



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

August 31, 2020

**To:** Superintendents, Member School Districts (K-12)  
**From:** Carl D. Corbin, General Counsel *CDC*  
**Subject:** Updated Framework for Re-opening  
Memo No. 52-2020

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On Friday August 28, 2020, the Acting State Public Health Officer, Dr. Erica Pan, issued a Statewide Public Health Officer Order (“Order”) that provided an undated framework for re-opening activities in California (including schools).<sup>1</sup> The updated Order was adopted due to the continued significant concern of community spread of COVID-19. The framework for re-opening, referred to as “California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe” is summarized in the “Blueprint for a Safer Economy” (“Blueprint”) on the California Department of Public Health (“CDPH”) website.<sup>2</sup> Both the Order and Blueprint are attached to this Legal Update. CDPH has updated its industry guidance to incorporate the Blueprint.<sup>3</sup>

The Order takes effect on August 31, 2020, and supersedes the July 13, 2020, State Public Health Officer Order and provides the legal authority for the implementation of the Blueprint. Information from the Blueprint regarding schools is summarized below.

- There are four colored tiers from most widespread to least widespread COVID-19 risk for each county:
  1. “Widespread” – purple and schools are closed for in-person instruction;
  2. “Substantial” – red and school are closed for in-person instruction, but schools can re-open for in-person instruction if the county remains in this tier for two weeks (14 calendar days);

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<sup>1</sup> [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20\\_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/8-28-20_Order-Plan-Reducing-COVID19-Adjusting-Permitted-Sectors-Signed.pdf).

<sup>2</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>.

<sup>3</sup> <https://covid19.ca.gov/industry-guidance/>.

3. “Moderate” – orange and school can re-open for in-person instruction; and
4. “Minimal” – yellow and school can re-open for in-person instruction.

	Higher Risk → Lower Risk of Community Disease Transmission			
	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
<b>Measures*</b>				
<b>New cases**/100,000 population per day (7 day average; 7 day lag)</b>	>7	4-7	1-3.9	<1
<b>Testing % Positivity (7 day average; 7 day lag)</b>	> 8%	5-8%	2-4.9%	<2%

- Schools may re-open for in-person instruction based on equivalent criteria to the July 17, 2020, [School Re-opening Framework](#) previously announced. That framework remains in effect except that Tier 1 is substituted for the previous County Data Monitoring List (which has equivalent criteria to Tier 1).
- Schools in counties within Tier 1 are not permitted to re-open for in-person instruction, with an exception for waivers granted by local health departments for TK-6 grades. So TK-6 waivers can still be requested as described in our Legal Update No. 46-2020.<sup>4</sup>
- Schools that are not authorized to re-open, including TK-6 schools that have not received a waiver, may provide structured, in-person supervision and services to students under the [Guidance for Small Cohorts/Groups of Children and Youth](#). Please see our Legal Update No. 51-2020.<sup>5</sup>
- Schools are eligible for re-opening fully for in-person instruction following California School Sector Specific Guidelines once the county is off Tier 1 for 14 days, which is similar to being off the County Data Monitoring List for at least 14 days.
- Potential re-closure should follow the July 17, 2020 [School Re-opening Framework](#).

General rules of the Tier Framework:

- CDPH will assess indicators weekly and the first weekly assessment will be released on September 8, 2020;
- A county will remain in a tier for a minimum of three weeks before being able to advance to a later tier;
- A county can only move forward one tier at a time, even if metrics qualify for a more advanced tier;
- If a county's case rate and test positivity measure fall into two different tiers, the county will be assigned to the more restrictive tier; and
- City local health jurisdiction (“LHJ”) data will be included in overall metrics, and city LHJs will be assigned the same tier as the surrounding county.

<sup>4</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Schools-FAQ.aspx>.

<sup>5</sup> <https://files.covid19.ca.gov/pdf/guidance-schools-cohort-FAQ.pdf>.



Counties will be assigned an initial step on August 28, 2020, through the following process:

- Each county is assigned to a tier based on an adjusted case rate and test positivity from the prior two reporting periods and if a county's case rate and test positivity measure fall into two different tiers, the county will be assigned the more restrictive tier;
- This tier status will be effective on Monday, August 31, 2020;
- If a county is initially assigned to Purple Tier 1 and has met the criteria for a less restrictive tier the prior week, the county only needs to meet the criteria for a less restrictive tier for one more week to move to the Red Tier 2; and
- For the September 8, 2020, assignment, a county does not need to remain in the Purple Tier 1 for three weeks, but for all subsequent assessments, a county must remain in a tier for three weeks and meet the criteria to advance as described below.

