



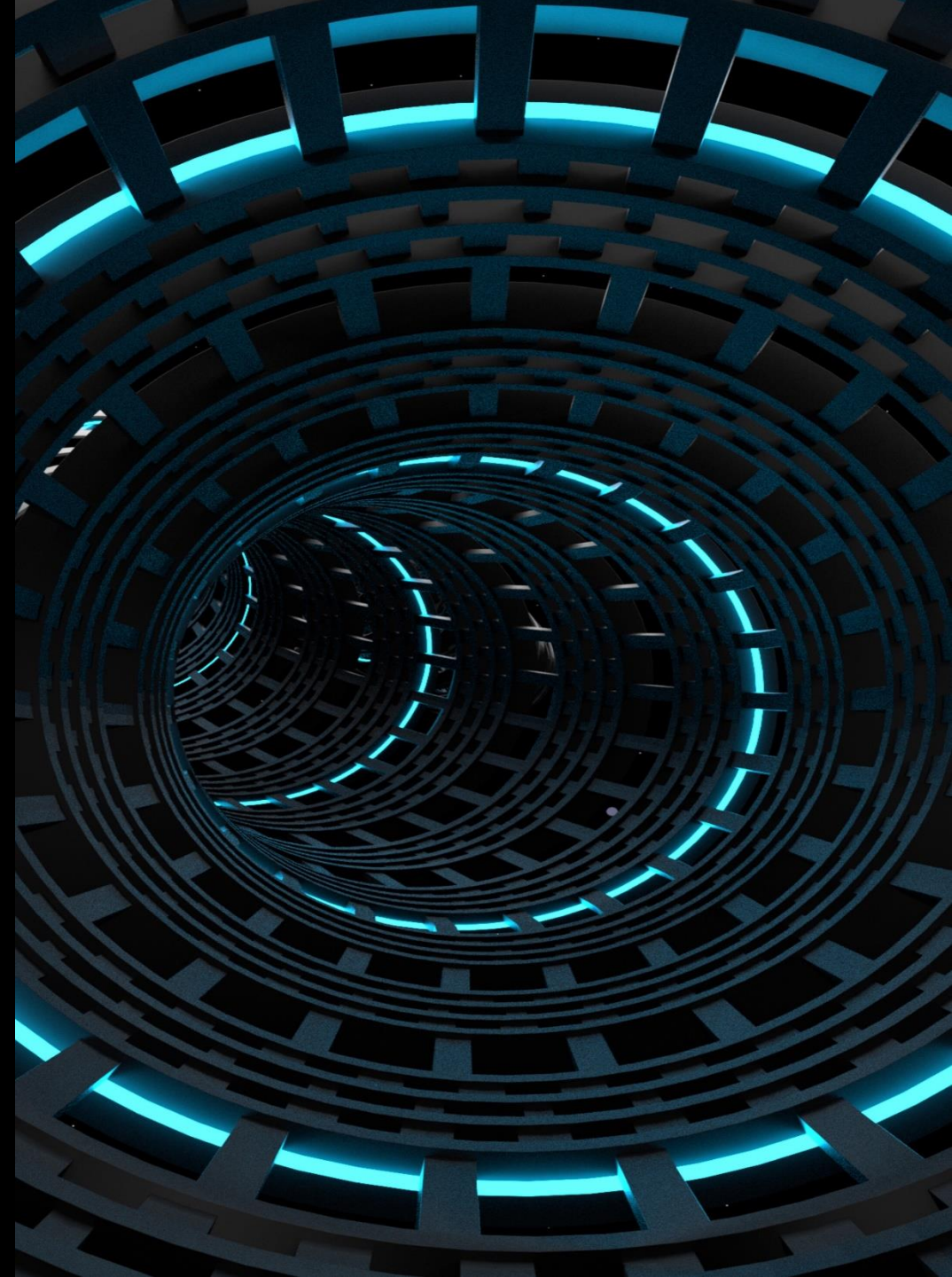
Dealership Reopening – Health & Safety Strategies for OEMs

