



Return to Business: What the Western States Pact Means for Reopening Business Out West

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Seyfarth Shaw LLP

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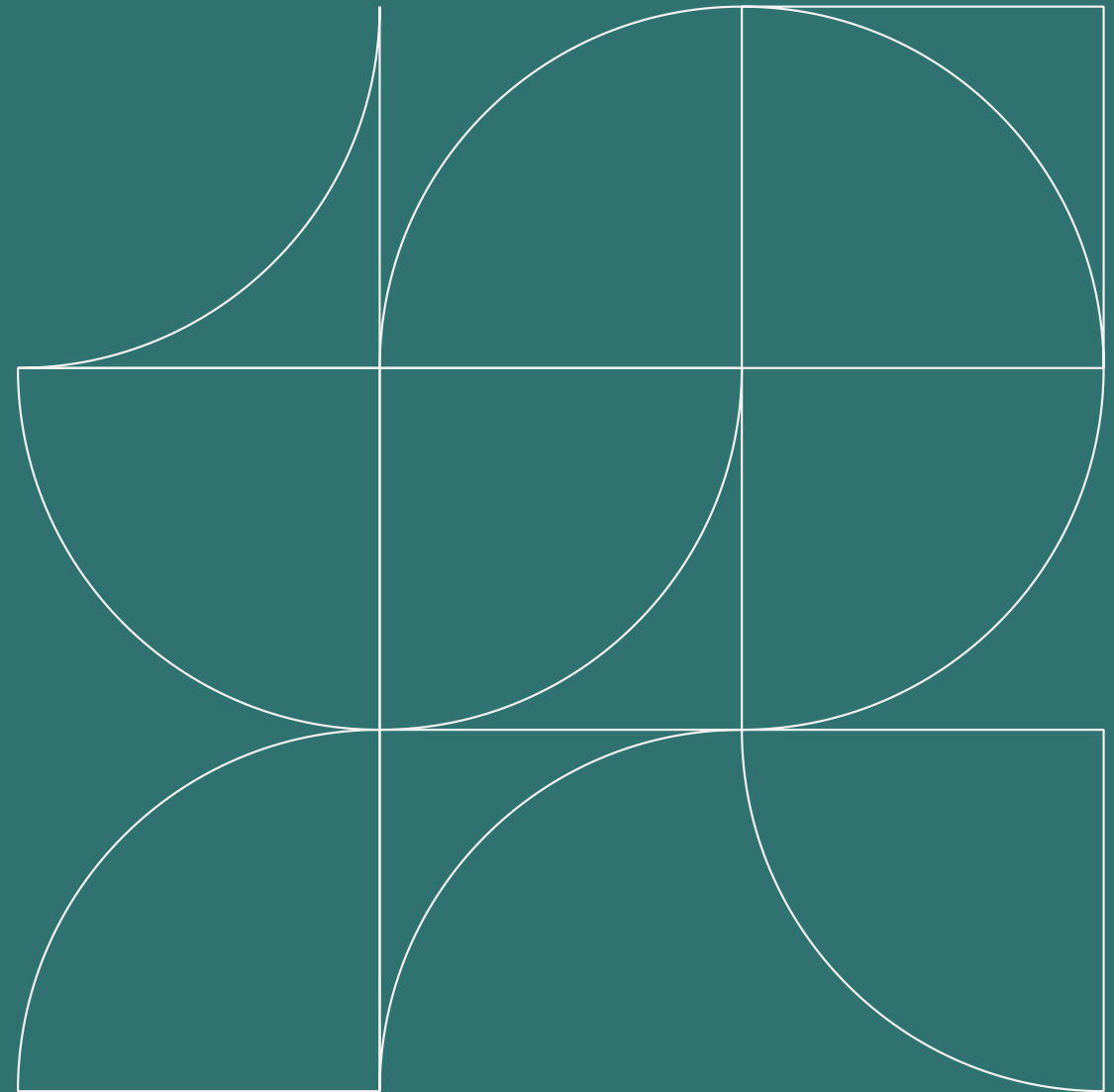
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Agenda

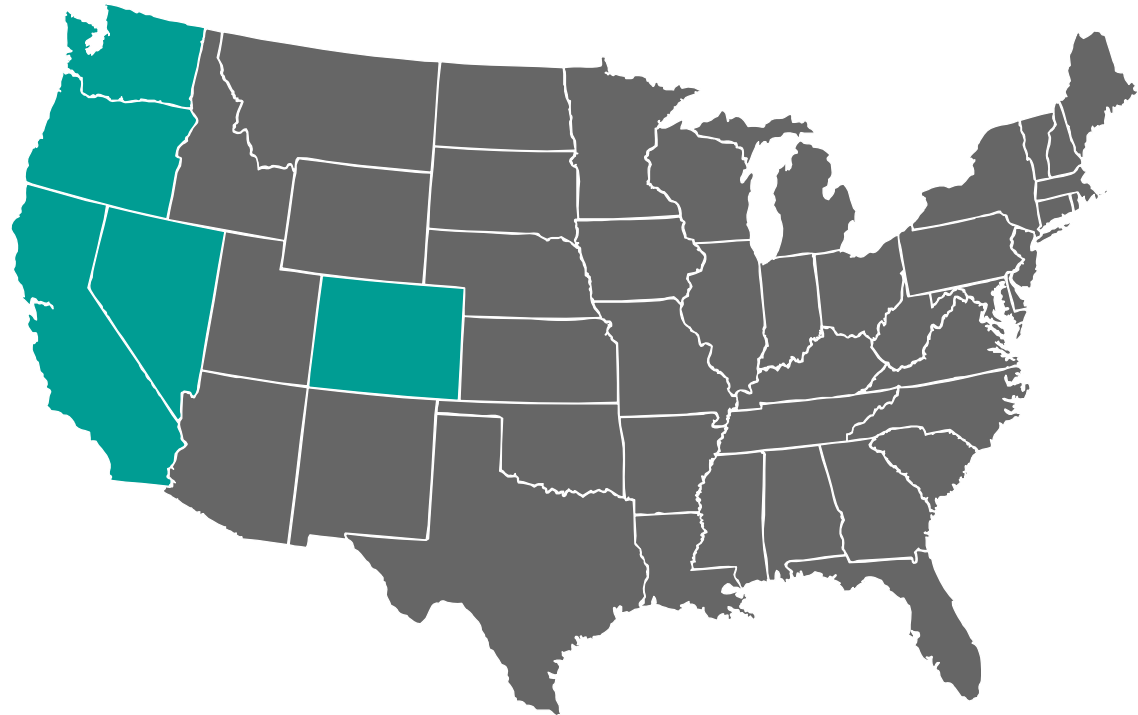
- 01** Overview: The Western States Pact Plan
- 02** Practical Considerations for Reopening
- 03** Returning to Business: Accommodations, Screening and Return to Work Determinations
- 04** New Public Accommodation Traps for Retailers and Other Businesses
- 05** Avoiding Potential Wage and Hour Risks from Reopening
- 06** Compliance Tips & Traps Under the Families First Coronavirus Response Act (FFCRA)
- 07** Questions

