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Return to Business:
Reopening in the DC-Metro Area—
Practical Considerations to Help Ensure
Employers Are Ready

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Seyfarth Shaw LLP

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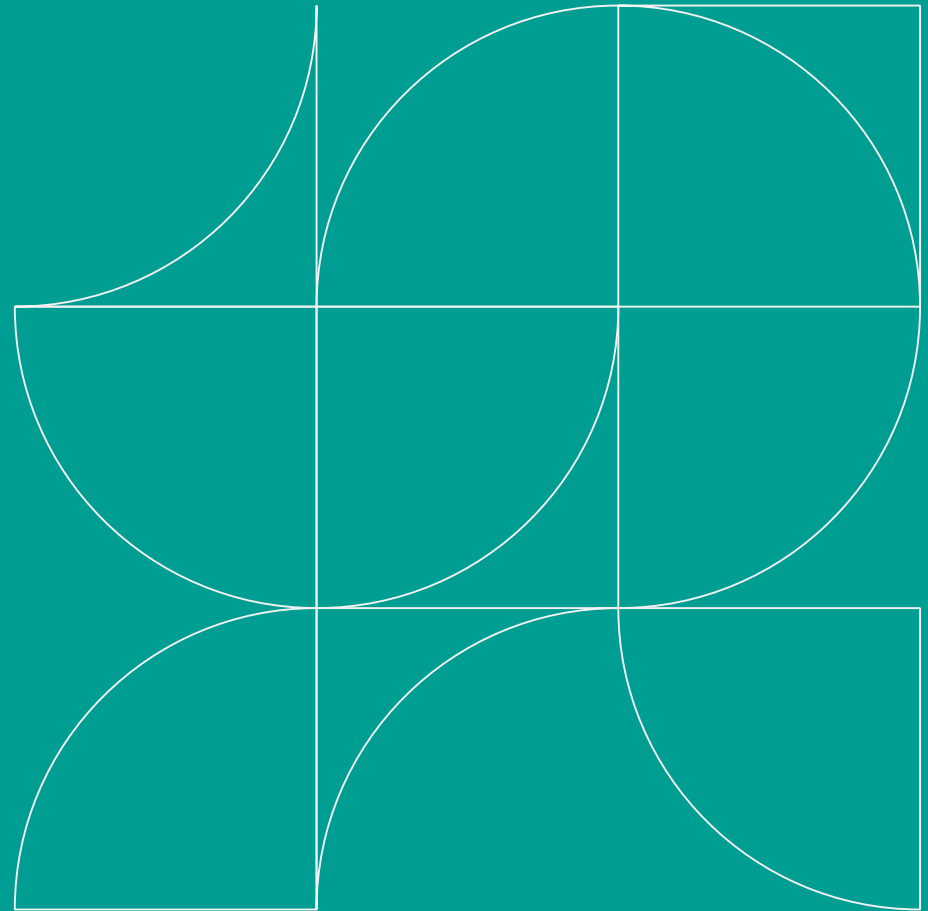**Chrissy Costantino**
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Agenda

- DC Reopening

- Maryland Reopening

- Virginia Reopening

- Plan

- Screen/Access

- Work Environment

- Questions

District of Columbia

District of Columbia

Where Are We Now?

- As of June 6, 2020
  - 70 new cases of COVID-19
  - 9,269 total cases
  - 483 COVID-19 Related deaths

- Phase One
  - May 29, 2020 to ?

District of Columbia

Phase One

- **May 29, 2020 – Stay-at-Home Order was lifted**
  - Public Health Emergency still in effect
  - gatherings of more than 10 prohibited
  - social distancing, face coverings
- **Operations of Nonessential Business**
  - nonessential businesses permitted to reopen for:
    - outdoor pickup/delivery
    - work-from-home strongly recommended
    - barbershop/salon by appointment
- **Business operating in Phase One required to:**
  - Inform employees that they should not come to work if sick
  - Inform employees of leave provisions
  - Create a plan regarding COVID-19, including providing all employees information about testing locations in DC and guidance from CDC

District of Columbia

Phase One (cont.)

- **Phase One Operations of Health Care Providers**
  - May continue to offer/resume offering services, including outpatient or other surgical procedures in DC that will not unduly burden hospital capacity or COVID-19 related resources
- **Phase One Additional Operations of Licensed Food Establishments**
  - Continue takeout, delivery, and "grab and go"
  - Outdoor dining permitted
    - No more than 6 per table
    - Tables 6 feet apart
    - Sanitation and disinfection protocols
  - Reservation system

District of Columbia

Phase Two: How Do We Get There?

DC Health Metrics for Phase 2

4

Metric	Phase 2	Where we are today (data as of 6/3/20)
Community Spread		
Sustained decrease in community spread	14 days	4 days
Low transmission rate (Rt)	$R_t < 1$ for 5 days	$R_t = 0.82$ (<1 for over 5 days)
Testing Capacity		
Low positivity rate	<15% for 7 days	11.9% (3 days <15%)
Health Care System Capacity		
Sufficient health care capacity without surge	<80% for 14 days	77.5% (6 days <80%)
Contact Tracing Capacity		
Make first contact attempt for new positive cases within 1 day of notification	over 90%	56.5%
Make first contact attempt for close contacts of new positive cases within 2 days of identification	over 90%	N/A

CORONAVIRUS.DC.GOV

June 5, 2020

DC | HEALTH
GOVERNMENT OF THE DISTRICT OF COLUMBIA

WE ARE GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC MURIEL BOWSER, MAYOR

District of Columbia

Phase Two: What Will it Look Like?

- Working from home recommended, 25% capacity in office spaces allowed with social distancing

- Small gatherings (up to 50)

- Indoor dining with social distancing, 50% capacity
  - No buffets, no bars, no nightclubs

- Expansion of non-essential retail, including in-store (5 people per 1,000 sq. ft., not to exceed 50% capacity)

- Personal care services (nails, salons, massage, etc.) open by appointment with strong safeguards and physical distancing

District of Columbia

Phase Two: Specific Guidance for Retailers and Restaurants

- **Operations Checklist**
  - Sitemap with signage
  - Cleaning protocols

- **Enforcement Checklist**
  - Communication strategy
  - Enforcement measures

- **Closure Plan Checklist**
  - Health incident or executive guidance
  - Communications with employees, customers about closure

