

Diversity & Inclusion: Coronavirus Edition

I have to go to the office now?! Covering your and your employees' legal obligations, rights,
risks (and face)

May 20, 2020

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May 20, 2020

6:00 pm – 7:00 pm

Timed Agenda

1. Introduction	8 Minutes
2. Coronavirus facts & figures	7 Minutes
3. Q & A	5 Minutes
3. Immigration law issues	15 Minutes
5. Q & A	5 Minutes
4. Employment law issues	15 Minutes
7. Q & A	5 Minutes

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Biographies

Mary Diaz is a third year law student at Fordham University School of Law. She obtained her Bachelor of Arts in Government from Wesleyan University. At Fordham Law she is a member of the *Fordham Environmental Law Review*, Fordham Law Moot Court, and is a Stein Scholar. Prior to law school, Mary spent three years as a paralegal at the U.S. Attorney's Office for the Southern District of New York in the Securities and Commodities Fraud Unit. During her 1L summer she worked on bankruptcy matters at the Department of Justice within the Office of the United States Trustee, and was an Honors Legal Intern with the U.S. Securities and Exchange Commission during her 2L summer. Mary hopes to pursue a career in commercial litigation and securities litigation/white collar investigations. She is a new member of the Inn and is looking forward to meeting everyone and collaborating on programs.

Eugene Frenkel is an attorney in the public sector, protecting consumers and markets from fraud. He has helped negotiate settlements in the hundreds of millions with companies and eliminated many businesses with harmful and unfair practices, including several that attempted to take advantage of the health crisis. In his downtime, Eugene serves as co-program chair for the Inn and as co-chair of the Young Lawyers Section at NYCLA. He enjoys reading fantasy books and is *always* ready to talk about star wars or marvel tv shows or movies.

Cyril Heron is a new member of the Inn and an Excelsior Fellow at the New York Department of Financial Services. His work includes investigating banking, insurance, and other financial entities for violations of New York law, and investigating potential instances of insurance fraud. Outside of work, Cyril enjoys writing articles on topics, both legal and non-legal; cheering for Everton in the Premier League; and, swimming competitively with his swim team.

Sora Kim is a senior associate at PwC in their New York office. She advises clients on the tax considerations associated with domestic and cross-border structuring for mergers, acquisitions, international deals, and various complex transactions. Prior to being a tax attorney, Ms. Kim was a legal aid attorney at Community Legal Aid. During her free time, she is an active board member for Guardian Community Trust.

Ms. Kim received her J.D. from Suffolk University Law School where she was Editor-in-Chief of the Journal of High Technology Law. She received her LL.M. in Taxation from Georgetown University Law Center and B.A. from George Washington University. She is admitted to practice in New York, Massachusetts, District of Columbia, and the U.S. Tax Court.

Susan L. Meekins is a solo practitioner whose practice is focused on commercial litigation and arbitration in New York State and federal courts, arbitration, and employment law matters. Ms. Meekins is a graduate of New York University School of Law (J.D. 1983), where she served as Articles Editor of the Review of Law & Social Change, and the University of Chicago (A.B. 1980 with Honors). Before she began practicing independently, Ms. Meekins was a member and co-founder of a commercial litigation boutique (Molton & Meekins) and a member of the litigation departments of the firms now known as Olshan Frome Wolosky LLP and Herrick, Feinstein LLP.

Justice Saliann Scarpulla is a graduate of Boston University and Brooklyn Law School, cum laude. After law school, Justice Scarpulla clerked for the Hon. Alvin F. Klein in Supreme Court, New York County. When her clerkship concluded, Justice Scarpulla joined Proskauer Rose Goetz & Mendelsohn as a litigation associate.

Justice Scarpulla later moved to the Federal Deposit Insurance Corporation as Senior Counsel in the New York Legal Services Office. From the FDIC Justice Scarpulla became Senior Vice President and Bank Counsel to Hudson United Bank.

Justice Scarpulla returned to the New York State court system in 1999, as Principal Court Attorney to the Hon. Eileen Bransten. She was then elected to the New York City Civil Court in 2001, appointed to the New York State Supreme Court in 2009, and elected to the Supreme Court in 2012. Since February 2014, Justice Scarpulla has been sitting in the Supreme Court, New York County Commercial Division. In 2019 Justice Scarpulla was also appointed to handle all international commercial arbitration matters pending in the New York State Supreme Court.

