

Nevada Enacts COVID-19 Liability Protection For Businesses But Imposes Additional Mitigation Requirements For Public Accommodation Facilities

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At the conclusion of its Special Legislative Session, the Nevada Legislature passed a law granting legal immunity from COVID-19-related lawsuits to most businesses, nonprofits, and government agencies so long as they adhere to requirements promulgated by local, state and federal agencies, and refrain from acting in a grossly negligent manner. Senate Bill 4 was signed into law by Governor Steven Sisolak on August 11 and will be effective immediately upon promulgation of the required regulations.

In addition to the new liability protections, however, SB 4 directs the Director of the Department of Health and Human Services to adopt regulations requiring public accommodation facilities to limit the transmission of COVID-19. What do Nevada businesses need to know about this new law?

Public Accommodation Facilities Face New Requirements

For the purposes of these requirements, a “public accommodation facility” is defined as a hotel and casino, resort, hotel, motel, hostel, bed and breakfast facility, or other facility offering rooms or areas to the public for monetary compensation or other financial consideration on an hourly, daily, or weekly basis. The forthcoming regulations will require employers to adopt protocols to encourage, to the extent possible, employees to remain at least six feet apart from other employees and guests during their work and while on break, as well as an extensive cleaning and disinfecting regiment for

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workplace areas frequented by employees and guests.

The cleaning requirements delineate certain areas of the public accommodation facilities for daily (or more often) cleaning. In addition, the law will require regulations prohibiting public accommodation facilities from advising or incentivizing guests to decline daily in-room housekeeping.

New Written Response Plan Required

The most consequential requirements for employers, however, will come in the form of regulations that will require public accommodation facilities to establish, implement, and maintain a written COVID-19 response plan aimed at monitoring and responding to instances of COVID-19 infection among employees and guests. The plan must designate a dedicated point of contact that will be responsible for overseeing and executing the plan. Each public accommodation facility's plan must contain the following features:

- Employers must provide an area of a public accommodation facility where employees will report daily to receive contact-free temperature screening and review questions to screen for exposure to COVID-19.
- Provision for equipment and procedures for facilitating frequent sanitation and handwashing.
- Adjusting employee break schedules to maintain social distancing.
- Each new employee, as well as all employees returning to work for the first time after March 13, 2020, must undergo testing for COVID-19 if such testing is available.
- Employers must notify each employee who is known to have had close contact with a guest or employee who has been diagnosed with COVID-19 no later than 24 hours or as soon as practicable after the employer learns of the diagnosis. The CDC defines "close contact" as "someone who was within 6 feet of an infected person for at least 15 minutes starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to specimen collection) until the time the patient is isolated."
- Employers must allow employees who are known to have had close contact with a guest or employee who has been diagnosed with COVID-19 to undergo testing. Affected employees shall be given not more than three days of paid time off to await testing and testing results. However, the time off can be extended if the employer receives documentation of a delay in testing or receiving testing results that exceeds three days.



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- Each employee who otherwise has a reasonable belief or has been advised that they have been in close contact with a person who tested positive for COVID-19 must undergo testing.
- Each employee who notifies their employer that they are experiencing symptoms of COVID-19 must undergo testing for the virus, and must not return to work while awaiting the results of the testing.
- If an employee gives their employer notice that they have been in close contact with a person who tested positive for COVID-19 or are experiencing symptoms of COVID-19, the employee must be given not more than three days of paid time off to await testing and testing results for the first occurrence on which the employee gives the employer such notification (or additional paid time off if there is documentation of a delay in testing or receiving testing results that exceeds three days).
- Each employee who tests positive for COVID-19 and is working or has been recalled to work at the time of the result must be allowed to take at least 14 days off, at least 10 of which must be paid time off. An employer may request that the Director of the Department of Health and Human Services increase or decrease the amount of days an employee may have paid time off in response to a positive diagnosis.

Notably, paid time off provided under the provisions of Senate Bill 4 may not be deducted from paid time off provided to employees pursuant to NRS 608.0197 or policy or contract but may be deducted from paid sick leave provided pursuant to the Families First Coronavirus Response Act.

Notwithstanding the provisions of Senate Bill 4, employees whose job duties are conducive to remote work may elect to perform their duties remotely instead of taking time off even if eligible for leave.

To the extent a public accommodation facilities employer requires an employee to undergo COVID-19 testing pursuant to Senate Bill 4, such testing must be made available at no cost to the employee and performed on-site or at a testing facility selected by the public accommodation facility. The employer should direct employees to obtain testing as quickly as possible and communicate with the employer regarding the status of testing as well as results. The employer may require the employee to release the testing results to the employer. However, all information pertaining to employees and guests who test positive for COVID-19 must be kept confidential, unless the employee or guest agrees otherwise and except as required to be disclosed to public health officials and for purposes of contact tracing or cleaning.

What Should Employers Do?



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Notably, all enforceable provisions of Senate Bill 4 will be promulgated by regulation. Thus, you should carefully review the Administrator's regulations once published. In the interim, you should plan for immediate compliance with the standards enumerated in Senate Bill 4 by evaluating, and to the extent necessary, revising your standards for cleaning that are designed to limit the transmission of COVID-19 in the workplace.

In addition, you should (and public accommodation facility employers are required to) conspicuously post at each employee entrance and on each bulletin board where you regularly post official communications a one-page summary of the standards your business has adopted. The CDC and OSHA have published guidelines and guidance that your businesses should follow, and all Nevada businesses should comply with Governor Sisolak's latest Emergency Directives. Demonstrating you followed such guidance and orders is the best proof you acted reasonably in responding to COVID-19 hazards and will place your organization in the best position to invoke immunity pursuant to Senate Bill 4.

Finally, public accommodation facilities, such as hotels, casinos, and resorts, should prepare to arrange for COVID-19 testing that will allow for employees to receive testing in an expedient matter and avoid delays in testing or results. You should require reasonable communication with employees to establish eligibility for leave provided under this law, including but not limited to, the circumstances under which leave may be necessary. Such arrangements will allow you to maintain real-time information regarding potential COVID-19 infections in the workplace while limiting the amount of unnecessary paid time off for employees while awaiting test results.

As you continue the process of constantly evolving process of reopening, you should familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [7-Step Plan For Handling Confirmed COVID-19 Cases](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our Las Vegas office, or any member of our Post-Pandemic Strategy Group Roster.



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