*Future of Automotive Return to
Business Mini Series*

May 14, 2020

Seyfarth Shaw LLP

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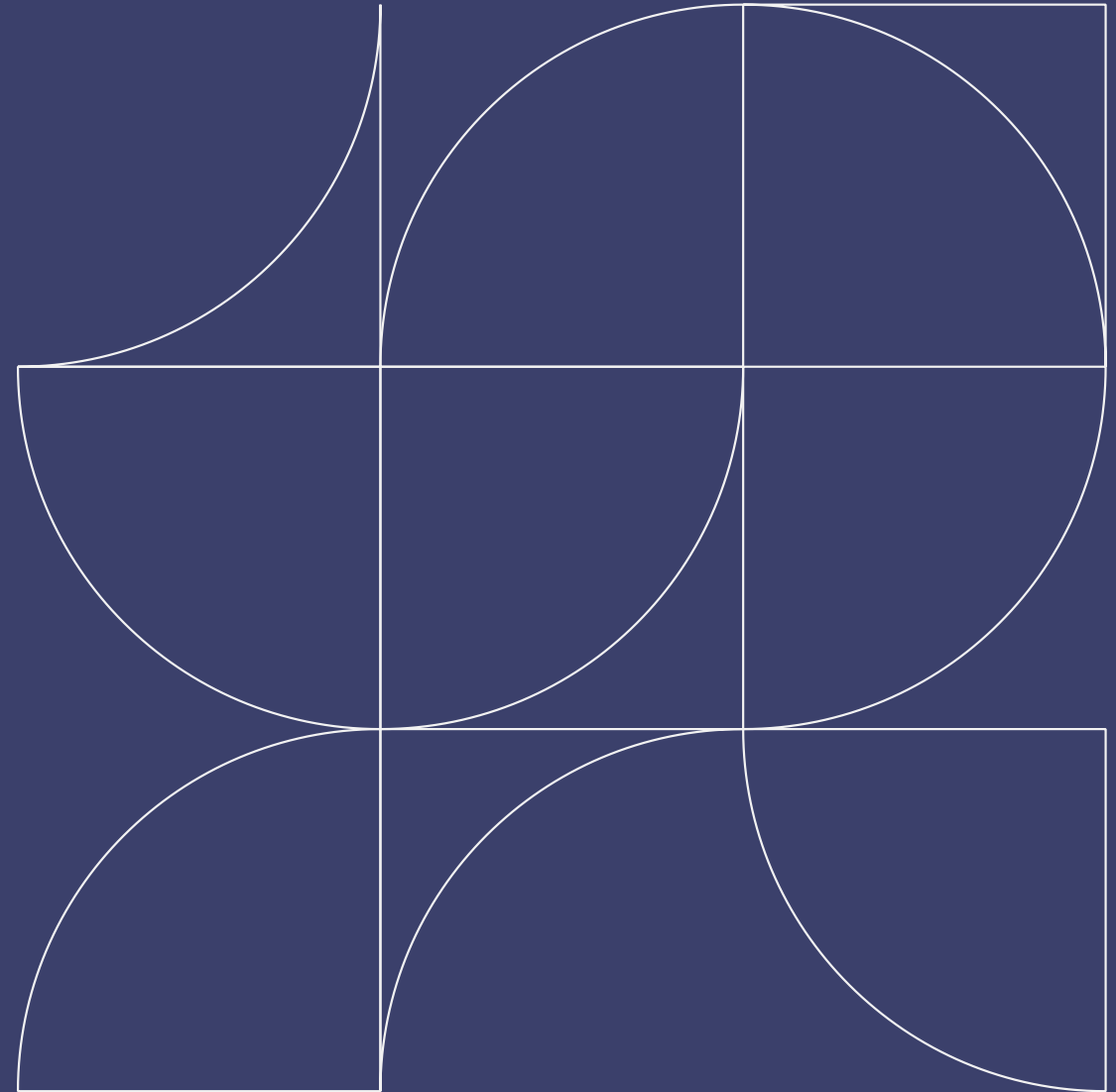
Agenda

- Protecting the Brand – Need for Network Wide COVID-19 Guidelines
- Legal Considerations – Federal, State & Local Orders and Guidelines
- Elements of a Dealership Infectious Disease Preparedness and Response Plan
- OEM Strategies for protecting the brand while managing risks

