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REOPENING CHURCHES, BUSINESSES AND NONPROFIT ORGANIZATIONS AS CORONAVIRUS RESTRICTIONS BEGIN TO LIFT

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Please note that this is a rapidly changing environment. Stay tuned to your state for changes in the orders and changes in the health field as well. This article may be updated periodically as federal and states clarify their reopening plans and executive orders. Published May 11, 2020.

As America looks toward cautiously opening the economy, many states are following federal guidelines outlined by the White House for reopening. Others follow a similar reopening timeline, but approach it in a different method. Some states are close-lipped about how they plan on reopening. Others have a step-by-step explanation of how and when they will reopen. In general, however, states are implementing versions of the White House's "Opening Up America Again" guidelines, which outline procedures for these next few months.¹

While the enforceable regulations are going to depend on the state, and thus can vary from state to state, many states are choosing to follow the three-phase guidelines released by the White House, so a review of these guidelines is instructive in what businesses, churches, and others can expect in the coming months. We will outline the federal reopening guidelines as implemented in the Mid-Atlantic states as examples for reopening. We note, however, that every state will be different and knowledgeable legal counsel must be consulted as you make these important decisions.

Procedures Throughout All Phases according to White House and CDC:

The White House and CDC encourage good hygiene in all circumstances. These include the items that we have all been hearing throughout the pandemic: not touching one's face, cleaning surfaces frequently – deep cleaning them, if possible – and washing hands well and thoroughly. Face masks are advised throughout this period, especially in mass transit.

All employers and businesses are encouraged in each phase (and may be required by their state) to utilize social distancing practices and protective equipment (such as masks and/or gloves), do regular temperature checks, provide disinfectant or hand sanitizer in public areas, clean/sanitize thoroughly and frequently, and be ready to assist in testing, isolating, and contact tracing.² Churches may be treated similarly to businesses depending on the state.

Before a state or locale may progress to Phase 1, the White and CDC recommend four criteria must be achieved:

- 1) Downward trajectory of flu-like illnesses and COVID-like illnesses for a 2-week period
- 2) Downward trajectory of documented cases of COVID-19 within a 2-week period; or, a downward trajectory of positive tests as a percent of total tests with a 2-week period
- 3) Hospitals are not at emergency capacity; supplies are available
- 4) Testing programs are in place for healthcare workers

¹ *Guidelines: Opening Up America Again*, THE WHITE HOUSE, https://www.whitehouse.gov/wp-content/uploads/2020/04/Guidelines-for-Opening-Up-America-Again.pdf?mod=article_inline. (last visited May 7, 2020).

² *Id.*

Federal Phase 1:

Staying at home is still important, and no meetings of more than 10 people is allowed unless precautionary measures are observed: social distancing, good hygiene, and face masks are worn. Non-essential travel should still be minimized.

Businesses should still operate remotely if possible or return to work in phases as necessary. Continued protocols must be observed and special accommodations for the especially vulnerable should be provided. The vulnerable are encouraged to continue sheltering in place.

Larger venues, including sit-down restaurants, churches, and others, in this phase, may open as long as “strict physical distancing” is observed.³ Similarly, the CDC is also expected to release guidance for impacted groups, including churches. A draft of that guidance indicated:

Churches should hold services through video streaming or at drive-in or outdoor venues as much as possible. They should also encourage anyone to wear cloth face masks, use a stationary collection box, and schedule extra services if necessary to make sure church pews are not packed and congregants stay at least six feet from each other.⁴

Churches and other gatherings will likely not be able to meet without social distancing protocols until Phase 3. Following the CDC guidance, many jurisdictions are favoring reduced capacity services or outdoor religious services first to spread out and avoid indoor, tighter spaces where the disease can spread more easily. Though Virginia and other states will likely model their reopening regulations upon the Federal and CDC guidance, it is up to the states to make and enforce these matters. Thus, churches will need to watch for and abide by their State requirements.

Under federal guidelines for Phase 1, schools currently closed must stay closed. Hospital and senior center visits are prohibited. Elective surgeries may resume, adhering to guidelines from the Centers for Medicare & Medicaid Services.⁵ While bars must stay closed, gyms and large venues can reopen as long as enhanced sanitization and social distancing protocols are followed.

Federal Phase 2:

This phase sees a greater aperture in the process. It may be accessed as long as the initial four previously stated criteria are still being met, and there is no evidence of a rebound in the virus. People are allowed to leave their homes freely, though vulnerable citizens should stay home and those who live with vulnerable people should consider how often they are going out, so as not to endanger them. **Social gatherings may now include up to 50 people**, and more if precautionary measures are in place. Non-essential travel may resume. At this point, people can travel to visit friends and relatives in other places.

