



## TEXAS IS OPEN FOR BUSINESS: UNMASKING EXECUTIVE ORDER GA-34

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**On March 2, 2021, Governor Greg Abbott issued Executive Order GA-34 that fully opens all businesses and facilities in Texas to 100% capacity and ends the mask mandate, effective March 10, 2021.[1] Executive Order GA-34 rescinds most of the Governor's earlier executive orders related to COVID-19 and limits County Judges' power to impose restrictions. In a statement issued in Lubbock, Governor Abbott announced that, while "COVID-19 has not disappeared," "it is clear from the recoveries, vaccinations, reduced hospitalizations, and safe practices that . . . state mandates are no longer needed." [2]**

With this dramatic reversal of the existing restrictions (many of which have been in place for nearly a year), many clients are left with questions on how this Executive Order affects their businesses and operations. To help understand and comply with the Governor's latest Executive Order, this client alert addresses several frequently asked questions:

**Question: Does the Executive Order overrule county mandates?**

**Answer:** Yes, for all regions that are not deemed areas with high hospitalizations. Specifically, only County Judges in "areas with high hospitalizations" – regions with COVID-19 hospitalization rates that exceed 15% of total hospital capacity for seven straight days – are authorized to restrict capacity or impose a mask mandate. These County Judges, however, may not impose fines or jail time for failing to follow COVID-19 orders, nor may there be any penalties imposed for failing to wear face masks. Further, even in areas with

high hospitalization, the County Judges may not impose restrictions that reduce capacity below 50% capacity for any type of entity.

Currently, none of the counties in North Texas would meet the "high hospitalization" criteria, so all local county orders are overruled by the Executive Order.

Question: **Are employees and customers required to wear masks in business establishments?**

Answer: While Executive Order GA-34 removed the mask mandate in Texas, the burden now shifts to individual businesses to determine what protocols they will maintain to protect their employees, patrons, and visitors. These decisions should be made on a case-by-base basis to fit the unique needs and concerns for each business. We expect that most businesses will maintain mask requirements initially (especially in high-trafficked properties such as grocery stores and the common areas of multi-tenant office building or shopping centers), but the number of businesses doing so will shrink over the coming months as vaccination becomes more prevalent and cases continue to decline.

It should be noted that even with the mask mandate is removed, the Executive Order explicitly states, "individuals are strongly encouraged to wear face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing."

Question: **Are businesses required to open?**

Answer: No. Businesses have the discretion to operate as they see fit with no capacity restrictions (unless you are in a high hospitalization area), but businesses are *not* required to open or increase their capacity unless they choose to do so.

Question: **Even though there are no restrictions, should a business re-open at full capacity?**

Answer: You should continue to do what you feel is best for your business, employees, clients, and visitors given the unique circumstances involved with your operations. This decision will need to be made on a case-by-case basis and in compliance with federal, state, and local ordinances.

While we will know more in coming weeks, we expect the "first movers" towards full capacity will be: (1) businesses that were already reaching 50% capacity (or 75% capacity before the winter surge of cases); (2) bars, restaurants, hotels, wedding venues, and other hospitality/entertainment functions (i.e., expect to see an increase of capacity at Stars and Rangers games over the next few weeks); (3) manufacturers/warehouses/ industrial functions; and (4) rural or exurban areas. We also expect that most companies and firms headquartered on the East or West Coasts will continue to self-impose capacity restrictions until their home states ease restrictions further.

Reaction among local leaders and business owners has shown there is a deep divide of opinion on the Executive Order. One local business owner interviewed in the Dallas Business Journal stated: "I'm really in favor of this new proclamation because it gives us options. It doesn't mean we take our masks off necessarily, it doesn't mean we open our dining room. But now we have options to do what's right for our

staff and right for our guests. And I love the freedom to make the right choices." Others stated they would not be making any changes for the foreseeable future.[3]

For your business, there are numerous risk factors to consider including: your facilities' configuration; proximity of your employees to one another and customers in a full-capacity environment; pre-existing conditions of your individual employees; and rate of vaccination of your employees, among myriad other factors.

If you would like to engage in a risk assessment based on your individual circumstances, Bell Nunnally attorneys are always available to consult with you to help tailor a re-opening plan that works best for you.

**Question: May businesses require employees to work in the office?**

**Answer:** There is no mandate to return to the office, but businesses are free to make their own decisions on requirements for their employees, within the bounds of the law.

Businesses unquestionably have a duty to provide a reasonably safe workplace to their employees and control certain known risks and hazards. Employee complaints over an unsafe work environment could lead to investigations or litigation if adequate protocols are not in place. While the state-wide mask mandate and occupancy restrictions have been lifted, the recognized standards of care set by the Center for Disease Control (CDC) and the regulatory requirements imposed by the Occupational Safety and Health Administration (OSHA) continue to remain in full force and effect. Thus, the safest course for businesses is to continue to maintain a COVID mitigation plan for your business that includes enhanced cleaning, screening, social distancing, and masking when persons will be in close proximity to one another. Even the Executive Order explicitly states, "individuals are strongly encouraged to wear face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing."

Businesses should also be sensitive to individual employees' health needs. For example, an unvaccinated person with health risk factors may be more sensitive to returning than others. In those circumstances, employers should be aware of their legal obligations to accommodate requests for enhanced safety measures, which could include work from home, mandatory masking, physical barriers like partitions, and staggered work schedules to allow for social distancing.

Business should partner with their legal counsel to develop or revise COVID-19 policies and procedures to reflect the latest guidance from the Center for Disease Control (CDC), the Equal Employment Opportunity Commission (EEOC), and the Occupational Safety and Health Administration (OSHA). For further guidance on managing employee relations during the pandemic, visit [Bell Nunnally's COVID Resource Center](#).

**Question: May businesses require employees to get vaccinated?**

**Answer:** For a full discussion on this topic, please see our [FAQ on "Can Employers Require a Vaccine?" in the Bell Nunnally COVID-19 Resource Center](#).

**Question: How does this affect other government functions (i.e., court system, schools, etc.)?**

Answer: This remains to be seen. While the Executive Order lifted many restrictions, it does not address whether the State of Texas will re-open all of its own functions (*i.e.*, schools, universities, courts, the Texas Capital Building, etc.) or remove the mask mandate from its buildings or agencies. There are a number of interesting questions which remain unanswered, including: will masks in schools be repealed; will in-person attendance be mandated in schools and virtual learning phased out; and when will in-person hearings and jury trials return to the court system.

For now, the existing rules and guidelines will stay in place, but do not be surprised to see some of these restrictions lifted in the coming weeks and months.

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[1] <https://open.texas.gov/uploads/files/organization/opentexas/EO-GA-34-opening-Texas-response-to-COVID-disaster-IMAGE-03-02-2021.pdf>

[2] <https://gov.texas.gov/news/post/governor-abbott-lifts-mask-mandate-opens-texas-100-percent#:~:text=Governor%20Greg%20Abbott%20today%20issued,the%20Lubbock%20Chamber%20of%20Commerce.>

[3] <https://www.bizjournals.com/dallas/news/2021/03/02/restaurants-abbott-announcement.html>

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