



***THE NEW "NORMAL": NAVIGATING RE-OPENING OF YOUR BUSINESS (INCLUDING HEALTHCARE PRACTICES) DURING THE COVID-19 PANDEMIC***

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# PERSONAL RESPONSIBILITY



- Wear masks.
- Clean and disinfect the things you touch.
- Wash your hands often with soap and water for at least 20 seconds. Use hand sanitizer with at least 60% alcohol if soap and water are not available.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Cover your mouth and nose with a tissue when you cough or sneeze or use the inside of your elbow. Throw used tissues in the trash and immediately wash hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer containing at least 60% alcohol. Learn more about coughing and sneezing etiquette on the CDC website.
- Clean AND disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, and doorknobs. Dirty surfaces can be cleaned with soap and water prior to disinfection. To disinfect, use products that meet EPA's criteria for use against SARS-CoV-2, the cause of COVID-19, and are appropriate for the surface.
- Avoid using other employees' phones, desks, offices, or other work tools and equipment, when possible. If necessary, clean and disinfect them before and after use.
- Practice social distancing by avoiding large gatherings and maintaining distance (approximately 6 feet or 2 meters) from others when possible.



# WORKPLACE RESPONSIBILITY

- State specific requirements: [Utah example](#)
- Include a mitigation plan for risk of resurgence
- [Protective measures for the most vulnerable](#)
- Provide reminders: Place posters that encourage [staying home when sick](#), [cough and sneeze etiquette](#), and [hand hygiene](#) at the entrance to your workplace and in other workplace areas where they are likely to be seen.

# DEVELOPING A PLAN TO REOPEN

- Identify a COVID-19 workplace coordinator.
- Follow any CDC and OSHA guidelines for the workplace.
- [Update leave policies.](#)
- Consider screening.
- Create or update an emergency communication and response plan.
- Continue remote work where possible.
- Consider PPE and other precautions.
- Minimize face-to-face interactions.
- Eliminate unnecessary travel, meetings, conferences, workshops, and training sessions.



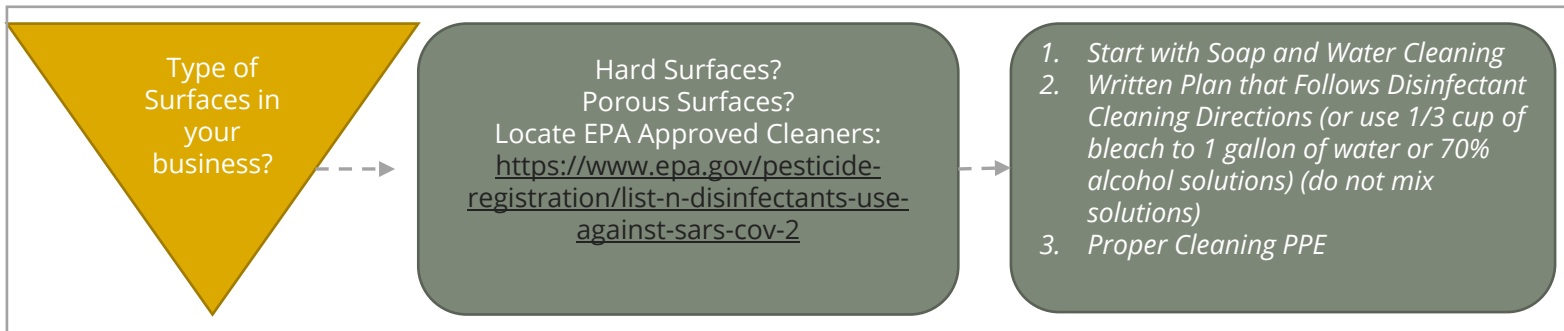
# WORKPLACE MITIGATION STRATEGIES

(BY LEVEL OF COVID-19 PRESENCE IN COMMUNITY OR WORKPLACE)