The Western States Pact



The Western States Pact

- What unifies the Western States?
- No unified reopening plan for all states
- No specific timeline for individual states, though some have given suggested time frames for when decisions will be made
- Intent to base decisions on science and data, including the numbers of new cases, hospitalizations, and death, modeling data, and other factors



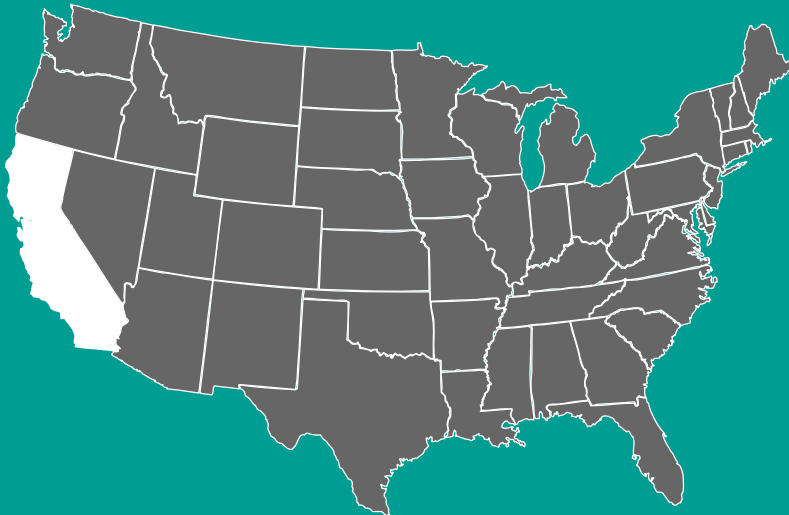
Question 1



Have you reopened already?

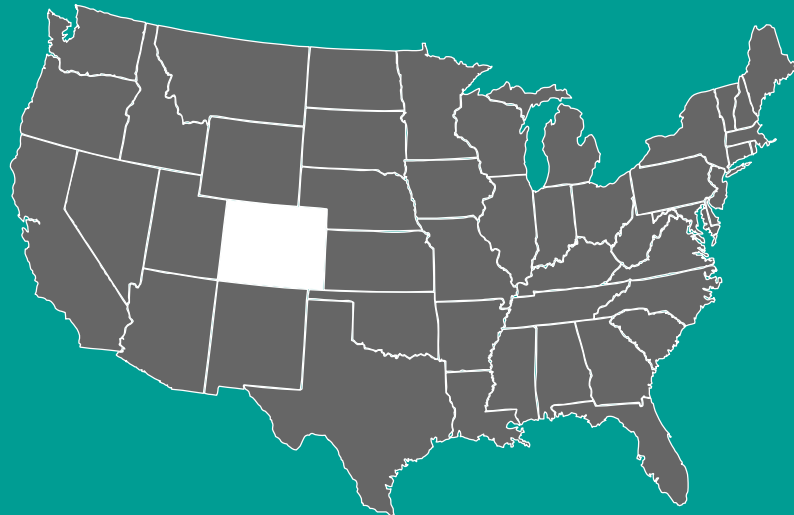
- Yes, fully
- Yes, partially
- No
- We are essential and never stopped

The Western States Pact: California



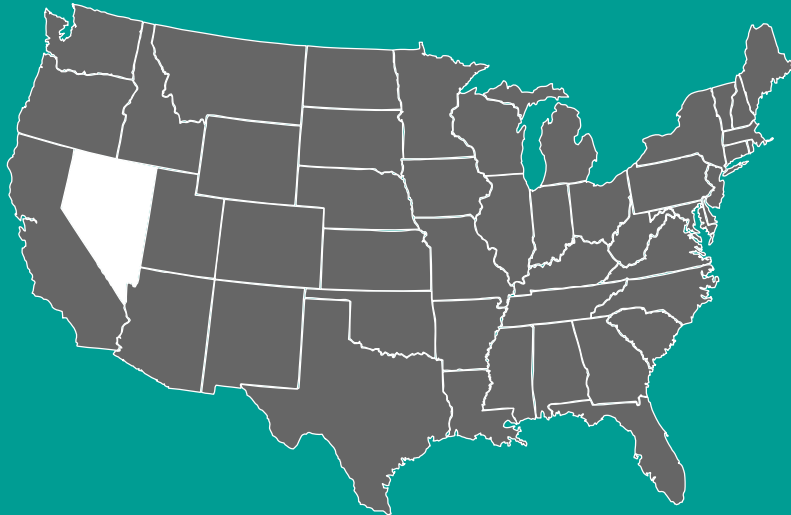
- **March 19, 2020:** First state to issue shelter in place order on March 19, 2020
 - Essential businesses were allowed to remain open with social distancing
- **April 28, 2020:** 4 Stage reopening plan announced
- **Current Status:** Moved to early Stage 2 on May 8, 2020
 - In addition to essential businesses, now allowing curbside retail, related logistics and manufacturing, office workplaces, limited personal services, outdoor museums, child care to open, subject to modifications and social distancing guidelines
 - Restaurants are still limited to take/out delivery
 - Local orders and variances allowed
- **Up Next:** Stage 3 – Reopening of “Higher Risk Workplaces” such as movie theaters, barbers, salons, and bars

The Western States Pact: Colorado



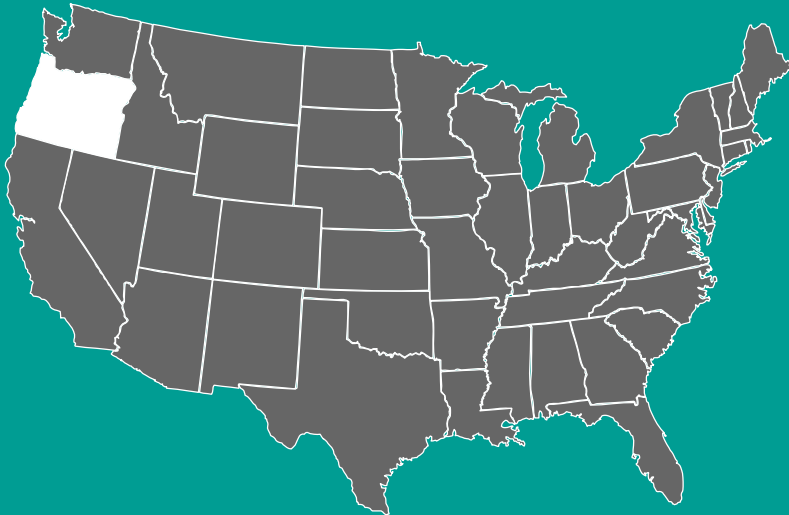
- **March 26, 2020:** Stay at Home Order announced
 - Required employers to protect vulnerable individuals and to “strongly encourage” telecommuting and social distancing
 - Non-critical businesses were required to close
- **April 24, 2020:** Announces 3 level plan to reopen
- **Current Status:** Moved to Level 2 on May 4, 2020
 - The “Safer At Home Level” allows in-store, non-critical retail, personal services including barbers and salons, office-based businesses, non-critical manufacturing
 - Each are subject to specific occupancy and social distancing limitations
 - Restaurants are still limited to take/out delivery
 - Variances allowed with State approval
 - Counties can implement stricter regulations
- **Up Next:** Level 3 – “Protect Our Neighbors” - Additional announcements expected on May 25 and June 1

