

NC Modestly Moves into Phase 2: What NC Businesses Need to Know

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North Carolina Governor Roy Cooper and Dr. Mandy Cohen, Secretary of the North Carolina Department of Health and Human Services ("NCDHHS"), conducted a press conference at 5:00 p.m. on May 20, 2020, where they outlined the provisions contained in Executive Order No. 141 (the "Order"), which allows North Carolina to move into Phase 2 of reopening during the COVID-19 pandemic.

Phase 2 will commence on Friday, May 22, 2020 at 5:00

p.m. and will continue until June 26, 2020 at 5:00 p.m., unless repealed, replaced, or rescinded by another applicable executive order.

Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, and other activities exercising First Amendment Rights are exempt from the Order, though the Governor strongly urges those engaging in exempted activities to follow social distancing recommendations, avoid exceeding Emergency Maximum Occupancy (as defined in the Order) and avoid holding Mass Gatherings (as defined in the Order).

Businesses that are Permitted to Reopen in Phase 2

Most businesses that were permitted to be open in Phase 1 may remain open in Phase 2. Any business open to the public must follow the following requirements for signage, screening, and sanitation:

1. Post the Emergency Maximum Occupancy (as defined in the Order) in a noticeable place;
2. Post signage reminding attendees, customers, and workers about social distancing and requesting that people who have been symptomatic with a fever or cough are not to enter;
3. Conduct daily symptom screening of workers before workers enter the workplace;
4. Immediately isolate and remove sick workers; and
5. Perform frequent and routine environmental cleaning and disinfection of high-touch areas.

Restaurants may open during Phase 2 for dine-in services in addition to carry out. Restaurants must follow sanitation requirements as defined in the Order. Restaurants must also limit the number of customers to the Emergency Maximum Occupancy which is the lowest number of people produced by applying the following rules: (i) limit customers to 50% of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) customers for every one thousand (1000) square feet of total footage), (ii) limit the number of people in the space so that groups can stay six feet apart, and (iii) arrange the restaurant so customers

sitting at one table are six feet from another table (also six feet of distance between people sitting at a counter). In addition to the signage, screening, and sanitation requirement above, restaurants must also increase disinfection during peak times, disinfect all shared objects between use, and promote frequent use of hand-washing for wait staff and food service staff. No more than ten people are permitted to sit at one table unless they are all members of the same household. Workers are strongly encouraged, but not required, to wear a face covering. Restaurants are also required to mark six feet of spacing lines in high-traffic areas, such as at a cash register. Workers do not need to remain six feet from customers.

Personal care, grooming, and tattoo businesses are permitted to open during Phase 2, but must follow the Order. These businesses include, but are not limited to: **barbershops, beauty salons, hair salons, nail salons, tattoo parlors, tanning salons, and massage therapists**. Businesses must limit occupancy to 50% of stated fire capacity and limit the number of people in the store so that patrons can remain six feet apart. Businesses must arrange seating so groups of customers are six feet from each other. Workers are required to wear a face covering when within six feet of another person, unless the worker's religious belief prevents them from wearing a face covering. All equipment that comes into direct contact with customers, including chairs, capes, and shampoo areas, must be completely cleaned and disinfected between each customer. These businesses are required to mark six feet of spacing lines in high-traffic areas, such as at the cash register and in waiting areas.

Indoor and outdoor pools may open but must limit user capacity in the pool to no more than 50% of the stated fire code. If the fire code number is unknown, capacity must be limited to thirty-three people per thousand square feet of deck areas, wading pools, and splash pads, and a maximum capacity in the water of ten people per thousand square feet of pool area.

These restrictions only apply to pools in commercial settings or at residential complexes but do not apply to family pools at peoples' homes.

Childcare facilities must (i) follow all applicable NCDHHS guidelines, (ii) conduct daily health screening on all individuals who enter the building, (iii) immediately isolate sick workers and children and send them home, (iv) have a plan to work with local health departments to identify close contacts of confirmed cases in the child care setting, and (v) before reopening, submit the Emergency Child Care Provider Application to NCDHHS. Section 2 of Executive Order No. 130 (except for Subsections (C) and (D)) and Section 3 of Executive Order No. 139 shall remain in effect through June 26, 2020 at 5:00 p.m.