District of Columbia

Phase Three and Four

- Importance of physical distancing of at least 6 feet for employees and patrons

- Regular cleaning and sanitation

- Use of health screens and PPE

- Protections for workers

- Education about COVID-19

- Strategies for accommodating ill employees

REOPEN DC ADVISORY GROUP RECOMMENDATIONS

OUR VALUES

Health

Opportunity

Prosperity

Equity

OUR STAGES

	STAGE 1	STAGE 2	STAGE 3	STAGE 4
What is the nature of the pandemic?	Declining virus transmission	Only localized transmission	Sporadic transmission	Effective vaccine or cure
Gather?	Up to 10 people	Up to 50 people	Up to 250 people	All gatherings
Travel?	Discouraged	Discouraged	Can resume	All travel
Work remotely?	Strongly recommended	Strongly recommended	Encouraged	New normal
What can we do?	Key low-risk activities with strong safeguards	Additional activities with strong safeguards	Higher-risk activities, with safeguards	A "new normal" for DC, with all activities as close to normal as possible

GATING CRITERIA

Level of community spread
Healthcare system capacity

Testing capacity
Public health system capacity

Meeting our gating criteria →

← Deterioration in our gating criteria

OUR SAFEGUARDS

UNIVERSAL SAFEGUARDS

For Individuals

Physical distancing of at least 6 ft. when not at home
Mask use in public spaces
Stringent personal hygiene
Staying home when sick
Regular disinfection of surfaces

For Employers and Venues

Physical distancing of at least 6 ft. for employees and patrons
Regular cleaning and strict sanitation
Use of health screenings and protective equipment
Protections for workers and their families, particularly vulnerable persons
Education of employees about COVID-19
Strategies for accommodating ill employees

VULNERABLE POPULATIONS

Protected through collective commitment to universal safeguards
Provided employer flexibility
Easy access to hygiene, sanitation supplies, testing and safe isolation

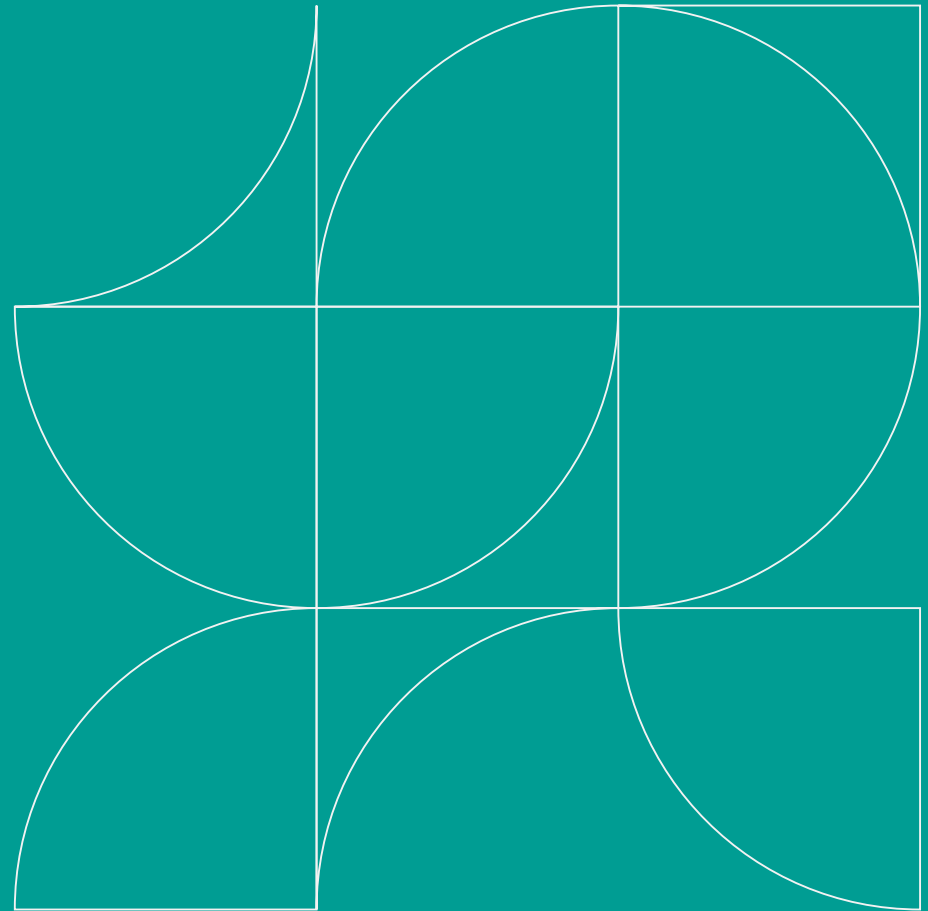For more information on what DC Health is monitoring and tracking, please visit: https://coronavirus.dc.gov/

District of Columbia

Resources

- https://coronavirus.dc.gov/
- https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/COVID-19_DC_Health_Guidelines_for_Employers_in_Non-Healthcare_Settings.pdf

   (guidance for employers in non-healthcare settings when an employee reports they are undergoing COVID-19 testing or have a positive COVID-19 test)

Maryland

Maryland Roadmap to Recovery

"The "Maryland Strong: Roadmap to Recovery" has been developed based on the recovery plans issued by the federal government, the National Governors Association, and premier institutions like Johns Hopkins and the American Enterprise Institute; shaped by the expert advice of the scientists and public health officials on Maryland's Coronavirus Response Team; and tailored to our situation here in Maryland. The result is a **responsible, gradual, safe path forward for our state.**"

Taken from:
https://governor.maryland.gov/recovery/

Maryland

Maryland Roadmap to Recovery

Three Stages:

- Stage 1 – Low Risk
- Stage 2 – Medium Risk
- Stage 3 – High Risk

Roadmap Contemplates Local Flexibility

Maryland

Maryland Roadmap to Recovery

Stage 1

5/15/20 – Safer At Home

- Continue staying home as much as possible

- Employers continue to encourage telework

- Individuals who can work from home should

- Continue wearing masks in indoor public areas, retail stores, and on public transportation

- Continue practicing physical distancing, continue avoiding gatherings of more than 10 people, keep washing hands often, and frequently sanitize high-touch areas

Maryland

Maryland Roadmap to Recovery

Stage 2

6/5/20 – Order Requiring Closure of Non-Essential Businesses Lifted:

- Manufacturing
- Construction
- Retail (50% occupancy)
- Warehouses
- Offices
- Financial Institutions
- Technology Firms
- Auto Dealerships
- Insurance Agencies
- Personal Services – nail salons, massage therapists, tanning salons, and tattoo parlors may resume operations at up to 50% capacity

Maryland Strong:
BACK TO BUSINESS PLEDGE

Maryland's business community plays a critical role in protecting our citizens and preventing another surge of COVID-19 infections.

Because we are committed to the safety and health of our valuable employees and customers, we pledge to:

Create an environment that allows for physical distancing between individuals (6 feet is recommended) to the extent possible.