The Western States Pact: Nevada



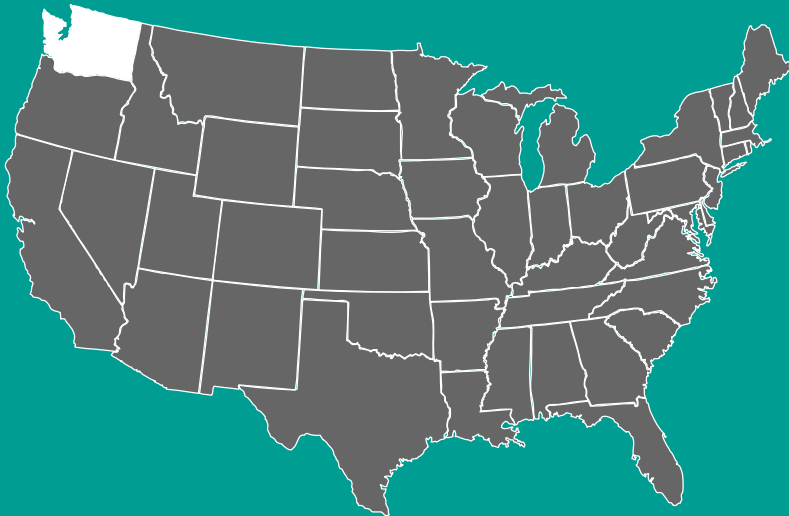
- **March 20, 2020:** Non-essential businesses ordered closed
- **April 1, 2020:** Stay at Home Order announced
- **April 30, 2020:** The State announced 4 phases to reopen
- **Current Status:** On May 9, 2020, Nevada moved to Phase 1 of the state's "Roadmap to Recovery," allowing dine-in restaurants, barbershops, hair and nail care salons, offices, warehouses, auto dealerships, and in-store retail.
- **Up Next:** Unclear

The Western States Pact: Oregon



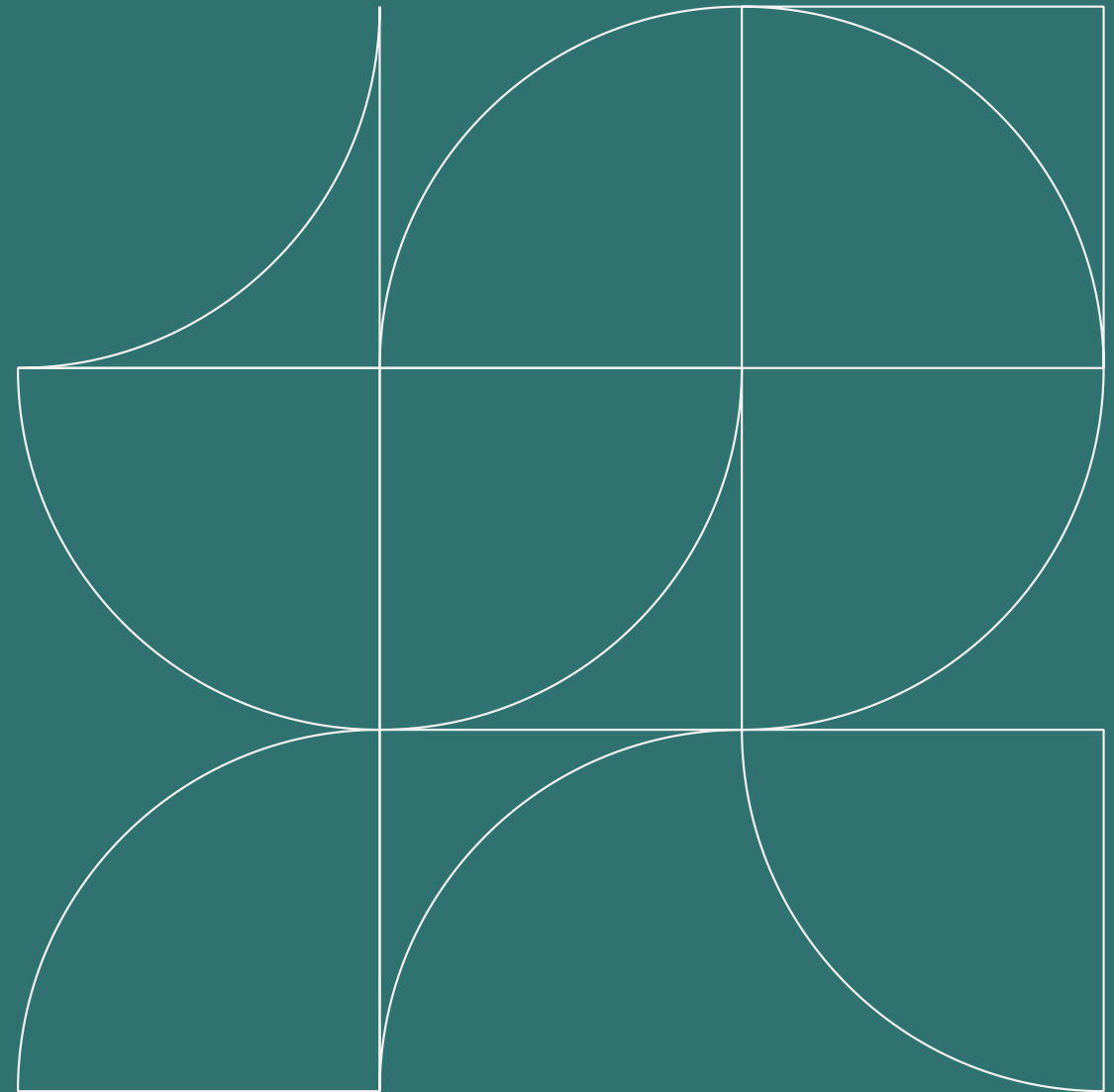
- **March 23, 2020:** “Stay Home, Save Lives” Order. Not as strict of a closure order as other states. No designation of “essential businesses.” Instead, certain types of businesses (e.g., bowling alleys, nail salons, amusement parks) were closed. Other businesses, including some retail, remained open with requirements for social distancing policies. Restaurants were limited to delivery and pick up.
- **May 7, 2020:** Governor announced 3 phases to reopen. Timing on phases to be determined by the governor, but individual counties can apply for approval based upon specified criteria.
- **Current Status:** 31 of 36 counties have been approved to be in Phase 1 as of May 15, 2020 (not the three largest counties that include Portland).
 - Phase 1: Gatherings of up to 25 people are permitted, restaurants and bars, salons gyms, and malls can open.
- **Up Next:** Phase 2 - Must have at least 21 days before Phase 2 (June 5, 2020 at the earliest)