Protecting The Brand

- As dealerships reopen, consumers will expect robust dealership health and safety protocols, including:
 - sanitized vehicles
 - social distancing practices
 - valet service, home deliveries, no contact transactions
- Health & Safety needs to be paramount – lax dealer protocols or compliance will reflect poorly on the brand
- Liability Risk – dealers (and OEMs) will face for claims if customer exposure (e.g., claims against cruise lines)
- OEMs have operational and facility standards for how products are displayed, marketed, and promoted -- need to make sure dealers doing things right
- Reality -- COVID-19 protocols are now a critical part of the customer experience
- Not a short term thing

Legal Considerations



Legal Considerations

- State/local executive orders
- OSHA guidance
- CDC guidance
- EEOC guidance

Note:

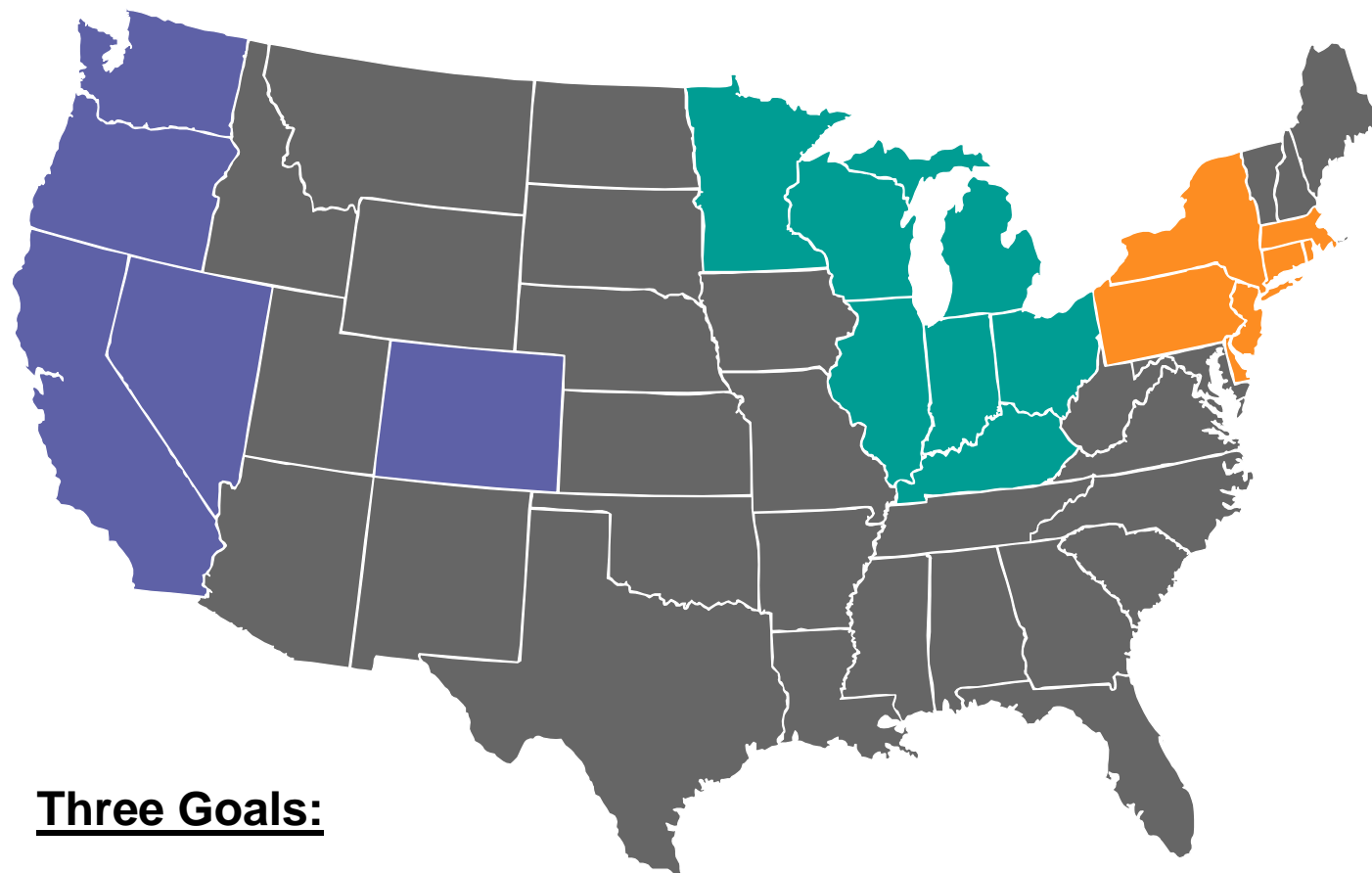
CDC and OSHA have issued guidance documents for some specific industries. Make sure you are aware of industry specific guidance.