Ensure our place of business is routinely cleaned and encourage our employees to frequently wash their hands.

Provide flexibility to our employees, provide training and education and clearly communicate policies and procedures.

Reduce and disinfect as many 'high touch surfaces' as possible.

Additionally follow guidance provided by the CDC, the Maryland Department of Health and our own industry.

Signature _____   Company Name _____

Taken from: https://open.maryland.gov/backtobusiness/

Maryland

Maryland Roadmap to Recovery

Stage 2 – Continued Measures:

- Stay home as much as possible

- Telework when possible

- Wear face coverings in indoor public areas, public transportation.

- Practice physical distancing

- Avoid crowds and close gatherings

Maryland

Maryland Roadmap to Recovery

Stage 2 – Recommendations:

- Wearing face coverings whenever face-to-face interaction takes place—businesses may require employees/visitors to wear
- Conducting temperature checks for workers and other personnel
- Limiting the proximity of employees by rotating employee hours
- Instituting split schedules, shifts, or shorter work weeks
- Staggering start, break, or shift times
- Teleworking when possible

Maryland

Maryland Roadmap to Recovery

Stage 2 – Face Coverings

Who is Required to Wear:

- Riders and operators on public transportation;

- Retail customers while inside;

- Retail staff; and

- Foodservice staff who interact with customers.

Maryland

Maryland Roadmap to Recovery

Stage 2 – Face Coverings

Who Should Wear Them (What CDC Says):

"CDC continues to study the spread and effects of the novel coronavirus across the United States. We now know from recent studies that a significant portion of individuals with coronavirus lack symptoms ("asymptomatic") and that even those who eventually develop symptoms ("pre-symptomatic") can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms. In light of this new evidence, CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) especially in areas of significant community-based transmission."

Maryland

Maryland Roadmap to Recovery

Stage 2 – Restaurants:

- Staff required to wear Face Coverings;

- Patrons are seated at least six feet away from each other;

- No groups larger than six persons to be seated together;

- No buffets; and

- Clean and disinfect each table between each seating in accordance with CDC and MDH guidelines, using cleaning products that meet the criteria of the U.S. Environmental Protection Agency for use against COVID-19.

COVID-19 (Coronavirus)
Prince George's County
Modified Phase One Reopening

Angela D. Alsobrooks
County Executive

The Stay-At-Home Order will be lifted for Prince George's County
JUNE 1, 2020.

We are encouraging all residents to continue to stay home as much as possible and use good judgment.

What is Now Open with Modifications:

Barbershops/Hair Salons
(hair services only.
by appointment only)

Retail Stores
(curbside pickup only)

Restaurants
(outside seating only.
max 6 people per table)

Houses of Worship
(10 people or less)

Farmer's Markets
(carryout only)

Manufacturing
(must follow CDC guidelines)

Car Washes with Automated Systems (stay in your vehicle)

Golf Courses & Tennis Courts

Childcare Facilities
(for essential workers and phase one employees returning to work)

What Remains CLOSED/Activities not Permitted:

SORRY WE'RE CLOSED

- Nail salons
- Pools
- Contact sports such as basketball or soccer
- Playgrounds
- Fitness centers

- County Government buildings
- Theaters
- Gatherings of more than 10 people

Taken from: Prince George's County June 5, 2020 COVID-19 Bulletin

Maryland

Maryland Roadmap to Recovery

Montgomery County (Phase 1):

- <u>Gatherings Larger Than 10 Persons Prohibited.</u> Social, community, recreational, leisure, and sporting gatherings and events of more than 10 people prohibited.

- <u>Retail Establishments</u>
  Retail businesses permitted to offer curbside pickup, if: physical distancing of greater than 6 feet at curbside and amongst employees during in-store operations; use of physical distancing markers; all staff are required use of face coverings and other PPE; all staff are required to wash their hands a minimum of once per hour; high contact surfaces are cleaned with CDC and Environmental Protection Agency ("EPA") approved disinfectant at least every 2 hours; all employees receive ongoing guidance and training to reflect updated CDC guidelines; and all customers are required to use face coverings during curbside pickup.

Maryland

Maryland Roadmap to Recovery

Montgomery County (Phase 1):

Manufacturing
- physical distancing of greater than 6 feet (whenever possible);
- staff are required use face coverings and/or other PPE;
- use of physical distancing markers for staff;
- high contact surfaces are cleaned with CDC and EPA approved disinfectant at least every 2 hours; and
- all employees receive ongoing training re CDC guidelines.

Hair Salons and Barbers
- by appointment only;
- physical distancing greater than 6 feet, wherever possible;
- staff required to use face coverings, gloves, and/or PPE;
- limit of 1 customer for every 200 sq. ft of service delivery space;
- limit of 1 customer in a waiting area at a time, other customers waiting for appointments must wait outside;
- use of physical distancing markers for staff and customers;
- all customers required to wear face coverings;
- high contact surfaces are cleaned with approved disinfectant at least every 2 hours; and
- all employees receive ongoing training to re CDC guidelines.

Maryland

Maryland Roadmap to Recovery

## Montgomery County (Phase 1):

Foodservice

May serve food and beverages in outdoor seating areas; continue to sell food and beverages by carry-out or drive-thru; and/or continue to deliver food and beverages to customers off the premises.

- All staff are required to wash their hands at a minimum of once per hour;
- Seated at least six feet apart; no groups larger than six seated together; no buffets;
- Clean high contact surfaces at least every 2 hours; and clean each table between each seating with CDC and EPA approved disinfectants.

Childcare

Childcare for dependents of essential employees and Phase I opening employees; physical distancing greater than 6 feet; staff are required to use face coverings gloves/PPE; children over the age of two should wear face coverings; high contact surfaces cleaned at least every 2 hours; and employees receive training re CDC guideline.