The Western States Pact: Washington



- **March 23, 2020:** “Stay Safe, Stay Healthy” Order
- **May 4, 2020:** 4 phase plan to reopen - Phase 1 began statewide. Anticipate at least three weeks for each phase.
- **Current Status:** Phase 1 - Outdoor recreation open (state parks, fishing, and golf), some businesses, including car washes, auto-boat sales, and “existing” construction. Non-essential retail now authorized to do curbside pickup.
- **Up Next:** Phase 2 (June 1, 2020?)
 - Some counties already approved for Phase 2.
 - More outdoor recreation is allowed (up to 5 people outside of your family)
 - Opening remaining manufacturing, additional construction, in-home/domestic services, retail (in-store purchases allowed with restrictions), real estate, professional services/office-based businesses (telework remains strongly encouraged), hair and nail salons/barbers, pet grooming
 - Opening restaurants/taverns <50% capacity table size no larger than 5 (no bar-area seating). Contact tracing initiative originally proposed for dining in restaurants. Inslee recently removed that requirement.

Practical Considerations for Reopening



Guidance for Reopening



California Standard for Reopening

1. Perform a detailed risk assessment and implement a site-specific protection plan
2. Train employees on how to limit the spread of COVID-19, including how to screen themselves for symptoms and stay home if they have them
3. Implement individual control measures and screenings
4. Implement disinfecting protocols
5. Implement physical distancing guidelines

Employment Policies



- Determine new COVID-19 legal requirements (and applicable sunset provisions)
- Update employee handbook or other policies as necessary, in addition to crafting new COVID-19 related policies and protocols
- Communicate to employees
 - Virtual distribution
 - Remote training

Question 2



Are you providing your returning employees with [check all that apply]:

- Masks - Cloth
- Masks - With filters
- Masks - Surgical/Medical grade
- Gloves
- Personal Cleaning Materials (wipes, cleaning sprays, desktop equipment cleaners, etc.)
- Company Childcare
- Company-sponsored transportation or parking vouchers that you did not offer before
- Boxed Lunches (that you did not offer before or in lieu of previous cafeteria-style offerings)
- Other




Social Distancing Protocols



- **Social Distancing Protocols**
 - Reconfigure workspaces
 - Adjust schedules
 - Building management
- **Protective Equipment**
 - Face coverings
- **Cleaning Considerations**
 - Handwashing
 - Cleaning supplies and schedules
- **Shared Supplies**

Ca/OSHA COVID-19 General Checklist for Office Workspaces

State Mandated Posters



Ca/OSHA COVID-19 General Checklist for Office Workspaces

May 7, 2020

This checklist is intended to help employers implement their plan to prevent the spread of COVID-19 in the workplace and is supplemental to the [Guidance for Office Workspaces](#). This checklist is a summary and contains shorthand for some parts of the guidance; familiarize yourself with the guidance before using this checklist.

Contents of Written Worksite Specific Plan

- The person(s) responsible for implementing the plan.
- A risk assessment and the measures that will be taken to prevent spread of the virus.
- Training and communication with employees and employee representatives on the plan.
- A process to check for compliance and to document and correct deficiencies.
- A process to investigate COVID-cases, alert the local health department, and identify and isolate close workplace contacts of infected employees until they are tested.

Topics for Employee Training

- Information on [COVID-19](#), preventing spread, and who is especially vulnerable.
- Self-screening at home, including temperature and/or symptom checks using [CDC guidelines](#).
- The importance of not coming to work if employees have a frequent cough, fever, difficulty breathing, chills, muscle pain, headache, sore throat, recent loss of taste or smell, or if they or someone they live with have been diagnosed with COVID-19.
- When to seek medical attention.
- The importance of hand washing.
- The importance of physical distancing, both at work and off work time.

Individual Control Measures & Screening

- Symptom screenings and/or temperature checks.

- Encourage workers who are sick or exhibiting symptoms of COVID-19 to stay home.
- Encourage frequent handwashing and use of hand sanitizer.
- Provide disposable gloves to workers using cleaners and disinfectants if required. Consider gloves a supplement to frequent hand washing for other cleaning, tasks such as handling commonly touched items or conducting symptom screening.
- Strongly recommend cloth face covers.
- Close or increase distance between tables/chairs in breakrooms or provide break areas in open space to ensure physical distancing.
- Communicate frequently to customers that they should use face masks/covers.

Cleaning and Disinfecting Protocols

- Perform thorough cleaning in high traffic areas.
- Frequently disinfect commonly used surfaces and personal work areas.
- Clean and sanitize shared equipment between each use.
- Clean touchable surfaces between shifts or between users, whichever is more frequent.
- Equip shared spaces with proper sanitation products, including hand sanitizer and sanitizing wipes and ensure availability.
- Ensure that sanitary facilities stay operational and stocked at all times.
- Use products approved for use against COVID-19 on the [Environmental Protection Agency \(EPA\)-approved](#) list and follow product instructions and Cal/OSHA requirements.
- Provide time for workers to implement cleaning practices before and after shifts and consider third-party cleaning companies.
- Install hands-free devices if possible.
- Consider upgrades to improve air filtration and ventilation.

Physical Distancing Guidelines

- Implement measures to physically separate workers by at least six feet using measures such as physical partitions or visual cues (e.g., floor markings, colored tape, or signs to indicate to where workers should stand).
- Reconfigure office spaces, cubicles, etc. and decrease maximum capacity for conference and meeting areas.
- Adjust in-person meetings, if they are necessary, to ensure physical distancing.
- Stagger employee breaks, in compliance with wage and hour regulations, if needed.
- Reconfigure, restrict, or close common areas and provide alternative where physical distancing can be practiced.

King County Steps to Minimize Risk of COVID-19

Local Posters

STEPS TO MINIMIZE RISK OF COVID-19



In response to Public Health direction, take these steps:

- ✓ Screen employees daily for fever, cough, and shortness of breath.



- ✓ Send sick employees home.



- ✓ Allow high risk employees to stay home (people over 60, pregnant people, medical conditions).

- ✓ Make hand washing and hand sanitizer available.



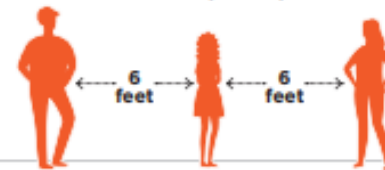
- ✓ Clean and sanitize surfaces frequently.