State/Local Executive Orders

- Every state has implemented, or will implement, restrictions on re-opening.
- Many are similar but contain critical differences with regard to the details, such as:
 - Masks
 - Social distancing
 - Employee assessments
 - Travel restrictions
- Most states are implementing a phased in approach for re-opening the state.
- Many cities and county public health departments also have orders in place.
- Orders can be internally inconsistent or confusing.
- Seek clarification when necessary.
- Use CDC guidelines as touchstone when dealing with unclear orders.

Three Regional Alliances (as of 5/4/2020)



State Alliances to
Coordinate an Eventual
Easing of COVID-19
Shutdowns

Three Goals:

1. Safety
2. Strengthening Health Care Systems
3. Developing Systems for Testing, Tracking, and Isolating COVID-19 Carriers

Restart Guidance

- The CDC has issued guidance for cleaning and disinfecting businesses.
- Dealers need to evaluate operations and determine what needs to be cleaned and develop and implement a plan, update as necessary.

GUIDANCE FOR CLEANING & DISINFECTING



SCAN HERE
FOR MORE
INFORMATION

PUBLIC SPACES, WORKPLACES, BUSINESSES, SCHOOLS, AND HOMES

1 DEVELOP YOUR PLAN

DETERMINE WHAT NEEDS TO BE CLEANED. Areas unoccupied for 7 or more days need only routine cleaning. Maintain existing cleaning practices for outdoor areas.

DETERMINE HOW AREAS WILL BE DISINFECTED. Consider the type of surface and how often the surface is touched. Prioritize disinfecting frequently touched surfaces.

CONSIDER THE RESOURCES AND EQUIPMENT NEEDED. Keep in mind the availability of cleaning products and personal protective equipment (PPE) appropriate for cleaners and disinfectants.

2 IMPLEMENT

CLEAN VISIBLY DIRTY SURFACES WITH SOAP AND WATER prior to disinfection.

USE THE APPROPRIATE CLEANING OR DISINFECTANT PRODUCT. Use an EPA-approved disinfectant against COVID-19, and read the label to make sure it meets your needs.

ALWAYS FOLLOW THE DIRECTIONS ON THE LABEL. The label will include safety information and application instructions. Keep disinfectants out of the reach of children.

3 MAINTAIN AND REVISE

CONTINUE ROUTINE CLEANING AND DISINFECTION. Continue or revise your plan based upon appropriate disinfectant and PPE availability. Dirty surfaces should be cleaned with soap and water prior to disinfection. Routinely disinfect frequently touched surfaces at least daily.

MAINTAIN SAFE PRACTICES such as frequent handwashing, using cloth face coverings, and staying home if you are sick.

CONTINUE PRACTICES THAT REDUCE THE POTENTIAL FOR EXPOSURE. Maintain social distancing, staying six feet away from others. Reduce sharing of common spaces and frequently touched objects.

For more information, please visit [CORONAVIRUS.GOV](https://www.covid19.gov)



MAKING YOUR PLAN TO CLEAN AND DISINFECT

Cleaning with soap and water removes germs, dirt, and impurities from surfaces. It lowers the risk of spreading infection.



Is the area indoors?

YES

It is an indoor area.

NO

Maintain existing cleaning practices.

Coronaviruses naturally die in hours to days in typical indoor and outdoor environments. Viruses are killed more quickly by warmer temperatures and sunlight.

Has the area been occupied within the last 7 days?

YES

Yes, the area has been occupied within the last 7 days.

NO

The area has been unoccupied within the last 7 days.

The area will need only routine cleaning.



Is it a frequently touched surface or object?



YES

Yes, it is a frequently touched surface or object.

NO

Thoroughly clean these materials.

Consider setting a schedule for routine cleaning and disinfection, as appropriate.

What type of material is the surface or object?

Hard and non-porous materials like glass, metal, or plastic.

Visibly dirty surfaces should be cleaned prior to disinfection.