Justice Scarpulla is a contributing author to the Commercial Litigation in New York State Courts treatise and has authored several articles on technology and commercial litigation. Justice Scarpulla is a frequent lecturer for, among others, the Association of the Bar of the City of New York, the New York County Lawyers Association, the New York State Bar Association, the American Bar Association, the Practising Law Institute, and the New York State Judicial Institute. In 2017 Justice Scarpulla was honored as one of Three Wise Women by the National Association of Italian American Women and was awarded the Louis J. Capozzoli Gavel Award by the New York County Lawyers Association.

Justice Scarpulla is active in several New York City and statewide bar associations and is a Business Court Representative to the American Bar Association. She is a member of New York's Commercial Division Advisory Council, and the Co-Chair of the Council's Subcommittee on Use of Technology in Commercial Division Cases. Justice Scarpulla also sits on the Chief Judge's Alternative Dispute Resolution Advisory Committee, and, in October 2019 Chief Judge DiFiore appointed Justice Scarpulla to the New York State Continuing Legal Education Board. Justice Scarpulla is a Board member and Co-President of Judges and Lawyers Breast Cancer Alert (JALBCA), and has been a trustee of the Camp Mason YMCA.

Tsui H. Yee is the founder of Law Offices of Tsui H. Yee P.C. and has been practicing immigration law exclusively since 1999. Her accomplishments for clients include the following: obtaining various work visas on behalf of foreign nationals so that they can work in the United States; securing lawful permanent residence based on employment and family sponsorship; and defending clients in removal (deportation) proceedings.

Tsui was selected to New York Metro Super Lawyers in 2016, 2017, 2018 and 2019, and has a 10/10 rating as a Top Attorney on Avvo. An active member of the New York City Bar Association, the Asian American Bar Association of New York, and the American Immigration Lawyers Association, Tsui frequently organizes and presents at continuing legal education seminars regarding immigration and nationality law, professional development, and topics of interest to solo and small firm practitioners. She received a Juris Doctor from the University of California at Los Angeles School of Law and a Bachelor of Arts degree in Political Science from Tufts University. Tsui is admitted to practice law in the State of New York; the Second Circuit Court of Appeals; and the U.S. District Courts for the Southern and Eastern Districts of New York.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOWSHIN ALI, SONIA MONIR, RON
CERRETA, UNLOCAL, INC., and CATHOLIC
MIGRATION SERVICES,

Plaintiffs,

v.

WILLIAM BARR, Attorney General of the United
States; and JAMES MCHENRY, Director of the
Executive Office of Immigration Review (EOIR),

Defendants.

COMPLAINT

20 Civ. _____

INTRODUCTION

1. In the face of an unprecedented public health crisis, Defendants are forcing Plaintiffs to make an impossible choice - to risk their health to meet filing deadlines that the Immigration Courts have left in place despite a stay-at-home order issued by New York State, or to risk deportation of themselves or their clients by complying with said order. Globally, more than 170,000 people have died from the COVID-19 pandemic to date, with a quarter of these deaths occurring in the United States. In New York City alone, over 146,000 people have been infected and over 11,000 people have died.¹ And yet, in the middle of this global pandemic, Attorney General William Barr and Director James McHenry continue to require litigants and their representative to gather and prepare hundreds of pages for submission to the Immigration Court and meet strict filing deadlines, heedlessly placing people at risk contracting or spreading the COVID-19 infection.

¹ Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering (CSSE), JOHNS HOPKINS UNIVERSITY (JHU), *available at* <https://coronavirus.jhu.edu/map.html>.

2. This action is brought by the following Plaintiff group: two low-income immigrants with serious underlying health conditions (one of whom may have already contracted COVID-19) who are unable to meet Immigration Court deadlines without unreasonable risk to their lives; one attorney living with AIDS who cannot meet deadlines in his clients' cases without unreasonable risk to his life; and two non-profit organizations whose clients and staff are actively risking their health in order to comply with Immigration Court deadlines.

