



# Return to Business:

## Getting America Back To Work Safely: Testing, Monitoring and Safety Best Practices

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**Seyfarth Shaw LLP**

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# Speakers

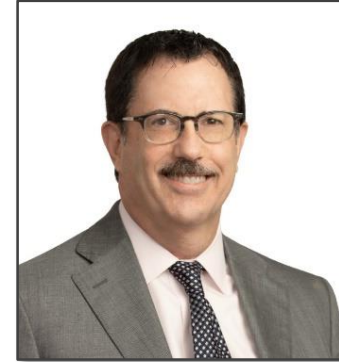
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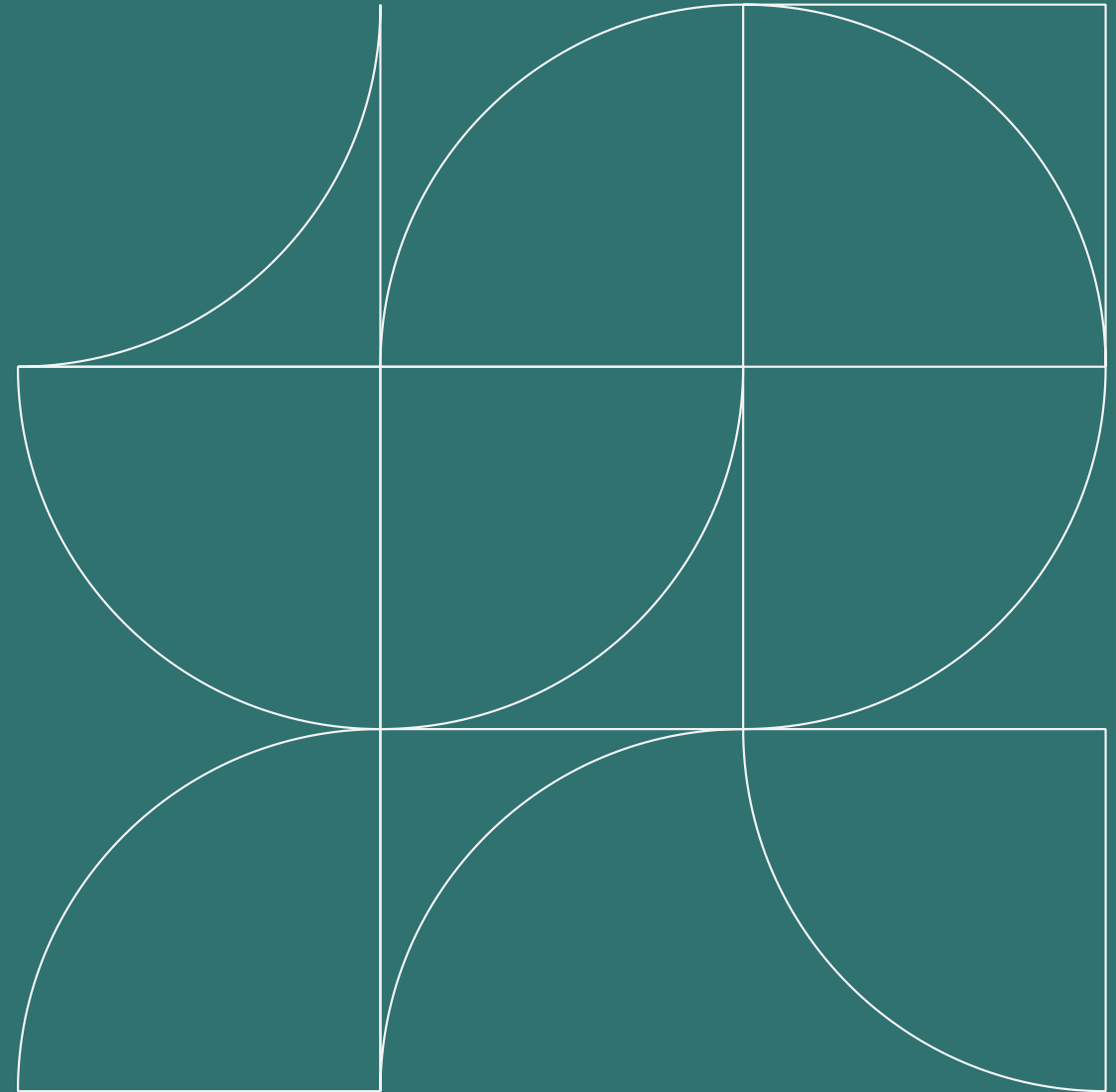


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# Agenda

- Legal Considerations
  - Infectious Disease Preparedness and Response Plan
  - Pre-Shift Screening and Temperature Taking
  - COVID-19 Antibody and Diagnostic Testing
  - Response to Confirmed COVID -19 Cases in the Workplace
-