Consult EPA's list of disinfectants for use against COVID-19, specifically for use on hard, non-porous surfaces and for your specific application need. More frequent cleaning and disinfection is necessary to reduce exposure.

Soft and porous materials like carpet, rugs, or material in seating areas.

Thoroughly clean or launder materials.

Consider removing soft and porous materials in high traffic areas. Disinfect materials if appropriate products are available.

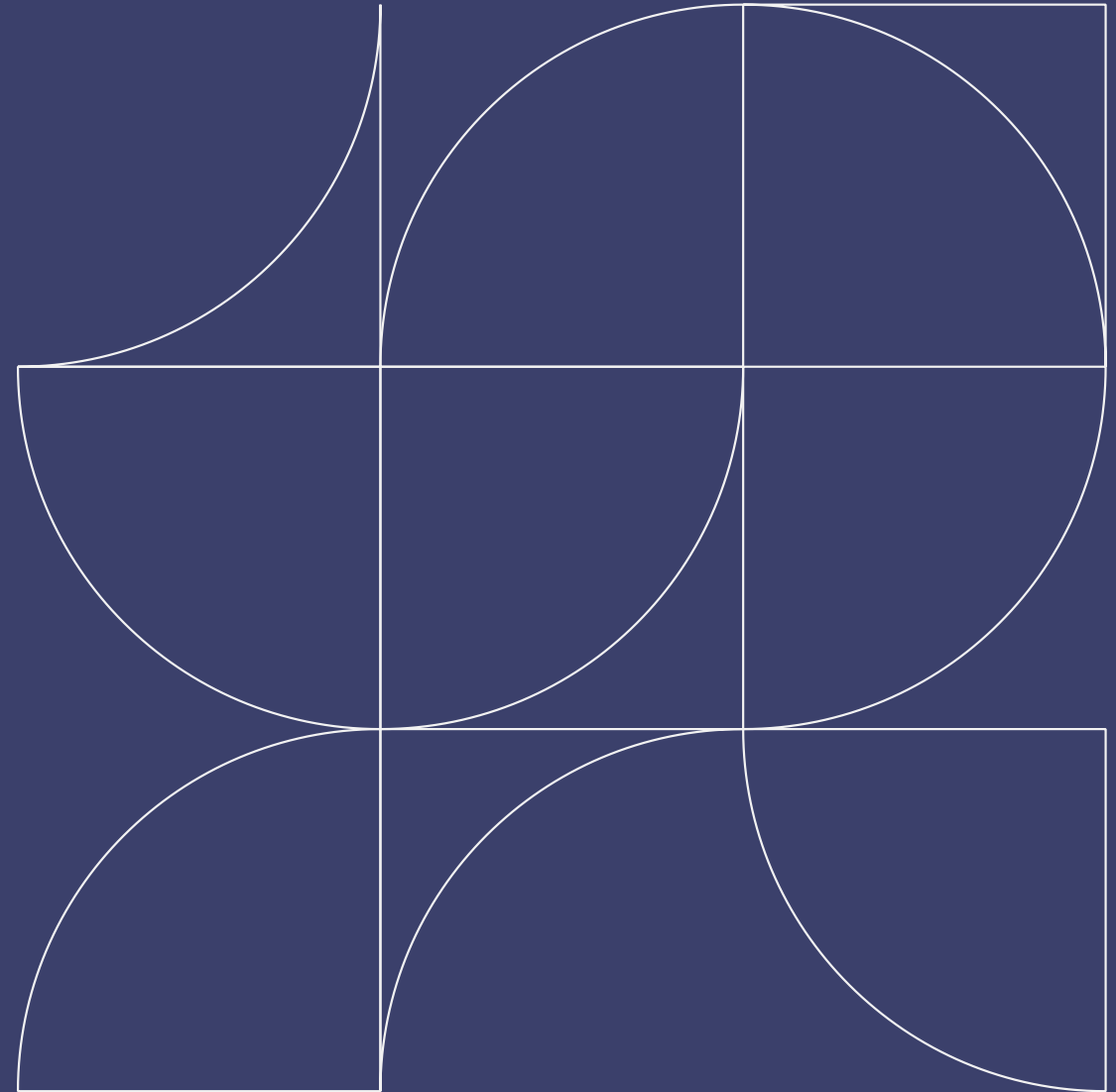




OSHA Considerations

- Conduct a COVID-19 risk assessment.
- What type of facility are you?
 - Very high or high risk:
 - Hospitals and Healthcare.
 - Medium Risk:
 - Workers have frequent contact with travelers or direct contact with public in community spread areas.
 - Dealerships likely seen as medium risk facilities
 - Low Risk:
 - Workers do not have contact with public.

