

- **Evaluating And As Necessary Modifying COVID-19 Response Measures.** The rapid transition to temporarily-closed or remote-work status necessitated many policy and operational changes across industries, some of which may need to be reversed to maintain proper business continuity and network security protocols. For example, personal devices may have been permitted to access network resources over a VPN; however, not all organizations are adequately prepared for personal devices to be used on-premises. Inventorying these changes will help ensure that essential practices do not slip through the cracks as reopening occurs. Employees may have been repurposed to different business functions as a consequence of location closures; employers should be prepared to unwind these changes as necessary.
- **Reviewing And Modifying Pre-COVID-19 Employment Policies.** Conducting a comprehensive review of all company policies and procedures helps ensure that policies are current with the COVID-19 situation and that the business is prepared to respond accordingly. At a minimum, companies should review their leave policies, especially if they have fewer than 500 employees and will be covered employers under the Families First Coronavirus Response Act (“FFCRA”); reimbursement and business expense policies, especially as it impacts employee expenses for teleworking; scheduling and work hours policies, especially as it impacts any staggered schedules, operating hours, or teleworking expectations; shared or communal space usage policies; and their safety and security policies. It will be important for employees to understand all employer policies, and for employers to ensure that managers and supervisors are prepared to implement and enforce the policies fairly and consistently.
- **Assessing Business Continuity Plans.** Companies should assess and, if necessary, update existing plans related to business continuity during COVID-19 plans. As the United States continues to exhibit highly regionalized divergences in pandemic severity, businesses should identify and develop plans to address product supply shortages in connection with decreased vendor capacity or increased consumer demand. Companies should also assess their ability to flexibly order by region, state, or other grouping. As discussed in more detail in [Section X](#) below, businesses may need to identify alternate suppliers, warehouses, and distribution centers to address potential closures.
- **Incorporating New Business Models.** COVID-19 resulted in major business changes for many companies. For example, companies may have relied more heavily on the website in marketing, sales and customer relations; they may have conducted more transactions electronically; or identified new supply chains and new ways of delivering products and services. Incorporating these business changes into the period of return-to-work can reduce the needs for employees, customers, and vendors to be in the workplace, increasing the ability to arrange for social distancing at the workplace.
- **Communicating Expectations, Protocols, And Processes To Employees And Other Key Stakeholders.** Companies should ensure that their planning includes provisions for providing employees, vendors, and customers with pertinent ongoing communication. As the situation changes from day-to-day, companies should ensure that they have a mechanism established to provide necessary updates and communication to all individuals who interact with the business. Businesses should prepare communication packages to facilitate a quick response to high-frequency scenarios, such as alerting employees to potential workplace exposure after a co-worker has tested positive for the virus, highlighting changing workplace or store hours in response to local conditions, and distributing guidance from trusted governmental or academic sources.
- **Creating Pathways For Communications From Employees, Customers, Vendors And Visitors, and Information Protection.** Companies should ensure that employees, customers, vendors, and visitors have clear communication lines for expressing concerns and notifying the company of threats and hazards relating to COVID-19. Further, when an employee or contractor tests positive, he or she needs

to know how and to whom to communicate that information to ensure that it will reach only those with a need to know. Additionally, lines of communication should be established to coordinate major COVID-19 announcements to and from key organizational affiliates and business partners to the extent that they will impact an organization's operations or public perception. The business should also ensure that processes exist to keep Google and other web contact points updated as locations reopen and hours change.

- **Determine The Role Of Third-Parties In Reopening.** Companies should consider whether they will need to confer with third-parties to prepare their workplaces, or whether they can complete the tasks entirely in-house. For example, increasing ventilation rates and the percentage of outdoor air that circulates into the applicable systems are good ideas based on current guidance, but could require companies to confer with their heating and air conditioning vendors, property managers, or landlords to determine the possibility and practicability of such steps. Similarly, if a company will be conducting temperature checks or COVID-19 tests of all employees and visitors to the workspace, it may need the assistance of third-party health care providers to conduct the tests (and must make sure that those providers share, protect, retain and destroy the information appropriately) as well as vendors who sell the necessary equipment. The same would be true if a company planned to provide specific Personal Protective Equipment ("PPE") to employees, as a third-party vendor may need to supply the PPE, and shortages in certain supplies may dictate a reopening timeline that is outside the company's control. Instructional signage packages for employees and customers may be needed to facilitate social distancing practices. Accordingly, continuous communication with corporate purchasing functions is essential to understanding where an organization stands in reopening preparedness. The Workplace Coordinator should be responsible for interfacing with procurement functions and tracking the ETA for these supplies, as well as identifying related supply chain risks. In contrast, some steps like encouraging respiratory etiquette and hand hygiene, creating staggered scheduling, or reconfiguring desks and cubicles may be handled internally.

II. Understand The Applicable Legislative and Regulatory Landscape

As all states have repealed, revoked or allowed their "shelter-in-place" or "stay-at-home" orders to expire, it is important for businesses to understand the scope of the reopening orders and how they may vary from state to state. Three states and Washington, D.C. are still largely shut down, whereas other states, like Georgia, have virtually no restrictions. Despite the variations, most "reopening" states have issued plans, or other guidance, on how companies operating within that state should reopen for business. The various state-specific guidance generally leave social distancing measures in place, and continue to prohibit large group gatherings. Most coastal states have reopened beaches, and many states appear comfortable reopening entities that operate outdoors, like state parks or golf courses. Additionally, numerous states have allowed retail establishments to offer curbside delivery, which was previously reserved solely for restaurants. In most instances, even for the businesses that open or are reopening, occupancy limits and/or reservation requirements remain in effect to ensure proper social distancing and limitation of groups. Further, some states are requiring that employees working in the reopening businesses wear masks, and states like Vermont are allowing the businesses to decide whether customers must wear masks.

While many states are allowing in-person dining in restaurants, others are limiting restaurants to curb-side, delivery, or to-go orders, and most states are continuing to require that bars remain closed. Similarly, states seem divided on the reopening of personal care or close-contact businesses like hair and nail salons, gyms, and fitness facilities. Georgia, Utah, and Colorado have allowed some or all of these businesses to reopen under certain circumstances, while other states, such as Alabama and Texas, continue to delay these reopenings. Even where these businesses are allowed to reopen, many states provided detailed guidelines to the customer-facing

businesses where human interaction is expected to occur in the daily operations of the business, including non-essential retail establishments, salons, barber shops, restaurants, and fitness facilities.

These Reopen Orders are being issued **before** widespread testing of the population has occurred and **before** simple, cheap, and reliable testing for the COVID-19 virus or antibodies is available. Accordingly, many of the guidelines encourage certain businesses to test the temperature of employees, customers, and visitors to the work premises, and, those showing a fever or other symptoms are to be banned from the work premises until healthy.

For the states that did not issue state-wide shelter in place orders, most still implemented some level of restrictions on business operations in an effort to keep the coronavirus pandemic in check. These states have issued reopening guidance to start easing the restrictions on businesses. This guidance generally still requires social-distancing protocols and sets occupancy limits on retail businesses and restaurants. Further, several states require customers and employees to wear masks where close customer-interaction is unavailable including tattoo parlors, salons, and massage parlors. States are requiring strict sanitation guidelines for gyms and restaurants. Notably, even in the states that did not issue state-wide shelter in place orders, many bars are still required to stay closed.

Due to the vast differences in state reopening plans, businesses that operate in multiple jurisdictions must recognize that a “one-size-fits-all” reopening strategy may not meet the requirements of each state in which they conduct business. (See Appendix 1 to this guidebook for state-specific information.) Further, since roughly half of the states have partially or fully suspended those orders without having clearly met the “gating criteria” of public health authorities, Businesses should consider what their states say, but should also make their own decision; they may be able to do more for safety than state guidelines (which in many cases have been more aggressive about reopening than public health guidance has recommended) can require, and doing so may reduce their liability exposures. While businesses should consider taking a more cautious approach than required under certain state orders, they should not take a more aggressive approach to reopening than is allowed.

In addition to the state guidance, there is a significant body of federal agency guidance to consider. Many administrative bodies, including the [Occupational Safety and Health Administration](#), the [Wage and Hour Division of the Department of Labor](#), the [Food and Drug Administration](#), and the [CDC](#), are providing regular updates on their websites with industry-specific guidance. To ensure they are basing decisions on the most up-to-date information, companies should monitor the applicable agencies for updates, advised protocols, and insight.

It is also important to remain conscious of the limitations of the available guidance. On May 14 the CDC issued high-level decision trees for reopening of [businesses, restaurants and bars, schools, camps, child care centers](#) and [mass transit systems](#). These decision trees have been criticized by many public health experts as insufficiently specific and overly permissive. In addition, the guidelines are less detailed than the [extensive guidance](#) that the CDC originally considered releasing. Some associations, like the School Superintendents Association, are [advising their members](#) to follow the more extensive unofficial CDC guidance. For these and other reasons, it is prudent for organizations to consider the most conservative public health guidance currently available on reopening issues.

III. Identify Reliable Sources For Local COVID-19 Information

The CDC Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19) ([here](#)) strongly encourages businesses to coordinate with state and local health officials so timely and accurate information can guide their COVID-19 related decisions. Thus, few factors will have

more impact on a reopening plan than the situation in the specific community where the company's facility is located. Accordingly, companies should regularly consult their state's department of health website for updated information on the scope of the pandemic in the local area. In addition, guidance from the scientific and medical communities (which may have some overlap with agency-driven guidance from agencies like the CDC) should be considered in determining the right time for companies' facilities to reopen and the related necessary precautions. As doctors, scientists, and public health officials learn more about COVID-19, community transmission, antibodies and immunities, treatments, and hopefully a vaccine and/or cure, the guidance they provide will help inform decisions on a variety of topics, including testing, tracking, and treatment.