# 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.

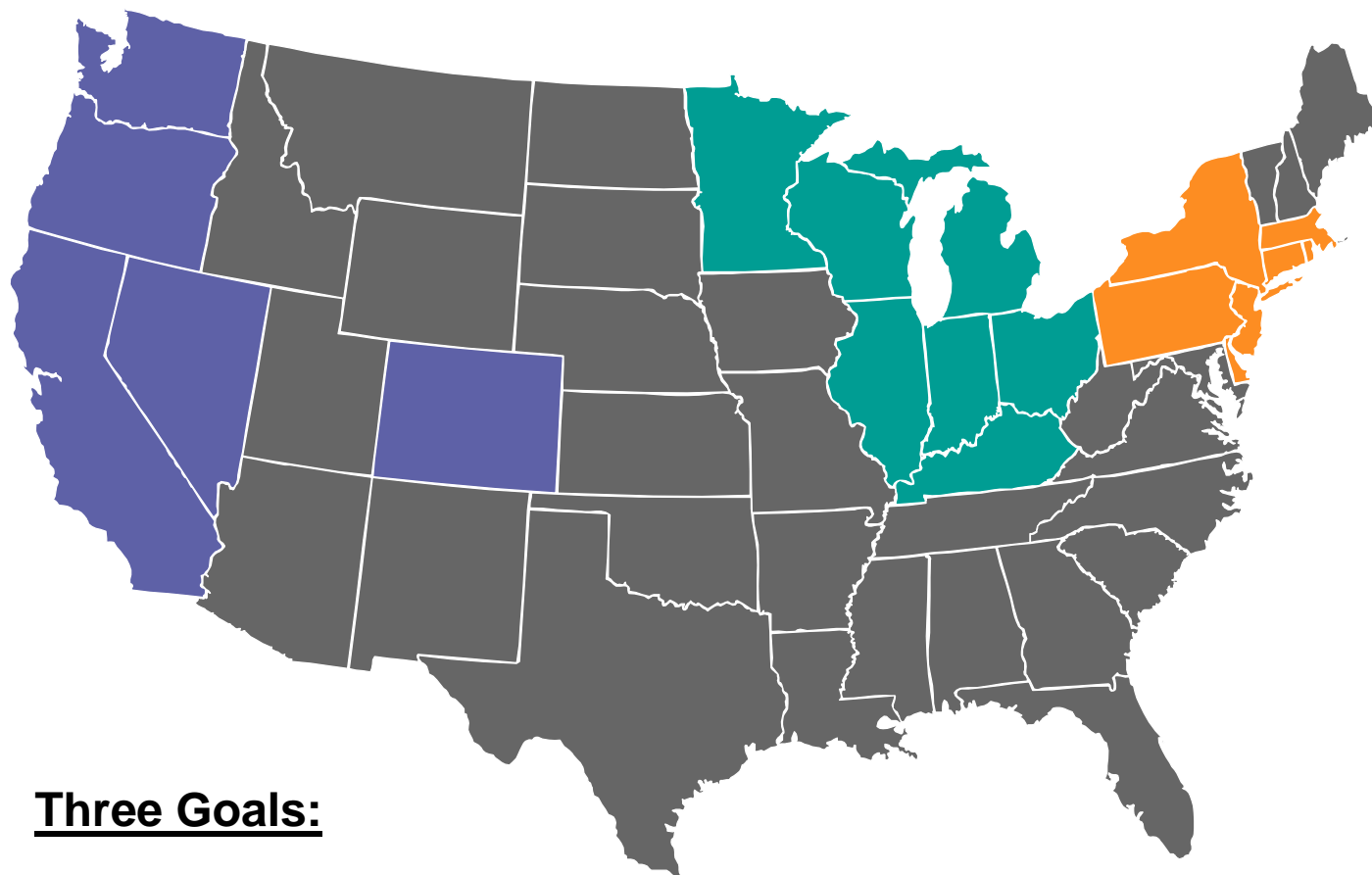


# State/Local Executive Orders

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- 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 often 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.
- Businesses should evaluate what needs to be cleaned, implement a cleaning 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.