Dealership Infectious Disease Preparedness and Response Plan



Infectious Disease Preparedness and Response Plan

- Dealers should develop an Infectious Disease Preparedness and Response Plan
- Plan should consider the level of risk associated with the worksite and job tasks.
- Consider:
 - Exposure sources for employees, customers, vendors, etc.
 - Workers' individual risk factors (e.g., older age, chronic medical conditions, pregnancy)
 - Specific dealership operations (sales, service, office operations).



Dealer Plan Should Implement Basic Infection Prevention Measures

- Good hygiene and infection control remain the keys to every plan:
 - Frequent hand washing and use of sanitizer (at least 60% alcohol);
 - Workers to stay home if sick;
 - Consider flexible work policies such as telecommuting and staggered shifts;
 - Discourage employees from sharing workspaces (e.g., phones, desks, offices, tools and equipment).
 - Use of face masks by employees and customers;
 - Ensure supply of sanitizer and other hygiene products is adequate.
 - Provide employees and customers/visitors with tissues and trash receptacles;

Dealerships Need Robust Housekeeping Protocols

- Frequent cleaning of common spaces:
 - Restrooms
 - Breakrooms
 - Lobby
 - Customer seating areas
- Frequent cleaning of commonly touched areas
- Sanitizing of vehicles



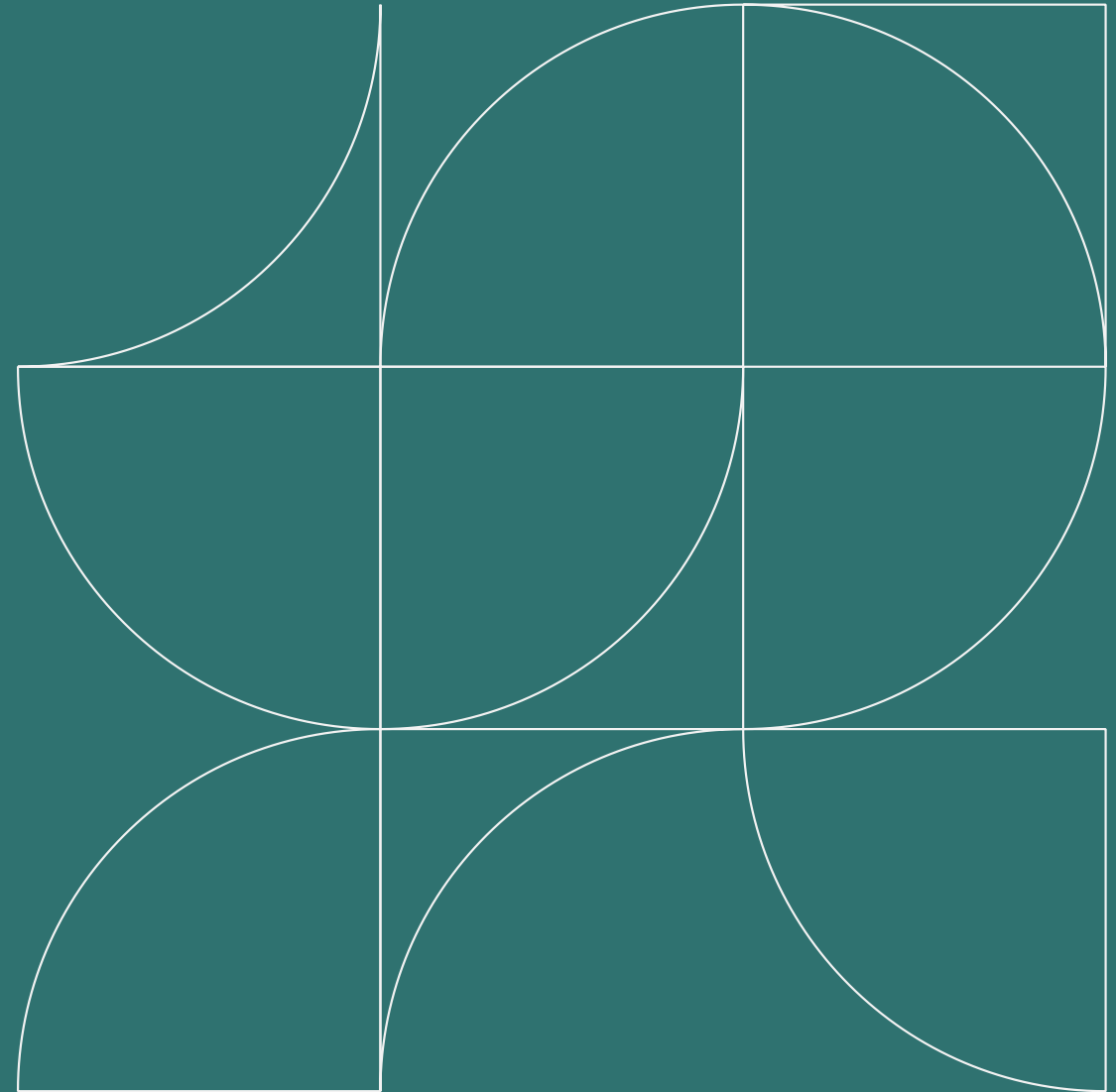
Dealer Policies

- Establish Policies for employee work flow and customer interaction:
 - Social distancing;
 - Employee and customer flow when entering and exiting the facility:
 - Sales / test drives / vehicle delivery
 - Service department
 - Valet service
 - Consider personal protective equipment where appropriate

Facilities

- Considerations
 - Increased ventilation;
 - High efficiency air filters;
 - Installation of barriers (such as sneeze guards) and curtains between open seating areas and desks;
 - Social distancing throughout

