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Reopening offices safely in response to government-mandated COVID-19 control plans - by Stephen Graham

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To reduce the risk of infection by the novel coronavirus (SARS-CoV-2) that causes coronavirus disease 2019 (COVID-19), guidance was originally provided starting in February/March 2020 by the U.S. Centers for Disease Control and Prevention (CDC), U.S. Environmental Protection Agency (EPA), and the U.S. Occupational Health and Safety Administration (OSHA), followed in April by organizations such as American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE). In May, most states began implementing mandatory standards requiring business compliance before reopening is allowed. This present article reviews key provisions of state government efforts in New England, to regulate re-occupancy, and how to comply with such programs. Each state's plan will incur considerable new effort by the commercial real estate (CRE) industry.

Connecticut, Maine, Massachusetts, and Rhode Island have inaugurated programs requiring registration (Maine) and/or self-certification (all four of these states) of a detailed compliance checklist or plan, and designation of an "administrator" or "health officer". Uniquely, Connecticut imposes an employee log; training on all plan elements; cleaning checklists; and estimates of personal protective equipment (PPE). Vermont instituted a policy that employers must "immediately order...and conduct routine" thermometer checks, amongst other requirements. As of May 11, New Hampshire retail and other businesses (but not yet dining-in only restaurants) could re-open if: employees wear masks during all business hours, even where no others were present; regular updates and training is provided; and employees report any symptoms of COVID-19 or close contact to a supervisor.

In Massachusetts, a "Four-Phase Approach to Reopening Massachusetts" with "Mandatory Safety Standards for Workplaces" was announced May 18 which applies to "all sectors and industries" prior to May 25 (June 1 in City of Boston) Phase I re-openings. The Massachusetts version of reopening requirements is reviewed further as an example because it addresses nearly half the New England population, while still illustrative of most other states' plans. The Approach establishes three

“dimensions”: overall social guidance, mandatory safety standards, and sector specific protocols. The four elements of the mandatory standards include social distancing, hygiene protocols, staffing and operations, and cleaning and disinfecting. Recommended “best practices” are also provided.

One controversial requirement is that certain business categories, notably restaurants, cannot open until Phase II or at least June 8, and bars until end of June, and then at a 25% capacity. Rhode Island and New Hampshire already allow dining in, with restrictions, and outside dining is allowed in most of the other states. Note that the City of Boston also intends to issue its own requirements for businesses the week of May 25.

An employer must prepare and sign a Control Plan, make physical adjustments as needed in workspaces, and affix posters which “attest” to their compliance and/or identify strategies to reduce infection. Certain mandatory requirements in the Control Plan should be understood by the employer, who must enforce:

- Capacity limits: Businesses and other organizations shall limit occupancy within their office space to no more than 25% of (a) the maximum occupancy level. Relief from this limit will occur in next Phases;
- Training of employees of the Control Plan elements;
- Coverings or masks for all employees, in common areas leading up to and in employer’s workspace;
- Frequent hand washing by employees and adequate supplies to do so;
- Regular sanitization (daily as needed) of high touch areas, such as workstations, equipment, screens, doorknobs, restrooms;
- Cafeteria operation with only prepackaged food;
- Physical partition for separate workstations that cannot be spaced out (partitions must be taller than a standing worker);
- Regular evaluation of all workspaces to ensure compliance with all Federal, State and Local Guidelines;
- Preparation of Isolation, Contact Tracing, and Communication Plan: for a worker diagnosed as positive with COVID-19, or comes into close contact (within 6 feet for 10 minutes or more) with an individual diagnosed with COVID-19--which addresses how to handle such a case, and when to allow worker return;
- Notification of the local Board of Health, when a positive case occurs, and working with them to trace likely contacts in the workplace and advise workers to isolate and self-quarantine. Testing of

other workers may be recommended consistent with guidance and / or at the request of the LBOH

- Cleaning logs are kept that include date, time, and scope of cleaning; and
- In the event of a positive case, to shut down office for a deep cleaning and disinfecting.

In the scramble to get employees back to work, many landlords and tenants are moving quickly to implement these Control Plans throughout New England. Our experience has shown that addressing the Control Plan elements described above, amplified with practical, “how-to” details tailored to site specifics, provides an orderly framework for pre-opening preparation and employee re-transition into the workplace. Perhaps more importantly, the availability of such a Plan shared via the required training in advance of office re-entry, provides a sense of comfort and re-assurance to employees who are understandably nervous about that “first day back”. This document can also set the ground rules for work behavior and can provide protective language useful for employment issue resolution.

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