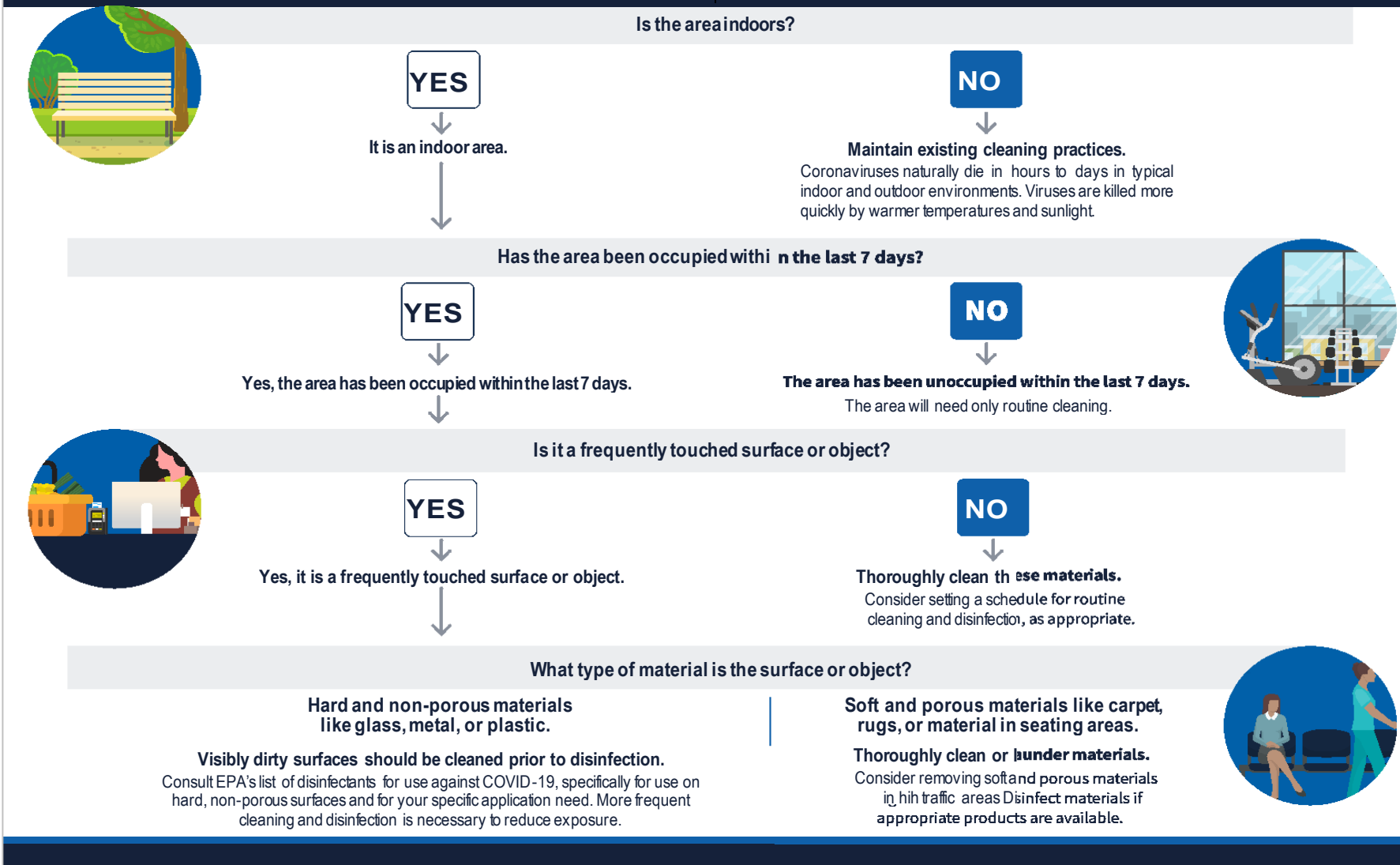
**CONTINUE PRACTICES THAT REDUCE THE POTENTIAL FOR EXPOSURE.** Maintain social distancing, staying six feet away from others. Reduce sharing of common spaces and frequently touched objects.

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.