- ✓ Limit face-to-face contact to under 10 minutes.



- ✓ Remind customers to stand at least 6 feet apart while waiting to order or for pick-up.



NOT FOR RESTAURANTS

Public Health
Seattle & King County 

- ✓ Ask employees to read this information sheet.

San Mateo County Face Covering Signs for Essential Businesses

Local Posters

EVERYONE MUST WEAR A FACE COVERING*

Covering your face is now mandatory and helps prevent the spread of COVID-19.



Masks, bandanas, scarves, and cloth can be used.
* This order does not apply to those 12 years old and less.

...AND STAY 6 FEET APART

This business is required to refuse service to anyone who does not comply.

Todos deben de usar una cobertura facial*
Cubrirse la cara ahora es obligatorio y ayuda a prevenir la propagación de COVID-19. Se pueden usar máscaras, pañuelos, bufandas y telas.
* Esta orden no aplica a aquellos que tengan 12 años de edad o menos.
...y mantenerse a 6 pies de distancia.
Este negocio está requerido a negarle el servicio a cualquier persona que no cumpla con este requisito.

每个人都必须佩带面罩*
现在要求强制性佩带面罩，帮助防止新型冠状病毒地传播。口罩、头巾、围巾和布料都可以。
* 该规定不适用于12岁及以下人群。
...并且保持6尺社交安全距离
商家不得为没有遵守规定的人提供服务。



www.smcgov.org




WE ARE AN ESSENTIAL BUSINESS

Everyone must wear a face covering and stay 6 feet apart.*
Covering your face helps prevent the spread of COVID-19.
* This order does not apply to those 12 years old and less.

Somos un negocio esencial abierto*
Usted tiene que usar un cubrebocas y mantener 6 pies de distancia de los demás durante su visita.
* Esta orden no aplica a aquellos que tengan 12 años de edad o menos.

我們是營業中的基本服務行業*
到訪時請務必遮蓋臉部和保持6呎社交距離。
* 該規定不適用於12歲及以下人群。



www.smcgov.org

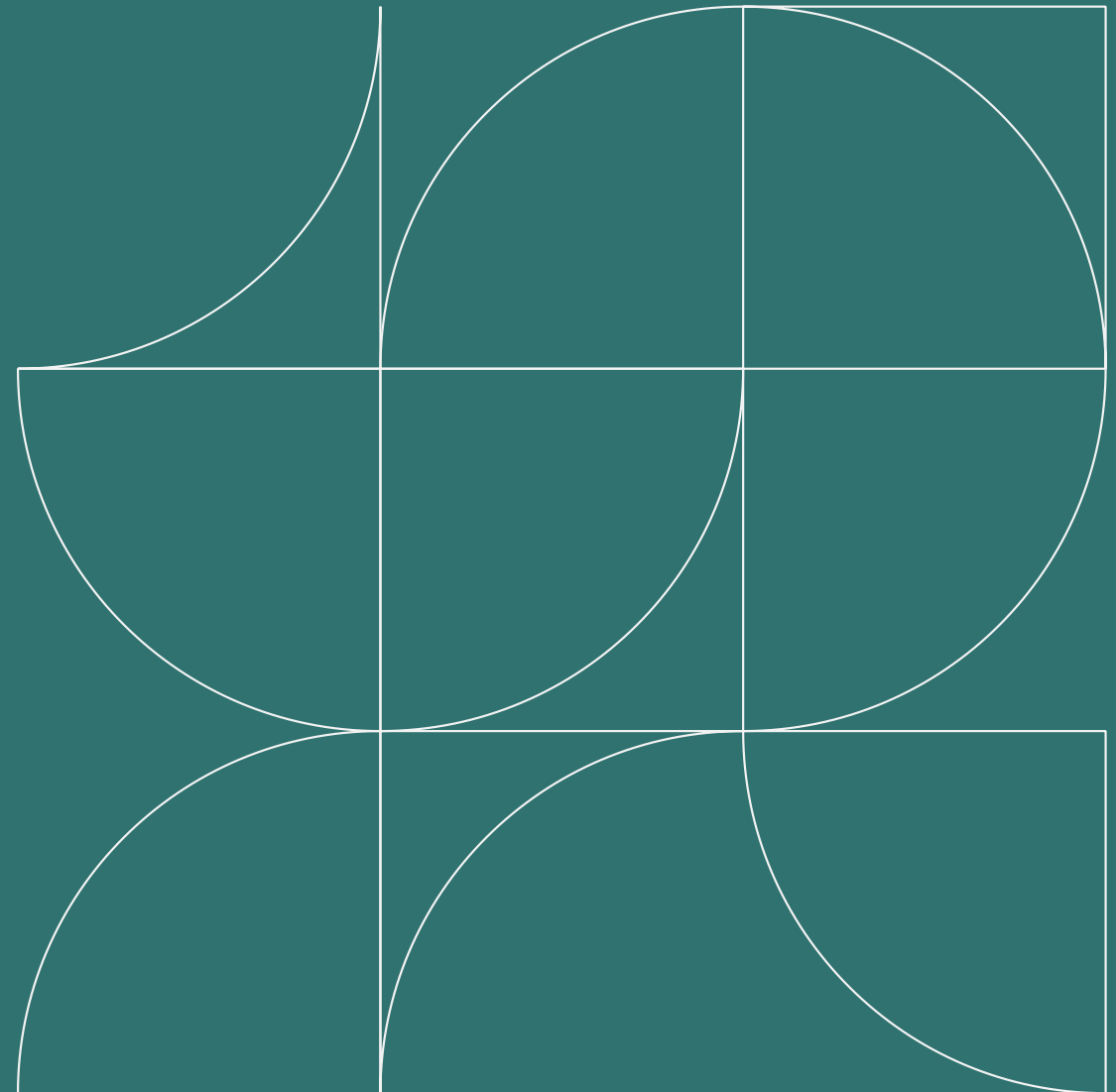


Stay Informed, Be Prepared, Be Flexible



- Be prepared for the possible need for future employee layoffs and/or temporary furloughs or alternatives such as wage and hours reductions
- Be prepared in the event a large number of employees take sick time or other leaves
- Be prepared for another shutdown or a partial shutdown due to future government orders
 - What will that look like the 2nd time around?
 - Second wave next fall?
- Have a good communication notification plan ready
 - Update employee contact information
 - Method for communicating quickly with the workforce
- Develop a media/PR strategy

Returning to Business: Accommodations, Screening and Return to Work Determinations



Question 3



Are you allowing some employees to elect to continue remote work for a longer period?

- Yes, if they wish
- Yes, if they have childcare needs
- No, we need them back at work

Returning to Business



Accommodations, Screening and Return to Work Determinations

- Selecting which employees to return to the office (and when)
 - Pick your pod
 - Accommodation needs?
 - Employees who refuse to return to work
- Can they return? Fitness for duty and EEOC guidelines

Question 4



Are you requiring employee temperature checks before beginning work?