Businesses are encouraged to use remote work when possible, as well as increased sanitary habits and special accommodations for those most vulnerable. Non-essential business travel may resume.

Churches and schools may reopen, but hospital and senior center visits are still prohibited. Venues can open under social distancing policies, including bars, with standing room occupancy.

Federal Phase 3:

³ *Id.*

⁴ Kevin Freking and Mike Stobbe, *CDC compiles new guidelines to help organizations reopen*, ABC NEWS (April 28, 2020, 10:30 AM), <https://abcnews.go.com/Health/wireStory/cdc-compiles-guidelines-organizations-reopen-70377133>.

⁵ *Regulations & Guidance*, CTRS. FOR MEDICARE & MEDICAID SERVS., <https://www.cms.gov/Regulations-and-Guidance/Regulations-and-Guidance>. (last visited May 7, 2020).

Before a state or locality progresses to Phase 3, leaders should verify that the four initial criteria are still met and there has not been a rebound in the impact of the coronavirus on the community. Members of the vulnerable population are free to leave their homes, but are encouraged to observe social distancing policies and take care how long they are out of their homes. It is good practice for everyone during this time to avoid being in crowded spaces for extended periods of time.

Businesses may resume unrestricted staffing of offices or worksites in Phase 3. Hospital and senior center visits may resume under hygienic protocol. Large venues should still operate under moderate physical distancing policies, and bars may be opened to allow for a greater standing room occupancy.

Again, these are guidelines – not mandates. The local governments are in charge of how and when to reopen their borders and businesses, though many are basing their regulations on these guidelines.

Virginia:

The original executive order (EO 53 – March 23, 2020) closed most businesses through April 23, 2020. Executive Order 55 (March 30, 2020) mandated the Shelter in Place requirement through June 10. Amendments to these executive orders gave some more details on closures and essential activities and businesses. As the virus progressed, Governor Northam extended the non-essential business and large gathering (10 or more) order twice more; it is now set to expire May 14 per EO 61.

However, although Governor Northam is expected to allow the order to expire on May 14, it will be replaced with new regulations and not a full return to normalcy for quite some time. We will use Virginia as an example with details.

When Will Phase 1 Begin?

Phase 1 will begin as early as May 15. Governor Northam listed the four criteria that he is looking at to determine when to start Phase 1 of the reopening, following CDC guidance: *(1) Decrease in positive tests and hospitalization for 14 days (2) significant increase in testing and contact tracing (3) sufficient hospital beds and intensive care capacity, (4) an increasing and sustainable supply of personal protective equipment.*⁶

Under those criteria, at the time of announcement, Virginia was at least two weeks away from Phase 1 as the number of new cases continued to increase as testing expanded significantly, despite some days of downward progression and a stabilization in hospitalization.⁷ However, the Governor has indicated willingness to reopen even if numbers do not go down, if the percentage of tests which come back positive continue to trend down. Given those factors, Governor Northam announced that Phase 1 is set to begin May 15 if the numbers allow.⁸ Leaders in several Northern Virginia cities and counties have asked the governor to delaying this opening and may take their own action to delay the onset of Phase 1 in their jurisdictions – so be aware, your locality may not be more permissive than what the state allows, but it can be more restrictive.

What Will Phase 1 Look Like

As in most states, in Virginia reopening is not an all-or-nothing proposition. Instead, the process will be gradual with early phases still involving heavy restrictions. The Governor announced the Phase 1 guidance in a press conference, summarized in the chart below and further detailed in Executive Order 61 linked [here](#).

⁶ *Forward Virginia: A Blueprint for Easing Public Health Restrictions*, VIRGINIA GOVERNOR'S OFFICE, <https://www.governor.virginia.gov/media/governorviriniagov/governor-of-virginia/pdf/Slide-Deck-4-24-2020-.pdf>. (last visited May 7, 2020).

⁷ *COVID-19 In Virginia*, VIRGINIA DEPARTMENT OF HEALTH, <https://www.vdh.virginia.gov/coronavirus/>. (last visited May 7, 2020).

⁸ Cameron Thompson, *Northam to provide detailed guidance on reopening plan Friday*, WTVR NEWS (May 6, 2020, 4:01 PM), <https://www.wtvr.com/news/coronavirus/northam-to-detail-plans-as-virginia-moves-closer-to-phase-1-of-reopening>.

