



Checklist for safely and successfully reopening retail businesses

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Several states are now amending their shelter-in-place orders to allow for many activities, including non-essential retail businesses to re-open in some fashion even during the coronavirus (COVID-19) outbreak. Appropriately, Colorado Governor Jared Polis used ski analogies to discuss his state's approach to ending the lockdown—"We're on the bunny hill right now. The Safer-at-Home phase is the 'green circle' beginner ski slope. No double-black diamond or terrain park, or we'll be seriously hurt. If we're falling down on the green, it means back to the bunny slope." But, as some states are just reaching their peak rates of deaths and infection, many are reluctant to loosen any restrictions. There is no uniform standard approach for allowing non-essential retail businesses to operate.

As retailers contemplate re-opening their shuttered businesses, we have put together the below checklist of items to address prior to or while re-opening up their brick-and-mortar operations.

Open/stay closed?

As a preliminary matter, just because your business is permitted to open doesn't mean it is practical or makes financial sense to re-commence operations. Additionally, you and your employees might not be mentally prepared to return.

We urge each business to review the requirements imposed by their state, cities, and/or other governing bodies (such as OSHA or their landlord) and weigh those, along with the operational needs of your business, to decide whether the costs outweigh the benefits. A detailed financial "open/stay closed" analysis must be done before re-commencing operations. Not sure where to start? We discuss some of the most common considerations below that may impact revenue and costs.

Rent

Some retailers impacted by shelter-in-place ordinances have either sought or simply took rent abatement, many under the premise that they could not access or utilize their premises. While the reaction to these actions by retail tenants has been varied, the rationale for seeking or taking

abatement may be impacted by re-opening the store operations or expanding usage. Retailers need to consider this reality in their re-opening calculations.

Access

Even if you want to open, will customers be able to access your store? Is your shopping center open/storefront accessible? According to the CNBC, The Simon Property Group reportedly is re-opening 49 properties across 10 states between May 1 and May 4. However, the store hours will be restricted—11:00 a.m. to 7:00 p.m. Monday through Saturday, and noon to 6:00 p.m. Sunday. Reportedly, not all mall entrances will be open. How will new traffic flows impact your store's foot traffic?

Further, how will you limit customer count in your store to ensure proper distancing? How do you decide how many are allowed in at a time? Who will monitor this? Some retailers are considering use of “nightclub” accessories like lines and ropes. Is that allowed in your mall? On the sidewalk in front of your store? While many states and cities are still restricting customer access in-the-store for non-essential retailers, some states are allowing shops to re-open their interiors as long as customers can effectively follow social distancing protocols.

Monitoring

Reports of thermal cameras and other ways of checking temperatures abound, but it is unclear whether privacy regulations permit these measures. OSHA seems to suggest that they are best practices but it remains unclear whether such monitoring is permissible under existing regulations. How will you give you customers notice of such measures? How will you receive their consent? And separately, what happens if a customer does not wear a mask despite a requirement to do so? Will you require such customer to vacate immediately and what if such customer refuses to leave? What if customers do not maintain distancing? You will need to have procedures and best practices for your staff to follow.

Store layout

Once customers are inside your store, will you need to make changes to the current layout and/or configuration? Does this require remodeling? In addition to being expensive, significant remodeling will require, in many cases and jurisdictions, consultation and approval of landlords and local officials. Plus, in the pandemic age, construction itself has significant restrictions. In some areas, retail operations and commercial construction may open up simultaneously, necessitating a lag in having a location coming online. Some areas are also requiring retro-fitting, such as plexiglass barriers at cash wraps, and the provision of protective equipment and/or hand sanitizer to customers. How will you handle this?

Inventory

Once given the greenlight to open your doors, retailers need to consider what products they (1) have in stock to sell AND (2) what customers want to buy. Some retailers have depleted their stores' physical inventories to provide merchandise for online portals. Those that do have inventory could soon realize there is a mismatch between customer demand and their current supply. Merchandise planners were not contemplating a virus outbreak that would lock down almost the entire country when doing their planograms and store layouts. However, retailers that have a robust web presence may have some additional insights into customer needs and purchase

directions in the #newnormal. Retailers should not simply follow the current playbook. Many large brands are also impressing the importance of maintaining margins on their goods—pressuring retailers from taking huge markdowns on their products.

Staff

Most stores need people to sell their merchandise or handle customer issues. For many retailers, their sales associate teams have been furloughed or laid off. Assembling a team for a store may be more complicated than some retailers imagine. While the likelihood that employees have found other positions in the interim during the pandemic is small, the outbreak has placed huge demands on employees' personal lives that may make going back to work incredibly complicated. In addition, retailers have reported that employees receiving the \$600 a week in additional pandemic unemployment are calculating that it may be more beneficial to stay home. Plus, there is a wide array of staff safety protocols being recommended or mandated, including temperature/health screening and monitoring; use of masks, gloves, and other PPE; and, social distancing requirements. Retailers need to create detailed plans for employees to safely work in their stores—before re-commencing operations.

Payments

Many state and local orders encourage retailers to embrace contactless payments, which is interesting because prior to the pandemic, some cities actually prohibited solely contactless payments. Colorado, for example, is now advising retailers, “Encourage virtual payments and minimize exchanges of debit/credit and identification cards except as required by law.” Are your registers/POS set-up to accept these types of payments? While providing these may not be mandatory, customer choice may also be an important lever in encouraging adoption, if you are not already set-up for these payment options.

Curb-side pickup

Some states are placing restrictions on accessing the store premises—mandating “curb-side” pick-up. How will that work for your locations? What process will you use? Where will customers wait? Retailers need to make sure they have good communication with their customers and figure out a way for their staff to easily make the logistics work. This could involve coordinating with landlords and municipal agencies (sometimes even adjacent tenants/owners)—especially as access may interplay with common areas.

Cleaning protocol

Some retailers—outside of food and beverage—likely gave very little thought to store cleaning routines. Services were utilized, or some cleaning may have been done by store staff. While the suggested or required protocols for “cleaning and disinfecting” store locations will vary from jurisdiction to jurisdiction, the importance of these activities is underscored in most orders opening up operations. Fortunately, non-essential retailers can look to the essential retailers for best practices and tips for an effective store cleaning regimen. Many locations close early and open later to allow a thorough process of cleaning all surfaces to be accomplished. Retailers must analyze their physical plants and operation to develop a robust plan to clean every store surface. Some might even want to consider cleaning during store hours, which might actually give customers more confidence leading to more time spent in the store, hopefully resulting in higher items per transaction (in turn increasing profitability and/or sales per square foot).

The decision to re-open your retail business is not an easy one as a result of the significant challenges and restrictions that face retailers in light of the pandemic. Plus, the economic and regulatory landscape is incredibly fluid. Nixon Peabody LLP has been advising retailers through every phase of this crisis and will continue to monitor the guidelines and other trends that impact retailers during this unsettled time.

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