Vicarious Liability & Joint Employer Risks



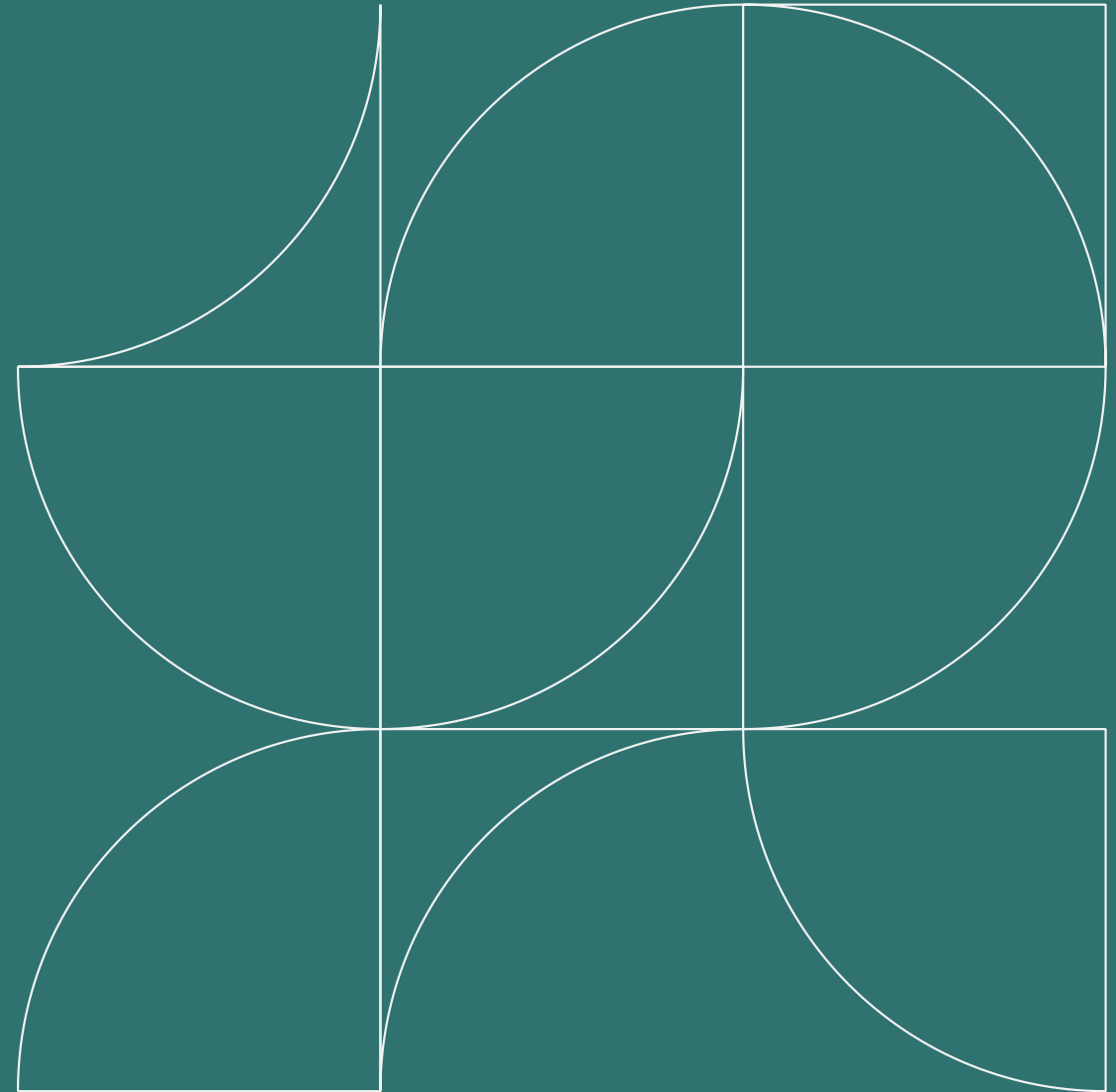
Vicarious Liability

- Franchisors / OEMs face potential liability for acts of franchisees / dealers
 - Control - franchisors potentially liable if it “enter[s] the arena’ of overseeing the day to-day operations of the franchise.” *Vazquez v. Jan-Pro Franchising Int’l, Inc.*, 923 F.3d 575, 592 (9th Cir 2019).
 - Franchisors can lawfully impose marketing standards and guides how to “operat[e] [their] franchises in a uniform way.” *Salazar v. McDonalds Corp.*, 944 F.3d 1024, 1030 (9th Cir. 2019).
 - But standards and guides must be “geared toward quality control” which is “central to modern franchising and the company’s ability to maintain brand standards[.]” *Salazar at 1029–30.*

Joint Employer Liability

- “Joint Employer” is form of vicarious liability
 - 2015 -- *Browning Ferris / NLRB* -- Franchisors potentially deemed employer of franchisee’s employees if controls or has the *right* to control
- New NLRB (29 C.F.R. § 103.40) joint employer liability rule. Potential J/E liability *if*
 - (1) franchisor “share[s] or codetermine[s]” essential terms and conditions of employment” and
 - (2) actually exercises “**substantial control**” over terms or conditions of employment.
- “Substantial Control” means
 - “direct and immediate control that has a regular or continuous consequential effect on an essential term or condition of employment.”
- The “right to control” is not enough -- need actual control.

OEM Strategies