Phase 1 in VA⁹	Now (Stay at Home Order)	Phase 1
Non-Essential Retail	Open with 10-person limit	Open with 50% cap.
Restaurant and Beverage Services	Takeout and delivery	Takeout and delivery; Outdoor seating at 50% capacity if existing permit
Entertainment and Amusement	Closed	Closed
Fitness and Exercise	Closed	Closed (limited to outdoor)
Beaches	Exercise and fishing only	Exercise and fishing only
Places of Worship	Drive-in services; 10-person limit	Drive-in services; 50% indoor capacity
Personal Grooming	Closed	Appointment only; social distancing and face coverings required
Private Campgrounds	Closed	Open
State Parks	Open for day use only	Day use; Overnight in phases
Child Care	Open for working families	Open for working families
Overnight Summer Camps	Closed	Closed
Schools	Closed	Closed
Gatherings	10-person limit	10-person limit
Teleworking	Strongly encouraged	Strongly encouraged
Face Coverings	Strongly encouraged	Strongly encouraged

Phase 1 will allow some, but not all businesses, to reopen if they can follow strict safety restrictions (like face coverings), continue social distancing, and encourage teleworking where possible.¹⁰ Gov. Northam has announced Executive Order 55 will be adjusted in Phase 1 from a stay at home directive to a “safer at home guideline” in Phase 1 under the new executive order. Each business industry has guidelines in how to reopen. Detailed guidance for all business sectors, above and beyond the executive order has also been released by the Governor’s Office [here](#). This guidance document explains the mandatory requirements in further detail and also provides encouraged, but not necessarily mandatory best practices as well.

In general, the 10-person limitation remains in place. Face coverings are recommended in public (though not required in all cases as in some states). The Order provides that “[w]illful violation or refusal, failure, or neglect to comply with this Order” is “punishable as a Class 1 misdemeanor.”

As people expand their social and business interactions, there will likely be a surge of testing and quarantining of both those who test positive and those who have come in contact with that person (contact tracing). Unfortunately, some are seriously concerned that despite these efforts another surge in coronavirus cases is inevitable once widespread contact resumes. Time will tell as states test the waters in the coming weeks.

Virginia Churches in Phase 1

The Governor had signaled that he will loosen requirements for churches specifically and there is now detailed guidance for how churches may reopen. This is likely due in part to the Department of Justice filing a statement

⁹ Chart compiled from Gov. Northam’s presentation available from the following article: Fareeha Rehman, *Forward Virginia: Gov. Northam introduces plan to ease restrictions*, LOCAL DVM (May 8, 2020, 3:03 PM), <https://www.localdvm.com/news/virginia/forward-virginia-gov-northam-introduces-plan-to-ease-restrictions/>.

¹⁰ *Forward Virginia: A Blueprint for Easing Public Health Restrictions*, VIRGINIA GOVERNOR’S OFFICE, <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Slide-Deck-4-24-2020-.pdf>. (last visited May 7, 2020).

in support¹¹ of a religious liberty suit by a Virginia church challenging the Virginia order, after police issued a criminal citation to the pastor for holding a service of 16 people in a 225-person venue, while maintaining social distancing.¹² The principal argument is that states “cannot treat religious gatherings less favorably than other similar, secular gatherings” – that is allow secular establishments (like ABC stores) to remain open or reopen if religious gatherings are not allowed to under similar circumstances¹³ Governors in other states are also likely paying attention to this suit and will hopefully voluntarily ease restrictions on churches who want to find ways to meet safely during this time.

Starting May 15, unless local government enforces stricter requirements like Northern Virginia has signaled, Churches will be allowed to meet in excess of the 10-person limit indoors if they meet at less than 50% of the designated fire marshal capacity for their buildings. They may be able to meet outdoors as well, like other states, although no specific guidance has yet been released on that possibility. We note that under both practical considerations and the rules below, nursery and traditional children’s ministry is going to be one of the last things that will be able to reopen in most churches, as it is very difficult for young children to “physically distance.” “Family services” with families sitting together and six feet of separation between each family at the service can open at the beginning of Phase 1.

The Executive Order lists ten requirements for churches or other groups that wish to provide or attend religious services:

- i. Religious services must be limited to no more than 50% of the lowest occupancy load on the certificate of occupancy of the room or facility in which the religious services are conducted.
- ii. Individuals attending religious services must be at least six feet apart when seated and must practice proper physical distancing at all times. Family members, as defined above, may be seated together.
- iii. Mark seating in six-foot increments and in common areas where attendees may congregate.
- iv. Persons attending religious services must strongly consider wearing face coverings over their nose and mouth at all times.
- v. No items can be passed to or between attendees, who are not family members, as defined above.
- vi. Any items used to distribute food or beverages must be disposable, used only once, and discarded.
- vii. A thorough cleaning and disinfection of frequently contacted surfaces must be conducted prior to and following any religious service.
- viii. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 is permitted in the establishment.
- ix. Post signage to provide public health reminders regarding social distancing, gatherings, options for high risk individuals, and staying home if sick.
- x. If religious services cannot be conducted in compliance with the above requirements, they must not be held in-person.