IV. Ensure Ability To Maintain A Safe And Healthy Work Environment

Under the Occupational Safety and Health Act, employers have a general duty to furnish to their employees "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [their] employees..." This duty was not eliminated by the COVID-19 pandemic. Thus, in addition to the steps discussed [here](#) for minimizing risk to employees, employers should:

- Consider increasing air flow and ventilation systems facility-wide, opening windows, and/or airing out small shared spaces throughout the day, between shifts, and during low usage times to reduce the risks of airborne exposures to COVID-19 by employees working at the facility.
- Consider whether strategic scheduling of employees is feasible. This could be accomplished in many different ways, including returning employees to the workplace in waves; staggering employee schedules each day to limit the number of people present at any time; alternating weeks between employees working onsite; and/or, continuing to allow employees to telework where practicable. The primary objective here should be for employers to use their scheduling practices to ensure necessary in-person interactions at the worksite, while still accounting for and accommodating safe social-distancing protocols.
- Encourage or require workers to wear face coverings at work unless there is a compelling safety reason to the contrary.
- Consider reorganizing desks or cubicles to put at least six (6) feet of distance between employees; this could potentially be accomplished through usage of every other cubicle.
- Educate employees about how they can reduce the spread of COVID-19, including following the employer's policies and procedures related to illness and safe hand washing, coughing and sneezing etiquette, and other cleanliness guidelines.
- Clean and disinfect frequently touched objects and surfaces, such as workstations, keyboards, telephones, handrails, doorknobs, shared objects in a breakroom or lounge, elevators, and bathrooms. Avoid having employees share workstations when possible, and increase the frequency with which any shared spaces are cleaned and sanitized.
- Adopt policies and practices that promote social distancing by maintaining at least six feet distance, avoiding large gatherings, limiting occupancy in smaller or enclosed rooms, and encourage virtual meetings over face-to-face interaction.
- Support respiratory etiquette and hand hygiene for employees, vendors, customers, and visitors by providing tissues and no-touch disposal, hand sanitizer, no touch door openers, soap and water, discouraging handshaking, and posting the requisite notices.
- Perform routine environmental cleaning and disinfecting, and ensure that employees have the necessary cleaning supplies to perform maintenance and cleaning on their own equipment as needed.

- Advise employees against non-essential travel for business related reasons and check the CDC's traveler's health notices for the latest guidance and recommendations.
- Create and implement flexible sick leave policies consistent with public health guidance to ensure that sick employees stay home, and that all employees understand the guidance.
- If there is a confirmed case of COVID-19, identify where and how employees might have been exposed at work and notify employees of the confirmed case (without revealing the infected employee's confidential medical information).

It is important that employees understand their role in helping maintain the safety of the workplace. Employers should prepare their employees virtually for their return to the office. Regardless of what changes the company is making to the office or to the policies and practices, employees will need to learn new patterns of behavior for the office in order to abide by existing guidance. Creating virtual trainings and/or a virtual tour of the updated office environment will help employees prepare for returning to the office, and will help them feel comfortable that the company has thoroughly prepared for a safe reopening.

V. Determine The Need For Screening, Testing, And The Use Of Personal Protective Equipment

Businesses should consider whether screening protocols and/or personal protective items, such as masks, face shields, gloves, gowns, will be necessary for their respective facilities and to whom (employees or visitors or both) these requirements will apply. On June 10, OSHA made clear that it expects employer's to "encourage workers to wear face coverings at work," absent a compelling safety reason against the practice. OSHA also stated that employers should provide employees with face shield and/or surgical masks "[w]here cloth face coverings are not appropriate in the work environment or during certain job tasks (e.g., because they could become contaminated or exacerbate heat illness)."

Further, various agencies and sources have confirmed that the ability to identify people who are sick, enforce their quarantine, and trace their contacts are all key components of reopening businesses safely. Indeed, on April 23, the Equal Employment Opportunity Commission took the position that companies may administer COVID-19 tests before allowing employees to enter the workplace. However, on June 17, the EEOC clarified that employers are not permitted to require that employees undergo coronavirus antibody testing prior to returning to work. This guidance from the EEOC mirrors the current recommendations from the CDC. Accordingly, should the CDC guidance change, so too might the EEOC guidance. For now, because the CDC has stated that an employee testing positive for antibodies cannot be equated with immunity, requiring such antibody testing (which qualifies as a medical exam) is not justifiable and thus would be viewed by the EEOC as violation of the Americans with Disabilities Act ("ADA").

Employers should establish policies and practices to ensure consistency across the board, provide training for any employees involved in conducting any temperature screenings, and implement practices to ensure any related information is stored confidentially and in compliance with the ADA, Genetic Information Nondiscrimination Act, and other confidentiality guidelines. Further, employers should understand the rules for the protection, retention, and potential sharing – as with public health authorities – of positive test results. When testing non-employees, businesses should have consistent policies and practices applied to all visitors. In addition, companies must remain cognizant that the information obtained may need to remain private under applicable federal or state privacy laws or to prevent notice-triggering breaches.

Businesses that decide to implement testing or screening protocols should consider the incidence of false-positives or false-negatives associated with a particular test or screening mechanism. For example, if utilizing

temperature taking, businesses should be mindful that some people transmitting COVID-19 do not have a fever or any other symptoms. And, if administering COVID-19 tests, companies should note that “a negative test does not mean the employee will not acquire the virus later.” Thus, even when using COVID-19 tests, businesses should still require that all individuals allowed access to the facility observe infection control practices (such as social distancing, regular handwashing, and other measures) to prevent transmission of COVID-19. Further, companies should develop clear and concise communications for employees, customers and visitors warning of the COVID-19 virus, risks of contamination by entering the premises, and the limitations of the testing protocol. Businesses may even want customers and visitors to sign a [disclaimer of liability or an acknowledgement of the risks](#), as a condition to being granted access to the premises, and such a disclaimer can be combined with such an informed consent.

VI. Consider And Understand Pertinent Employment Laws And Regulations

There are a myriad of laws and regulations that govern employers’ interactions with their employees even when there is not a national pandemic. However, the COVID-19 pandemic raises special concerns and employers should be especially cognizant of the following:

- **The Occupational Safety and Health Act.** The Occupational Safety and Health Act (“OSH Act”) mandates that employers have a general duty to furnish to their employees a safe workplace free from recognized hazards impacts how employers respond to COVID-19. The Occupational Safety and Health Administration (“OSHA”), the agency charged with implementing the OSH Act, has issued guidance to assist employers in preparing their workplaces for COVID-19. Among the available guidance from OSHA are [FAQs](#) regarding the necessity of masks in the workplace, which OSHA generally recommends that employers encourage workers to wear face coverings at work. Employers who comply with the available OSHA guidance will likely be viewed as having met their general duty to furnish a safe workplace. OSHA has expressed an intent to afford employers some flexibility to account for the rapidly changing COVID-19 landscape. Further, OSHA has clarified its recordkeeping and reporting requirements and informed employers that COVID-19 related illnesses or injuries are recordable only if there is objective evidence that it is work related and that evidence was available to the employer.
- **The Families First Coronavirus Response Act (“FFCRA”) And The Family And Medical Leave Act (“FMLA”).** While the leave requirements of the FFCRA did not apply to workplaces that were completely shuttered, or situations where the employer did not have work for the employee to do (See DOL FFCRA FAQs 24-28), that will change when the business reopens. Employers with fewer than 500 employees that are covered by the FFCRA must ensure that they fully understand their obligations and the various types of COVID-19 related leave provided for under that statute prior to reopening the business. Explanations and analyses of the FFCRA are available [here](#). Employers should remember that the Department of Labor (“DOL”) strongly encourages employers and employees “to collaborate to achieve flexibility and meet mutual needs when addressing employee requests for leave.” Employers should review their leave policies to ensure compliant policies and appropriately flexible leave procedures.
Similarly, many employers will be covered by the traditional job protected leave provisions of the FMLA. Employers should review their policies and procedures concerning leave entitlement under the FMLA, and ensure that supervisors, managers, and employees are all informed of the policies and procedures involved in requesting FMLA leave for covered employers and eligible employees.
- **The Americans With Disabilities Act.** The ADA protects employees and applicants from job discrimination based on disability and requires employers to make reasonable accommodations for employees with disabilities under certain circumstances. This will manifest in two key ways with regards to

COVID-19. First, employees with preexisting conditions that increase their risk of injury, illness, or death from COVID-19 exposure may be entitled to reasonable accommodations from their employers. Second, while employers may not discriminate against employees with disabilities, during a pandemic, employers should familiarize themselves with the “direct threat” guidance under the ADA, which allows employers to take actions that may otherwise be prohibited by the ADA.

To the first issue, while having COVID-19, in and of itself, will likely not rise to the level of a disability protected by the ADA, it may exacerbate an employee’s existing disability that was previously under control. Employers should be prepared to discuss reasonable accommodations and engage in the interactive process with employees who request accommodations as a result of COVID-19. Employers should consider all requests for reasonable accommodations in light of the changes implemented by their pandemic response, their business continuity and general operations plans, their updated policies, and their revised practices. For example, while requesting “telework only” might not have been a reasonable accommodation request prior to the pandemic, employers may not be able to prove the request is unduly burdensome if portions of their workforce have been successfully teleworking for weeks or months prior to the request.