3. In this action, Plaintiffs seek an order from this Court enjoining enforcement of Immigration Court deadlines until 45 days after New York State and New York City lift all stay at home and social distance orders applicable to advocates and litigants appearing in NYC. While the stay-at-home orders remain, Plaintiffs should not be forced to risk their lives and their staff members' lives to meet Defendants' deadlines.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331.

5. Jurisdiction is also proper pursuant to 5 U.S.C. § 704, as Plaintiffs are aggrieved by adverse agency action which this Court is authorized to remedy under the Administrative Procedures Act, 5 U.S.C. §§ 702 *et seq.*

6. This Court also has jurisdiction pursuant to 28 U.S.C. §§ 2201-02, which authorizes the issuance of declaratory judgments.

7. Plaintiffs seek costs and fees pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. §§ 2412(2) *et seq.*

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because this judicial district is where the events underlying the Complaint have occurred.

PARTIES

Plaintiffs:

9. Plaintiff Nowshin Ali is a citizen of India and is currently in removal proceedings before the New York Immigration Court. Ms. Ali lives in Brooklyn, New York.

10. Plaintiff Sonia Monir is a citizen of Bangladesh and is currently in removal proceedings before the New York Immigration Court. Ms. Monir lives in Brooklyn, New York.

11. Plaintiff Ron Cerreta is a Senior Staff Attorney in the Immigrant Community Law Center of African Services Committee, a non-profit organization in New York City.

12. Plaintiff UnLocal, Inc. is a community-centered non-profit organization that was founded in 2008. UnLocal, Inc.'s principal place of business is 45 West 29th Street, Suite 203, New York, NY 10001.

13. Plaintiff Catholic Migration Services is a non-profit organization that was founded in 1971. Catholic Migration Services' principal place of business is 191 Joralemon Street, Fourth Floor, Brooklyn, NY 11201.

Defendants:

14. Defendant William Barr is the Attorney General of the United States with executive authority over the U.S. Department of Justice.

15. Defendant James McHenry is the Executive Office of Immigration Review (EOIR). Defendant McHenry is named in his official capacity. EOIR operates the Immigration Court system. EOIR operates three Immigration Courts in New York City: 290 Broadway (also known as the Broadway court), 26 Federal Plaza (also known as the Federal Plaza court), and 201 Varick Street (also known as the Varick Street court).

FACTUAL ALLEGATIONS

A. The COVID-19 Epidemic Poses a Grave Risk of Harm, Including Serious Illness or Death to Litigants and Lawyers

16. The novel coronavirus known as “COVID-19” has caused a pandemic that began in Wuhan, China in December 2019, and has since spread to almost every country in the world.²

17. Coronaviruses are a large family of viruses that can cause varying levels of disease, from a common cold to severe organ malfunction, and, in many cases, death. COVID-19 is an extremely contagious virus that is usually spread person-to-person through respiratory droplets. It is also possible for a person to contract COVID-19 by touching surfaces or objects that have the virus on them and then touching their own mouth, nose, or eyes. Asymptomatic and pre-symptomatic individuals can infect others.³

18. On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization (WHO) declared the outbreak a “public health emergency of international concern” (PHEIC).⁴ On March 11, 2020, WHO characterized COVID-19 as a pandemic.⁵ On March 13, 2020, the President of the United States declared the COVID-19 outbreak a national emergency.⁶

² Coronavirus Disease 2019 (COVID-19), Situation Summary, updated April 19, 2020, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

³ Coronavirus disease 2019 (COVID-19), Symptoms and Causes, MAYO CLINIC, *available at* <https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963>.

⁴ WHO DIRECTOR-GENERAL’S OPENING REMARKS AT THE MEDIA BRIEFING ON COVID-19, WORLD HEALTH ORGANIZATION (March 11, 2020), *available at* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁵ WHO DIRECTOR-GENERAL’S OPENING REMARKS AT THE MEDIA BRIEFING ON COVID-19, WORLD HEALTH ORGANIZATION (Mar. 11, 2020), *available at* <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁶ White House Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020), *available at* <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

19. As of April 24, 2020, nearly three million people have been infected worldwide, and over 190,000 people have died. In the United States, over 870,000 people are known to be infected and over 50,000 people have died.⁷ As of April 24, 2020, the number of confirmed cases in New York State is approximately 263,000 including 146,000 in New York City alone. At least 15,700 persons in New York State have so far died from the virus with at least 11,200 coming from New York City. On April 14, 2020, New York City sharply increased its death toll by more than 3,700 victims after officials said they were now including people who had never tested positive for the virus but were presumed to have died of it.⁸ These cases account for approximately 25% of the total number of confirmed cases nationwide to date. The number of cases continues to rise.⁹