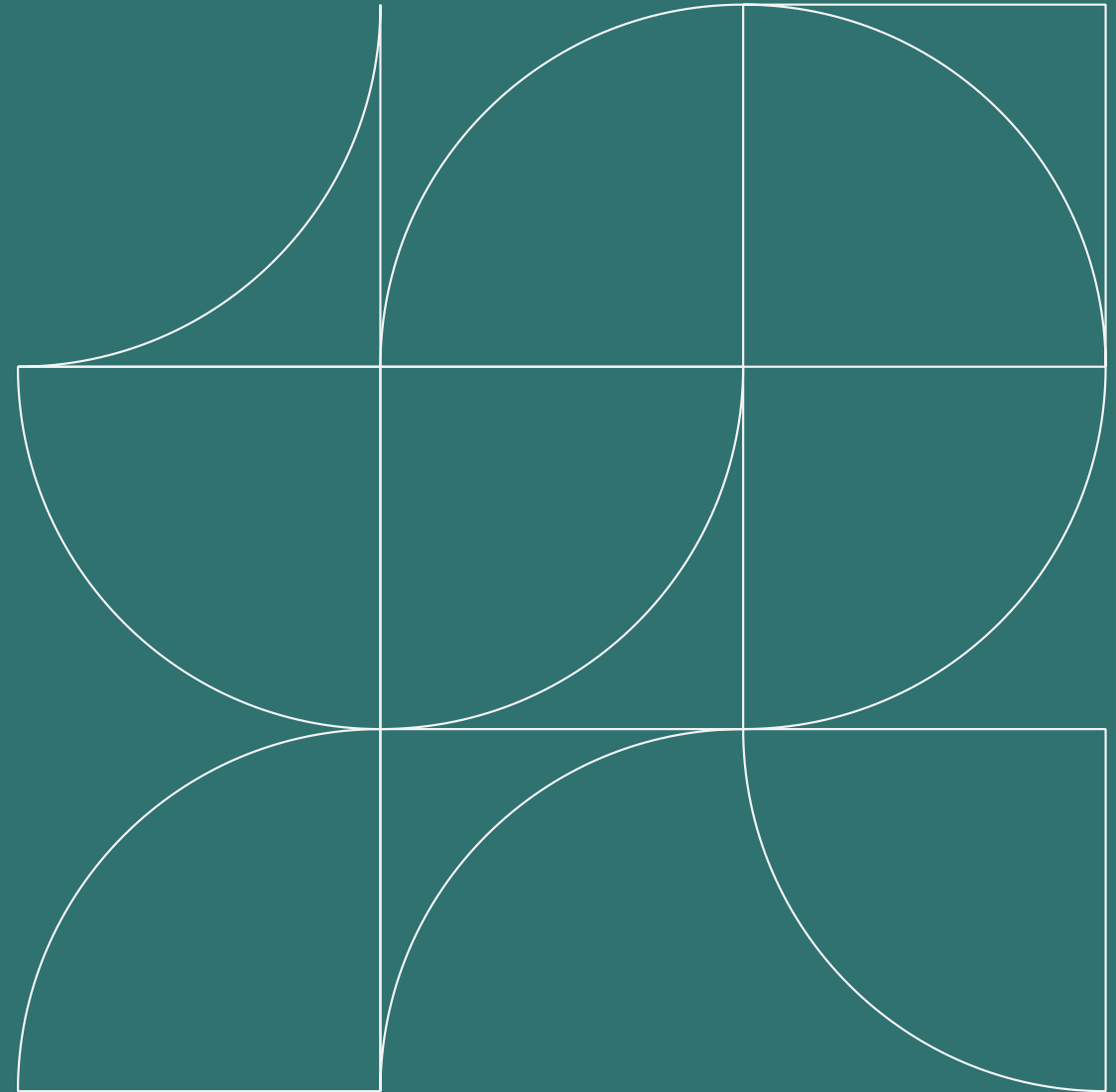




## OSHA Considerations

- 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.
  - Low Risk:
    - Workers do not have contact with public.

# Infectious Disease Preparedness and Response Plan



# Infectious Disease Preparedness and Response Plan

- Develop an Infectious Disease Preparedness and Response Plan
- Plan should consider the level of risk associated with the worksite and job tasks.
- Consider:
  - Where, how and to what sources employees may be exposed to COVID-19.
    - General public, co-workers, customers or vendors
  - Workers' individual risk factors (e.g., older age, chronic medical conditions, pregnancy).



# Implement Basic Infection Prevention Measures

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

# Establish Robust Housekeeping and Cleaning Schedules

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- Frequent cleaning of common spaces:
  - Restrooms
  - Breakrooms
  - Lobby
- Frequent cleaning of commonly touched areas:
  - Countertops;
  - Reception desks;
  - Copiers, printers and community computers.





# Establish Policies

- Establish Policies for Employee Work Flow Throughout the Facility Including:
  - Social distancing;
  - Staggered shifts;
  - Employee flow when entering and exiting the facility;
  - Time clock;
  - Locker rooms, breakrooms and common areas.

# Develop Processes

- Develop Process for Identifying and Addressing Sick Employees
  - Isolation;
  - Restrict number of people coming into contact;
  - Contact tracing;
  - Cleaning and disinfecting.

# Consider Potential Engineering and Administrative Controls

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- Increased ventilation;
- High efficiency air filters;
- Installation of barriers (such as sneeze guards);
- Limit third-parties on site (e.g., drive-through or curbside service for customers and vendors);
- Replace face to face meetings with virtual meetings.
- Restrict employee travel;
- Limit personal contact among employees/third-parties in common areas;
- Consider personal protective equipment where appropriate (gloves, face shields, goggles, respirators).

# Employee Training

- Conduct Employee Training Prior to Restarting Operations.
- Critical that Employees Understand the New Procedures.
- Update/Refresh Training Regularly.



## Third-Parties On-Site

- Identify all Third-Parties On-Site and Account for Potential Exposures, for Example:
  - Customers;
  - Vendors;
  - Visitors;
  - Temps/Contract Workers;
  - Delivery Drivers.