Regarding the second issue, during a pandemic, Equal Employment Opportunity Commission (“EEOC”) guidance states that the presence of a direct threat to the workplace allows employers to conduct “medical tests” that would otherwise normally be prohibited. Thus, to ensure a safe working environment for all employees, employers may be able to require medical tests, inquire about health-related matters, and prevent employees who have tested positive for or display symptoms associated with COVID-19 from entering the workplace. Employers are encouraged to understand the direct threat framework and apply it consistently on a rolling basis.

- **The Fair Labor Standards Act (“FLSA”).** Unless employees fall within one of the FLSA’s exemptions, they must receive at least \$7.25 per hour for each hour that they work and one and one-half times their regular rate of pay for every hour in excess of 40 hours worked per week. Many states have established a higher minimum wage and increased overtime compensation. To ensure that they are properly compensating employees for all hours worked, employers must be diligent in tracking the hours worked by employees who are not exempt from the FLSA’s or the state’s minimum wage and overtime requirements. Where most businesses have explicit timekeeping mechanisms to track hours worked at the office, facility, or worksite, and to ensure employees took their lunch or rest breaks, those processes and procedures may have been unavailable to teleworking employees and difficult for employers to enforce for a work-from-home workforce that sprung up practically overnight. Additionally, as many employers were forced to cut hours, stagger shifts, furlough, or lay off employees, such actions may have wage and hour implications as exempt employees must receive a certain amount on a salary basis to retain their exempt status. Further, employers may be required to compensate employees for time spent at the employer’s facility awaiting employer-mandated screening or testing procedures or putting on or taking off PPE.
- **Anti-Discrimination Statutes.** Title VII of the Civil Rights Act of 1964 (“Title VII”) protects employees from discrimination and harassment based on their race, color, national origin, sex and religion. Similarly, the Age Discrimination in Employment Act (“ADEA”) protects employees from discrimination and harassment based on being over the age of 40 and the ADA protects employees from discrimination based on their actual or perceived disabilities. Employers need to remain cognizant of these protections when returning employees to the workplace. If the employer intends to take a staggered or staged approach to returning employees to the workplace, it should consider allowing employees to volunteer for stages. Should this not be feasible or provide the desired result, employers should be careful not to stagger the return in a manner that might prove to have a discriminatory impact (i.e., by delaying the return of all older or pregnant

employees). Similarly, while employers may exclude employees who pose a “direct threat” from the workplace, it cannot exclude all older workers or pregnant employees from the office, even though the CDC states they are more susceptible to the impact of COVID-19.

Employers should also be vigilant during this time to ensure that their employees are mindful of the employer’s existing anti-harassment and anti-discrimination policies. Employers may want to consider sending employees a reminder that ethnicity is not a risk factor for transmission of COVID-19 and that stereotyping and discrimination will not be tolerated in the workplace. Further, supervisors and managers should be reminded about their responsibility to stop any xenophobic or racist behavior, speech, or action, and to follow company policies for reporting such actions.

VII. Evaluate Labor Relations Implications

Among the numerous issues employers are likely to encounter as they reopen are ones related to the National Labor Relations Act (“NLRA”), whether they have a union or not. The NLRA provides protections to employees at unionized and non-unionized workplaces alike. Among the rights provided by the NLRA is the right to engage in protected concerted activity. This can take many forms and relate to many issues, however, it is typically when two or more employees act together to improve their terms and conditions of employment. Examples include protesting, making a report to HR, or posting on social media. Employers should be on the lookout for such activity as they start to reopen and call employees back. Some employees will, for example, have safety concerns about returning to work and may join together and refuse to work in what they consider unsafe conditions. While such refusal must be reasonable and based on a good faith belief as to the unsafe conditions, employers need to consider whether it is protected activity under the NLRA because getting it wrong could have significant consequences.

Additionally, businesses should remain extra vigilant of potential union organizing as they reopen. The fear created by this situation along with the uncertainty of work going forward, concerns about personal safety, and, in some instances, feelings of mistreatment by management, could create opportunity for unions to step in now or after the dust settles. In that regard, employers should make sure they have the right policies and practices in place as they relate to union organizing and treatment of employees, continue or restart employee roundtables to stay on top of issues that could drive employee dissatisfaction and a resulting desire for a union, and, of course, show respect and compassion for employees during and after these tough times.

In addition, employers that took loans under the CARES Act should be cognizant of the impact that loan may have on their labor strategy. Unionized employers who received loans are obligated to continue the terms of existing collective bargaining agreements for the term of the loan and two years after. Additionally, the Act requires that an employer remain neutral in any union organizing effort for the term of the loan. In that regard, the best strategy is a proactive one that addresses employee concerns and advocates for them such that they have no reason to bring in a union.

Finally, employers with unions need to be sure their actions continue to abide by the terms of their collective bargaining agreements and that they continue to bargain over any changes in the terms and conditions of employment - even state ordered closures do not suspend the duty to bargain.

VIII. The Mental Impact of COVID-19

According to an early April 2020 [poll by the Kaiser Family Foundation](#), 45% of adults said the pandemic has affected their mental health, and one in five (19%) said it had a “major impact.” Another poll found 69% of employees said the coronavirus had created the most stressful time of their career, and 88% said they had

experienced moderate to extreme stress over the past four to six weeks. The general stress surrounding COVID-19 is only compounded by concerns about the safety of resuming public activities, the controversy around wearing masks, economic anxiety, and other social conditions. These concerns, anxiety and stress do not disappear when a customer or employee enters a business establishment. Thus, businesses should consider taking proactive measures to minimize the interpersonal conflicts and hostilities that often result when such conditions go unaddressed. Potential actions to address these concerns include:

- **Demonstration of Caring.** Although it is always important to demonstrate caring during distressing times, the unique current risks, tensions and uncertainties make it critical.
- **Feedback.** Establish active communication channels from employees and customers to understand their needs and concerns. Anonymous surveys can be very helpful. Compile this information to identify trends and needs.
- **Communication.** Let employees and customers know what the business has been doing that shows caring, commitment, and a control of the situation. Discuss what they can expect in the foreseeable future in a transparent manner. Encourage questions.
- **Clear Expectations.** For customers, consider correspondence before they come setting out the rules and risks or an informed consent when they get there, particularly if difficulties enforcing mask-wearing are anticipated.
- **Crisis Counseling and Hostility Management.** Consider providing crisis-experienced counselors in the workplace or online to assist employees in managing their feelings. It is also important that all employees know how to constructively address hostilities in real-time when they arise.

IX. Workers' Compensation And Tort Liability Issues

As COVID-19 cases have spread, so too have lawsuits relating to the impact of the pandemic. In the wake of the pandemic, courts will have to navigate uncharted waters to better define a business's duty to its employees and customers/visitors, and determine when businesses have breached such duty. Even where damages are clear, potential litigants will still have a difficult time showing causation in many cases, especially given the nature of community transmission.

- **Employee Allegations Of Exposure.** An employee who believes that he or she was exposed to COVID-19 at work will likely seek compensation through a workers' compensation claim or a tort claim. The remedies available under workers' compensation are typically less than the available remedies in a successful tort action. Specifically, workers' compensation damages hold the employer responsible for the employee's medical expenses and partial reimbursement of lost earnings (or earning potential) due to a temporary or permanent disability. In contrast, a traditional negligence lawsuit could result in a judgment for medical expenses, lost wages, pain and suffering, and even payment for a spouse's loss of consortium with the injured person.

Workers' compensation laws may provide employers with potential protection against civil lawsuits by employees who have confirmed cases of COVID-19 and experience illness. Generally speaking, state workers' compensation remedies usually provide employees with their "exclusive remedy" for injuries that occur in the course of their job duties. However, workers' compensation laws vary by state; thus the employer's location will determine whether COVID-19 claims will be covered by workers' compensation.

While many states' workers' compensation laws exclude diseases that are an "ordinary disease of life to which the public is exposed," COVID-19 presents a novel situation and states are enacting unique laws to address it. For example, on May 6, 2020, California's legislators created "a time-limited rebuttable

presumption for accessing workers' compensation benefits" that is applicable to employees who worked outside of their homes in essential businesses during the statewide quarantine and stay-at-home order. Illinois introduced a similar law on April 16, 2020, which was successfully challenged in state court and subsequently withdrawn by the Illinois Workers' Compensation Commission on April 27. It is likely that California's law will be challenged as well; however, the outcome cannot be predicted. Given the anticipated onslaught of challenges, whether COVID-19 related illnesses are covered by workers' compensation laws is still an open question and will likely remain so for a while.

Should COVID-19 infections not be covered by workers' compensation laws, employees will likely assert civil tort claims alleging that their employers negligently failed to protect their workers from COVID-19 exposure, and that the employee suffered damages from that failure. While available torts vary by state, the most likely claims in tort would be a negligent supervision, personal injury, or wrongful death claim. To succeed on a tort claim, the employee will likely need to show negligence, recklessness, or willful disregard by the employer which resulted in the employee being infected with COVID-19; causation between the infection and the employer; and, damages ensuing from the infection. While employees will likely face an uphill battle to prove causation in such a tort claim—especially given what we know about the incubation period of COVID-19 and the community transfer—the threat of litigation still looms.