For a county to advance:

- A county must have been in the current tier for a minimum of three weeks, except as described in the "Initial step applied on August 28, 2020" section above;
- A county must meet criteria for the next tier for both measures for the prior two consecutive weeks in order to progress to the next tier; and
- In addition, the state will establish health equity measures on activities such as data collection, testing access, contact tracing, supportive isolation, and outreach that demonstrate a county's ability to address the most impacted communities within a county, which may include additional measures addressing health outcomes such as case rates, hospitalizations and deaths that will be developed and tracked for improvement.

Some counties may be moved back to a lower tier depending on various factors:

- During the weekly assessment, if a county's adjusted case rate and/or test positivity has been within a more restrictive tier for two consecutive weekly periods, the county must revert to the more restrictive tier;
- At any time, state and county public health officials may work together to determine targeted interventions or county wide modifications necessary to address impacted hospital capacity and drivers of disease transmission, as needed; and
- Counties will have three days to implement any sector changes or closures unless extreme circumstances merit immediate action.

Please note that in addition to the various State-Wide CDPH guidance, County Local Health Officers ("LHOs") may issue more restrictive guidance for a specific county.

Our office will continue to do our best to provide timely legal guidance to help schools understand and comply with the various directives issued to address COVID-19 issues.

Please contact our office with questions regarding this Legal Update or any other legal matter.



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*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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SANDRA SHEWRY, MPH, MSW  
Acting Director

State of California—Health and Human Services Agency  
**California Department of Public Health**



GAVIN NEWSOM  
Governor

**Statewide Public Health Officer Order,  
August 28, 2020**

On March 19, 2020, the State Public Health Officer issued an order directing all individuals living in the State of California to stay at home except as needed to facilitate authorized activities or to maintain the continuity of operations of critical infrastructure sectors. (See [March 19, 2020 Order](#).) The scope of activities authorized under this order was subsequently modified in additional state public health directives. Then, consistent with Executive Order N-60-20, the State Public Health Officer set out California's path forward from this "Stay-at-Home" Order in California's [Pandemic Resilience Roadmap](#). That Roadmap identified four stages of the pandemic: safety and preparation (Stage 1), reopening of lower-risk workplaces and other spaces (Stage 2), reopening of higher-risk workplaces and other spaces (Stage 3), and finally an easing of final restrictions leading to the end of the stay-at-home order (Stage 4). On July 13, 2020, in response to a significant increase in the spread of COVID-19, the State Public Health Officer ordered the statewide closure of operations in certain high-risk sectors. (See [July 13, 2020 Order](#).) Counties on the County Monitoring List for three consecutive days were also required to close additional indoor operations for certain sectors in order to further slow community transmission.

Community spread of infection remains a significant concern across the state. In addition to the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic. Higher levels of community spread also increase the likelihood of infection among individuals at higher risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual. COVID-19 infection is also disproportionately impacting our essential workforce. The anticipated influenza season is likely to impose additional burdens on the healthcare delivery system, increasing demand for space, supplies, and personnel.

The COVID-19 pandemic continues to evolve, and CDPH is continually monitoring new scientific evidence and improving its understanding of the disease. Based on the current state of the pandemic in California and current scientific understanding of transmission, it is my judgment that it is appropriate to further refine the approach in order to gradually reopen businesses and activities while reducing the risk of increased community spread. A targeted system for sector reopenings which considers both current epidemiological conditions and the latest understanding of transmission risk in certain



sectors will allow CDPH to monitor both counties and sectors for evidence of increased epidemiological risk and will reduce risk as California continues to reopen its economy and protect public health. [California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe](#) sets forth in detail the basis for the new Framework.