- Yes, on site
- Yes, employees must test at home
- Yes, by a third party (on or off site)
- No

Question 5



Are you requiring your employees to wear masks?

- Yes, bring your own
- Yes, and we are providing them
- No

Temperature Taking and Masks

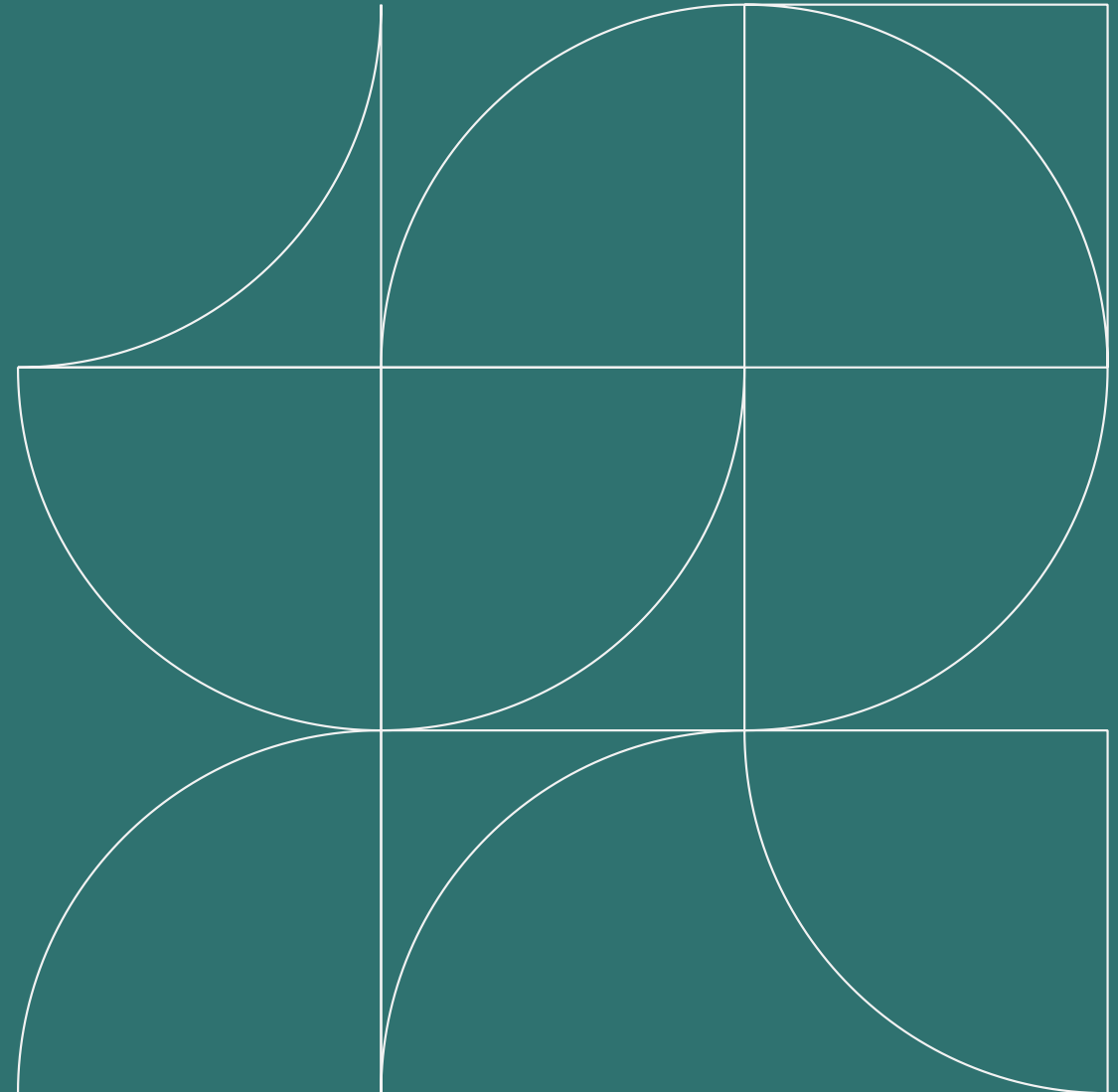
Temperature Taking

- Required or recommended?
- On or off site?
- In house or third party?
- Record keeping?
- Potential accommodation and wage and hour issues

Masks

- State or local requirements or guidance?
- Reusable?
- Potential accommodation issues

New Public Accommodation Traps for Retailers and Other Businesses



Question 6

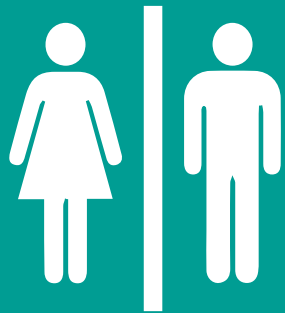


Will you screen your customers?