Day camps were permitted to open in Phase 1 and **overnight camps** are now permitted to open in Phase 2. Day camps must (i) follow all applicable NCDHHS guidelines, (ii) conduct daily health screening on all individuals who enter the building, (iii) immediately isolate sick workers and children and send them home, and (iv) have a plan to work with local health departments to identify close contacts of confirmed cases in the camp setting. Public schools that operate day camps may open for that purpose but must otherwise remain closed to the general public.

Overnight camps must (i) follow all applicable NCDHHS guidelines, (ii) conduct daily symptom screening of workers, (iii) immediately isolate sick campers and staff, (iv) if a camper or staff member has been diagnosed with COVID-19, then he or she must remain in isolation until there is no fever for at least 72 hours since recovery, other symptoms have improved, and at least ten days have passed since first symptoms, (v) have a plan to work with local health departments to identify close contacts with confirmed cases in camp setting, and (vi) perform ongoing and routine environmental cleaning and disinfection of high touch areas.

Mass Gatherings are prohibited. A Mass Gathering is defined as an event or convening that brings more than ten people indoors and twenty-five people outdoors together in a single confined space such as an

auditorium, stadium, arena, or meeting hall. This includes parades, fairs, and festivals. Mass Gathering limits do not apply to the business operations above nor to households where more than ten people reside in the one house. Drive-in events, such as **drive-in movie theaters**, are not prohibited, as long as participants remain inside their cars.

The Mass Gathering limits do apply to groups gathered together in a **park**, on a **beach**, or on a **trail**. Park operators must (i) post signage regarding social distancing and request that people with symptoms do not enter, (ii) conduct daily symptom screening of workers before they enter, (iii) immediately isolate and remove sick workers, and (iv) perform frequent and routine environmental cleaning and disinfection. **Public playgrounds** will remain closed.

Entertainment and Sporting Events in Large Venues

Large venues (a venue that has at least two entrances and exits and a stated fire capacity of at least 500 people) may hold sporting or entertainment events for recording and broadcasting to the public, only if it abides by the Mass Gathering limits and it is able to control the flow of people in the lobbies and common spaces. Entertainers, performers, athletes, coaches, training, support staff, and broadcast staff do not count toward the Mass Gathering limit. The large venue operator must (i) disinfect during peak times and between use of shared objects, (ii) immediately isolate and remove sick workers, and (iii) comply with the Order as it relates to food services (but bars must remain closed).

NCDHHS offers guidelines for businesses that are open during the pandemic.

Businesses Ordered to be Closed

Entertainment and fitness facilities including, but not limited to, **bowling alleys, yoga studios, indoor rock climbing facilities, gyms, indoor basketball courts, movie theaters, gaming establishments, venues for receptions, museums, bars, and night clubs** must be closed. However, an entertainment or fitness facility with a dining or retail component can operate just that component under the restrictions of the Order. **Professional athletes** or **college athletes on scholarship** may train in an indoor facility that would otherwise be closed, provided the Mass Gathering limit is not exceeded.

Breweries, wineries, and distilleries are not required to stop production. However, they may not sell their products for onsite consumption.

Repercussions for Not Following the Order

The provisions of the Order shall be enforced by state and local law enforcement officers. A violation of the Order is punishable as a Class 2 misdemeanor under North Carolina General Statute Section 14-288.20A, which can impose a fine up to \$1,000 and up to sixty (60) days in jail for the offender.

Restrictions Could be Reinstated

Governor Cooper and Secretary Cohen repeatedly delivered the message that a successful Phase 2 depends on the people of North Carolina remaining vigilant in following the Order and its recommendations. Governor Cooper stated that just because people can go out does not mean they should. He encouraged people to continue to telework, when possible, and for high-risk populations to remain at home. He also stated that businesses are not required to reopen and customers should remain patient with those businesses. Governor Cooper and Secretary Cohen warned that if there is an increase in hospitalization, previous restrictions may

be reinstated.

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