¹¹ Press Release, U.S. Dept. of Justice, The Department of Justice Files Statement of interest in Support of Church That Ministers to Underserved Communities (May 3, 2020), <https://www.justice.gov/opa/pr/department-justice-files-statement-interest-support-church-ministers-underserved-communities>.

¹² Complaint, Lighthouse Fellowship Church v. Northam, Case no. 2:20-cv-00204 (Eastern District of Virginia) (Apr. 24, 2020), <http://lc.org/042420LighthouseFellowshipChurchVerifiedComplaint.pdf>.

¹³ United States’ Statement of Interest in Support of Plaintiff’s Motion for an Injunction Pending Appeal, Lighthouse Fellowship Church v. Northam, Case no. 2:20-cv-00204 (Eastern District of Virginia) (May 3, 2020), <https://www.justice.gov/opa/press-release/file/1273211/download>.

“Family members” in the executive order are defined to “include blood relations, adopted, step, and foster relations, as well as all individuals residing in the same household.”

Any social gathering held in connection with a religious service is still subject to subject to the general prohibition on in-person gatherings of more than 10 people.

The [additional guidance for religious services](#) provides the following “suggested best practices” to the extent they are feasible:

- Designate a health coordinator to be responsible for COVID-19 planning and preparation
- Building
 - Conduct thorough cleaning before and between services
 - Use separate doors to enter and exit the establishment when possible (to avoid congestion of people coming and going)
 - Allow doors to remain open to limit touching door handles
 - Provide sanitizing stations throughout the building, particularly at entry and exit points
 - Consider installing touchless door entry systems or providing single-use barriers (i.e. paper towels) for use in touching door and sink handles in bathroom facilities.
 - Use messaging boards or digital messaging and social media in lieu of physical bulletins and handouts.
- Weekly religious services
 - Continue to encourage online streaming and drive-in options for people who can utilize these options. Especially for those who are vulnerable and not able to return.
 - Consider holding multiple services, with time for thorough cleaning in between each service, to allow for greater distancing during services.
 - Suspend the choir as part of services
 - Consider shorter services to avoid the need for people to use bathroom facilities.
 - Consider limiting to suspending youth services until a safer time.
 - Consider holding small group or separate services for senior citizens and other high-risk populations.
 - Consider discontinuing use of common items shared between people and difficult to clean (e.g., microphones, books, hymnals, scriptural texts). Use of projector or assigning these items to particular individuals or families are given as alternatives.
 - When oils, water, ashes, or other materials are applied to a person, self-application should be used to the extent possible.
 - Discontinue shared meals and other activities where people may gather in groups (e.g., limit or suspend coffee stations, shared food, meet and greet time before and after services etc.), with the exception of essential food services for low-income residents.

How are churches to conduct their services under such reduced capacity and social distancing mechanisms? The guidance document provides a number of possible methods for churches to consider:

1. Drive-in/parking lot church: This is the safer model of religious service where social distancing may be maintained.
Sign-up worship services: This will limit the number of live worship services. Ask members, visitors, or guests to sign up for one live service per month, or every other week (in Phase 1). If needed, members can take turns between online and in-person worship services during this interim time. Allow space for

impromptu visitors by registering fewer people (for each worship or religious service) than the maximum allowed per the occupancy restrictions.

2. Multiple gatherings during the week: A place of worship may divide the number of congregants by the maximum occupancy level and offer worship services at that level. Consider adding online services, multiple services on one day, or alternative services during the week and/or on Saturdays and Sundays.
3. Utilize multiple methods: As a result of the COVID-19 crisis, most places of worship lost the ability to gather in-person, but many gained a stronger online presence. Consider nurturing both aspects for at-risk individuals, as well as for the increased capacity to reach and serve those outside of the walls of the faith organization.
4. Adult-only services: This method asks parents of young children to alternate worship attendance (naturally reducing attendance, as one parent stays home with children).
5. Online-only: Take this approach if you are in a high-risk area, your place of worship is not yet prepared with the conditions outlined in the state guidelines for opening, you or a member of your family has COVID-19 symptoms, or the governing authorities have requested additional measures in the interest of public health.

Outside services are implied to be without as many direct restrictions although social distancing, face coverings and sanitation will be recommended.