Virginia
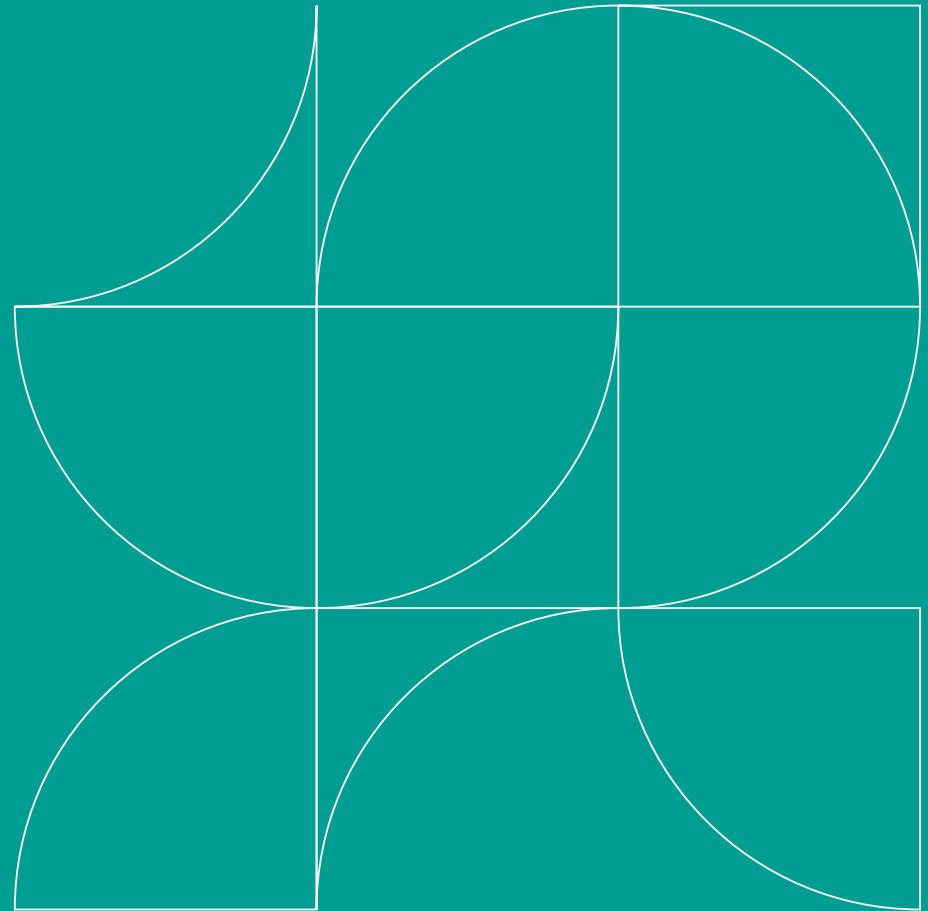
Virginia

FORWARD VIRGINIA!

- Three-phased plan (launched on April 24, 2020)

- Phase I – Executive Order 61

  - Rest of Virginia: May 15, 2020
  - Richmond & NoVa: May 29, 2020

- Phase II – Executive Order 65

  - Rest of Virginia: June 5, 2020
  - Richmond & NoVa: June 12, 2020

- Phase III – No Earlier Than July

Forward Virginia Blueprint expects each phase to last 2-4 weeks (or longer)

COVID-19 Impact On Virginia

Virginia

Phase I: The Basics (Executive Order 61)

- Non-essential retail opened at 50% capacity with requirement that employees wear masks

- Restaurant and beverage services remain takeout and delivery only (indoor)

  - Outside seating permitted at 50% capacity with tables spaced

- Appointment-only salon services

- *Hotels subject to the gathering ban requirements that limit all in-person social gatherings to 10 people*

  - *Any food and beverage or fitness facility within a hotel must follow the guidelines provided for those business categories*

- All Businesses recommended to follow "Guidelines for All Business Sectors" as **best practices**

  - Mandatory requirements are predominantly outlined by business sector

Virginia

Face Masks Required (Executive Order 63)

- **All "patrons" ten and over when entering, exiting, travelling through or spending time inside:**
  - Personal Care and Personal Grooming Services
  - Brick and Mortar Retail Businesses (Essential and Non-Essential)
  - Food and Beverage Establishments
  - Entertainment and Recreation Businesses
  - Transportation services, including waiting areas
  - Any other indoor, non-residential place shared by groups of people in close proximity to one another
  - State or Local Government Office Buildings

- **Employees of Essential Retail Businesses**

- **Exceptions (does not apply employees/independent contractors):**
  - While eating or drinking, while exercising
  - Persons trying to communicate with hearing impaired
  - Persons having trouble breathing or with health conditions that prevent wearing a face covering

- **Enforced by Virginia Dept. of Health**

Virginia

Executive Order 63: New Workplace Regulations

- *"The Commissioner of the Virginia Department of Labor and Industry shall promulgate emergency regulations and standards to control, prevent, and mitigate the spread of COVID-19 in the workplace."*

  - Shall apply to every employer, employee, and place of employment within the jurisdiction of the Virginia Occupational Safety and Health program

  - Must address personal protective equipment, respiratory protective equipment, and sanitation, access to employee exposure and medical records and hazard communication

- Have to be approved by the Virginia Safety and Health Codes Board before effective

Virginia

Phase II: The Basics

- Continued "Safer at Home" recommendations for teleworking and social distancing
- Individuals still required to wear face masks in public indoor settings
- Permitted social gatherings increase from 10 to 50
- Restaurant and beverage establishments can offer indoor dining at 50% capacity
- Fitness centers may open indoor areas at 30% capacity
- Certain recreation and entertainment venues without shared equipment may open subject to restrictions
- Phase I Guidelines for non-essential retail and personal grooming services remain essentially the same in Phase II
- Additional guidelines and requirements based on business sector

	PHASE ONE	PHASE TWO
NON-ESSENTIAL RETAIL	Open with 50 percent capacity	Open with 50 percent capacity
RESTAURANTS AND BEVERAGE SERVICES	Takeout and delivery; outdoor seating at 50 percent capacity	Indoor and outdoor seating at 50 percent capacity
RECREATION AND ENTERTAINMENT VENUES	Closed	Low-contact indoor and outdoor open; high-contact closed
FITNESS AND EXERCISE	Closed (limited to outdoor fitness classes)	Open with 30 percent capacity
BEACHES	Exercise and fishing only	Open
GATHERINGS	10-person limit	50-person limit
TELEWORKING	Strongly encouraged	Strongly encouraged
FACE COVERINGS	Strongly encouraged	Required
CHILDCARE	Open for working families	Open
PLACES OF WORSHIP	Drive-in services; 50 percent capacity	Drive-in services; 50 percent capacity
PERSONAL GROOMING SERVICES	Appointment only	Appointment only
PRIVATE CAMPGROUNDS	Open	Open
OVERNIGHT SUMMER CAMPS	Closed	Closed
STATE PARKS	Day use; Overnight in phases	Open

Credit: Gov. Northam's Office

Virginia

Phase II: Best Practices for All Businesses

- If your company does not fall into one of the enumerated sectors with specific requirements, Forward Virginia: Best Practices Guidance

- Three buckets:
  - Physical Distancing
  - Enhanced Cleaning and Disinfecting
  - Enhanced Workplace Safety

- This guidance is largely unchanged between Phase 1 and Phase 2
  - "Virginia Reopening Checklist for All Business Sectors – Phase 1" remains good planning tool

Virginia

Phase II: Brick and Mortar Retail (Non-Essential)