Yes

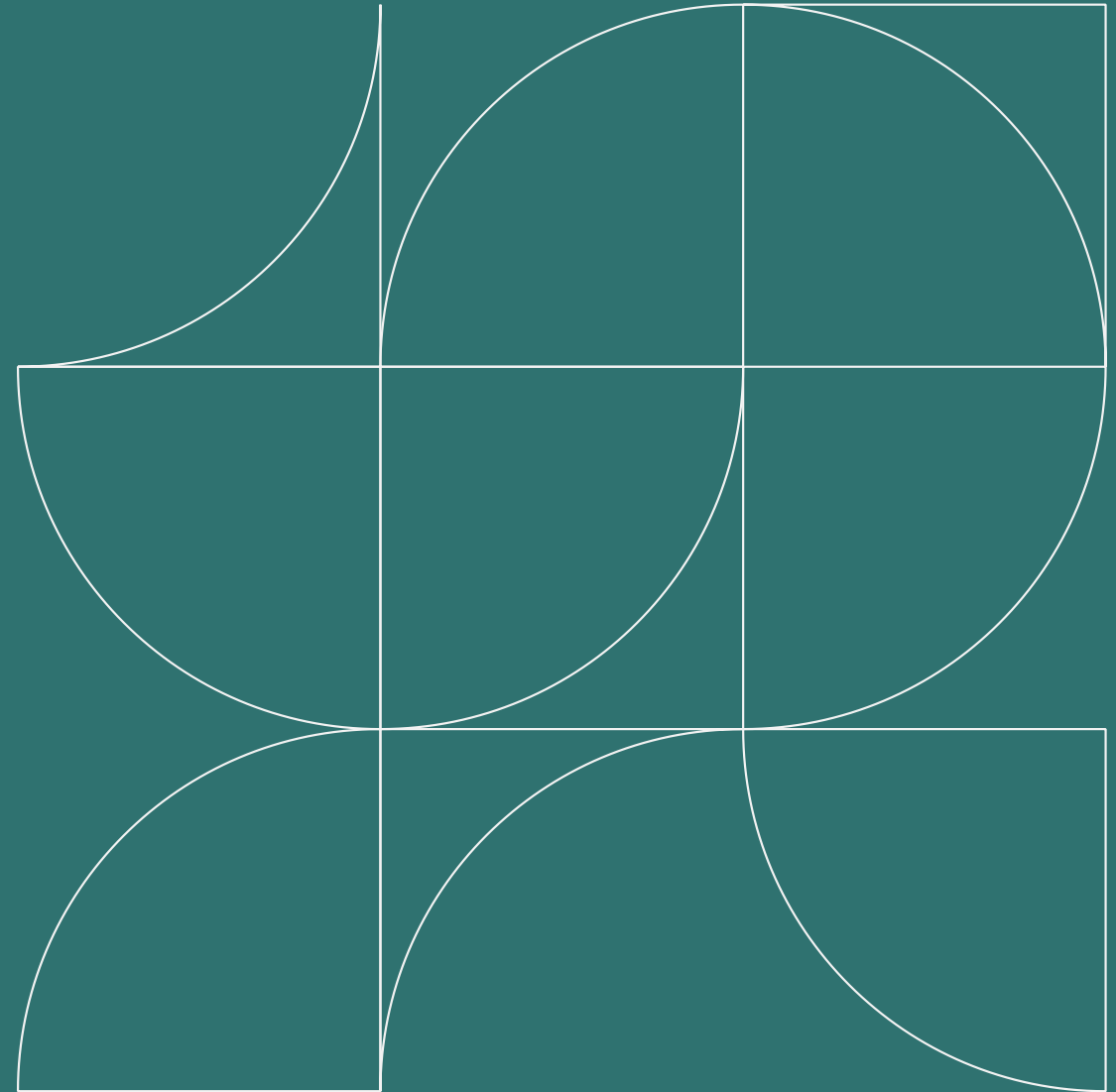
No

Public Accommodation



- ADA applies to visitors and customers
- “Legitimate safety requirement” defense → Permissible to impose legitimate safety requirements that are **necessary for safe operation**. Safety requirements must be:
 - Based on actual risks, and
 - Not based on mere speculation, stereotypes, or generalizations about individuals with disabilities
- ADA Compliance
 - Screening for COVID symptoms
 - Social distancing protocols
 - Accessible routes
 - Waiting customers
 - Face masks
 - Medical conditions
 - Lip reading

Avoiding Potential Wage and Hour Risks from Reopening



Question 7



Are you changing shift times to avoid overlap during lunches/breaks?

Yes

No

Question 8



**Are you closing your
break/lunch spaces?**

Yes

No

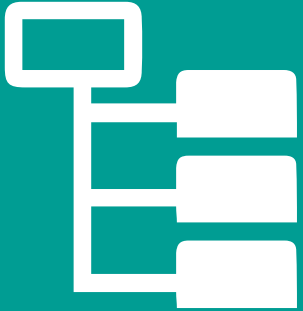
Wage Changes



Reductions and Incentive “Hero” Pay

- Impact on classification
- Regular Rate considerations
- Notice requirements
- Minimum Wage and other requirements still apply

Duty Changes



Classification Back in Session?

- Remember the duties tests!
- Can changes to duties affect employee classifications?
- What if the shift is only temporary?

Returning to Work



At Home or Back to the Office?

- What should I keep in mind for employees restarting remotely?
- Any tips for returning employees to the office?

Wage and Hour Considerations



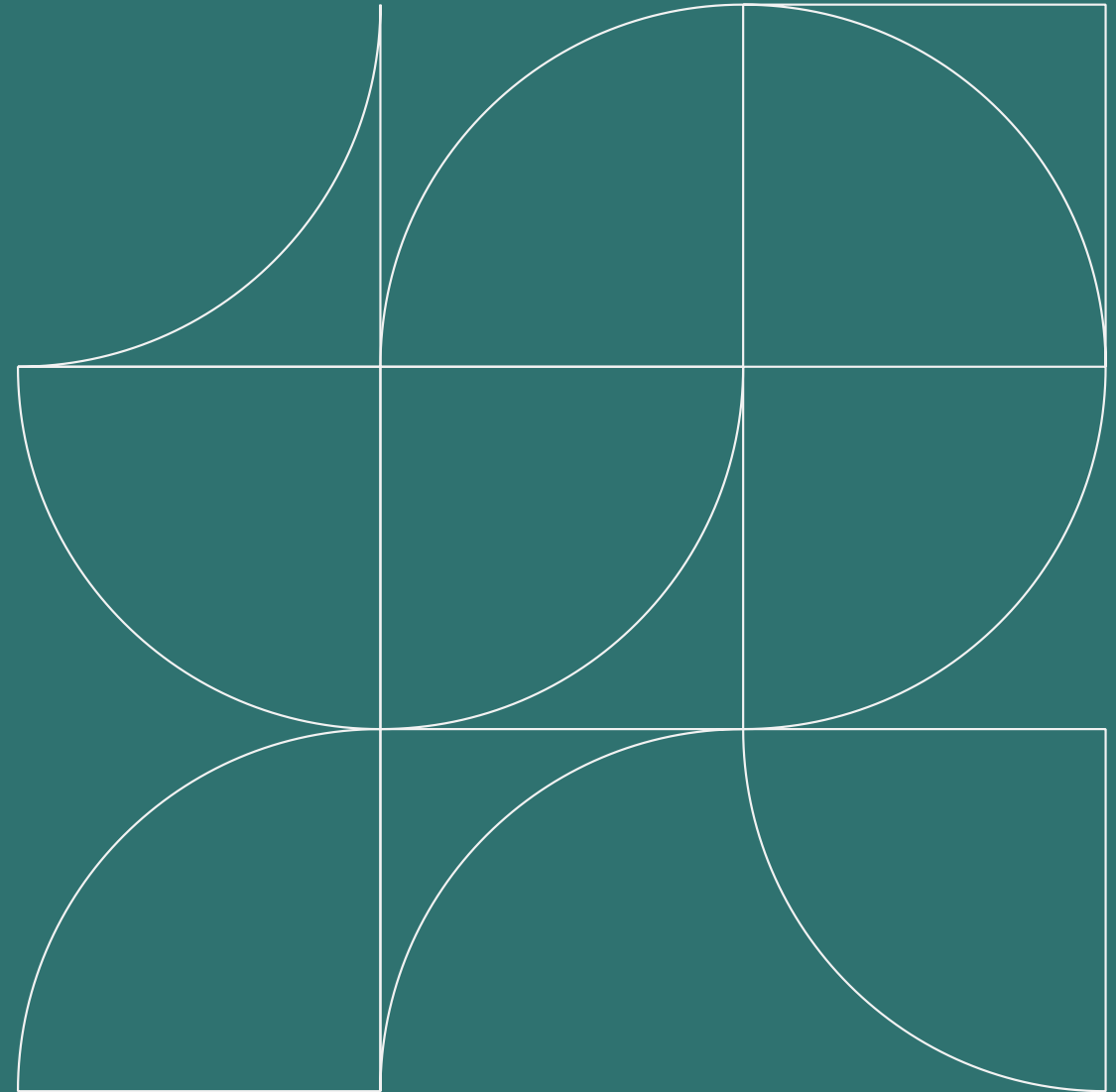
Do I Need to Pay For That?

