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## COVID-19: California Announces Framework For Gradual Reopening

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Six weeks ago, California issued the nation's [first statewide shelter-in-place order](#) in response to the growing COVID-19 pandemic. Although nearly [every other state eventually followed suit](#) in taking significant measures to limit the virus's spread, California has remained one of the most cautious—declining for weeks to set a timeline or specific guidelines for when the statewide order would be lifted.

On April 28, 2020, Governor Gavin Newsom [offered his most detailed guidance yet](#) on how the phased reopening of the state will proceed. While Governor Newsom declined to provide a date certain by which any stage of his plan will occur, he did give additional information about those areas of the economy that are considered lower risk (and thus more likely to reopen quickly) and higher risk (and thus more likely to reopen slowly). Governor Newsom's plan also highlights the important role of localities. Unlike the current statewide order—which is notably silent on whether counties and cities may enact even more restrictive policies based on local conditions—the phased reopening plan expressly allows local governments to reopen at their own pace even if the state permits the adoption of lighter restrictions.

### Guiding Principles For Reopening

During Tuesday's announcement, Governor Newsom framed the discussion by emphasizing that any decision to modify the statewide order would be informed by the [six indicators](#) that he announced several weeks earlier. These high-level considerations are:

- The ability to monitor and protect communities through testing, contact tracing, isolating, and supporting those who are positive or exposed;
- The ability to prevent infection in people who are at risk for more severe COVID-19;
- The ability of the hospital and health systems to handle surges;
- The ability to develop therapeutics to meet the demand;
- The ability for businesses, schools, and child care facilities to support physical distancing; and
- The ability to determine when to reinstitute certain measures, such as the stay-at-home orders, if necessary.

It is notable that these factors for reopening California's economy are based almost entirely on health-related considerations—as opposed to balancing such considerations with economic ones, [as some other states have done](#). These metrics also require California to rely on factors that are not necessarily within the state's direct control, such as access to sufficient testing kits and the development of an effective vaccine.

That said, the six indicators do leave some room for California localities and businesses to accelerate the state's reopening. For example, businesses that can demonstrate that they have the capacity to support physical distancing and the health of their workforce will positively influence the state's ability to move forward with reopening.

#### Four Phases Of Reopening

Governor Newsom's April 28 announcement—which is premised on making progress on the six indicators discussed above—outlines a four-stage “Resilience Roadmap” for modifying, and ultimately ending, the State's [stay-at-home order](#). The current iteration of the plan does not offer firm dates, but instead provides a flexible approach that permits the gradual reopening of different sectors of the economy as the state's capabilities evolve to meet the challenges of the pandemic.

Governor Newsom explained that California is currently in what he has deemed “Stage 1” and will remain so at least the short term. During this first stage, California will focus on continuing “to build out testing, contact tracing, PPE, and hospital surge capacity.” The state will also make efforts to ensure that essential workplaces are “as safe as possible” by changing physical work environments and work flows, enhancing the safety net for essential workers, focusing on individual behavioral changes, and trying to increase the availability of personal protective equipment.

The transition Stage 1 to Stage 2 is potentially [weeks away](#), and will occur through an express modification of the statewide order. Even as California as a whole moves to Stage 2, however, Governor Newsom has remarked that he will grant localities the authority to move more slowly in easing restrictions. That said, his office has made clear that counties and cities [will not be permitted to reopen more quickly](#) than the state as a whole.

“Stage 2” of the reopening plan will focus on the gradual re-opening of certain lower risk workplaces (coupled with necessary adaptations to minimize the risk that remains). Although sector-specific guidelines will be released at a future date, examples of such lower risk workplaces include certain retail establishments (operating using curbside pickup), manufacturing facilities, and certain offices (when it is not possible to work remotely). This stage may also see the reopening of certain school and childcare facilities. Indeed, the Governor noted at a press conference that the next school year may potentially start early—in July or August—to make up for the decision to close schools for the rest of this school year.

Stage 3 of the state's phased reopening plan is—by Governor Newsom's current estimate—still [“months, not weeks, away.”](#) It will include the gradual reopening of certain higher-risk businesses and environments, such as hair and nail salons, movie theaters, gyms, sporting events without live audiences in attendance, weddings, and in-person religious services. Notably, the state's plan

assumes that these businesses will have to reopen with certain adaptations to make them feasible in the COVID-19 era, including limitations on the size of gatherings.

The fourth and final stage of California's phased reopening will see the end of the stay-at-home order and involve the reopening of the highest-risk workplaces, such as concert venues, conventions, and live-audience sporting events. State guidance indicates that the transition to this stage will occur only "once therapeutics have been developed" (*i.e.*, a treatment for COVID-19). Despite [federal efforts to fast-track potential vaccines](#), the current estimates for when such a treatment will be available [range from a year to 18 months](#). Accordingly, it seems likely that—for the foreseeable future—the state will continue to operate under a form of the statewide order that strongly discourages such large mass gatherings.

#### The Special Role of Localities

As noted above, Governor Newsom's April 28 guidelines place significant emphasis on the role that localities have to play in responding to COVID-19. In particular, the four-stage guidelines anticipate that at Stage 2 and on, localities have the authority to move more slowly than the state in easing COVID-19 related restrictions. In that specific situation, a more restrictive local order would control if there was a conflict with state guidance. This is notable for two reasons. First, the existing statewide order does not carve out any role for counties and cities to adopt more restrictive policies—even though [some localities have claimed the authority to do so](#). Second, the guidelines notably do not suggest that localities will have the power to open more quickly than the rest of the state and the Newsom administration has affirmatively suggested that they will not be granted that authority. Taken together, this suggests that the Governor views statewide orders as preempting local orders absent express language to the contrary—otherwise, there would be no need to make such fine distinctions about what localities can and cannot do.

In light of the lack of clear guidance on preemption, however, localities have continued to chart their own course in a manner that diverges from the statewide order. For example, several counties have [required](#) their residents to wear a facemask when in public. And a coalition of six Bay Area counties and the city of Berkeley have acted in tandem to issue near-identical shelter-in-place policies that [are more restrictive](#) than the state's. Indeed, the orders governing the Bay Area counties were just yesterday extended to remain in effect [at least until the end of May](#), although the orders do relax certain limitations on outdoor activities—including commercial matters like construction projects, car washes, and landscaping.

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While Governor Newsom's April 28 announcement sheds some light on how the state may eventually reopen its economy, its lack of specific dates and detailed metrics for reopening means that this remains an evolving situation. Given that California's leadership role among the rest of the states—and significance of the California economy to the nation's financial health—it is well worth keeping a close eye on how this develops. WilmerHale's attorneys will continue to stay abreast of developments and keep its clients informed if there are any significant changes.

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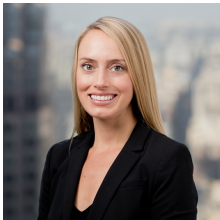


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