20. The Centers for Disease Control and Prevention (CDC) has stated that older individuals and those with underlying health conditions, including some of the individual Plaintiffs and many of the organizational Plaintiffs' members, have a higher risk of serious illness or death if they contract COVID-19.¹⁰ Young people, however, are not immune to

⁷ Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering (CSSE), JOHNS HOPKINS UNIVERSITY (JHU), *available at* <https://coronavirus.jhu.edu/map.html>.

⁸ David Goodman and William K. Rashbaum, *N.Y.C. Death Toll Soars Past 10,000 in Revised Virus Count*, THE NEW YORK TIMES (April 14, 2020), *available at* <https://www.nytimes.com/2020/04/14/nyregion/new-york-coronavirus-deaths.html>.

⁹ *See* Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering (CSSE), JOHNS HOPKINS UNIVERSITY (JHU), *available at* <https://coronavirus.jhu.edu/map.html>.

¹⁰ Coronavirus disease 2019 (COVID-2019), U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, *People Who Are at Higher Risk*, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

COVID-19, and numerous reports highlight younger people who have faced life-threatening complications and death as a result of contracting the virus.¹¹

21. COVID-19 has had a disparate impact on people with cases in Immigration Court, since they are often low-income and racial minorities. Many of the individual Plaintiffs and employees of the organizational Plaintiffs share these characteristics.

22. Recent data highlights that Black and Brown communities are dying at the highest rates from COVID-19 in New York City. Nearly thirty four percent of the deaths in New York City are of Latinx residents and twenty eight percent come from Black New Yorkers.¹² Racial minorities who live in poverty are the most vulnerable, as they often lack the financial resources to obtain medical treatment for pre-existing conditions, and are thus at serious risk of life-threatening illness if they contract COVID-19. Many of them do not have health insurance or access to paid sick leave, which places them and the people they interact with at risk of contracting the virus. Additionally, many undocumented people work in the service industry. Some of these jobs have been declared “essential” by the Governor, including restaurants, public transportation, agriculture, construction, and health care. These jobs often require workers to be in close contact with others, putting them at higher risk of contracting COVID-19.¹³

¹¹ See Ryan W. Miller, *Yes, COVID-19 Can be Serious for Younger Adults, too, CDC Report Shows*, USA Today (March 19, 2020), available at <https://www.usatoday.com/story/news/health/2020/03/19/coronavirus-illnesses-can-serious-young-adults-cdc-report/2874271001/>.

¹² See Jeffery C. Mays and Andy Newman, *Virus is Twice as Deadly for Black and Latino People Than Whites in N.Y.C.*, THE NEW YORK TIMES (April 8, 2020), available at <https://www.nytimes.com/2020/04/08/nyregion/coronavirus-race-deaths.html>.

¹³ See Tracy Jan, *Undocumented workers among those hit first — and worst — by the coronavirus shutdown*, THE WASHINGTON POST (April 4, 2020), available at <https://www.washingtonpost.com/business/2020/04/05/undocumented-immigrants-coronavirus/>.

23. There is currently no medication or vaccine to effectively treat or prevent COVID-19.¹⁴ Scientists have stated that production of a usable coronavirus vaccine is at least eighteen months away.¹⁵ The only known strategies for slowing the spread of the virus are social distancing, wearing protective masks in public, and regularly washing hands with soap and water.¹⁶

24. Doctor Anthony Fauci, the director of the National Institute of Allergy and Infectious Diseases, is warning against attempts to place concrete time limits on the coronavirus pandemic. Doctor Fauci predicts millions of people will be infected in the U.S. and there will be 100,000 to 240,000 COVID-19 related deaths in the United States.¹⁷

25. On March 29, 2020, the President extended the recommendation for a national shut down for a month, bowing to public health experts, and scientific reality, and warning Americans that up to 2.2. million Americans could die from the virus without measures to stop the spread.¹⁸

¹⁴ Coronavirus Disease 2019 (COVID-19), How to Protect Yourself & Others, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹⁵ See George Petras, Ramon Padilla, and Veronica Bravo, *Why a Coronavirus Vaccine is More Than a Year Away, Despite Medical Researchers' Progress*, USA TODAY (March 11, 2020), *available at* <https://www.usatoday.com/in-depth/news/2020/03/09/biotech-international-effort-makes-big-push-for-coronavirus-vaccine/4927298002/>.