None to Minimal	Minimal to Moderate	Substantial
<ul style="list-style-type: none"> <li>• Know where to find local information on COVID-19 and local trends of COVID-19 cases.</li> <li>• Know the signs and symptoms of COVID-19 and what to do if staff become symptomatic at the worksite.</li> <li>• Review, update, or develop workplace plans to include:               <ul style="list-style-type: none"> <li>» Liberal leave and telework policies</li> <li>» Consider 7-day leave policies for people with COVID-19 symptoms</li> <li>» Consider alternate team approaches for work schedules.</li> </ul> </li> <li>• Encourage employees to stay home and notify workplace administrators when sick (workplaces should provide non-punitive sick leave options to allow staff to stay home when ill).</li> <li>• Encourage personal protective measures among staff (e.g., stay home when sick, handwashing, respiratory etiquette).</li> <li>• Clean and disinfect frequently touched surfaces daily.</li> <li>• Ensure hand hygiene supplies are readily available in building.</li> </ul>	<ul style="list-style-type: none"> <li>• Encourage staff to telework (when feasible), particularly individuals at increased risk of severe illness.</li> <li>• Implement social distancing measures:               <ul style="list-style-type: none"> <li>» Increasing physical space between workers at the worksite</li> <li>» Staggering work schedules</li> <li>» Decreasing social contacts in the workplace (e.g., limit in-person meetings, meeting for lunch in a break room, etc.)</li> </ul> </li> <li>• Limit large work-related gatherings (e.g., staff meetings, after-work functions).</li> <li>• Limit non-essential work travel.</li> <li>• Consider regular health checks (e.g., temperature and respiratory symptom screening) of staff and visitors entering buildings (if feasible).</li> </ul>	<ul style="list-style-type: none"> <li>• Implement extended telework arrangements (when feasible).</li> <li>• Ensure flexible leave policies for staff who need to stay home due to school/childcare dismissals.</li> <li>• Cancel non-essential work travel.</li> <li>• Cancel work-sponsored conferences, tradeshows, etc.</li> </ul>



# REOPENING CONSIDERATIONS



## High Traffic Areas – Clean At Each Use

- doorknobs
- light switches
- countertops
- handles
- desks
- phones
- keyboards
- toilets
- faucets and sinks
- gas pump handles
- touch screens
- ATMs
- shopping carts
- POS keypads
- iPads or other screens used for communication

## Other Areas

Are there items you can remove from use?

### Outdoor areas:

- No need to disinfect regular spaces such as sidewalks
- Hard surfaces such as tables, chairs, or other improvements should be evaluated and cleaned as with High Traffic Areas

### Areas used by children:

- Do you have surfaces that are used by children, or things that children will put in their mouths?
- only use soap and water

### Medium Traffic areas:

- spaced out cleaning every 30 minutes – trash cans – light switches
- Mandatory hand washing before or after use?



# SAFE WORKPLACES FOR EMPLOYEES

## Stay Up To Date

- [Holland & Hart Coronavirus Resource Site](#)
- [Whitehouse Guidelines for Reopening](#)
- State Guidelines for Reopening: [Utah Example](#)
- Local Health Department Resources: County based
- [CDC Resources](#)
- [OSHA Resources](#)
- [EEOC Resources](#)



# SAFE WORKPLACES FOR EMPLOYEES

## If an employee is suspected to have COVID-19:

- See [Holland & Hart COVID-19 Resource Site](#) – Workplace Safety Tab
- Refer to the [CDC guidance](#) on cleaning and disinfecting areas of potential COVID-19 exposure.
- Investigate
- Notify
- Confidentiality
- Modify staffing
- Partner with health department
- Helpful links: CDC [risk assessment](#) and general [CDC guidance](#).
- Require a negative COVID-19 test result before return to work.

# NAVIGATING EMPLOYEE RIGHTS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

## **ADA (42 U.S.C. § 12101 et seq.)**

- [Considerations for Employers During the “Re-Opening” Phase – Holland & Hart Client Alert](#)
- Screening
- Reasonable Accommodations
- Confidentiality
- Banning from the workplace
- Negative test requirements

# NAVIGATING EMPLOYEE RIGHTS UNDER FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

## OSHA (29 USC §651 et seq.)

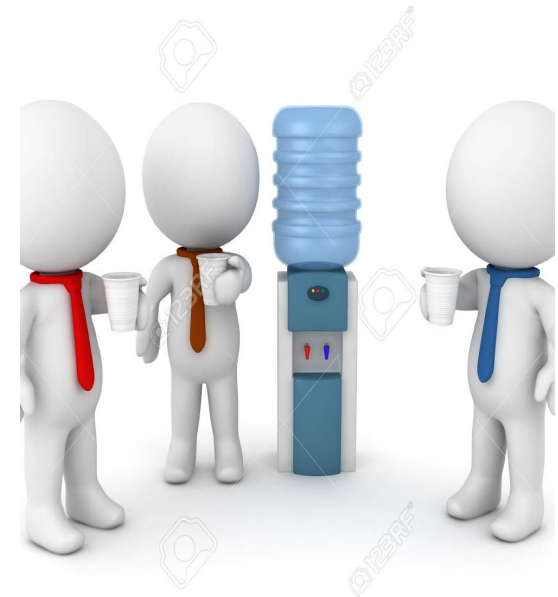
- General duties clause - section 5(a)
- “[A]s a general matter, there is no right afforded by [OSHA] which would entitle employees to walk off the job because of potential unsafe conditions at the workplace.” (See 29 CFR §1977.12(b)(1)).
- Employer right to correct. Employee right of inspection – section 8(f) of OSHA.
- Be aware of discrimination. (See 29 CFR 1977.12(b)(2)).
- The mere existence of COVID-19 is not sufficient.
- Remember vulnerable populations.
- OSHA workplace evaluation tool:  
<https://www.osha.gov/Publications/OSHA3990.pdf>
- Always check your state’s local OSHA laws and guidance.



# EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (NLRA)

## NLRA (29 USC § 151 et seq.)

- Protects employees' rights to engage in:
  - Concerted activity
  - Complain about working conditions
  - Improve working conditions
- Concerted protected activity during the COVID-19 pandemic
  - Two or more employees discussing safety concerns, with each other, or speaking with their employer about improving workplace conditions.
  - An employer should proceed with caution in evaluating potential consequences related to an employee or employees' refusal to work at this time.



# OTHER LEGAL ISSUES TO CONSIDER

- Families First Coronavirus Response Act (FFCRA), including the Emergency Paid Sick Leave Act (EPSLA) and Extended Family Medical Leave Expansion Act (EFMLEA).
- Whether or not the FFCRA applies, consider providing flexible sick leave policies or relaxing your leave policies. Resource:  
<https://www.coronavirus.hollandhart.com/protecting-your-workforce>
- Reintegrating or rehiring employees without discriminating against a protected class (i.e., age, pregnancy, disability).

# INNOVATION



- Innovating business purpose
- Pivoting and using existing resources
- Connecting with workers
- Community connections

# RESUMING CARE: CONSIDERATIONS FOR HEALTHCARE PROVIDERS

- There are many considerations for healthcare providers. Many of the topics discussed today are included in a client alert published Monday on our website. Please refer to this client alert for additional information:

[Considerations for Resuming Non-Urgent and Elective Medical Treatment](#) – *Holland & Hart Client Alert*



# RESUMING CARE: STATE AND LOCAL THRESHOLD ISSUES

- **Comply with your state and county orders.**
  - Only resume care as allowed by such orders and continue to monitor such orders throughout the pandemic.
  - States and most counties have specific orders related to resuming non-urgent patient care, including specific requirements/protocols not included in national guidance.
- **Coordinate with public health officials and other care providers.**
  - Ensure there are adequate workforce and resources across the various phases of care that may be impacted by resumed operations (e.g., pharmacy, imaging, pathology, post-acute care).
- **Be prepared to decrease or stop non-essential medical treatment in the event of a COVID-19 surge.**

# RESUMING CARE: PATIENT MANAGEMENT

- **Prioritize the provision of care based on medical necessity.**
  - High-complexity disease management and surgical/procedural care that has been deferred should generally be prioritized over preventative services.
  - For surgeries, start with patients who have lower co-morbidities and surgical risks, and with procedures that are lower risk for airborne transmission or unintended hospital admissions. Develop policies on how treatment will be prioritized for transparent and consistent application.
- **Utilize telehealth when appropriate.**
- **Implement non-COVID care zones.**
- **Screen patients for COVID-19 risk factors prior to in-person appointments.**
  - [CDC Patient Screening Guide](#)
- **Laboratory Testing prior to surgery/procedures or high-risk in-person appointments.**
- **Prioritize the triage of COVID-19 symptomatic patients.**
- **Train staff on communicating with patients about COVID-19 and related safety protocols.**
- **Adjust the standard of care, if necessary.**
  - Stay up to date on CDC and community recommendations to ensure care is consistent with applicable standards.
- **Consider updating patient consent forms.**
  - For some medical treatment, COVID-19 may pose a risk that should be disclosed to the patient in advance of medical care.

# RESUMING CARE: INFECTION CONTROL

- **Modify premises to optimize social distancing.**
  - Where possible, modify reception and patient waiting areas, entrances and exits, and traffic patterns to maximize distancing afforded to patients and staff.
- **Maintain low patient volumes**
  - Modify scheduling patterns to (1) reduce the number of patients present in the facility at any one time to maximize social distancing and (2) leave enough time between patients to thoroughly sanitize rooms and equipment.
- **Prohibit visitors, where appropriate.**
  - Unless necessary for some aspect of patient care, non-essential visitors should be restricted.
- **Implement robust cleaning and disinfecting protocols.**
  - A detailed review may identify areas for improvement. Confirm that products being used are effective against COVID-19, as listed on the [EPA Product Guide](#).
- **Monitor staff and patients for adherence to respiratory and hand hygiene etiquette.**
  - Post visual alerts to remind individuals how to practice appropriate source control measures, and provide supplies for compliance, including alcohol-based hand rubs and facemasks.
  - CDC and Joint Commission have [posters](#) that can be printed for your use.
- **Install physical barriers at reception areas.** Limit close contact between triage staff and potentially infectious patients.
- **For more detailed infection control recommendations,** see the [CDC guidelines](#).