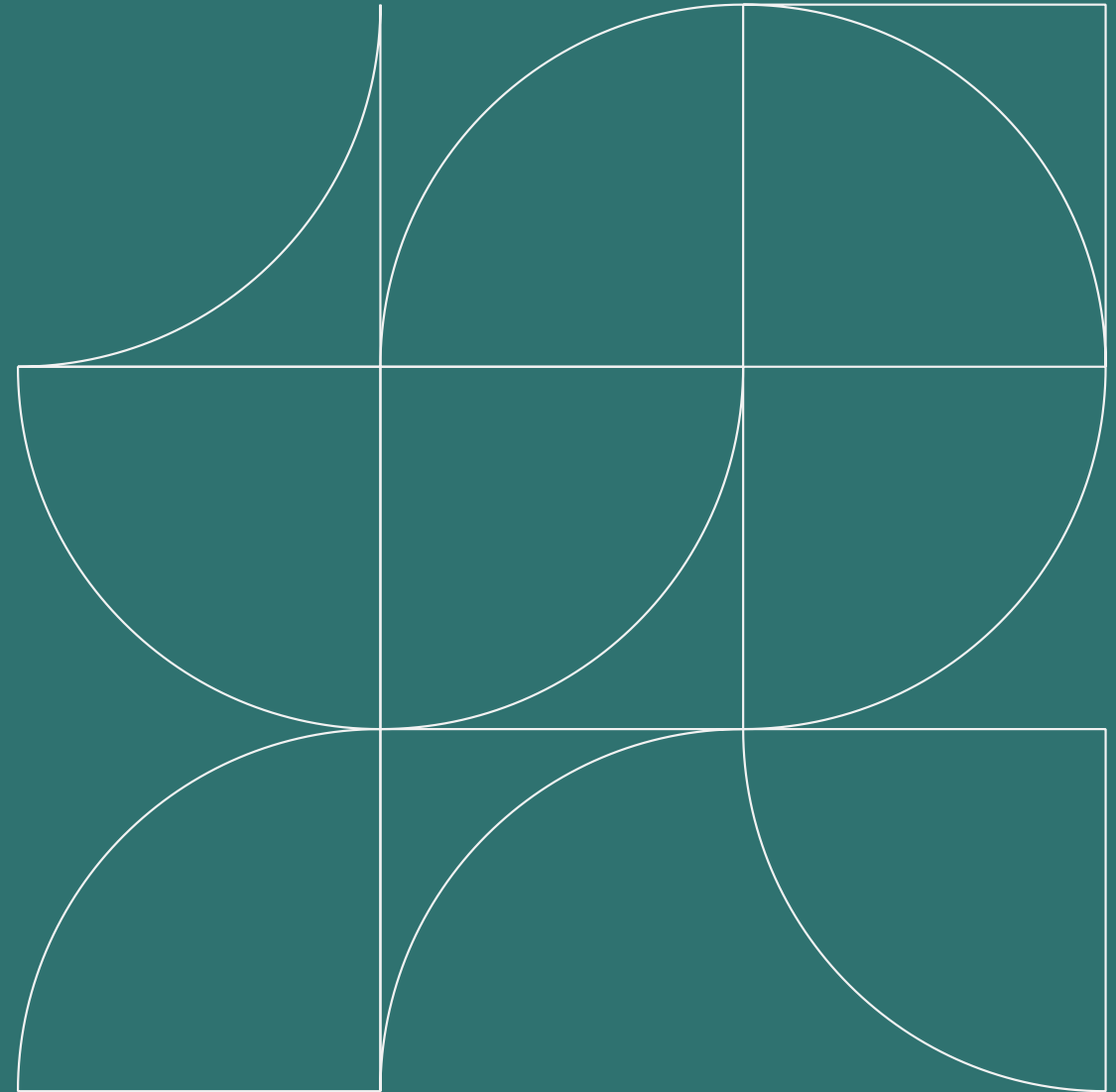
# Contingency Planning

- Develop Contingency Plan for Future Potential Outbreaks.
  - Increased absenteeism;
  - Options for conducting essential operations with reduced workforce (e.g., cross-training);
  - Interruption of supply chain or delayed deliveries.

# Equipment Safety

- If facility has Been Idle During Shelter-in-Place Orders:
  - Ensure all equipment is current on PM's and safe to restart.
  - Equipment should be visually inspected to ensure guards, interlocks, gates, etc. . . are functional.
  - Employees are up to date on training or re-certifications (e.g., LOTO, PIV, HAZCOM).
  - Conduct refresher training as necessary to ensure employees understand safety protocols.

# Pre-Shift Screening and Temperature Taking







## Why Is Return to Work Screening So Important?

- Provide a safe and healthy workplace generally
- Reassure employees that you are doing what some authorities require and what FDA or CDC recommend/have approved
- Reassure customers, vendors, and others who must be on premises
- Avoid possible tort liability by exercising reasonable care
- Avoid other legal risks (OSHA, ADA, ADEA, plus state and local protections)
- Avoid REPUTATIONAL risk of positive cases or worse yet deaths
- Help flatten the curve



## Employee Pre-Shift Screening

- EEOC approved checking for symptoms and sending home symptomatic employees
- Types of pre-shift screenings
  - Written, oral, posting

# What questions should you/can you ask?

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- Have you had in the past 48 hours?
  - any one of the following symptoms:
    - persistent cough
    - shortness of breath
  - two or more of the following symptoms:
    - new onset fever
    - chills
    - repeated shaking with chills
    - muscle pain
    - headache
    - sore throat
    - diarrhea
    - loss of taste or smell
- Have you had close contact with a person who has confirmed COVID-19?
- Have you had close contact with a person experiencing symptoms of COVID-19?
- Do you currently have a fever  $\geq 100.4$ ?



