay-at-home mandate allows and prohibits.
- Read [our advisory](#) on what qualifies as Essential Services.
- Read [our advisory](#) on public health guidance from ADHS.
- Read [our advisory](#) on issues with returning to work.

QUESTIONS

Sherman & Howard is here to help businesses and employers gain clarity and to provide guidance on reopenings. Contact our team [here](#).