- **Visitor Allegations Of Exposure.** Generally, businesses must exercise reasonable care to make their offices safe for visitors and customers. The most likely COVID-19 related cases from a customer or visitor would turn on the company's duty of reasonable care from a premises liability standpoint. In most states, property owners and occupiers must exercise ordinary care in keeping their premises safe. However, some states, such as Georgia, are clear that "a property owner [or occupier] is not an insurer of the safety of entrants, and a mere showing that an injury occurred while on the premises of a proprietor is not sufficient, by itself, to create a presumption of negligence." It is reasonable to assume that customers and visitors are aware of the COVID-19 pandemic, and understand the risks associated with visiting public places and with failing to practice recommended social distancing guidelines, sanitation and hygiene, or other COVID-19 related guidance. Having customers and visitors to sign a disclaimer of liability or an acknowledgement of the risks could provide be written proof of this.

Moreover, many states, such as New York, New Jersey, Illinois, Michigan, Pennsylvania, have issued executive orders or passed legislation providing limited civil liability immunity for healthcare providers during the pandemic, subject to certain requirements and limitations. North Carolina has [extended civil immunity beyond healthcare](#), although it is still limited in scope. North Carolina's May 4, 2020 COVID-19 Recovery Act grants limited, civil immunity to the following three groups in connection with acts or omissions in the course of responding to the current pandemic: (1) health care facilities and providers, (2) essential businesses, and (3) emergency response entities. The U.S. Congress is also debating whether to provide some form of COVID-19 legal immunity to companies (beyond just healthcare). Thus, businesses should continue to monitor changes to both state and federal law related to these issues.

Assuming a business follows existing guidance to minimize the spread of COVID-19 at its facilities, employees, customers, and visitors will face challenges in prevailing on claims regarding COVID-19 exposure at the facility. Thus, it is important that businesses adhere to conditions imposed by state and local orders as well as the guidance provided by the CDC and the World Health Organization ("WHO").

X. Consider Insurance And Related Considerations

As businesses reopen, employers should review their insurance policies and potential coverage for claims and events that may arise. Since the COVID-19 outbreak, lawsuits are pending against businesses, alleging,

among other things, that a business's negligence led to the virus infecting others on its premises. Countless businesses have submitted notifications to their insurers for their own business losses, and many already have filed lawsuits seeking recovery for these losses. This precarious, evolving situation has businesses seeking every option to mitigate their losses, including by attempting to reopen as quickly and fully as possible. In engaging in these efforts, it is imperative for businesses to understand what their current and future insurance policies may and may not cover with regard to the risks of reopening.

More specifically, businesses need to be aware of provisions in their current insurance policies that can affect or limit their ability to recover losses during and after reopening. They also should be knowledgeable about any information requested or required by insurers in connection with the notifications submitted to date relating to COVID-19 and with the renewal or purchase of insurance policies during and after reopening. They should monitor the federal, state, and local governmental approaches to insurance losses, liability, and funding, as discussions and efforts on how to address insurance liability and funding are underway at every level. Finally, and as an overarching matter, businesses should consult their insurance brokers and legal advisors regarding all of these issues to ensure that they are moving through this process with as much knowledge, information, and guidance as possible to be able to maximize any potential insurance recovery and make prudent investments in addressing these risks through insurance coverage.

Among the general items for consideration during the reopening process that potentially relate to insurance risk and recovery are whether, prior to reopening, there has been a known or suspected COVID-19 contamination in the workplace or common areas and whether the company knows of any employees, clients, or customers who have tested positive for COVID-19 or had reported symptoms of COVID-19. It is also imperative to examine whether it would be difficult to comply with applicable governmental orders, regulations and industry standards to reasonably provide a safe workplace or space for others to inhabit and visit. All of these issues pertain to a potential standard of care that should be evaluated in assessing risk of potential legal liability during and after reopening and the likelihood of insurance to respond to damages or losses relating to the same. Liability policies, from general to professional and other specialized policies, may provide coverage for third-party losses and damages during and after reopening, but businesses should review the terms, conditions, and exclusions to understand how to minimize risk and maximize recovery.

Businesses also should review with their insurance brokers and advisors the "sufficiency" of their insurance coverage for risks during and after reopening – both in amount and scope. There are coverages available for purchase now, and there will be others in the future, in standalone policies or as additional extensions of coverages to standard form policies. These coverages likely will come with higher premiums, so it is important to exercise due diligence and care in asking questions and providing information during the application for and purchase of insurance. Businesses already suffering losses during shutdown and shelter-in-place conditions will want to make prudent investments to assess, address, and potentially insure their risks. The insurance application and procurement process will require businesses to exercise care and consideration to provide accurate, current information in their applications and otherwise to avoid any forfeitures of coverage down the road. Businesses also should ask to see all forms and endorsements to the policies in question to ensure, to the greatest extent possible, that the risks they expect to be covered are not subject to obvious exclusions or deficiencies in the coverage they renew or purchase. Again, brokers and legal advisors are helpful to analyze and guide businesses through the risk assessment and insurance procurement process generally, and they can be a valuable resource during and after reopening. At a minimum, having a team in place to manage and assess risk – especially in light of the evolving governmental response -- will help a business navigate through the reopening process and procurement of appropriate insurance.

XI. Evaluate Supply Chain Issues

The supply chain is another important consideration as businesses reopen. In addition to essential personnel, businesses require their essential equipment and inventory. COVID-19 has had significant and sometimes catastrophic impacts on supply chains. Businesses seeking to minimize further disruption by supply chain challenges should consider the following steps:

- **Understand the supply chain.** Supply chains are unique to a business. It is more important than ever for companies to understand from where their equipment and supplies are sourced and how COVID-19 has impacted those suppliers. By digging into the specifics of its supply chain, a business can identify suppliers and processes that may have extended lead times and item unavailability.
- **Plan for delays.** The supply chain goes beyond just immediate suppliers. The world is interconnected and a business's suppliers may be served by suppliers half a world away. As a result, it may take longer for the business to obtain supplies that it could previously count on receiving quickly. Businesses can get out in front of these potential delays by re-ordering items faster or maintaining a larger inventory than usual for core equipment and items, if possible.
- **Revisit current supply agreements.** COVID-19 has impacted demand across almost all sectors. Thus, companies should assess whether their existing supply agreements are appropriate for the current environment. In addition, they should consider negotiating with existing suppliers to make adjustments to terms to address the demand for goods and services. In addition to just addressing quantity, companies may also want to consider whether to revise payment terms.
- **Consider alternate suppliers and diversify.** There is no better time than now for businesses to revisit whether their suppliers are right in the current environment. They should consider whether there are alternatives that, while a little more expensive, are closer to home and easier to obtain in an emergency. Additionally, moving from a handful of core suppliers to more suppliers in different locations may be an option to explore so that a "minimal" supply stream is in place if core suppliers cannot get the job done for any reason.

Following these simple steps will help companies ensure that when their doors reopen, supply chain issues do not stop them from being able to meet the demand.

XII. Preparing And Reconfiguring Facilities

The COVID-19 pandemic resulted in shuttered retail spaces and virtually empty office buildings as most employees worked remotely for a substantial period of time. As landlords, property managers and tenants reopen buildings and workspaces, they face issues and decisions in balancing the safety, health and well-being of occupants and their legal obligations.

The most important legal considerations are to ensure compliance with all laws and regulations as they continue to evolve and that the division of responsibilities in applicable leases and other contracts are followed. For example, leases often split cleaning and maintenance obligations between the landlord and tenant. Each party should ensure that it performs its contractual obligations and cooperates with the other where services needed to be integrated or if a question exists as to who bears responsibility for a particular issue.

While a myriad of issues will come up in specific situations, the most common issues fall into five categories: (i) preparation of physical space; (ii) preparation of occupants; (iii) circulation plans for occupancy; (iv) procedures for social distancing; and (v) cleaning. It is important to note that these lists have been collected from various sources, it is not a definitive or exhaustive list, and local laws and regulations and practices will control.

- **Preparation of Physical Space.** Prior to allowing people to re-enter a building that has been unoccupied for an extended period of time, the building and all critical components should be inspected for safety and performance purposes. Real estate professionals should review any cleaning plans and perform any necessary inspections, including HVAC, fire/life safety systems and any other mechanicals systems to confirm they are safe for full occupancy once again. Whether air filters need to be replaced is an additional matter that may be appropriate to examine when preparing a building that may have been unattended longer than usual. In addition, the responsible party should ensure all inspections, remediation, repairs and communications are complete before the building and tenant workspaces are reopened. It is also important to determine the necessary amount and maintain a sufficient supply of cleaning materials and products for ongoing cleaning requirements.
- **Preparation of Building Occupants.** In addition to preparing the physical structure for re-entry, landlords and property managers should provide written communication to the tenants and their employees of any new guidelines and rules and regulations prior to re-opening. In addition, they should provide transparent and thorough communication regarding new health and safety measures that are being implemented (e.g., social distancing, building circulation, entry and exit, use of common areas).
- **Circulation Plans.** Controlling access and circulation throughout the building will be integral to maintaining health and safety. Property managers, owners and landlords should consider the following measures to ensure a building remains safe:

Entries and Exits

- ◆ Reduce the number of access points to the building so that people use monitored, protected entry points, except in the case of emergencies.
- ◆ Establish protocols for how people will enter and exit the building, while maintaining social distance (this may include marking off areas for people to wait in line that are sufficiently spaced out, establishing a directional traffic flow for walking around the facility or office that will eliminate people walking past one another).
- ◆ Install hand sanitizing stations at designated entrances to the building.
- ◆ Require all visitors to sign a release or other protections waiving liability, prior to granting access to your facility or providing services.
- ◆ Install signage regarding entrance and exit procedures and other protocols for movement throughout the building.
- ◆ Disable all touch screens or implement touchless registration via mobile phone.