- Do your new policies and practices mean more compensable time?
- What strategies will you implement to manage compensable time?

Give Me A Break!

- Where should we go for lunch?
- Wage/hour considerations for break time
- Make time for local ordinances
- Reconfiguring work spaces and adaptive scheduling
- Not just for social distancing!

Compliance Tips & Traps Under the Families First Coronavirus Response Act (FFCRA)



Families First Coronavirus Response Act (FFCRA)



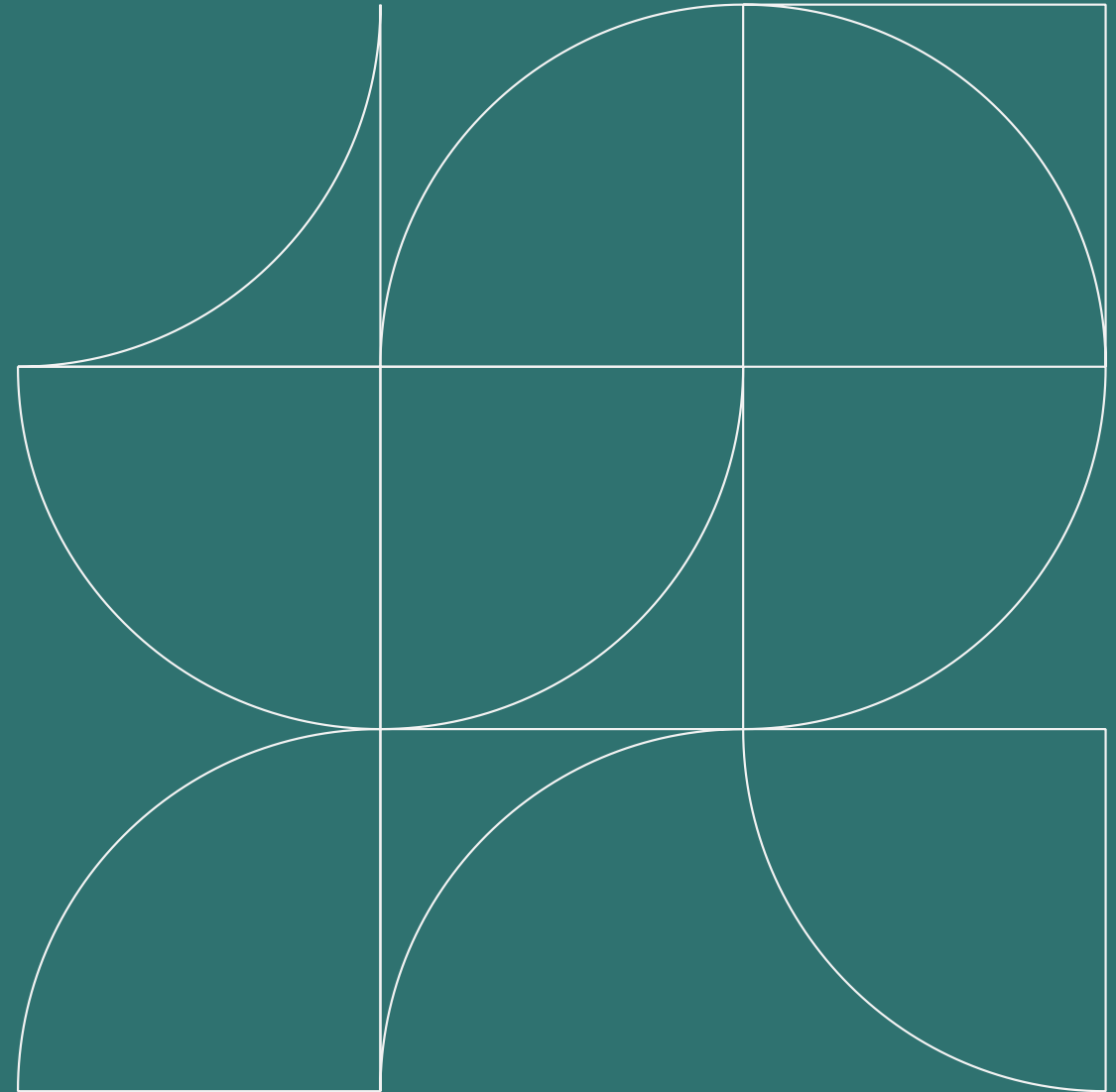
- 500 or fewer employees, may apply for hardship exemption if under 50
- Employees are eligible for EPSL immediately upon hire
- DOL poster: email & intranet okay/no posting if not covered by FFCRA
- Schools that have moved to on-line learning are still considered closed
- This is **NOT an additional 12 weeks of FMLA** (employees start with whatever FMLA they have remaining, and subtract EFMLA from there)
- FMLA used for employee's own serious health condition (even if because of COVID-19) is **not paid** (except for EPSL under FFCRA)

Other Paid Sick Leave Laws



- Many local jurisdictions have attempted to fill the gaps left by FFCRA, results in a patchwork of laws
- State laws, e.g., California's Food Sector Worker Order, Colorado, Nevada, Oregon, Washington
- Local Ordinances, e.g., Los Angeles (county and city), San Francisco, San Jose, Emeryville, Oakland, Seattle

Questions?




Question 9

What is one creative solution your team has come up with so far to address return to business transitions?



Open Answer

Seyfarth's COVID-19 Resources



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

- **Seyfarth's COVID-19 Resource Center**

- www.seyfarth.com/covid19

- **Sign Up For Seyfarth's Latest COVID-19 Updates**

- <https://connect.seyfarth.com/33/48/landing-pages/rsvp-blank---covid-19.asp?sid=blankform>

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

- <https://www.seyfarth.com/services/practices/advisory/post-pandemic-recovery-and-renewal.html>

- **Seyfarth COVID-19 Webinars on Demand**

- www.youtube.com/playlist?list=PLg0AI7yn7R3cVmPQJEUtYilEffzrSgJdv

The image features a solid teal background. On the left side, there is a white geometric design consisting of a vertical line, a horizontal line, and two curved lines that meet at the intersection of the vertical and horizontal lines, forming a shape reminiscent of a stylized 'S' or a decorative element. On the right side, the text 'Thank You!' is written in a bold, white, sans-serif font.

Thank You!