## What to Document

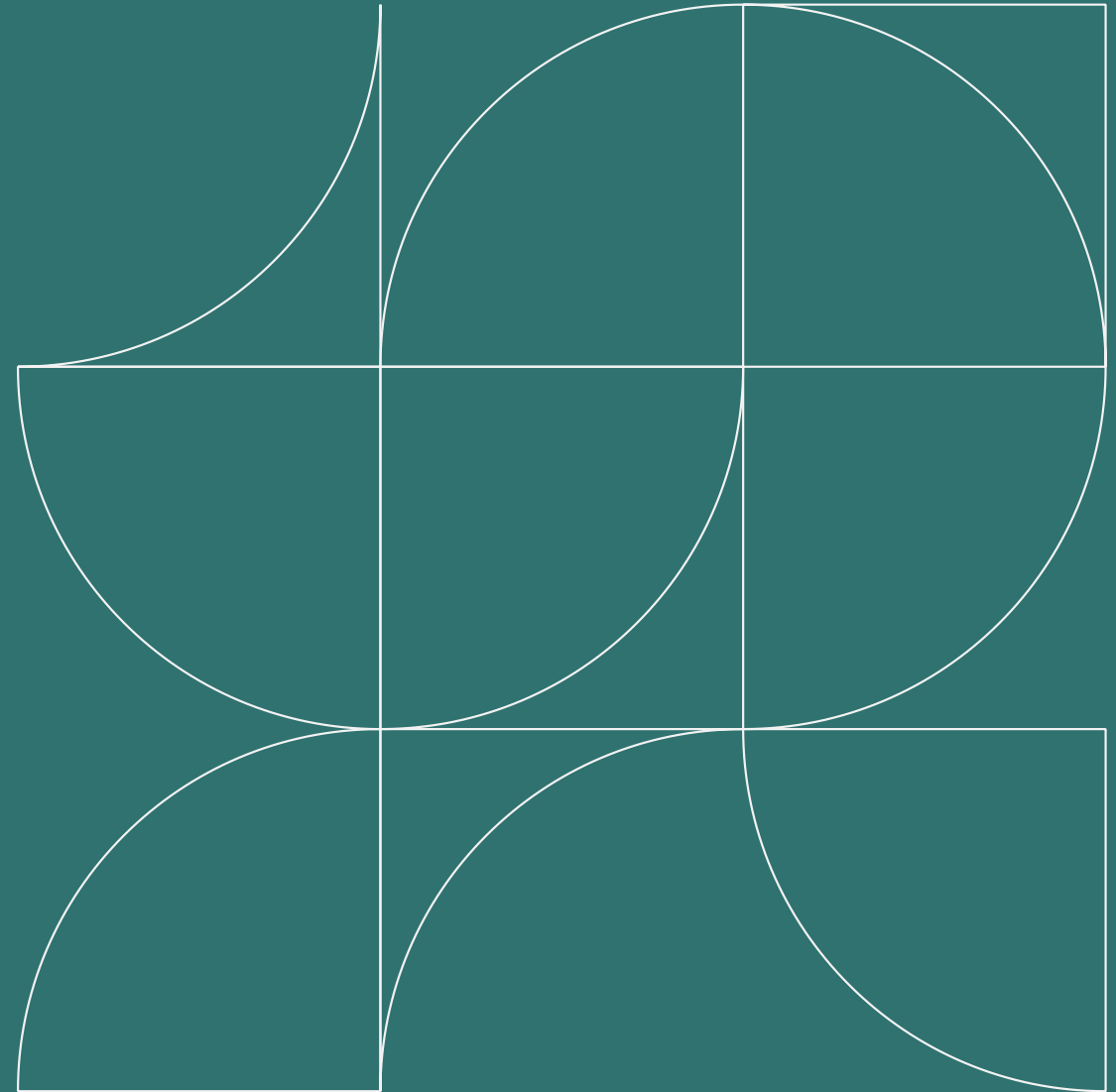
- Documentation of responses
- ADA Confidentiality rules
  - separate form, separate medical file, confidential medical record
  - Regulatory exceptions are narrow
    - supervisor/manager
    - first aid/safety
    - agency enforcing ADA
    - workers comp
    - insurance



## Temperature Screening

- Also currently permitted by the EEOC
- Types of temperature screening
  - Thermal, oral, confirmation of employee self check/self assessment
- Have a protocol
  - Protect the screener
  - Self-administered when possible
  - What is an elevated temperature?
  - Sanitization
  - Privacy Considerations

# Testing as a Condition of Return to Work



# Mandatory Versus Voluntary Testing

- EEOC has approved mandatory testing [www.eeoc.gov](http://www.eeoc.gov), *What You Should Know About COVID-19 (4/23/2020)*
  - Employer must ensure tests are accurate and reliable
  - Review guidance from FDA and CDC
  - Beware of unapproved tests
  - Return to work testing permitted by prior EEOC Guidance for those diagnosed as having COVID-19
- Testing can generally be required as a condition of return to work
  - may need to consider disability or religion-based requests for accommodation