**NOW, THEREFORE, I, as Acting State Public Health Officer of the State of California, order all of the following:**

1. The updated framework for reopening, which shall be known as California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe, will rely on a set of Tiers corresponding to specific epidemiological profiles based on indicators of disease burden including case rates per capita and percent of positive covid-19 tests and proportion of testing and other covid-19 response efforts addressing the most impacted populations within a county. For each progressive Tier, this framework will permit a broader range of reopening guided by risk-based criteria pertinent to each sector. I may modify the epidemiological criteria for each Tier as well as the sectors, businesses, establishments, or activities within the Tiers as necessary based on the latest available public health information and research to protect public health and safety. The up-to-date Tier profiles and those sectors, businesses, establishments, or activities that are permitted to open in each Tier will be posted (along with necessary modifications), at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>.
2. Pursuant to this framework, all local health jurisdictions in the state may reopen specified sectors according to their respective county's Tier. However, a local health jurisdiction that moves to a Tier permitting further reopening must pause for 21 days, or a different period that I identify, before reopening additional sectors.
3. Conversely, a local health jurisdiction must also close sectors according to their respective county's Tier consistent with the timeline and procedures set forth in California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.
4. A local health jurisdiction may continue to implement or maintain more restrictive public health measures if the jurisdiction's Local Health Officer determines that health conditions in that jurisdiction warrant such measures.

## Terms of Orders

5. This order shall go into effect August 31, 2020 and shall supersede the July 13, 2020 State Public Health Officer Order.
6. This order shall remain in effect until I determine it is appropriate to modify the order based on public health conditions.
7. I will continue to monitor the epidemiological data and will modify California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe as required by the evolving public health conditions. If I determine that it is necessary to change what will reopen or close, or otherwise modify the Plan, these modifications will be posted at [California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe](#).
8. Except to the extent this order or other state public health directives expressly provide otherwise, all CDPH guidance continues to apply statewide.
9. All references in CDPH or other State guidance to the County Monitoring List or the County Data Monitoring List shall refer to those counties falling within Tier 1 of California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.
10. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120150, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.



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Erica S. Pan, MD, MPH  
Acting State Public Health Officer  
California Department of Public Health

## COVID-19

# Blueprint for a Safer Economy

California has a new blueprint for reducing COVID-19 in the state with revised criteria for loosening and tightening restrictions on activities. Find out how businesses and activities can open in counties statewide beginning on August 31. See the activities and business tiers.

### **TO: All Californians**

### **SUBJECT: Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe**

This guidance outlines an updated framework for a safe progression of opening more businesses and activities in light of the pandemic. The framework for this guidance is informed by increased knowledge of disease transmission vulnerabilities and risk factors and is driven by the following goals:

- 1) To progress in phases based on risk levels with appropriate time between each phase in each county so impacts of any given change can be fully evaluated.
- 2) To aggressively reduce case transmission to as low a rate as possible across the state so the potential burden of flu and COVID-19 in the late fall and winter does not challenge our healthcare delivery system's ability to surge with space, supplies and staff. Also, with winter weather pushing more activities indoors, low levels of transmission in the community will make large outbreaks in these riskier settings less likely.
- 3) To simplify the framework and lay out clear disease transmission goals for counties to work towards.

### **Tier Framework**

This framework lays out the measures that each county must meet, based on indicators that capture disease burden, testing, and health equity. A county may be more restrictive than this framework. This framework also notes signals of concern, including impacted healthcare capacity that may lead towards a dimming intervention. This framework replaces the current County Data Monitoring metrics. As the COVID-19 pandemic continues to be an evolving situation and new evidence and understanding emerges, the California Department of Public Health (CDPH) will continue to reassess metric thresholds.

See chart below for the framework metrics as set according to tiers based on risk of community disease transmission.



	Higher Risk → Lower Risk of Community Disease Transmission			
	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
<b>Measures*</b>				
<b>New cases**/100,000 population per day (7 day average; 7 day lag)</b>	>7	4-7	1-3.9	<1
<b>Testing % Positivity (7 day average; 7 day lag)</b>	> 8%	5-8%	2-4.9%	<2%

\*To advance to the next tier, a county must also meet health equity measures as described below.

\*\*Case rate will be determined using confirmed (by PCR) cases, and will not include state and federal inmate cases. Case rates include an adjustment factor for counties that are testing above the state average. The incidence is adjusted downwards in a graduated fashion, with a maximum adjustment at twice the State average testing rate.

## Moving through the Tiers

### Rules of the framework:

1. CDPH will assess indicators weekly. The first weekly assessment will be released on September 8, 2020.
2. A county will remain in a tier for a minimum of three weeks before being able to advance to a later tier.
3. A county can only move forward one tier at a time, even if metrics qualify for a more advanced tier.
4. If a county's case rate and test positivity measure fall into two different tiers, the county will be assigned to the more restrictive tier.
5. City local health jurisdiction (LHJ) data will be included in overall metrics, and city LHJs will be assigned the same tier as the surrounding county.