- Strict adherence to the Best Practices Guidelines in place for other businesses

Required:

- 50% occupancy of the lower occupancy load on certificate of occupancy
- Signage that no one with a fever or symptoms of COVID-19 or known exposure in past 14 days is permitted
- Post public health reminders
- "Assist" customers in maintaining physical distancing
- Meeting rooms and fittings rooms should be closed to customers
- Customer-facing employees required to wear masks
- Clean and disinfect high contact surfaces every 2 hours
- Eliminate food and drink samples, and self-service food
- Sanitize shopping cart and basket handles

Virginia

Phase II: Restaurant and Beverage Establishments

- Strict adherence to the Best Practices Guidelines in place for other businesses

Required:
- Same signage requirements as Brick and Mortar Retail
- 50% occupancy; bar areas remain closed
- Minimum of six feet between <u>parties</u> at tables and areas outside of entity's control (e.g, sidewalks)
- **Pre-shift employee screening**
- **Customer-facing employees required to wear masks**
- Clean and disinfect high contact surfaces every 2 hours and between patrons (e.g., credit card folders)
- Hand-washing requirement for employees setting tables
- No reusable menus
- No self-service food (including condiments)

Virginia

Phase III: Looking Ahead

- Key Elements:

  - "Safer at home" for vulnerable populations

  - Remove ban on social gatherings

  - Remove capacity limits on establishments

  - Continue heightened cleaning and disinfection

  - Possible other measures

- No formal plan announced

- Not expected any earlier than July

Virginia

Resources

- https://www.virginia.gov/coronavirus/forwardvirginia/

- https://www.doli.virginia.gov/vosh-programs/coronavirus-covid-19-resources/ (Business Reopening Toolkit)

- https://www.vdh.virginia.gov/coronavirus/vdh-interim-guidance-for-daily-covid-19-screening-of-employees-and-visitors/ (Guidance on Employee Screening and Handling Employees with COVID-19)

- https://www.vdh.virginia.gov/environmental-health/information-for-lodging-establishments-regarding-covid-19/ (VDH Guidance for Lodging Establishments)

Plan
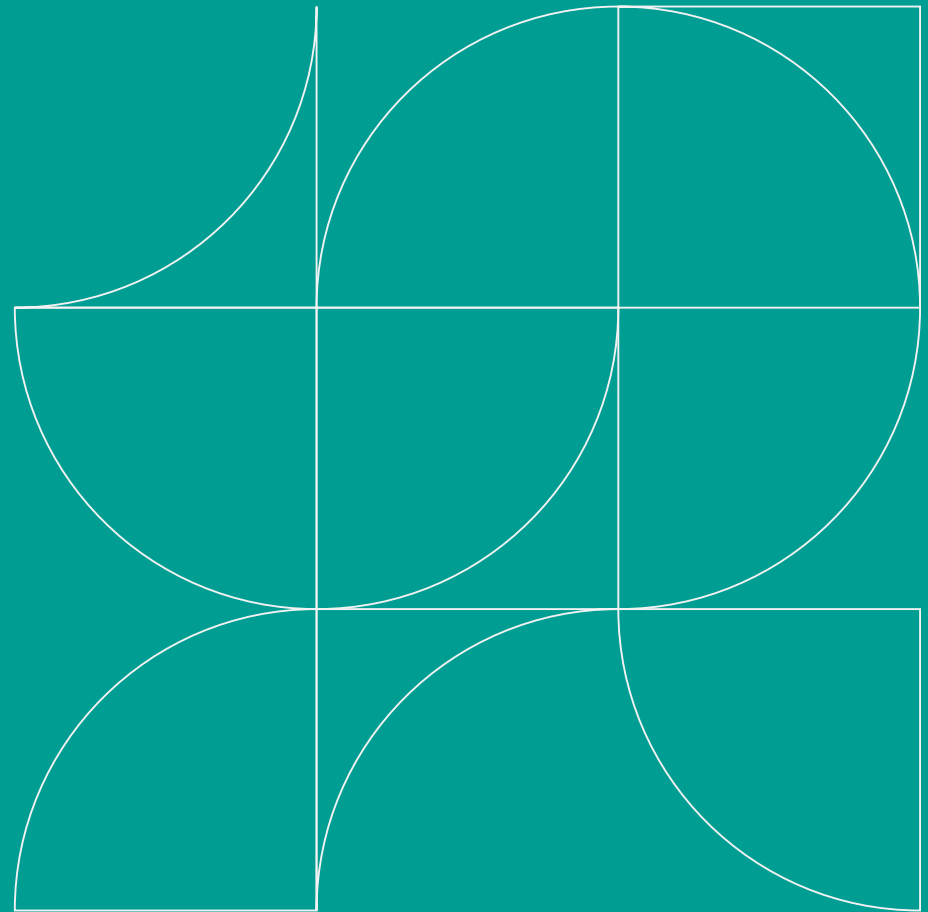
Determine Which Employees Will Return to Work (and How & When)

- Decide when to bring employees back
- Determine which/how many employees are legally permitted to return to the worksite (telework still required if feasible)
- Decide which employees to return to the worksite immediately (and timing for others)
- Consider that certain employees may be prohibited from returning to the worksite due to actual COVID-19, symptoms, potential exposure, isolation or quarantine by a health care provide or public health officer, etc.
- Determine which employees are on legally-protected leaves (plan for business impact of anticipated future requests)
- Decide how to handle high-risk employees
- Decide how to handle employees with logistical/other barriers to returning to the worksite (e.g., child care, transportation)