OEM Strategies for Protecting the Brand While Managing Risk

- Dealer agreements generally require compliance with all applicable laws.
- NLRB rule expressly recognizes right to set standards based on government regs and guidelines (CDC, OSHA, etc.)
- Strategies for OEMs
 - Require compliance with state and local orders and applicable guidelines
 - OEM COVID-19 guides should refer to relevant CDC, etc., regulations and guidance
 - Remain current and informed (use resources)
 - Frequent and ongoing communication (not a one and done deal). Engage the dealer council / forum, if available

OEM Strategies for Protecting the Brand While Managing Risk, Cont.

- Share resources (i.e., NADA guide) and encourage and share best practices
- Coordinate the brand message (coop ads, etc.)
- Make sure any specific “directives” (dos and don’ts) are necessary to protect the brand
- Be flexible with space and brand standards -- facilities will look different with social distancing changes, etc.
- Monitor dealer ops and messaging – know what is going on before too late
- Do not dictate specific actions by dealership employees – focus on “dealer” compliance
- Make sure field staff understands vicarious liability/JE risks – advise, don’t micromanage

Visit Seyfarth's **Future of Automotive** page and **COVID-19 Resource Center**:

<https://www.seyfarth.com/trends/future-of-automotive.html>

<https://www.seyfarth.com/covid-19-resource-center.html>

Next Topic:

Dealer Collaboration to Serve Stay-at-Home Customers

May 21 @ 1:00 p.m. EST