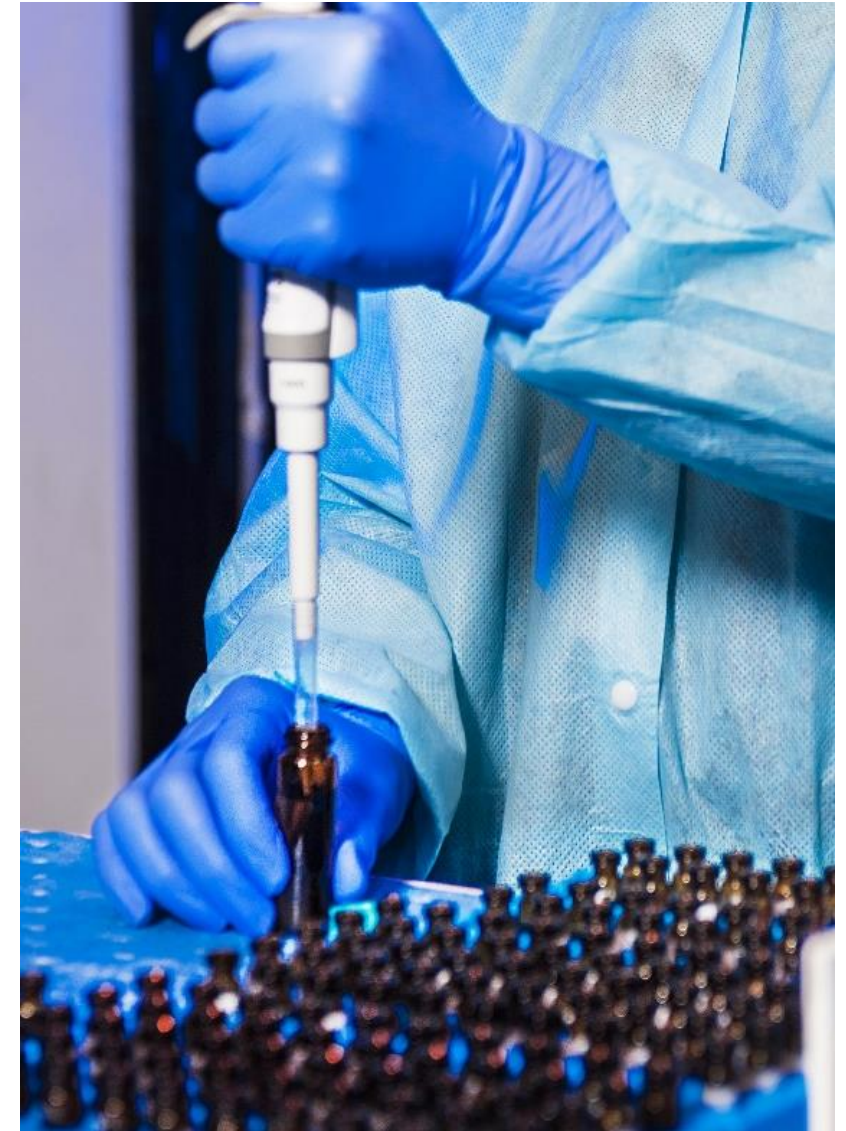
## Types of Tests

- Diagnostic tests (“molecular” or “NAAT” tests)
  - Over 3 dozen diagnostic tests with EUA from FDA
  - But many must be evaluated by limited labs certified for high complexity testing
- Antibody tests (“serological”)
  - Test for the presence of antibodies to COVID-19 virus
  - 11 serological tests currently have EUA from the FDA
  - Many can be evaluated at labs certified for medium complexity testing



# Testing Is Not a Panacea

- Diagnostic test shortcomings
  - Negative result today says nothing about possible future infection
  - EEOC has not approved repeated testing
- Antibody test shortcomings
  - “Negative” result does not mean an individual is virus free (employee may have COVID-19 but antibodies have not yet developed; don’t use antibody test as a diagnostic test)
  - Best suited for those most likely exposed: healthcare workers and first responders
  - Antibody tests are more effective where infection rates are high: more cases = more resistance
  - Unlikely to be effective in areas with low infection rates
- Practical challenges with testing
  - Shortage of clinical lab technicians to perform tests
  - Results must be analyzed by FDA-certified labs
  - Cost and access issues





## Testing Entails Additional Obligations

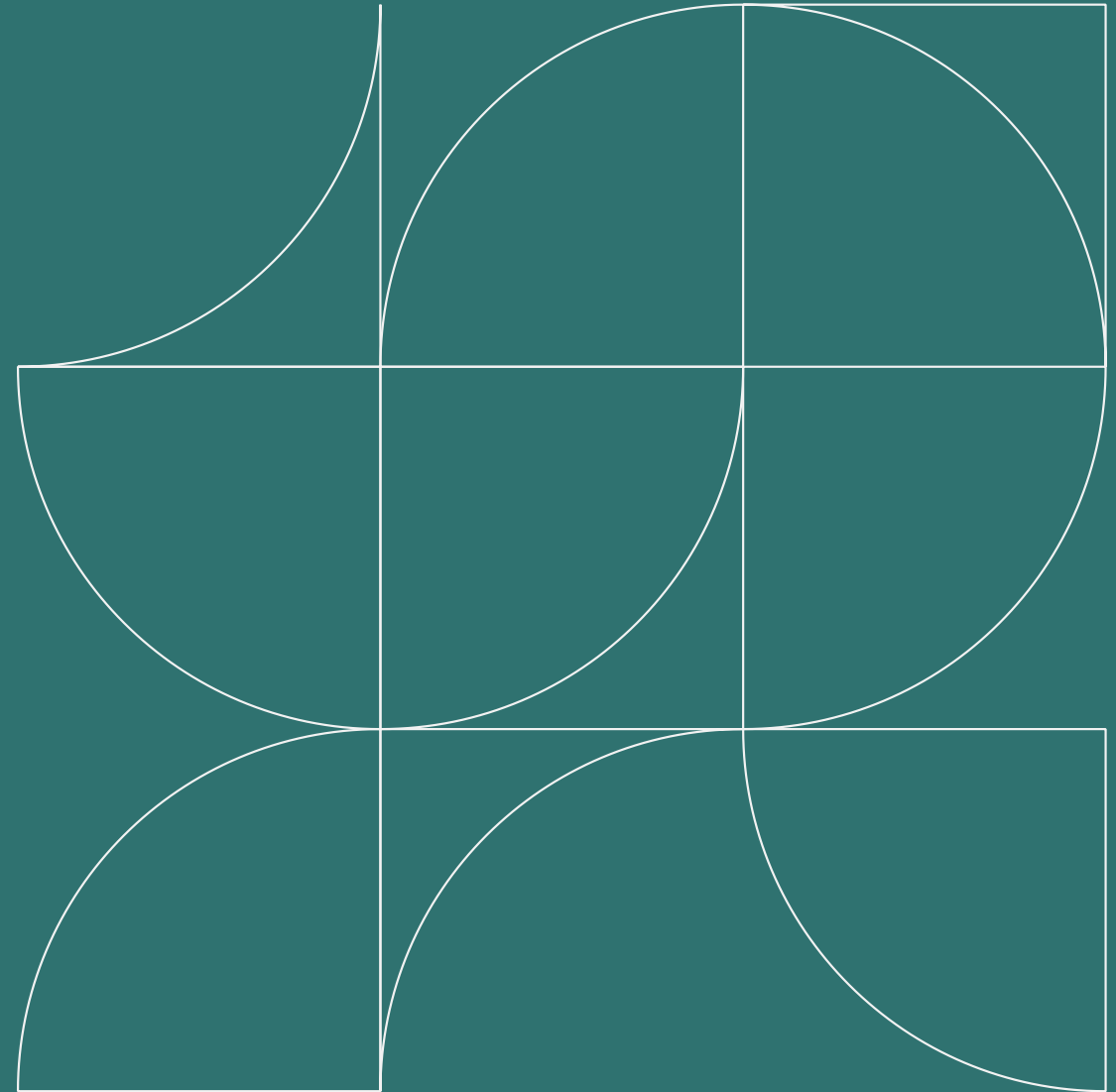
- Establish and follow medical privacy duties and protocols
- Report positive results to local health officials
- Balance employee privacy against need-to-know of co-workers potentially exposed
- Limit reporting to what's required legally (resist temptation to notify spouse and other immediate family or household members unless that's legally required)