Lobbies and Common Areas

- ◆ Install floor markings and Plexiglas or other screening devices to divide people for safe social distancing in areas of congregation.
- ◆ Space out high demand items to prevent congestion.
- ◆ Where possible, require that visitors and vendors be seen by appointment only in order to control the number of individuals present at the office at any time.
- ◆ Clearly communicate building protocols with signage and floor markings indicating directional flow throughout the building and safe social distances.
- ◆ Provide PPE and hand sanitizing stations in lobby, elevator lobby and other common areas (including common area bathrooms) as appropriate.

- ◆ Limit the number of occupants in a bathroom at any one time with clear signage providing direction.
- ◆ Limit the number of occupants in elevators at any one time with clear signage providing direction.
- ◆ Regularly clean and sanitize elevators, elevator lobbies and stairwells, including high touch points, and update cleaning protocols as necessary.
- ◆ As an alternate offer access by stairwells to building floors with clear direction regarding traffic flow in stairwells.
- ◆ Removing seating from lobbies, waiting rooms, conference rooms, breakrooms, or common areas to limit the number of people who can congregate.
- ◆ Temporarily close (or denying access to) portions of the building that cannot be safely reopened (e.g., locker rooms, cafeterias, gyms, shared work stations or equipment, etc.).

Shipping and Receiving Locations

- ◆ Create a schedule and plan for shipping and receiving to limit contact with occupants.
 - ◆ Require persons handling and delivering parcels to wear PPE and insure they know how to properly use and dispose of the PPE.
 - ◆ Sanitize the exterior of any packages and parcels.
- **Social Distancing Procedures.** “Social distancing” is now a part of everyday life for most Americans. Even in places where strict social distancing measures are not mandated, decreasing density in public spaces, actively managing personnel schedules and regulating office traffic patterns should be considered. These simple, lower cost adjustments could go a long way in minimizing risk:
 - ◆ Alternate employees’ schedules or stagger arrival and departure times.
 - ◆ Enable business teams to negotiate their own “in-office” versus remote-work schedules to promote social distancing.
 - ◆ Rearrange office logistics to provide for at least six-feet in distance when socializing, including reducing the capacity of common spaces if necessary.
 - ◆ Install panels, structures or other screening in higher-density work environments.
 - ◆ Reorganize desks or cubicles to put at least six feet of distance between employees.
 - ◆ Enforce stringent cleaning protocols for all shared spaces.
 - ◆ Discourage shared use of small rooms and hoteling.
 - ◆ Designate the direction of foot traffic in main circulation paths throughout work spaces.
 - ◆ Limit in-person meetings.
 - **Cleaning Practices.** Concerns over human contagion can be mitigated by making simple and effective changes, such as providing for touchless ingress/egress devices, promoting a “clean desk” policy and ensuring common areas are always clean. Other steps may include:
 - ◆ Establish and maintain enhanced cleaning and disinfecting practices throughout the building paying particular attention to common areas and common workspaces.
 - ◆ Maintain disinfectant supplies near or on each desk or work area, particularly those that are shared.
 - ◆ Consider increasing air flow and ventilation systems facility-wide, opening windows, and/or airing

out small shared spaces throughout the day, between shifts, and during low usage times to reduce the risks of airborne exposures to COVID-19 by employees working at the facility.

- ◆ Remove shared food and beverage items, and consider restocking with single-serve items.

Provide hand sanitizer, disinfectant wipes and other such products that will allow individuals to disinfect as necessary.

- ◆ Remove high-touch shared tools such as whiteboard markers, remote controls, breakroom supplies, etc.

The above are illustrative but not exhaustive of all of the facilities-related considerations that should be prior to re-opening. These factors will all be site and business specific, but considering and altering the physical environment to maximize safety is an important step for landlords, property managers and tenants to take before reopening for business.

XIII. Cybersecurity/Risk Register

COVID-19 risk registers are quick to stand up, easy to scale, and we consider them to be a useful weapon in a business' risk management arsenal. As [cybercrime related to COVID-19](#) continues to increase and vulnerabilities and threat vectors associated with work from home continue and multiply, these risk registers are becoming increasingly valuable.

What is a COVID-19 Risk Register?

Risk registers are simple tools by design. They can be housed in a word processing document, a spreadsheet, or through more sophisticated technologies. In each case, the core elements are as follows:

1. Document significant operational changes due to COVID-19
2. Identify risks created by these changes
3. Designate mitigation measures
4. Track implementation of mitigation measures

National security-oriented readers will recognize that these components closely track the OODA loop, the military action cycle consisting of Observe, Orient, Decide, Act. Successful organizations control their own fate by staying ahead of this curve.

As in warfare, COVID-19 business decisions are made against the backdrop of quickly-changing circumstances on the ground, and the COVID-19 risk register offers an essential framework for informing those choices. The risk register accomplishes this by keeping the spotlight on operational changes and then offering a structured method to identify and mitigate the derivative risks.

Crucially, a risk register is crowdsourced. Decision-makers at every level in a business should be empowered to submit descriptions of operating changes for inclusion in the risk register and, to the extent they are able, contribute to the other three components of the risk register as well. Businesses can accomplish this by maintaining group-editable spreadsheets, adding a link on internal portals, setting up dedicated email mailboxes, or through any number of other means.

Businesses then assign a keeper for the risk register. The keeper may be an individual or a working group, but in all cases, the keeper should have sufficient insight into the business' cybersecurity and business continuity initiatives to recognize the risks posed by any identified operating changes. The keeper completes items 2-4 on the risk register or, if already completed by the business component that submitted the operational

change, the keeper verifies the adequacy and propriety of what has been submitted. The keeper also adds any other items to the risk register that may be appropriate given the nature of the business and its existing risk management strategies. Some additional items to consider for inclusion are:

- Severity of risks
- Duration of risks
- Internal policy compliance status
- Responsibility for particular risks and mitigation tasks

Here is an example of what a simple COVID-19 risk register may look like:

| Operating Change | Derivative Risk(s) | Risk Severity | Risk Duration | Policy Reference | Mitigation Measure(s) | Mitigation Status | Point of Contact |
|--|--|---------------|--|---|---|-------------------|--------------------|
| Increased volume of online sales and limited call center availability has required reducing automated credit card purchase authentication measures | Heightened exposure to fraudulent purchases | High | Temporary – until call center capacity can be scaled up | Payment Card Policy Section X.X | Index shipping addresses against past purchases | Implemented | Dana Scully (IT) |
| | Possible violation of card issuer agreements | Medium | Temporary – until all authentication measures are re-enabled | National Procurement Policy Section X.X | Review issuer agreements for terms | In process | Fox Mulder (Legal) |

Why Implement a COVID-19 Risk Register?

Operational changes come with risks, particularly when undertaken on short notice. And if savvy risk management means understanding one’s risk posture at any given time, then disruptions like COVID-19 turn that objective into a moving target.

A risk register confronts this challenge head-on by providing an avenue for real time documentation of operational changes. After the fact, it may be immensely resource-consuming or even flat out impossible to reconstruct each improvisation or deviation from standard operating procedure by memory or observation. Things inevitably slip through the cracks, and that leaves you with an incomplete understanding of your business’ risk posture. Your colleagues’ ingenuity and adaptability become blind risk vectors.

Maintaining a risk register allows you to get ahead of the OODA loop on these changes. As internationally-inclined readers already know, Article 30 of the EU General Data Protection Regulation requires organizations to maintain a data processing register for related purposes. Much like logging data processing activities, tracking operational changes with a view toward derivative risks gives an organization a holistic picture of its overall risk posture, enables the business to coordinate its risk management efforts across departments, and puts it in a position to make decisions informed by up-to-date facts on the ground rather than relying exclusively on the assumptions built into its policy documentation and preexisting playbooks.

This operational focus gives risk registers a distinct advantage over traditional risk assessment tools, which frequently begin with an identified risk and then analyze the potential implications of that risk. In times of massive disruption, the challenge is spotting and managing a litany of new risks, not merely getting a handle on a set of risks that have already been identified.

Moreover, maintaining a risk register helps to document the context for business decisions made in the proverbial fog of war, where the best information at the time of a decision may be outdated by start-of-business the following day. It demonstrates that an organization is risk-aware, thoughtful, and deliberate about its approach to an unprecedented situation.

In short, you should maintain a COVID-19 risk register if you want the ability to explain to customers and regulators why you are confident that you'll emerge stronger from this crisis.

How Can a COVID-19 Risk Register Help Reopen the Business?

As C-suite conversations turn from resiliency to reopening, a COVID-19 risk register can help answer the most pressing questions. Most significantly, maintaining a risk register helps to understand how your day-to-day business operations are different today than they were in the Before Times. Which activities is your business equipped to perform, over what time horizons, and at what scale? What previously-unremarkable events might generate significant exposure for continuity of business given an organization's new risk profile?

Further, many of the changes necessitated by COVID-19 may reveal heretofore hidden efficiencies or demonstrate that longstanding fears were unfounded. Maintaining a COVID-19 risk register equips a business to build a strategy for phasing out operational changes—or deciding to keep them—all centered around risk-savvy analysis of the likely long-term implications of those choices.