Regional Restrictions

Since localities may create additional regulations for their regions even as the statewide order loosens, you will need to check your locality for reopening restrictions as well. Rural regions will likely see restrictions fade sooner than the more heavily impacted metro areas. Northern Virginia and the Tidewater regions have been the hardest hit by coronavirus and will likely be the last to fully reopen if the reopening proceeds on a regional basis.

Phases 2 and 3:

Virginia has little information about Phases 2 and 3 as the Governor has said “Phase 1 is the first priority and future guidance will be shaped by the data as this pandemic develops.”¹⁴ The Governors of both North Carolina and Virginia (both Democrats) have stated that they will try to coordinate with one another if possible.¹⁵

We do know that Phase 1 will last a minimum of two weeks. In order to move to Phases 2 and 3, Virginia will check to ensure there must be a stable amount of protective equipment available for citizens and healthcare workers, and a continued downward trend of all aforementioned criteria. A rebound in cases could pause or reverse the progression from phase to phase. Under Phase 2, the stay at home order could be lifted for non-vulnerable citizens. Vulnerable people will need to continue to shelter in place at least until Phase 3. Each phase is anticipated to last two to four weeks for the state.

North Carolina:

North Carolina began its reopening process on May 8 at 5pm, and contains detailed information on its first phase. The Executive Order generally follows the White House’s guidelines.¹⁶

¹⁴ Caleb Stewart, “We will reopen Virginia next Friday:” Gov. Northam extends closures, outlines Phase 1 guidance, WHSV NEWS (May 5, 2020), <https://www.msn.com/en-us/news/us/we-will-reopen-virginia-next-friday-gov-northam-extends-closures-outlines-phase-1-guidance/ar-BB13AxAE>.

¹⁵ Drew Hansen, *Virginia governor: ‘We’re working as close as we can’ with D.C., Maryland*, BALTIMORE BUS. J. (May 5, 2020, 11:18 AM), <https://www.bizjournals.com/baltimore/news/2020/05/05/virginia-governor-we-re-working-as-close-as-we-can.html>.

¹⁶ North Carolina Exec. Order No. 138 (May 5, 2020), <https://files.nc.gov/governor/documents/files/EO138-Phase-1.pdf>.

Phase 1:

Individuals may leave home for non-essential travel to places permitted to open, as follows: clothing stores, sporting goods, bookstores, housewares, and other similar retailers. These must operate at 50% capacity during phase 1, and they must continue social distancing (at least six feet apart), good hygiene, cleaning protocols, and must provide accommodations for vulnerable workers.

Gatherings must still be limited to less than 10 people. Public parks may reopen. Face masks should be worn where social distancing is not possible (though the White House suggests both are better than either one). Businesses should encourage remote work. Restaurants and bars should still be doing takeout or drive-thru service only; salons, gyms, sporting events venues, and movie theaters should still be closed.

Churches and places of worship, however, may meet even if the gatherings are over 10 people.¹⁷ Funerals with up to 50 people are also allowed, if following social distancing recommendations. Weddings are impliedly allowed, but there is no direction as to whether this can be with more than 10 people. For any group of over 10 people that is allowed to meet under the new executive order, the gathering “**shall take place outdoors unless impossible.**” This requirement is on account of recent findings that COVID-19 spreads much more easily in indoor settings than in the outdoors. Regardless, social distancing protocols must still be followed. See the executive order [here](#)¹⁸ for the full details.

“Allowable activities” also specifically includes working, many outdoor activities, seeking employment, caring for others, engaging in worship or the exercise of First Amendment rights, and volunteering for charitable or social services.¹⁹

Phase 2:

In phase 2, which may start as early as end of May 2, Gov. Cooper will lift the stay at home order, though he will encourage the vulnerable population to remain home. He will provide for a limited opening of restaurants and bars within strict safety and cleaning protocol – i.e., social distancing and good hygiene.

If a church is meeting indoors under the phase 2 provisions, it must operate at reduced capacity; the same is true for entertainment places. There will be an increased number of people at gatherings to be determined later, though restrictions on nursing home visits will continue. Public playgrounds and beach rentals will open during this phase.

Phase 3:

The vulnerable population may leave their homes during this time, but it is encouraged that they continue to practice good social distancing. Allowable capacity continues to increase at restaurants, bars, and social gatherings. Not until the state moves out of all three phases of reopening will nursing homes and hospitals be able to accept visitors freely.

West Virginia:

Entitled “West Virginia Strong: The Comeback,”²⁰ West Virginia’s reopening plan is based on a 6-week process,²¹ as opposed to the more common 3-phase plan. Currently, West Virginia’s cumulative percent positive

¹⁷ North Carolina Exec. Order No. 138 § 6(A) (May 5, 2020), <https://files.nc.gov/governor/documents/files/EO138-Phase-1.pdf>.