## Testing Plus Other Measures Will Be Key

- Testing merely clears someone to return to work; employers must remain vigilant thereafter
- Symptoms monitoring is needed to help detect new cases and minimize risk of exposure to others
- PPE and social distancing will remain essential, likely until a widely available vaccine is developed

# Positive Cases



# Standard Protocol

- Confirm the case and timing
- Isolated affected areas and disinfect
- Contract trace
  - Focus on 48 Hour Period Prior to Symptom Onset
  - Close Personal Contact
  - Send home
    - CDC Guidance for Critical Infrastructure Workers
- Notify DOH as may be required under state law



## Confidentiality


- ADA Confidentiality
- EEOC and CDC direct not to give identity of positive case
  - contact tracing apps
  - EEOC contractor/vendor exception
- Asking for consent to reveal identity

# When Can They Come Back?

- Option 1 – Symptom-Based
  - no fever for at least 72 hours
  - respiratory symptoms have improved
  - at least 10 days have passed since symptoms first appeared
    - if asymptomatic – since their positive test
- Option 2 – Test Based
  - depends on locally available testing resources
  - no fever
  - respiratory symptoms have improved
  - received two negative tests in a row
    - if asymptomatic, just two negative tests

# Coming up

- Seyfarth's COVID-19 Resource Center to sign up for daily updates: [www.seyfarth.com/returntobusiness](http://www.seyfarth.com/returntobusiness)
- Webinars Coming Up
  - 5/7 – Return to Business in Texas: Practical Tips and Legal Risks as Texas Businesses Reopen
  - 5/7 – Return to Business in the Southeast: How to Protect Your Most Valuable Asset
- Post-Pandemic Return to Work Checklist



**Seyfarth** **Post-Pandemic Recovery and Renewal**

**Planning and Executing a Strategic and Successful Return to Work**

We have assembled a cross-disciplinary Recovery and Renewal team who can advise you on the current state of business impact as a result of COVID-19, and what the future holds for business. Our team of 100+ lawyers is already deeply credentialed, having advised thousands of clients on the developments of the rapidly changing pandemic across the globe. We have a deep understanding of how the pandemic is affecting businesses and industries deemed essential and non-essential, and the related legal, business, and workforce issues specific to all. Likewise, we are already helping clients build phased return-to-work plans by modeling various scenarios for how business might resume—from continued social distancing to a full engagement of their workforces in full operations.

We are ready to leverage our knowledge to help you reengage in business—and grow.

**We recognize that your business is unique and the legal landscape faces unprecedented complexity. Accordingly, we employ a three-step process to prepare a comprehensive, bespoke return-to-work toolkit for our clients.**

**1. Review**

- Investigation and audit of pre-pandemic business status quo
- Step-by-step checklist addressing business elements and pandemic
- Establish goals and overall business strategy for near, mid, and long term

**2. Analysis**

- Business review in the new legal and business landscape using Seyfarth's in-depth **Return to Work Treatise**
- Strategic conversations regarding return-to-work timing, business considerations, and growth opportunities
- Identification of legal landmines with strategies for minimizing risk
- **Return to Work Selection Process Guide**

**3. Implementation**

- Execution of custom plan for return to work: phased/all/none; employee selection; employee screening protocol; workplace safety plan; communications cascade
- Access to Seyfarth's first-in-class **Policy, Communications & Tracker Repository**

|                                  |                            |                      |
|----------------------------------|----------------------------|----------------------|
| • Positive test / confirmed Case | • Face covering            | • Work from home     |
| • Temperature screening          | • Business travel          | • FFCRA request      |
| • Antibody testing               | • Expense reimbursement    | • Infectious disease |
| • Social distancing              | • Visitor self-Declaration |                      |

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[www.seyfarth.com/covid19](http://www.seyfarth.com/covid19)



# Coming up



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# Post-Pandemic Recovery & Renewal

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## Return to Work

As shelter-in-place orders are lifted, your business will enter uncharted territory. COVID-19 has the potential to permanently alter supply chains, service models, and growth strategies. How will you respond?

### Critical Return to Work Issues for Employers

Webinar: Now is the time for employers to lay the groundwork for implementing specific return to work plans.

— REGISTER NOW

### Strategies For Developing A Return To Work Action Plan

Return to work plans will vary widely, and will require employers to grapple with challenges unique to their workforce and geography.

— GO





**Questions?**

Thank you



**Visit Seyfarth's COVID-19  
Resource Center to sign  
up for daily updates:**

[www.seyfarth.com/returntobusiness](http://www.seyfarth.com/returntobusiness)