### Initial step applied on August 28, 2020:

1. Each county is assigned to a tier based on an adjusted case rate and test positivity from the prior two reporting periods. If a county's case rate and test positivity measure fall into two different tiers, the county will be assigned the more restrictive tier.
2. This tier status will be effective on Monday, August 31, 2020.
3. If a county is initially assigned to Purple Tier 1 and has met the criteria for a less restrictive tier the prior week, the county only needs to meet the criteria for a less restrictive tier for one more week to move to the Red Tier 2. (For the September 8, 2020 assignment, a county does not need to remain in the Purple Tier 1 for three weeks. For all subsequent assessments, a county must remain in a tier for three weeks and meet the criteria to advance as described below.)

### To advance:

1. A county must have been in the current tier for a minimum of three weeks, except as described in the "Initial step applied on August 28, 2020" section above.
2. A county must meet criteria for the next tier for both measures for the prior two consecutive weeks in order to progress to the next tier.
3. In addition, the state will establish health equity measures on activities such as data collection, testing access, contact tracing, supportive isolation, and outreach that demonstrate a county's ability to address the most impacted communities within a county. Additional measures addressing health outcomes such as case rates, hospitalizations and deaths, will also be developed and tracked for improvement.

### To move back:

1. During the weekly assessment, if a county's adjusted case rate and/or test positivity has been within a more restrictive tier for two consecutive weekly periods, the county must revert to the more restrictive tier.
2. At any time, state and county public health officials may work together to determine targeted interventions or county wide modifications necessary to address impacted hospital capacity and drivers of disease transmission, as needed.
3. Counties will have three days to implement any sector changes or closures unless extreme circumstances merit immediate action.

## Risk Criteria

Activities and sectors will begin to open at a specific tier based on risk-based criteria, as outlined below. Lower risk activities or sectors are permitted sooner and higher risk activities or sectors are not permitted until later phases. Many activities or sectors may increase the level of operations and capacity as a county reduces its level of transmission.

### Criteria used to determine low/medium/high risk sectors

- Ability to accommodate face covering wearing at all times (e.g. eating and drinking would require removal of face covering)
- Ability to physically distance between individuals from different households
- Ability to limit the number of people per square foot
- Ability to limit duration of exposure
- Ability to limit amount of mixing of people from differing households and communities
- Ability to limit amount of physical interactions of visitors/patrons
- Ability to optimize ventilation (e.g. indoor vs outdoor, air exchange and filtration)
- Ability to limit activities that are known to cause increased spread (e.g. singing, shouting, heavy breathing; loud environs will cause people to raise voice)

## Schools

Schools may reopen-for in-person instruction based on equivalent criteria to the July 17<sup>th</sup> School Re-opening Framework previously announced. That framework remains in effect except that Tier 1 is substituted for the previous County Data Monitoring List (which has equivalent criteria to Tier 1). Schools in counties within Tier 1 are not permitted to reopen for in-person instruction, with an exception for waivers granted by local health departments for TK-6 grades. Schools that are not authorized to reopen, including TK-6 schools that have not received a waiver, may provide structured, in-person supervision and services to students under the Guidance for Small Cohorts/Groups of Children and Youth.

Schools are eligible for reopening fully for in-person instruction following California School Sector Specific Guidelines once the county is off Tier 1 for 14 days, which is similar to being off the County Data Monitoring List for at least 14 days.

Potential re-closure should follow the July 17<sup>th</sup> School Re-opening Framework.

## County Data Adjudication Process

If a county finds that there is discrepancy between the county's and state's calculated data for the above defined measures, the county shall notify the County Data Monitoring Regional Coordinator. The county may request a meeting to discuss with local and state epidemiology leads to compare data. In addition, CDPH will work with

California Conference of Local Health Officers and County Health Executives Association of California to develop other methodologies to assess qualitative and contextual information impacting these metrics and the most appropriate interventions.

Once a discrepancy is adjudicated by CDPH, any updated tier status will be determined by CDPH and the tier status will be reflected on the public website within 48 hours, as appropriate.

Page Last Updated : August 28, 2020