¹⁸ North Carolina Exec. Order No. 138 (May 5, 2020), <https://files.nc.gov/governor/documents/files/EO138-Phase-1.pdf>.

¹⁹ North Carolina Exec. Order No. 138 § 2(C), <https://files.nc.gov/governor/documents/files/EO138-Phase-1.pdf>.

²⁰ Jordan Damron, *COVID-19 Update: Gov. Justice unveils plan to reopen state: “West Virginia Strong – The Comeback”*, WEST VIRGINIA GOVERNOR’S OFFICE (April 27, 2020), <https://governor.wv.gov/News/press-releases/2020/Pages/COVID-19-UPDATE-Gov.-Justice-unveils-plan-to-reopen-state-“West-Virginia-Strong—The-Comeback”.aspx>.

²¹ John Bowden, *West Virginia announces six-week reopening process*, THE HILL (April 27, 2020, 10:55 AM), <https://thehill.com/homenews/state-watch/494966-west-virginia-announces-six-week-reopening-process>.

tests remain below 3%, and the state initiated its Week 1 reopening on April 30.²²

Week 1:

In this bare-bones week, elective medical procedures may resume within safe guidelines, as long as the medical location has enough protective equipment and a plan if there is a resurgence of the virus. Outpatient operations may resume as well – dentists, physical therapists, psychological and mental help, etc., as long as all are operating under safe guidelines.

Week 2:

Beginning on May 7, certain businesses may reopen in West Virginia, as long as they follow normative protocol – increased sanitation efforts, social distancing, and face coverings. These businesses include salons, pet grooming, and restaurants with outdoor dining. Businesses with the availability to make appointments must have their clients do so and wait in the car until their appointment time has arrived.

Churches, under West Virginia orders, were deemed essential and could continue to meet under guidelines. However, most chose to discontinue in-person services. They are encouraged to wait to go back to in-person meetings until Week 2, but they must sit in every other pew, observe social distancing, and wear face masks if they decide to return to their buildings.

Weeks 3-6:

From May 14 onward, guidelines are less specific. During this period, other businesses will reopen, including, but not limited to: office and government buildings, specialty retailers, parks, gyms, fitness centers, recreational facilities, dine-in restaurants, hotels, casinos, and spas and massages. Exactly when each type of entity may reopen has not yet been announced, but the governor has stated he will provide the information at least a week in advance in each case. More information will likely be available as the weeks progress.

No Timeline:

Certain facilities, Gov. Justice stated, will be closed for an indeterminate amount of time for the moment. This includes nursing homes, senior centers, hospitals for visits, and large venues like movie theaters, sporting events, and concerts. Additionally, the stay at home order remains in place; apparently, as each particular business reopens it is deemed essential, and thus, people are allowed to travel to and from their destination.

District of Columbia:

As of April 23, DC has followed the Johns Hopkins Bloomberg School of Public Health Principles for Reopening. The stay at home order ends May 15, but that may be extended. Mayor Bowser has closed the schools until the end of the year, and that will not change. Face masks are required for hotel workers and visitors, individuals in taxis and other private transport, and those selling or buying food; they are suggested for anyone on public transit. Johns Hopkins and the American Enterprise Institute are working together on reopening guidelines. Johns Hopkins lists detailed data, like risk assessment processes and exacting definitions of particular terms used;²³ the American Enterprise Institute outlines the phases themselves that DC is following for its reopening process.²⁴ They are similar, but not identical, to the White House's guidelines. Unlike nearby states, D.C. does not specify how different businesses will be impacted by its regulations and has not indicated any particular timeline in which businesses may reopen.

²² Nick Boykin, *West Virginia is starting to reopen. Here's what the state's plan looks like*, WUSA9 (May 5, 2020, 9:37 am), <https://www.wusa9.com/article/news/health/coronavirus/west-virginia-governor-reopening-coronavirus/65-999f51f2-177d-4f5d-8676-89c13ee68558>.

²³ *Public Health Principles for a Phased Reopening During COVID-19: Guidance for Governors*, JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH (April 17, 2020) https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2020/200417-reopening-guidance-governors.pdf.

²⁴ Scott Gottlieb, et. al., *National coronavirus response: A road map to reopening*, AMERICAN ENTERPRISE INSTITUTE (March 29, 2020), <https://www.aei.org/research-products/report/national-coronavirus-response-a-road-map-to-reopening/>.

Phase 1:

Under this plan, the current time is characterized as phase 1: attempt to slow the spread through social distancing and staying at home while testing increases. During this period, healthcare and essential workers are preparing for a move from “community mitigation” to “case-based interventions.” This means, ideally, the community as a whole will be less impacted while the healthcare system cares for those already sick from the virus.

