FPLG: COVID-19

Nonprofits & CA's "Take 2" Reopening

09.16.20 | Linda J. Rosenthal, JD

Throughout the United States, the summer months were a frenzy of rushed “reopenings” followed by all-too-predictable rollbacks as COVID-19 outbreaks surged. Disease hotspots erupted even in some jurisdictions like California that had imposed early lockdowns.

Now, in September 2020, state and local governments around the nation face wrenching decisions on whether and when to attempt a new round of more careful reopenings. In this post, we’ll focus on California. But there are a number of helpful (and periodically updated) online compilations of U.S. statewide reopening rules and regulations; see, for example, here.

Where do nonprofit organizations fit into these complex laws and rules that have popped up since the COVID-19 pandemic swept across the United States last spring? As a general rule, tax-exempt organizations are subject to them the same as profit-making entities and individuals because these new provisions are largely health and safety measures.

CA Reopening The Second Time Around

California’s governor, Gavin Newsom, took action in mid-March with tough stay-at-home orders designed to – and which did for a while – tamp down the spread of COVID-19. But there was intense pressure to loosen up some of the restrictions. By early May, 2020, Gov. Newsom agreed to a staged reopening plan that went into effect in the following weeks with whiplash-inducing speed. By June, though, the disease spiked in many parts of the state, causing the government to pull back a bit.

One of the (many) problems with the first reopening scheme was that it “relied on local officials to attest to their own readiness to reopen. But instead of requiring counties to meet the benchmarks outlined in his plan, Newsom permitted dozens of counties to move forward as long as local officials said they could increase testing capacity or train more contract tracers in the weeks and months after their businesses opened their doors again.”

In late August 2020, California's governor announced a second try at a revamped and more cautious reopening plan. The new effort is called *Blueprint for a Safer Economy*; that is, the method for reducing "COVID-19 … with revised criteria for loosening and tightening restrictions on activities."

The latest and best information is collected at the state government's COVID-19 master reference site: https://covid19.ca.gov/ (updated almost daily). This plan has four "tiers" and is based on a requirement that counties "… show consistent progress in stemming transmission of the coronavirus before they can advance to the next tier of reopening.

This more "robust" plan is "designed to correct some of the mistakes made during California's initial reopening attempt in May." The tiers are "ranked by the percentage of positive COVID-19 tests and the number of new cases." Generally, the state sets certain rules that are effective *within* each tier for the counties that are assigned to that tier. But counties and municipal governments have some leeway to impose variations that are *stricter* than the statewide provisions.

Reopening for Each County

On the announcement date (August 28, 2020) the majority of California's 58 counties were in the most stringent "Tier 1." Color-coded purple, it represents a "widespread" county risk level in which "many non-essential indoor business operations are closed." On that date, all of Southern California was in Tier 1 except for San Diego County which had placed in Tier 2, color-coded red, representing a "substantial" risk level in which "some non-essential indoor business operations are closed." San Francisco has also been in Tier 2 from the beginning of this new plan.

On the state's master site, there is an interactive chart to view and understand each county's current tier status. Another helpful reference source is the Los Angeles Times: *Which California counties are reopening?* (updated almost daily). There's been some movement among counties since the first week of this new plan when 38 of the counties were in the most restrictive category. As of September 12, 2020, just 33 counties with some 71% of California's population are "rated too risky to reopen." Key changes include Orange County, Santa Clara County, and Santa Cruz County which moved from Tier 1 to Tier 2 while San Diego is in some danger of being sent down to Tier 1 *from* Tier 2. Changes are scheduled to be announced each Tuesday.

[Update 9/16/20 : San Diego County has received official notice it may be moved back to purple next week if numbers continue in the wrong direction. A major spike is related to an outbreak on the SDSU campus. The County asked Governor Newsom to separate out the SDSU cluster for purposes of evaluation of the county-wide tier status. So far, the answer is no.]

The only counties currently in Tier 3 (nine) and Tier 4 (two) are in the most rural northern and eastern parts of the state. The Los Angeles Times's chart has a section called "How it shakes out" with a color-coded map of the entire state.

What About Nonprofits?

The Los Angeles Times's chart includes another useful section titled "What's open in your county?" The default section is Los Angeles County which started out and remains in Tier 1; you can type in your own county to bring up that information.

What's particularly helpful with this chart is that it lists the rules for certain activity categories including a number of ones that are mostly nonprofit in nature. For instance, there is information about: libraries, museums, zoos, places of worship & cultural ceremonies, higher ed, K-12 schools, and – of course – "nonessential business offices."

These charts also indicate when there is a "stricter" variation in a county from the state's standard within a particular tier. Check, too, with your local government's websites for information about variations closer to home.

Conclusion

A final note for now: Just because the government permits you to reopen doesn't necessarily mean it's a good idea to make that move at the earliest allowable opportunity. There are many considerations including liability issues and well as the nonprofit board's fiduciary duties to its own personnel as well as the general public. We'll take a stab at those topics in upcoming posts.