Finally, keeping a COVID-19 risk register brings internal policy compliance into focus. Decisions made in triage mode may leave an organization in violation of its policy documentation, even when the cybersecurity or business continuity impact of those decisions are relatively minor. Assessing compliance status in a regimented fashion puts a business in a position to reopen with confidence about its degree of policy compliance—and to reduce litigation and regulatory risk in the process. And in cases where applicable policies no longer reflect the new reality, the information collected in the COVID-19 risk register will assist with reshaping policies in a sustainable manner. Going forward, policy documentation with pre-2020 update timestamps will be inherently suspect, and the risk register is an invaluable tool for identifying exactly which policy updates 2020 should bring.

Examples

While every organization will have made different operational adjustments, consider whether you're aware of the responses to the following questions and what you might learn by assessing their combined effects and any mitigation measures as part of your overall risk posture:

- How has error reporting and support monitoring changed?
 - ◆ What new requests are coming in?
 - ◆ How do they compare to typical requests?
- Do data loss prevention (DLP) processes function externally?
 - ◆ Do they require VPN connections?
 - ◆ What other limitations exist?
- How does encryption function for files open in remote access? What are the new risks imposed by remote editing in collaborative environments?
- Where is sensitive data being stored on local systems?
 - ◆ Is there a change in the type/amount of data collected?
 - ◆ Is there a change in storage location or data flows?

- Is your network infrastructure capable of accommodating the shift in resource demand? E.g., bandwidth bottlenecks may necessitate routing non-essential users through third country VPNs.
- If hiring new employees, what changes have been made to onboarding process? Are you still provisioning email accounts from same provider? Has browser-based email access recently been enabled, and what compensating protections have been implemented in those cases?
- If furloughing employees, how are systems and data being temporarily secured in the interim?
- If employees are terminated, how is access to confidential information disabled—including any data stored locally on employees' devices?
- With new groups of employees working remotely, have you defined new flags to identify suspicious behavior from each user group? E.g., failed login attempts, unusual IP addresses or geolocations, extensive or erratic file downloads or deletions, etc. These may be different from the identified flags for preexisting remote work groups.
- How has two factor authentication been rolled out to new groups of remote work employees?
- How is compliance training and incident response readiness occurring for new and existing employees?
- How are invoices approved and settled? Any changes to the process that introduce vulnerabilities?
- Do newly-adopted communications technologies present new threat vectors?
- Have anti-theft mechanisms been moved to remote settings?
 - ◆ What inventory control mechanisms exist, and have they accounted for irregular demand and inconsistent supply chain flow?
 - ◆ How is register cash reconciled, particularly if circumstances have dictated till-sharing among employees?

Armed with the answers to these questions and others like them, your business can determine how best to coordinate resiliency with vendors, project responsibility and competence to customers, mitigate regulatory and enforcement risk, and even anticipate market trends in the critical months to come.

The Bottom Line

A COVID-19 risk register provides businesses with a centralized database of operational changes implemented in the process of addressing the current pandemic. By focusing on operational changes and then determining risk vectors from there, a COVID-19 risk register puts businesses in a position to navigate rapidly-changing circumstances in an organized strategic fashion. In so doing, the COVID-19 risk register helps mitigate regulatory, litigation, business continuity, and cybersecurity threats, while offering reassurance to customers, employees, and other stakeholders.

Further discussion of reasons for and uses of risk registers can be found [here](#).

KEY TAKEAWAYS

Businesses are essential to returning America to a semi-normal state. However, decisions to reopen should be deliberately and thoughtfully made. Companies should be considering their options, consulting legal counsel, and creating plans for how they will reopen their doors, what they will be changing, how they will be ensuring safe operations (including how they will comply with their legal responsibilities and requirements), and promoting and providing safe and healthy environments.

As with all things COVID-19 related, we will continue to monitor the situation and provide additional updates and guidance as necessary.

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APPENDIX:

Specifics of State Reopening Orders

States with Shelter Orders that have Issued Reopening Plans

Alabama. Alabama's stay-at-home order expired on April 30. Alabama has implemented a new order that allows all retail establishments and entertainment venues to open but limits them to 50% capacity with social-distancing measures in place. Beaches, salons, spas, tattoo parlors, schools, and child care facilities are reopened but must practice social distancing, use facial coverings, and sanitize regularly.

See [Safer at Home Order](#).

Alaska. Alaska's stay-at-home order expired on April 24. Effective May 22 Alaska entered Phase three/four of its reopening. All restaurants, retail stores, personal care services, offices, swimming pools, gyms, bars, libraries, theaters, and religious gatherings are now open. However, businesses and individuals are being advised to implement "personal mitigation" strategies to control the spread. See [Reopening Plan](#).

Arizona. Effective June 29 Arizona reversed many of its previous reopening orders. Organized events of more than 50 people are prohibited unless approved by the city with adequate safety precautions. Bars, gyms, fitness clubs, movie theaters, and water parks must pause operations until at least July 27. Pools may not allow the gathering of more than 10 people. Schools may not begin in-person instruction until August 17.

See [Executive Order](#).

California. California's stay-at-home order is still in place, but the state entered Phase two of its reopening plan on May 8. Under Phase two guidelines, certain counties can allow dine-in restaurants to reopen, and retailers can reopen for curbside pickup and delivery. Offices and outdoor museums were also permitted to reopen as of May 12. See partial reopen order [here](#). California is moving ahead in their reopening plan on a county-by-county basis. See the county variance map [here](#).

Colorado. Colorado's stay-at-home order expired on April 26. Colorado has since reopened personal-care services, including hair and nail salons, under certain conditions. Offices were permitted to reopen but limited to 50% capacity and with social distancing measures in place. Nonetheless, the governor has encouraged workers to continue working from home, if possible. Restaurants were permitted to resume in-person dining on May 27 but limited to 50% occupancy; in addition, outdoor-only seating is encouraged. Retailers have been permitted to resume in-person shopping as long as social distancing can be maintained and capacity is limited to 50%. Effective July 1 Colorado reclosed all bars. Some cities, such as Denver, maintain more restrictive measures. See [Safer at Home and in the Vast, Great Outdoors](#), [Restaurant Guidance](#) and [Retail Guidance](#). See [Denver Guidance](#).

Connecticut. Connecticut's shelter-in-place order expired May 20. Effective June 17 Connecticut reopened most sectors of its economy, but requires social distancing and limits gatherings to 50% capacity. Bars and campgrounds remained closed. See [Reopening Guidance](#).

Delaware. Delaware delayed Phase three of its reopening which was set to begin on June 29. Instead, Delaware remains in Phase two which allows most businesses to open but requires gatherings do not exceed 60% capacity. Sports facilities/venues, indoor children's play areas, and water parks remain closed. See [Reopening Guidance](#).

District of Columbia. Washington, D.C. entered Phase two of its reopening on June 22. This order raised the limit on public gatherings from 10 to 50 people. Most non-essential businesses were allowed to reopen, however they were forced to remain below 50% capacity. Bars, nightclubs, saunas, and high-contact sports remain closed. See [Reopening Update](#).

Florida. Florida's stay-at-home order expired on May 4. On June 5 Florida entered Phase two of its coronavirus recovery plan. Restaurants, bars, and entertainment businesses such as movie theaters, concert venues etc., were allowed to reopen and keep gatherings below 50% capacity. Personal services including tattoo parlors, massages, etc. were also allowed to reopen given they complied with guidelines from the Department of Health. See [Phase two Reopening Order](#).

Georgia. Georgia's stay-at-home order expired on April 30. Gyms, fitness centers, bowling alleys, body art studios, barbers, cosmetologists, hair designers, nail care artists, estheticians, their respective schools and massage therapists reopened April 24. Restaurants, social clubs and movie theaters reopened April 27. The state has encouraged high-risk Georgians to stay at home. See [Reopen Order](#).

Hawaii. Hawaii's stay-at-home order expired May 31. As of June 10th "medium-risk businesses and operations," including indoor gathering places, indoor exercise facilities, museums, theaters, personal services, and dine-in restaurants reopened with physical distancing requirements. Large venues such as clubs remained closed. See [Reopening Status](#).

Idaho. Idaho's stay-at-home order expired on April 30. Idaho has since entered stage four of its reopening plan, with Idaho now 100% open for business. Individual actions to mitigate the spread are still highly encouraged. These actions include distancing, facial protection, and sanitization. See [Stage Four Guidelines](#).

Illinois. Illinois' stay-at-home order expired on May 30. The state has broken itself into four health regions. Each region has recently entered "Stage 4." Stage 4 allows nearly all businesses to reopen, but with set

capacity limits. See the Illinois “Regional Phase [Dashboard](#)” and [Stage Three/Four Guidelines](#).

Indiana. Indiana’s stay-at-home order expired on May 15. As of July 4th Indiana entered stage 4.5 of reopening. Dining room services resumed with 75% capacity. Most other businesses such as gyms, bars, nightclubs, entertainment sites, etc. reopened at 50% capacity. Stage 4.5 also meant schools could resume in the 2020-2021 academic year. See [Stage 4.5 Guidance](#).

Kansas. Kansas’ stay-at-home order expired on May 4. Kansas entered Phase three of its reopening plan on June 8. Under Phase three guidelines, salons, barbershops, tattoo parlors, gyms, casinos, bars, nightclubs, community pools, and summer camps are now open. Mass gatherings can now include up to forty-five (45) people. Governor Kelly recently announced Kansas will require public masks. See [Phase Three Reopening](#).