Phase 2:

This phase, similar to Phase 1 in other states, may be reached by following the four criteria that Virginia and North Carolina must meet: a downward trend in positive test results, cases, hospitalizations, a sufficient supply of protective equipment, etc. In this phase, businesses may reopen with modifications to their operating procedures. The modifications are typical: social distancing observation, public hygiene improvements, and deep cleanings as routinely as possible. Wider-spread testing should be a focus of healthcare workers during this period, as well. This phase will last some time.

Phase 3:

Phase 3 will only initiate when broad surveillance on COVID-19 is available and actionable, or a vaccine is available. While certain vaccines have been in trial periods now, Dr. Fauci, director of the U.S. National Institute of Allergy and Infectious Diseases, hopes for a vaccine by wintertime.²⁵ This means DC may be under phase 2 strictures until then. This phase will consist of lifting the social distancing policy and continuing life as was more normal prior to March 2020.

Phase 4:

DC utilizes a fourth stage, unique among these six jurisdictions. This phase will focus on readying for another disease threat. Research and developing strategies for containment, vaccination, and response time are musts during this period, as well as developing better methods of preserving public health.

South Carolina:

South Carolina’s governor has not provided an explicit three-phase plan or six-week plan. Instead, he says he wants to reopen as soon as safely possible. Thus, the Governor has released new guidance periodically as he meets regularly with his healthcare advisors and significant members of certain areas of the economy and learns when the state may open what. As of now, he has a series of executive orders opening particular areas dating back to April 20.²⁶ Further information will come as the governor continues to sign these orders.²⁷ Much of the economy in South Carolina, though, is open for business.

April 20:

Gov. McMaster opened all beaches and waters, such as lakes, piers, and rivers. (Some local governments have kept beaches closed, however.²⁸) Certain businesses may reopen as long as they limit customers to 5 per 1,000 square feet of space, or 20% of the fire marshal occupancy limit – whichever is less. These businesses include:

²⁵ Scott Stump, *Vaccine by January is ‘doable,’ Fauci says*, NBC NEWS (April 30, 2020, 11:53 AM),

<https://www.nbcnews.com/health/health-news/live-blog/2020-04-30-coronavirus-news-n1196031/ncrd1196496>.

²⁶ South Carolina Executive Order No. 2020-31 (May 3, 2020), <https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-05-03%20eFILED%20Executive%20Order%20No.%202020-31%20-%20Modification%20of%20Home%20or%20Work%20Order%20%26%20Authorization%20of%20Outdoor%20Dining%20Services.pdf>.

²⁷ Jenni Fink, *South Carolina Reopening Explained: Nonessential Businesses, Beaches Allowed to Open by Tuesday*, NEWSWEEK (April 21, 2020, 10:47 AM), <https://www.newsweek.com/south-carolina-reopening-explained-nonessential-businesses-beaches-allowed-open-tuesday-1499218>; Harry Hoffower, *South Carolina has already begun to reopen beaches, department stores, and flower shops*, BUSINESS INSIDER (April 21, 2020, 2:23 PM), <https://www.businessinsider.com/south-carolina-gov-henry-mcmaster-reopens-beaches-nonessential-stores-2020-4>.

²⁸ Charles Duncan, *Town refuses to reopen beach to all, so a South Carolina county threatens to sue*, THE STATE (May 6, 2020, 11:59 AM), <https://www.thestate.com/news/state/south-carolina/article242535281.html>.

furniture/home-furnishing stores; clothing and shoe stores; jewelry, luggage, and leather-goods stores; department stores, with the exception of hardware or home-improvement stores; sporting goods stores; book, craft, and music stores; flea markets; and florists and flower stores. All businesses must follow sanitation and social distancing protocol.

April 24:

On this date, an executive order opened South Carolina gyms, hair salons, barbershops, fitness centers, and massage-therapy parlors. All must follow the requisite guidelines.

April 27:

As of this date, schools continue to be closed, but restaurants, social clubs, and movie theaters reopened as long as they followed directives. However, gatherings must be in the amount of fewer than 50 people.

April 29:

Churches, as of this date, had spoken with Gov. McMaster. He said the state wasn't mandating how churches should proceed, but he urged caution no matter their decision. Each congregation must make their own decision. Church conventions leave it to individual churches, as long as they are "in step with local leadership and state leadership." The governor suggested churches may want to limit gatherings to 20% of their capacity; however, it is again up to each church how they will proceed.²⁹

May 3:

The governor rescinded the stay at home and travel restrictions orders. He did suggest people remain at home and limit their travel as much as possible. Social distancing, sanitation, and face mask guidelines are still in effect.