# RESUMING CARE: PERSONAL PROTECTIVE EQUIPMENT

- **Require staff to wear facemasks at all times.**
  - Healthcare providers and staff should wear facemasks at all times. Procedures that have higher risks of aerosol transmission should be done with precautions appropriate to the risk of such transmission, such as face shields or N95 respirators.
- **Require patients to wear a cloth face covering or facemask.**
  - With limited exceptions (under 2 years of age, patients with trouble breathing or incapacitated patients), require patients to wear a facemask, or a cloth face covering, for the entire duration they are in the facility.
- **Retrain staff on appropriate selection and use of PPE.**
  - Ensure staff are trained in and have practiced the appropriate use of PPE, as well as measures to prevent contamination of clothing, skin, and the environment during removal of such equipment.
- **Conserve PPE.**
  - Due to ongoing supply issues with PPE, facilities should make every effort to conserve PPE consistent with recommendations by [CDC on PPE supply optimization](#).

# RESUMING CARE: HEALTHCARE AND FACILITY STAFF

- **Screen staff daily for symptoms or potential exposure.**
  - Staff should be screened daily for symptoms or high-risk activities or contact that could jeopardize the safety of co-workers and patients. Use the [CDC's risk assessment guide](#) to assist with assessing risk and work restriction decisions for healthcare providers with potential COVID-19 exposure. Employers can implement employee screening protocols consistent with the [guidance published by the EEOC](#).
- **Prioritize testing for healthcare providers.**
  - Staff with suspected COVID-19 should be [prioritized for testing](#) to ensure timely disease mitigation and minimize unnecessary restrictions. However, it is important to remain mindful of HIPAA issues regarding disclosures to employers (see [Holland and Hart's guidance on this topic](#)).
- **Implement return to work requirements.**
  - Utilize the [CDC's return to work criteria](#) for confirmed or suspected COVID-19 illness, which may include testing or work exclusion requirements.
- **Implement or modify existing sick leave policies.**
  - Ensure sick leave policies are flexible and non-punitive for staff to ensure compliance with public health guidance related to self-isolation.
- **Reduce staff volumes in the facility.**
  - Reducing staff volumes will also minimize interpersonal contact and optimize social distancing measures within the facility. Evaluate whether staff may be able to work from home or conduct telehealth visits in non-patient care areas, or consider reduced schedules, if appropriate.
- **Identify high-risk versus low-risk staff.**
  - Accommodate high-risk staff, where possible, and assign them to low-risk tasks (e.g. non patient-facing tasks).
- **Other considerations for employers.**
  - See Holland and Hart's [guidance for employers during the re-opening phase](#).

# RESUMING CARE: FACILITY MANAGEMENT

- **Develop a plan for staffing shortages.**
  - Be prepared for illness- or exposure-related staffing shortages and have a plan in place for responding to such situations. This may include considering whether it may be appropriate to waive certain return to work criteria. Consider the [CDC's recommendations for mitigating staff shortages](#).
- **Ensure adequate equipment, medications, and supplies for operations.**
  - Sufficient stock of PPE and other supplies should not be to the detriment of those healthcare providers responding to and treating COVID-19 patients or impact the community's ability to respond to a potential surge.
- **Adjust insurance coverages, if necessary.**
- **Update billing and coding procedures.**
  - Make sure staff trained on new codes for COVID-19-related treatment and telehealth.
- **Review existing contracts.**
  - Review and possibly modify existing employment or contractor agreements to address things such as adjusted hours and compensation.
  - Evaluate vendor/supplier contracts to ensure they are implementing appropriate COVID-19 safeguards in the performance of their services.
- **Maintain documentation related to COVID-19 relief funds.**
  - Facilities that have accepted COVID-19 stimulus funds must comply with Department of Health and Human Services terms and conditions. Therefore, it is important to maintain documentation related to the allocation of those funds to support claims, particularly in the event of an audit.
- **Monitor status of federal and local regulatory waivers.**
  - Throughout the COVID-19 pandemic, regulators have modified or waived regulations to allow healthcare providers to respond to immediate patient needs. Many of these waivers are effective only during the public health emergency, while others may sunset at earlier or later times. Before relying on a regulatory waiver, confirm whether that waiver is still in effect.

# RESUMING CARE: INDUSTRY-SPECIFIC GUIDANCE

- [Ambulatory Surgery Center Association: Statement on Resuming Elective Surgery as the COVID-19 Pandemic Recedes](#)
- [American College of Surgeons: Roadmap for Resuming Elective Surgery after COVID-19 Pandemic](#)
- [American Society of Plastic Surgeons: Considerations for the Resumption of Elective Surgery and Visits](#)
- [American Dental Association: Return to Work Interim Guidance Toolkit](#)



# QUESTIONS?

[Holland & Hart COVID-19 Resources for the Healthcare Industry](#): Alerts, Webinar Recordings, National and State Resources

# THANK YOU



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