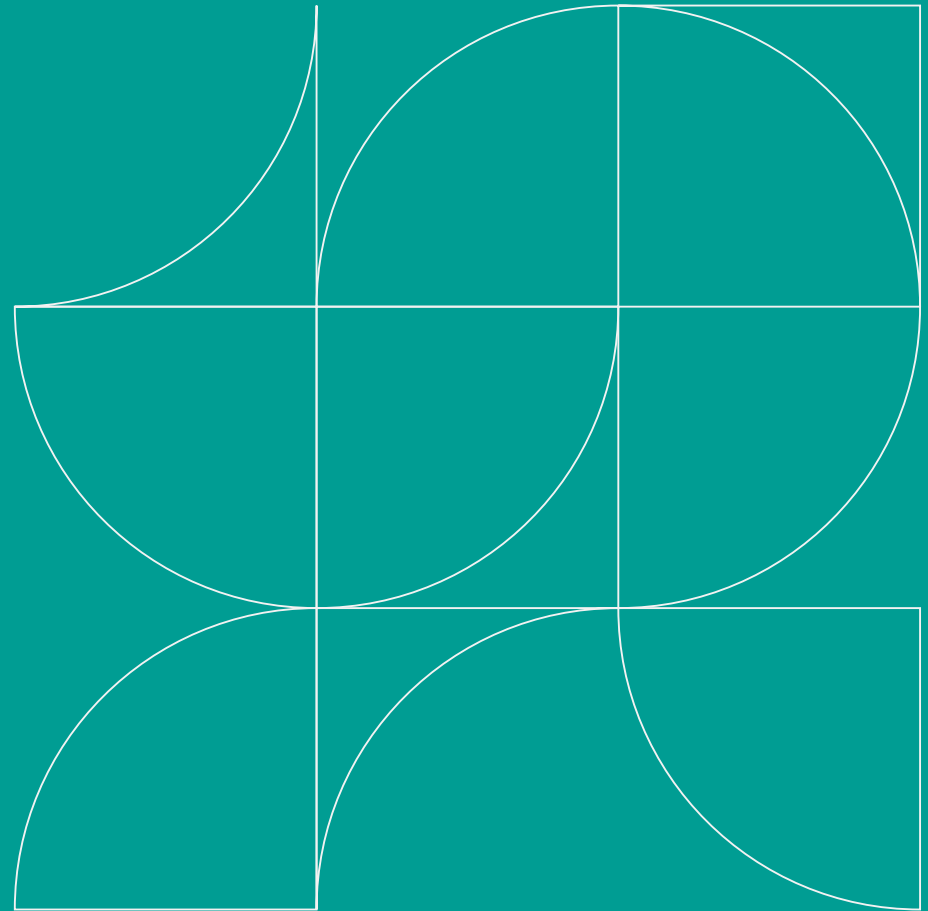# Determine an Organizational Approach

- Designate a point person or core Return to Work team who can make company-wide policy decisions
  - HR
  - IT
  - Building Facilities
  - Health & Safety
  - Office Managers
  - Senior Management

- Determine an approach that is right for the business and the workforce

Requests to Work Remotely After Worksite Opens

- Has overall philosophy toward remote work changed since COVID-19?

  - Requests for reasonable accommodations for a disability (including potential need to revisit pre-COVID-19 accommodation request denials)

  - Requests due to fear of COVID-19 (note potential ADA and whistleblower issues)

  - Requests due to membership in a vulnerable population

  - Requests due to allegation(s) of violations of health and safety orders and/or laws or need to quarantine due to potential exposure

  - Requests due to child/senior-care challenges

  - Requests due to transportation challenges

  - Requests due to household family members being in a vulnerable population (pre-vaccine) (e.g. household family members with underlying medical conditions/immuno-compromised or who are senior citizens)

  - Requests due to other personal reasons

Screen/Access

WORKPLACES DURING THE COVID-19 PANDEMIC

The purpose of this tool is to assist employers in making (re)opening decisions during the COVID-19 pandemic, especially to protect vulnerable workers. It is important to check with state and local health officials and other partners to determine the most appropriate actions while adjusting to meet the unique needs and circumstances of the local community.

Should you consider opening?

- ✓ Will reopening be consistent with applicable state and local orders?
- ✓ Are you ready to protect employees at higher risk for severe illness?

ALL YES →

ANY NO ↓

DO NOT OPEN

Are recommended health and safety actions in place?

- ✓ Promote healthy hygiene practices such as hand washing and employees wearing a cloth face covering, as feasible
- ✓ Intensify cleaning, disinfection, and ventilation
- ✓ Encourage social distancing and enhance spacing between employees, including through physical barriers, changing layout of workspaces, encouraging telework, closing or limiting access to communal spaces, staggering shifts and breaks, and limiting large events, when and where feasible
- ✓ Consider modifying travel and commuting practices. Promote telework for employees who do not live in the local area, if feasible.
- ✓ Train all employees on health and safety protocols

ALL YES →

ANY NO ↓

MEET SAFEGUARDS FIRST

Is ongoing monitoring in place?

- ✓ Develop and implement procedures to check for signs and symptoms of employees daily upon arrival, as feasible
- ✓ Encourage anyone who is sick to stay home
- ✓ Plan for if an employee gets sick
- ✓ Regularly communicate and monitor developments with local authorities and employees
- ✓ Monitor employee absences and have flexible leave policies and practices
- ✓ Be ready to consult with the local health authorities if there are cases in the facility or an increase in cases in the local area

ALL YES →

ANY NO ↓

MEET SAFEGUARDS FIRST

OPEN AND MONITOR

CDC

cdc.gov/coronavirus

Employee Screening

- "Reasonable Measures" likely includes some type of screening

- EEOC has approved checking for symptoms and sending home symptomatic employees.

- Minimum screening is questionnaire

- For example, New York requires mandatory health screening assessment for employees, contractors, and other visitors, asking about (1) COVID-19 symptoms in past 14 days, (2) positive COVID-19 test in past 14 days, and/or (3) close contact with confirmed or suspected COVID-19 case in past 14 days.

What should/can you ask?

- Have you had in the past 10 days?
  - Cough
  - Shortness of breath or difficulty breathing
  - Fever
  - Chills
  - Muscle pain
  - Sore throat
  - New loss of taste or smell

  Note: This list is not all possible symptoms. Other less common symptoms have been reported, including gastrointestinal symptoms like nausea, vomiting, or diarrhea.

- 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 > 100.4?

Employee Screening (cont.)

- Can do as part of computer log in—but there is some risk.

- Screen at or near the building entrance (if space allows) to minimize the impact of a positive individual.

- Coordinate with building managers to facilitate screening.

- Employers are still responsible for screening their own employees and visitors.

- On-site screeners should be trained by employer-identified individuals familiar with CDC, DOH, and OSHA protocols and wear appropriate PPE, including at a minimum, a face covering.

- Identify a point-of-contact for workers and visitors to inform if they later are experiencing symptoms.

- Prevent workers or visitors from intermingling in close contact with each other prior to completion of the screening. Consider whether to pay for waiting time.

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

What Does CDC Say About Taking Temperatures?

- CDC says temperature screening employees is an optional strategy that employers may use.

- CDC wants screener protected and offers guidance how:

  - Ask employees to take their own temperature either before coming to the workplace or upon arrival at the workplace. Upon their arrival, stand at least 6 feet away from the employee.

  - Ask the employee to confirm that their temperature is less than 100.4^o F (38.0^o C), and confirm that they are not experiencing coughing or shortness of breath.

  - Make a visual inspection of the employee for signs of illness, which could include flushed cheeks or fatigue.

  - Screening staff do not need to wear personal protective equipment (PPE) if they can maintain a distance of 6 feet.

What Does CDC Say About Temperature Logistics?