¹⁶ Coronavirus Disease 2019 (COVID-19), How to Protect Yourself & Others, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹⁷ Michael D. Shear, Michael Crowley, and James Glanz, *Coronavirus May Kill 100,000 to 240,000 in U.S. Despite Actions, Officials Say*, THE NEW YORK TIMES (March 21, 2020), *available at* <https://www.nytimes.com/2020/03/31/us/politics/coronavirus-death-toll-united-states.html>.

¹⁸ Michael D. Shear, *Trump Extends Social Distancing Guidelines Through End of April*, THE NEW YORK TIMES (March 29, 2020), *available at* <https://www.nytimes.com/2020/03/29/us/politics/trump-coronavirus-guidelines.html>.

B. New York State's and New York City's Emergency Responses to COVID-19 Pandemic

26. Governor Andrew Cuomo and NYC Mayor Bill de Blasio have implemented various orders and directives to the general population to maintain social distancing and work at home policies. New York State, which reported its first case of COVID-19 on March 1, 2020, has become the epicenter of the outbreak in the United States.¹⁹ On March 7, 2020, Governor Cuomo declared a state disaster emergency for the entire State of New York.²⁰ Mayor Bill de Blasio quickly followed, declaring a local state of emergency for New York City on March 12, 2020.²¹ On March 20, 2020, the Governor issued an Executive Order implementing the New York on “PAUSE” plan (Policies Assure Uniform Safety for Everyone) requiring 100% closure of all non-essential businesses, banning non-essential gatherings of any size for any reason, closing down schools, shutting down state courts for all non-essential matters, and tolling all filing deadlines.²²

27. On April 7, 2020, Governor Cuomo issued New York State Executive Order No. 202.14, the 15th Executive Order issued during the COVID-19 state of emergency since the first issued on March 7, 2020. This Executive Order extends the closures of non-essential businesses

¹⁹ Jesse McKinley, *New York City Region Is Now an Epicenter of the Coronavirus Pandemic*, THE NEW YORK TIMES (March 22, 2020), available at <https://www.nytimes.com/2020/03/22/nyregion/Coronavirus-new-York-epicenter.html>

²⁰ N.Y. EXEC. ORDER NO. 202: DECLARING A DISASTER EMERGENCY IN THE STATE OF NEW YORK (March 7, 2020), <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>.

²¹ Gabriela Bhaskar, *De Blasio Declares State of Emergency in N.Y.C., and Large Gatherings Are Banned*, THE NEW YORK TIMES (March 12, 2020), available at <https://www.nytimes.com/2020/03/12/nyregion/coronavirus-new-york-update.html#link-408c01d7>.

²² See Information on Novel Coronavirus, Executive Orders, Governor Andrew M. Cuomo, available at <https://www.governor.ny.gov/keywords/executive-order>; The Official Website of the City of New York, *Mayor de Blasio, NYPD Prepare to Enforce New Guidelines* (March 22, 2020), available at <https://www1.nyc.gov/office-of-the-mayor/news/178-20/mayor-de-blasio-nypd-prepare-enforce-new-guidelines>.

until April 29, 2020.²³ On April 15, 2020, the Governor issued another Executive Order requiring all people in New York to wear masks in public until at least May 15, 2020.²⁴ On April 16, 2020, the Governor issued another Executive Order extending social distancing requirements until May 16, 2020.²⁵ Between March 7, 2020 and April 14, 2020, the Governor has issued eighteen executive orders, each one tightening restrictions on public interactions.²⁶

28. To keep New Yorkers informed as to the status of the outbreak, Governor Cuomo has been giving daily press briefings on the COVID-19 pandemic, during which he has often reiterated that forty to eighty percent of New Yorkers will be infected with COVID-19.²⁷ Mayor de Blasio similarly estimates that half of all New York City residents, approximately 4,000,000 people, will have been infected by the time the virus runs its course.²⁸

29. In response to the COVID-19 pandemic, state and federal courts around the country have taken precautions such as closing or allowing virtual only hearings to limit the

²³ N.Y. EXEC. ORDER No. 202.14: CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY (April 7, 2020), *available at* <https://www.governor.ny.gov/news/no-20214-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

²⁴ N.Y. EXEC. ORDER No. 202.17: CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY (April 15, 2020), *available at* https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.17.pdf.

