

As more restaurants reopen for dine-in, the threat of another shutdown looms, Nation's Restaurant News, ft. Arif Virji

Arif Virji, Managing Partner of the KD San Francisco and Sonoma offices, was quoted in the Nation's Restaurant News article written by Lisa Jennings on issues with restaurants reopening nationwide, published June 25, 2020.

Restaurants in Chicago are preparing for limited indoor dining starting Friday as concern about a second shutdown in other states is growing, along with a reported spike in coronavirus cases.

Several states are reportedly showing signs of becoming hot spots for the virus. The governors of New York, New Jersey and Connecticut jointly announced a travel advisory that requires a 14-day quarantine for those traveling from nine states with "significant community spread," a list that as of Wednesday included Alabama, Arkansas, Arizona, Florida, North Carolina, South Carolina, Washington, Utah and Texas.

In California and Texas, the governors reportedly hinted of a retrenchment of reopening plans, threatening to take action against restaurants not willing to follow safety protocols.

As the coronavirus case load surpassed 5,000, Texas Gov. Greg Abbott on Tuesday urged residents to stay home and said the state would crack down on overcrowding in some restaurants and bars. In some counties, alcohol licenses have been suspended temporarily.

California's Gov. Gavin Newsom on Monday urged residents to report to local authorities businesses that aren't following safety protocols, noting that alcohol permits could be pulled for enforcement.

Among the guidelines is the requirement that both employees and guests (while not seated) wear face masks. Illinois is among a growing number of states that have adopted stricter face mask mandates, including Washington state, California and New York.

The face mask issue has become increasingly political, despite the fact that health officials say face coverings are crucial to preventing spread of the virus. Masks are recommended in restaurant reopening guidance from the Centers for Disease Control and Prevention.

Attorneys, however, note that — even without a law or government mandate — restaurants can require guests and employees to wear masks as a matter of policy.

There are some grey areas, notes Arif Virji, managing partner of the law firm Kaufman Dolowich & Voluck in San Francisco. Restaurants should accommodate guests with a disability, for example, such as a breathing difficulty or if someone is prone to panic attacks. Those situations should be handled on a case-by-case basis, he said.

Some guests, however, may see not wearing a mask as a First Amendment right but Virji said that's the weakest argument. People are not free to yell "fire" in a theater because it could cause harm, he noted, and restaurants could argue that a guest not wearing a mask also creates an unreasonable risk of harm to other guests and employees.