Reliance on Barrier/Partition Controls: During screening, the screener stands behind a physical barrier, such as a glass or plastic window or partition, that can protect the screener's face and mucous membranes from respiratory droplets that may be produced when the employee sneezes, coughs, or talks. Upon arrival, the screener should wash hands with soap and water for at least 20 seconds or, if soap and water are not available, use hand sanitizer with at least 60% alcohol. Then:

- Make a visual inspection of the employee for signs of illness, which could include flushed cheeks or fatigue.
- Conduct temperature and symptom screening using this protocol:
  - Put on disposable gloves.
  - Check the employee's temperature, reaching around the partition or through the window. Make sure the screener's face stays behind the barrier at all times during the screening.
  - **If performing a temperature check on multiple individuals, make sure that you use a clean pair of gloves for each employee and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and you did not have physical contact with an individual, you do not need to change gloves before the next check. If non-contact thermometers are used, clean and disinfect them according to manufacturer's instructions and facility policies.
- Remove and discard PPE (gloves), and wash hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer with at least 60% alcohol.

# Testing Is Not A Cure-All

- **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
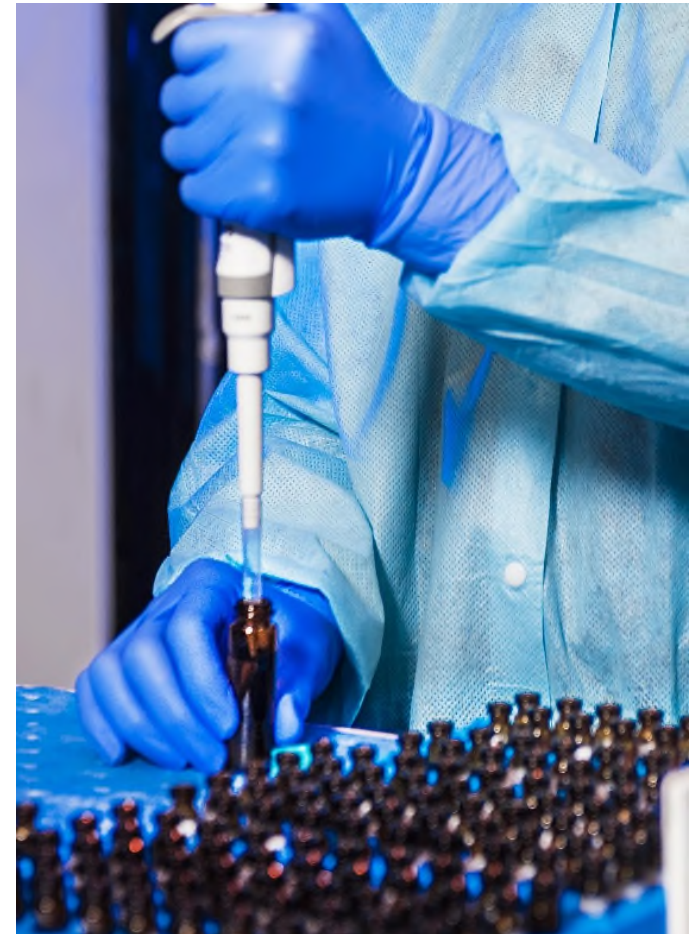
Working Environment
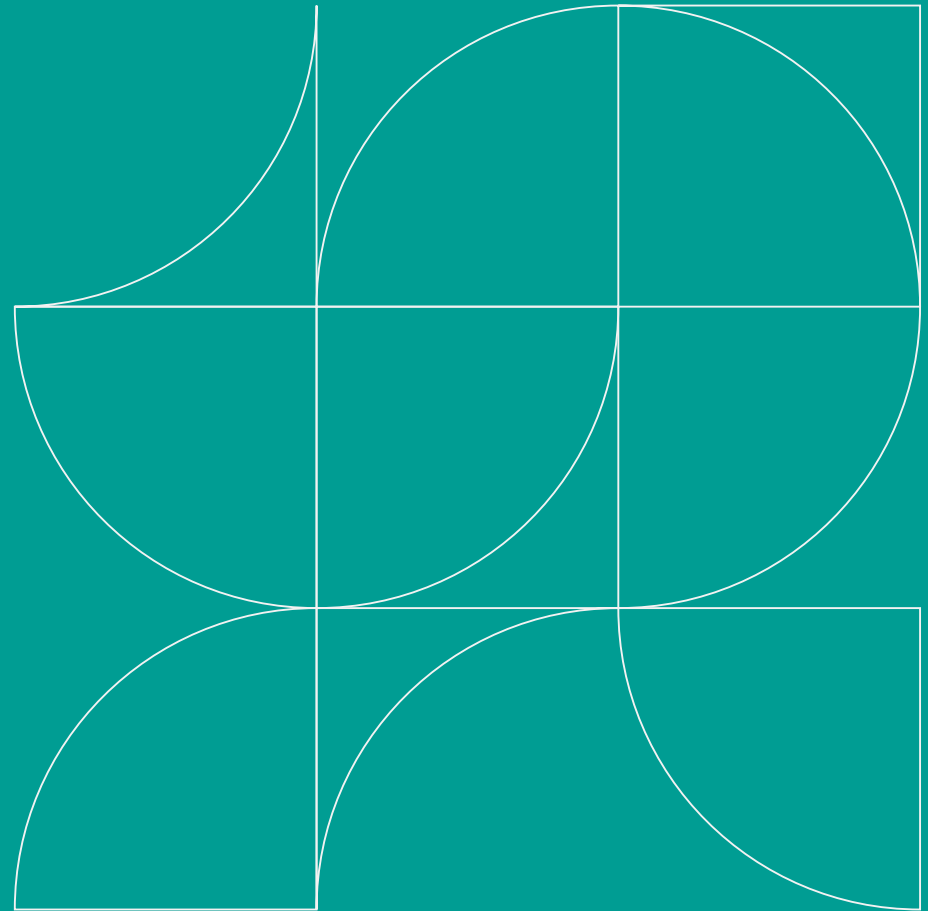
Social Distancing

- All persons, including employees, customers, and vendors should remain at least six feet apart to the greatest extent possible, both inside and outside workplaces

- Establish protocols to ensure that employees can practice adequate social distancing

- Provide signage for safe social distancing

- Require face coverings or masks for all employees

Social Distancing Protocols

Considerations for Reconfiguring Workspaces:

- Ability to maintain at least six foot distance
- Workstation paths (e.g., one-way aisles and floor markers to facilitate social distancing)
- Redesign of production lines (e.g. to increase space between employees)
- Use of physical barriers (e.g., Plexiglass, etc.)
- Repurposing conference rooms, lunch rooms, and other communal spaces to allow for more distance
- Limiting in-person meetings
- Posters