Kentucky. As of July 1, Kentucky has reopened many parts of its economy. Places of worship, offices, dine-in restaurants, movie theaters, fitness centers, museums, libraries, campgrounds, salons, barbershops, and tattoo parlors have reopened, but must maintain social distancing guidelines and limit gatherings to 50% capacity. See [Reopening Guidelines](#).

Louisiana. Louisiana’s stay-at-home order expired on April 30. The state entered Phase two of its reopening plan on June 5. Under Phase two, the following establishments may open but are limited to 50% capacity: restaurants, malls, gyms, salons, spas, tattoo parlors, barbershops, movie theaters, museums, and bars and breweries with food permits. Casinos reopened with a 50% capacity limit on May 18. Water parks, sports arenas, and amusement parks remain closed. See [Partial Reopen Order](#).

Maine. Maine’s stay-at-home order expired on May 31. The “gradual reopening plan” to prohibit gatherings of more than fifty (50) people, to enforce the quarantine of all people entering or returning to Maine for a period of 14 days, and to order special precautions for older Mainers and others at risk of COVID-19. It will also require that people of Maine wear cloth face coverings in public settings where physical distancing measures are difficult to maintain, and continue strict requirements for long-term care facilities. Stage 1 of the reopening plan allowed for limited expansion to personal services such as hair salons and pet grooming and some types of recreation, such as drive-in theaters, hunting, and golf. Stage 2, reopened restaurants, gyms, nail salons, and in-store retail. Stage 3, set for July 1, was postponed by the governor on June 22, which means indoor services at bars remain closed. See [Maine’s Reopening Plan](#).

Maryland. Maryland reopened certain businesses on May 15, including religious facilities and retail stores, manufacturing businesses, hair salons, and barbershops. Retail stores are limited to 50% capacity. Dine-in restaurants, gyms, theaters, malls, tattoo parlors, spas, and nail salons reopened as of June 19, but at 50% capacity. Gatherings of more than ten (10) people are also still prohibited. See [Partial Reopening Order](#).

Massachusetts. Massachusetts’ shelter-at-home order expired on May 18. The state entered Phase three of its four-phase reopening plan on July 6th. Most businesses have been permitted to reopen, with specific orders regarding capacity. Indoor spaces are limited to eight people per 1,000 square feet, but should not exceed 25 people; outdoor spaces are limited to 25% of the facility’s maximum permitted occupancy, with a maximum of 100 people in a single enclosed outdoor space. Boston chose to delay beginning Phase three another week, shifting the targeted date to July 13. See [Partial Reopening Order](#).

Michigan. Michigan’s stay-at-home order was in place until May 28. Under the “Michigan Safe Start” reopening plan, the state has been divided into eight (8) regions. As of July 1st, bars, restaurants, offices, and retail businesses reopened in all regions. Recently, the governor announced all indoor bars must close unless they were offering dining services similar to a restaurant. However, bars in the northern part of the state remain open. See [Reopening Plan Guidelines](#).

Minnesota. Minnesota’s stay-at-home order expired on May 17. The state allowed certain non-essential

businesses with “workers in non-customer-facing industrial and office-based businesses who cannot work from home,” to reopen. Retail businesses, restaurants, bars, pools, and personal services reopened with a 50% capacity limit in Phase three of Minnesota’s reopening which began June 10th. Gyms reopened at 25% capacity. Schools employ a hybrid mix of instruction. Gatherings of over 250 people remain prohibited.

See [Partial Reopen Order](#).

Mississippi. Mississippi’s stay-at-home order expired on April 27. The state then moved into the Governor’s “Safer at Home” order. The order, originally scheduled to expire on May 11, was extended to June 1. As of June 29, Mississippi allowed most businesses to reopen with 50% capacity limits. Indoor gatherings are limited to 50 people if social distancing can be maintained, 20 people if it cannot. Outdoor gatherings are limited to 100 people where social distancing can be maintained, 50 people where it cannot. See [Partial Reopen Order](#).

Missouri. Missouri’s stay-at-home order expired on May 3. On June 16th the state moved into Phase two of its reopening plan, allowing all businesses to reopen as long as social distancing guidelines, such as keeping 6-foot distance from other people are followed. Some businesses are required to take additional precautions to protect their employees and the public, such as occupancy limits at retail locations. See [Partial Reopen Order](#).

Montana. Montana’s stay-at-home order expired on April 27. Retail businesses were allowed to open with social-distancing measures in place. Restaurants, bars, and casinos were allowed to open with social distancing and capacity reductions. On May 7, schools were allowed to resume in-person instruction, pending decisions from local districts. Gyms, movie theaters, and museums reopened on May 15. Montana entered Phase two of its reopening plan on June 1. In Phase two, restaurants, bars, breweries, distilleries, casinos, indoor fitness classes, and pools increased their capacity from 50% to 75% capacity. Concert halls and places of assembly also reopened. The state recommends that gatherings of over 50 people be avoided. See [Announcement](#).

Nevada. Nevada’s stay-at-home order expired on May 15. Retail businesses, including cannabis dispensaries, can operate with curbside pickup, an option previously only open to restaurants. On May 26, Nevada entered Phase two of its recovery plan. Gathering limits were increased from 10 to 50 people. Gyms, bars, restaurants, and other retail establishments were allowed to reopen with 50% capacity. Adult entertainment centers, brothels, nightclubs, and live sporting venues remained closed. See [Phase Two Order](#).

New Hampshire. New Hampshire’s modified stay-at-home order, “Stay at Home 2.0,” remains in place. Golf courses, barbershops, hair salons, retail establishments, beaches, body art businesses, cosmetology services, gyms, spas, restaurants, and child care have reopened with varying capacity limits. See [Reopening Guidance](#).

New Jersey. New Jersey is currently in stage II of a multi-stage approach. Stage II allows for the reopening of “moderate risk activities.” Stage II began in New Jersey on June 15, and over the following weeks a number of different activities were reopened including outdoor dining, child care centers, pools, casinos, and NJ transit. See [Reopening Information](#).

New Mexico. New Mexico’s stay-at-home order expired on May 15. As of June 1 New Mexico reopened hotels and gyms at 50% capacity. Retail stores, personal services such as tattoo parlors, and houses of worship are limited to 25% capacity. Bars remain closed and mass gatherings remain prohibited. See [Partial Reopen Order](#).

North Carolina. On May 22, North Carolina’s stay-at-home order was transformed into a “Safer at Home recommendation” as the state moved to Phase two of its reopening plan. Retail businesses, dine-in restaurants, salons, barbershops, and pools can reopen but are limited to 50% capacity. Child care facilities, camps, and worship services are also permitted to reopen. Bars, nightclubs, gyms, and movie theaters remain closed. Recently, Governor Cooper announced North Carolina will remain in Phase two until at least July 17. See [Press Release](#).

Ohio. Ohio's stay-at-home order expired on May 29. Hospital, medical, dental, and veterinary services that don't require an overnight hospital stay were permitted to open on May 1; construction, distribution, manufacturing, and offices were permitted to open on May 4; and consumer, retail and service businesses were permitted to reopen on May 12. Mini golf, batting cages, bowling alleys, and sports training reopened May 26. Beginning on June 1, banquet halls can reopen but can serve no more than 300 people. The state has issued certain "Sector Specific Operating Requirements" for businesses to reopen, as part of the "Responsible Restart Ohio" plan. Beginning July 8th individuals in certain counties in Ohio would be required to wear masks. See [Sector Specific Operating Requirements](#) and [Press Release](#).

Oregon. Oregon opened a few businesses statewide on May 15. These places included grocery stores, pharmacies, banks, and credit unions. However, the majority of the reopening in Oregon is occurring on a county-by-county basis. Under Phase one, gatherings of no more than twenty-five (25) people are allowed. Counties must remain in Phase one for at least twenty-one (21) days before moving to Phase two. Counties entering Phase two of the reopening plan can permit bars, restaurants, personal care services (e.g., salons and spas), and gyms to reopen. See [Reopening Guidelines](#) and [County-by-County Status](#).

Pennsylvania. Pennsylvania's stay-at-home order expired on May 8. Golf courses, marinas, guided fishing trips, and privately-owned campgrounds reopened statewide May 1. State campgrounds reopened May 15. The entire State is now in the "green phase" of reopening. This means places of worship are now fully open. Restaurants and bars may serve customers inside if they follow specific provisions laid out by the State. Outdoor dining is acceptable everywhere. Personal service businesses such as hair salons and barbershops may reopen by appointment only. See the [Executive Order](#).

Rhode Island. Rhode Island's stay-at-home order expired on May 9. Beginning June 30 Rhode Island moved to Phase three of their reopening plan. This step allowed all indoor and outdoor venues to increase capacity to 66%. Bars may operate with seated service only. See [Phase Three Guidelines](#).

South Carolina. South Carolina's stay-at-home order was lifted on May 4. Retail stores previously deemed nonessential, including bookstores, department stores, furniture stores, apparel stores, sporting goods stores, craft stores, music stores, flea markets, and flower stores were allowed to reopen April 20. Restaurants and beaches [reopened](#) May 11. Gyms, spas, pools, barbershops, salons, and tattoo parlors [reopened](#) May 18. "Attraction facilities," like zoos museums, and amusement parks, [reopened](#) on May 22. On July 2 the Governor announced a delay in reopening nursing homes and assisted living facilities, due an increase in COVID-19 cases.

