MEMORANDUM

TO: **Texas Restaurant Association**

FROM: **Monty & Ramirez LLP**

DATE: **June 19, 2020**

RE: **Texas Restaurants & Essential Critical Infrastructures**

Good afternoon,

The purpose of this memorandum is to reiterate our position that Texas restaurants are part of an essential critical infrastructure and may operate under the CDC's guidelines for essential workers which affirm that essential workers need not quarantine after close contact with a co-worker who was diagnosed with or is exhibiting symptoms of COVID-19. We also wanted to provide a discussion point on safeguarding back of the house employees especially when the kitchen area does not allow staff to easily follow social distancing guidelines.

I.   Texas restaurants are essential.

The current U.S. Department of Homeland Security (DHS) guidance on "Essential Critical Infrastructure Workers" states "[r]estaurant and quick serve food operations, including dark kitchen and food prepcenters, carryout, and delivery food workers…" are essential.[1] The prior version of this guidance only listed restaurants offering carry-out services as essential.[2]

We know that employees of non-essential businesses are advised to quarantine for 14 days after the last date of **exposure** to a co-worker or household member who tested positive for or exhibited symptoms of COVID-19. **Exposure** means being in close contact (within 6 feet) for

---

[1] *See Guidance on the Essential Critical Infrastructure Workforce*, U.S. DEP'T OF HOMELAND SEC. CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (May 19, 2020), https://www.cisa.gov/sites/default/files/publications/Version_3.1_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers.pdf.

[2] *See Guidance on the Essential Critical Infrastructure Workforce*, U.S. DEP'T OF HOMELAND SEC. CYBERSECURITY & INFRASTRUCTURE SEC. AGENCY (Apr. 17, 2020), https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_1.pdf.

prolonged periods (at least 15 minutes) during the 48-hour period before either: (i) the infected employee developed symptoms or (ii) the infected employee took the COVID-19 test.[3]

However, the CDC's guidelines, as well as the Texas Department of State and Health Services' Minimum Standard Health Protocols establish an exception for exposed critical infrastructure workers.[4] If a critical infrastructure worker is exposed to COVID-19 (see definition for **exposure** above), such worker may continue working so long as they remain asymptomatic and follow these additional practices[5] prior to and during their work shift:

1. **Pre-Screen**: The employee must submit to a temperature check and assessment of their symptoms prior to their shift.

2. **Regular Monitoring**: The employee must self-monitor for COVID-19 symptoms under the supervision of the Company's occupational health program.

3. **Wear a Mask**: The employee must wear a face mask at all times while in the workplace for at least 14 days after last exposure.

4. **Social Distance**: The employee must maintain 6 feet between themselves and other employees and customers, and practice social distancing in the workplace as work duties permit.

5. **Disinfect and Clean Work Spaces**: The employer must clean and disinfect all areas such as offices, bathrooms, common areas, and shared electronic equipment routinely.

If the exposed employee becomes sick during the day, such employee should be sent home immediately and not allowed to return to work until cleared by a healthcare professional or based on the CDC's guidelines for discontinuing isolation.

II.   Face masks are the best form of protection for BOH employees.

COVID-19 is thought to spread mainly through close contact from person-to-person through respiratory droplets produced when an infected person coughs, sneezes, or talks.[6] These droplets can then land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. As such, the best ways to avoid the spread of the virus is to maintain a social distance of at least 6 feet, routinely clean and disinfect frequently touched surfaces, and cover your mouth and nose with a cloth face covering when around others.[7]

---

[3] *See Public Health Guidance for Community-Related Exposure*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html (last visited June 18, 2020).

[4] *See Checklist for All Employers and Event Organizers*, TEX. DEP'T OF STATE HEALTH SERVS. (rev. June 3, 2020), https://dshs.texas.gov/coronavirus/docs/opentx/june/AllEmployers.pdf.

[5] *See Implementing Safety Practices for Critical Infrastructure Workers*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html (last visited June 18, 2020).

[6] *See How COVID-19 Spreads*, CDC, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html?deliveryName=USCDC_2067-DM31064 (last visited June 19, 2020).

[7] *Id.*

Restaurants face a unique challenge in maintaining social distancing guidelines among back of the house staff especially because most of the guidance from the various state and federal government agencies is focused on protecting customers and the dining area.[8] In this situation, face coverings such as face masks and shields play an essential part in protecting kitchen staff, and employees should be trained on the proper use, removal, and washing of cloth face coverings.

Additionally, restaurants may implement other methods to promote social distancing for the back of house staff such as: (1) spreading out food preparation time, (2) limiting menu items, (3) extending shifts for employees based on their tasks, (4) providing face shields to protect the eyes, mouth, and nose, (4) buying pre-cooked items to minimize time spend on preparing and cooking menu items, and (5) taking timed breaks for wiping down and disinfecting the kitchen surfaces and tools commonly shared to prepare and cook meals.

In summary, restaurants are now considered essential businesses, but are still facing barriers to maintaining social distancing in the kitchen area and keeping employees as safe as possible. At this time, the best method to protect back of the house staff is to protect their eyes, noses, and mouths with cloth face coverings. Restaurants will need to get creative to increase the distance between employees and do their part to stop the spread. The road is tough, but Monty & Ramirez is here to help.

---

[8] Annia Ciezadlo, *The Safety Problem for Restaurants Isn't the Dining Room*, THE WASHINGTON POST (May 29, 2020), https://www.washingtonpost.com/outlook/restaurants-kitchen-covid-safety/2020/05/29/fa8f3fd4-a133-11ea-b5c9-570a91917d8d_story.html