Social Distancing Protocols

Considerations for Reconfiguring Schedules:

- Reconfigure/stagger work schedules and/or shifts to limit the number of employees physically present in a specific office, facility, plant, or other work location at any one time

- Staggering of meal periods and rest breaks to the extent consistent with applicable law; consider requiring employees to eat at their work stations

- Implementation of full-time and/or part-time work-from-home arrangements for positions where it is feasible for employees to work from home, either full-time or a number of days each week

Social Distancing
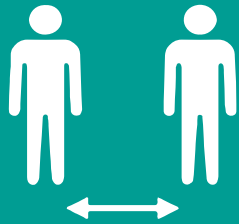
Physical Separation in the Workplace

- Ensure six feet of separation between individuals
  - Must wear face cover if not possible, except when unsafe due to a medical condition or disability
- Close or reconfigure common spaces
- Redesign workstations to ensure physical distancing (e.g., separate tables, use distance markers)
- Limitations on cafeteria use
- Use physical partitions when six feet of space is not possible (must be taller than standing workers)
- Establish directional hallways and passages for foot traffic, if possible
- Post clearly visible signage regarding these measures
- Stagger work schedules and improve ventilation, if possible
- Minimize use of confined spaces (elevators, cars)

Hygiene Protocols

- Provide hand washing capabilities throughout the workplace

- Ensure frequent hand washing by employees and adequate supplies to do so

  (sanitizer ≥ 60% alcohol)

- Provide regular sanitization of high touch areas, such as workstations, equipment, screens, doorknobs, restrooms throughout work site

Hygiene Protocols – Cleaning and Sanitation

- Access to handwashing facilities

- Encouraging frequent handwashing

  - Soap and running water, or
  - 60% alcohol-based sanitizer

- Supply adequate cleaning products (sanitizer, disinfecting wipes)

- Daily cleaning and sanitation of high-touch areas such as workstations, door handles, restrooms

- Avoid sharing office equipment

- Post signage reminders of hygiene protocols

Staffing & Operations

- Provide training for employees regarding social distancing and hygiene protocols

- Employees who are displaying COVID-19-like symptoms do not report to work

- Establish a plan for employees getting ill from COVID-19 at work, and a return-to-work plan
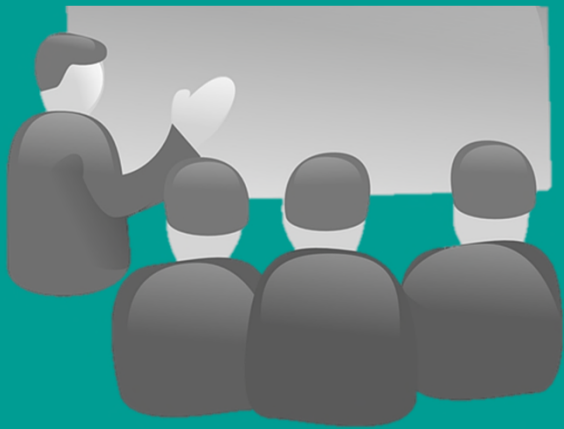
Staffing & Operations

COVID-19 Prevention Plan

- Establish and communicate a worksite specific COVID-19 Prevention Plan for all office locations:
  - Government contact information
  - Regular evaluation of workspaces
  - Isolation, contact tracing, and communication plan for when an employee is diagnosed with COVID-19, or comes in close contact (6 feet, 10 minutes) with an individual diagnosed with COVID-19.

Training Employees

- Conduct employee training prior to restarting operations (if possible)
- Critical that employees understand the new procedures
- Update/Refresh training regularly
- Topics include:
  - Social distancing, handwashing, proper use of face coverings;
  - Self screening at home, including temperature checks;
  - Importance of not coming to work when feeling ill;
  - Seeking medical attention if symptoms become severe;
  - Which underlying health conditions make an employee more susceptible to contracting severe case.

Staffing & Operations

Other Safety Measures

- Establish staggered hours and shifts if possible
- Limit visitors (shipping & deliveries should be done in a designated area)
- Limit business-sponsored travel

Staffing & Operations

Best Practices

- Workers are strongly encouraged to self-identify symptoms or any close contact to a known or suspected COVID-19 positive case to employer
- Encourage workers who test positive for COVID-19 to disclose that information to employer
  - Employer should clean/disinfect, and conduct contact tracing
  - Employer should notify the local Board of Health for help with tracing contacts and advising employees to self-quarantine
- Post notice to workers and customers
- Log everyone who comes in contact with site to enable contact tracing (e.g., temporary visitors, those conducting drop-offs, deliveries)

RTW Plan: When Can Employees With COVID-19 Come Back To Work?

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

Cleaning and Disinfecting

- Establish and maintain cleaning protocols specific to the business

- When an active employee is diagnosed with COVID-19, cleaning and disinfecting must be performed

- Disinfection of all common surfaces must take place at intervals appropriate to said workplace

Cleaning & Disinfecting

- Conduct frequent cleaning and disinfecting of worksite (at least daily, and more frequently if feasible)
    - High-touch surfaces: doorknobs, elevator buttons, railings, staircases, vending machines, bathrooms
- Keep cleaning logs that include date, time, and scope of cleaning
- Clean shared spaces (e.g. conference rooms) between use and maintain supply of cleaning products
- In the event of a positive case:
    - Shut down site for deep cleaning and disinfecting, in accordance with CDC guidance

Other Cleaning Protocols – Best Practices

- Perform deep workplace cleaning prior to reopening
- Consider implementation of more frequent or robust routine cleaning
- Develop protocol around cleaning work stations
- Coordinate with landlords and building management
  - Adequate cleaning of common areas
  - Social distancing protocols in common areas
  - Notification protocols in event of COVID-19 positive test in building
- Consider temporarily removing shared items (e.g., staplers, three-hole punchers, and other office supplies; coffee mugs; etc.)
- Develop a protocol for shared tools and other items (e.g., leave it for the other employee to pick up rather than handing it off in person, cleaning tools before each use, etc.)

Other Health and Safety Protocols

Best Practices

- Identify point person to keep track of changes
- Evaluate need to retain outside safety consultant
- Determine minimum legal requirements — Orders, OSHA, CDC guidance
  - Perform a hazard assessment as required by OSHA
- Consider type(s) of health screens to implement (questionnaires, temperature checks, testing, etc.)
  - Frequency
  - Self-checks vs. employer-administered checks
  - ADA & privacy considerations
  - Wage-hour considerations (e.g. compensable time for non-exempts?)

Questions?

Thank you

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

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