Maryland:

Although Maryland calls them stages, not phases, the idea is the same: three stages with similar criteria to Virginia, North Carolina, and West Virginia.³⁰ Furthermore, they are titled Low Risk, Medium Risk, and High Risk, and will be rolled out in that order.³¹ In each of these stages, certain businesses and areas will reopen in phases as Gov. Hogan announces they may reopen.

Stage 1 – Low Risk:

This stage will be attained once the "Building Blocks" are met: the four criteria identified by the White House and many of the states listed above. In this stage, like Virginia, Maryland will move to a "safer at home" guideline, as opposed to a stay at home directive. This stage will be phased in gradually. On May 7, Gov. Hogan allowed state parks and beaches to open for boating, camping, and fishing. Until recently Maryland held open the possibility of reopening schools, but has now formally announced schools would be closed for the rest of the academic year. Maryland also now allows some elective surgeries.

The reopening plan indicated that at some point in Stage 1, churches and religious groups would be allowed to implement "limited attendance outdoor religious gatherings." The governor has not announced a specific date when churches could begin this yet, and further details have not yet been released, except that indoor religious gatherings are not slated to begin until Stage 2.

²⁹ Michael Fuller, *South Carolina churches begin to talk about how and when to reopen*, WLTX NEWS (April 29, 2020, 10:40 PM), <https://www.wltx.com/article/news/health/coronavirus/palmetto-state-churches-begin-to-talk-about-how-and-when-to-reopen/101-883225a5-5aa9-4d22-851a-e95b9b2b308d>.

³⁰ Pamela Wood and Luke Broadwater, *Maryland Gov. Hogan outlines three-stage plan to reopen businesses when coronavirus abates*, BALTIMORE SUN (April 24, 2020, 7:23 PM), <https://www.baltimoresun.com/coronavirus/bs-md-hogan-reopening-plan-20200424-p5uyo4ec3jbilea4gitudvzgv4-story.html>; <https://patch.com/maryland/annapolis/governor-presents-maryland-strong-plan-recovery-coronavirus>.

³¹ *Maryland Strong: Roadmap to Recovery*, MARYLAND GOVERNOR'S OFFICE (April 24, 2020), https://governor.maryland.gov/wp-content/uploads/2020/04/MD_Strong.pdf.

The Maryland plan indicates that the following could also come in Stage 1, although the State has yet to give the go-ahead: the reopening of small shops and some small businesses; curbside services for businesses; golfing, hiking, hunting, and certain sporting; car washes, outdoor gym and fitness classes; outdoor work with good social distancing, and some personal services.

Stage 2 – Medium Risk:

Most businesses will reopen here with strict social distancing and hygiene practices, including wearing masks, according to the governor. This may be the longest phase, however - it could last many weeks. Ideally, this stage will see larger areas of the economy come back: social gathering capacity increases, indoor gyms and fitness classes, childcare centers, transit schedules returning to normal, indoor meetings for places of worship, lower-capacity restaurants and bars starting up again within restrictions, and increased elective and outpatient procedures at hospitals.

Stage 3 – High Risk:

Unfortunately, this level has “no realistic timeline yet from any of the scientific experts.” It requires a vaccine being widely available or good ways to care for patients of the virus, including containment thereof. The governor says that Commerce Industry Recovery Advisory Groups will provide plans for sectors of the economy under high risk. These high-risk items include: larger social groups; high-capacity bars and restaurants; hospital and senior center visits; entertainment venues, including movie theaters; and larger religious gatherings, assumedly indoor megachurch services.

Conclusion:

It will be many weeks, if not months, before the United States is completely open for business. However, many states are already working on reopening particular sectors of the economy. Many more are beginning to look with hope toward the next week or two to reopen small portions. Most states explicitly mention reopening churches (in some form) as part of the early stages of reopening. Small businesses are included in that category, typically, within safety and health measures. Larger business in most states may be able to reopen within a few weeks under certain modifications. A return to the “new normal” is coming – or, as some commentators call it: the “new abnormal.” Your business, church, or organization can begin to make plans for reopening in light of the existing guidance. In general, you will be able to open earlier if you can keep close physical proximity to a minimum, conduct your activities outside where the disease is less likely to spread, and maintain strong sanitization practices.

However, you will have to remain flexible as conditions have been and likely will continue to change rapidly. The medical and scientific communities continue to learn more every day, and sometimes learning that previous assumptions were false. The legal requirements follow closely on the heels of the medical data and determinations. Be prepared to adjust your strategy in light of these changes.

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