Tennessee. Tennessee's stay-at-home order expired on April 30. Restaurants in Tennessee were allowed to reopen on April 27, and retail stores followed on April 29. As of May 22nd bars, restaurants, nightclubs, and entertainment establishments have been open with certain health guidelines in place. On July 3rd the Mayor of Nashville returned the city to Phase two of their recovery efforts, closing bars and instituting capacity limits on several businesses. A [similar order](#) was recently put in place by the Mayor of Memphis. See [Reopening Guidelines](#).

Texas. Texas's stay-at-home order expired on April 30. The state entered Phase two of its reopening plan on May 18. Gyms, manufacturing businesses, offices, child care centers, spas, salons, and barbershops reopened on May 18. Bars, aquariums, and rodeo events reopened on May 22. Zoos reopened on May 29, and camps, youth sports, and professional sports (without spectators) reopened on May 31. However, on June 29 the Governor announced new restrictions given the rising COVID-19 confirmed case counts statewide. Bars were reclosed and restaurants reduced to 50% capacity. See [All Guidelines](#).

Vermont. Vermont's stay-at-home order expired on May 15. Outdoor and construction work, and manufacturing and distribution are permitted to operate but may have no more than ten (10) people in any location. Curbside pickup and delivery services, outdoor retail and libraries with curbside pickup are permitted.

Farmers markets may reopen. Dine-in restaurants and bars were permitted to open for outdoor seating on May 22. Hair salons and barbershops reopened by appointment only on May 29. Businesses may require customers and clients to wear masks. On June 19th Vermont expanded capacity limits to 50% for most businesses. See [Partial Reopen Order](#) and [Press Release](#).

Virginia. Virginia's stay-at-home order expired on June 10. Most of the state entered Phase three on July 1. Phase three allowed occupancy limits to expand to 250 people, gyms were allowed to open at 75% capacity, and most other businesses were allowed to increase to 50% capacity. Indoor congregating at bars remains prohibited, and summer camps remain closed. See [Phase Three Guidelines](#).

Washington. Washington's stay-at-home order expired on May 31. The state began a phased reopening of closed businesses on May 5. Businesses in Phase one included certain construction, landscaping, automobile sales, car washes and curbside pickup retail. Outdoor, recreational activities such as hunting, fishing, boating, hiking and golf were permitted under Phase one. Counties can move to Phase two if they have a population of less than 75,000 and have not had a new COVID-19 case in the last three (3) weeks. Phase two includes reopening dine-in restaurants (with a 50% capacity limit), hair and nail salons, retail stores, and offices. As of July 10th the State of Washington remains divided with some counties remaining at Phase three, while some have progressed to Phase three. No counties have reached Phase four. On June 26th Governor Inslee issues a mandatory mask requirement statewide. See [County-by-County Breakdown](#).

West Virginia. West Virginia's stay-at-home order expired on May 4, instead moving to a "Safer at Home" order with a strong recommendation to stay home. The state's reopening process began on April 27, with a phased reopening. Barbershops, hair and nail salons, gyms, indoor dining at restaurants, retail stores, malls, state parks (for West Virginia residents only), bars (with a 50% capacity limit), museums, and zoos have reopened. Spas, swimming pools, and indoor amusement businesses (e.g., bowling alleys and roller rinks) reopened May 30. Casinos and movie theaters were permitted to reopen on June 5, and low-contact youth outdoor sports resumed June 8. See [Partial Reopen Plan](#).

Wisconsin. Wisconsin's [safer-at-home order](#) was set to expire on May 26; however, the Wisconsin Supreme Court [invalidated](#) the order on May 13. All businesses may operate as usual due to the Supreme Court's order. In the interim, certain counties have issued their own stay-at-home orders. See [Wisconsin Supreme Court Order Summary](#).

Guidelines for States without Shelter Orders

Arkansas. On May 4, Arkansas began relaxing the limitations on business operations. Now all businesses may operate with some limitations on capacity. On June 15 Arkansas moved to Phase two which allowed all restaurants and businesses to operate at 2/3 capacity. Watch the announcement [here](#).

Iowa. Iowa has relaxed its limitations on business operations. As of June 10 Iowa reopened nearly all businesses with social distancing protocols in place. See [Reopen Order](#).

Nebraska. As of July 6, every county in Nebraska proceeded to Phase three of reopening. Contact sports and elective surgeries were allowed to resume. Restaurants could open at 100% capacity (with certain social distancing requirements). Gyms and personal services were allowed to open at 75% capacity. See [Reopen Order](#).

North Dakota. As of May 1, all businesses, including bars and personal-care services, are allowed to reopen with restrictions in place. The "North Dakota Smart Restart" protocols include operating standards for all industries, as well as specific guidance for several high-contact business sectors that were closed. See [Partial Reopen Order](#) and ["Smart Restart."](#)

Oklahoma. Personal-care services began operating on April 24, by appointment only. Gyms, restaurants, and movie theaters began operating on May 1, with social distancing and sanitation guidelines. Phase two of the plan began on May 15 and allowed bars to reopen, and weddings and funerals with no more than ten (10) people to be held. The businesses are required to follow social distancing and sanitation guidelines released by the state's Department of Commerce. Phase three of the plan began on June 1, with summer camps reopening. See [Partial Reopen Order](#) and [Reopening Plan](#).

Utah. Though Utah never had a statewide stay-at-home order, schools and restaurants were closed. Most of the state moved from a "moderate risk" protocol to a "low risk" protocol on May 16. Under the new protocol, all businesses, pools, and dine-in restaurants are permitted to open. Groups of fifty (50) or fewer people are also permitted. The state anticipates reopening schools for the 2020-2021 academic year. The reopenings remain on a county-by-county basis. See [Reopen Announcement](#) and [County-by-County Guidance](#).

Wyoming. Restaurants, bars, gyms, movie theaters, performance venues, child care centers, salons, barbershops, tattoo parlors, and spas were permitted to [reopen](#) on May 13 with social distancing requirements. However, gatherings of more than fifty (50) people are prohibited. See [Executive Order](#).

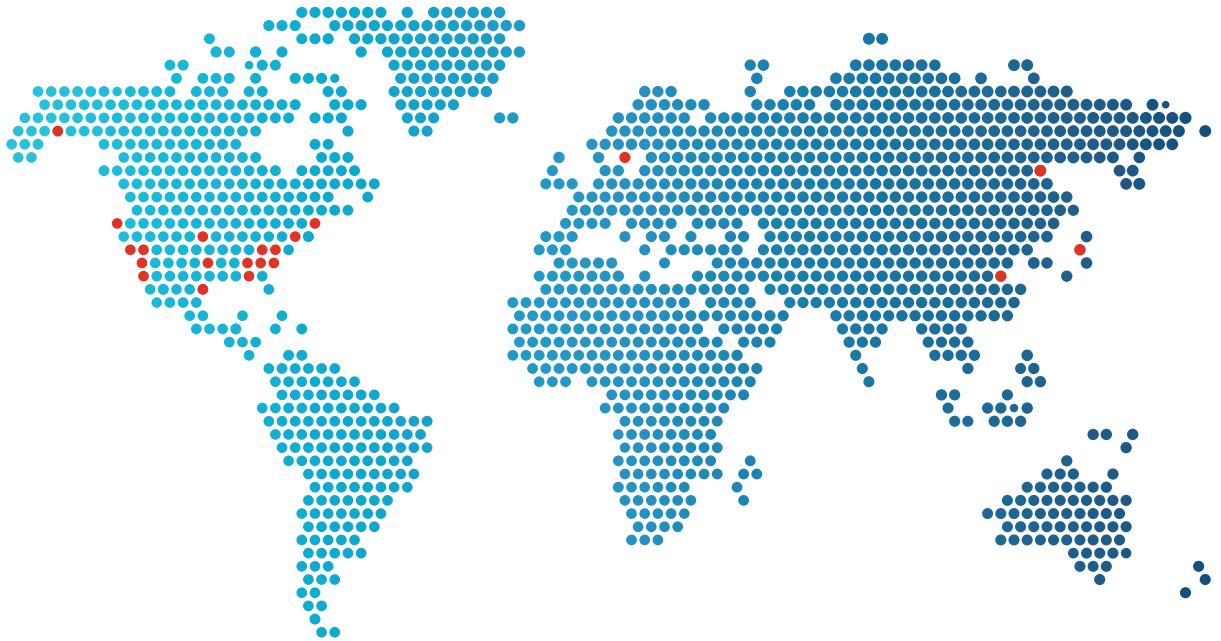
Mask Requirements

To date, all U.S. states have at least recommended that individuals wear cloth masks or face coverings (in line with the CDC's recommendations) when in certain public spaces, especially when in situations where six feet of social distance cannot be maintained. Many states, cities, and counties go much further and have mandated mask usage. Many jurisdictions also require employers to provide masks at no charge to their employees who are in public facing positions or who cannot socially distance from other employees.

[This chart](#) (which we will update regularly) outlines the state-level mask requirements as of July 15, 2020.

Note, the chart does not address local-level recommendations and/or requirements, which are too numerous to capture in a single chart. Employers and all other public-facing businesses must be vigilant to ensure compliance with both their state and local-level requirements and obligations.

ANCHORAGE
ATLANTA
AUGUSTA
BEIJING
CHARLOTTE
DALLAS
DENVER
HOUSTON
LOS ANGELES
NEW YORK
RALEIGH
SAN DIEGO
SAN FRANCISCO
SEATTLE
SHANGHAI
SILICON VALLEY
STOCKHOLM
TOKYO
WALNUT CREEK
WASHINGTON D.C.
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