²⁵ N.Y. EXEC. ORDER No. 202.18: CONTINUING TEMPORARY SUSPENSION AND MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY (April 16, 2020), *available at* <https://www.governor.ny.gov/news/no-20218-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

²⁶ *See* Information on Novel Coronavirus, Executive Orders, Governor Andrew M. Cuomo, *available at* <https://www.governor.ny.gov/keywords/executive-order>.

²⁷ Elina Tarkazikis, *Coronavirus Cases in NY Grow; Cuomo Says 40 to 80% Will Be Infected*, SPECTRUM NEWS NY1 (March 21, 2020), *available at* <https://www.nyl.com/nyc/all-boroughs/coronavirus-blog/2020/03/21/coronavirus-cases-grow--cuomo-says-40-to-80--in-ny-will-be-infected>.

²⁸ Christina Capatides, *Mayor De Blasio predicts over half of New York City will get coronavirus by the time crisis is over*, CBS NEWS (March 27, 2020), *available at* <https://www.cbsnews.com/news/mayor-bill-de-blasio-projects-that-over-half-of-new-york-city-will-become-infected-coronavirus/>.

spread given that COVID-19 is more likely to spread in these populated facilities.²⁹ On March 22, 2020, the New York Chief Administrative Judge ordered courts and county clerks to not accept any paper filings unless the filing was on the “list of essential matters” until further notice.³⁰ On March 16, 2020, the United States Supreme Court postponed oral arguments scheduled through April 1, 2020.³¹

30. On April 9, 2020, New York Empire State Development issued guidance on Executive Order 202.6 relating to COVID-19. Section 14 of the guidance explains that “lawyers may continue to perform all work necessary for any service so long as it is performed remotely.”³² Therefore, a litigant or legal representative who leaves home in New York to work on an Immigration Court case violates the New York Governor’s orders.

31. Numerous New York officials have warned that violating the New York order to stay home can constitute a crime. In April 2020, the Erie County Executive, Steuben County officials, and the city of Hornell warned that violations of the order could be a criminal misdemeanor with fines of up to \$2,000 and a year in prison.³³ If people with Immigration Court cases violate the New York order by leaving home to prepare and submit filings, they could be

²⁹ See Court Orders and Updates During COVID-19 Pandemic, United States Courts, *available at* <https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic>; *Coronavirus and the New York State Courts, New York State Courts Remain Open for Essential Business*, *available at* <https://www.nycourts.gov>.

³⁰ ADMINISTRATIVE ORDER OF THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS LAWRENCE MARKS, AO/78/20, March 22, 2020, *available at* <http://nycourts.gov/whatsnew/pdf/AO-78-2020.pdf>.

³¹ Supreme Court of the United States, News Media Press Releases, March 16, 2020, *available at* https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_03-16-20.

³² *Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders*, NEW YORK STATE EMPIRE STATE DEVELOPMENT, Information Regarding COVID-19 and Executive Order 2026 (April 9, 2020), *available at* <https://esd.ny.gov/guidance-executive-order-2026>.

³³ Paul Ross, *New York state enforcing PAUSE orders with fines up to \$10,000*, WKBW (Apr. 6, 2020); Caitlin Murphy, *Steuben County to issue warnings, fines for social distancing violations*, WENY (Apr. 8, 2020); Chris Potter, *Police will enforce social distancing rules*, THE HORNELL EVENING TRIBUNE (Apr. 12, 2020).

convicted of misdemeanors and receive a prison term of up to one year. Misdemeanor convictions can cause a litigant to lose out on certain types of immigration benefits. For example, people seeking Non-Lawful Permanent Resident Cancellation of Removal cannot prove good moral character if they have spent 180 days in jail during the ten years before the court makes its decision on their case.³⁴ If lawyers violate the New York order by leaving home to print, copy, scan, or mail court filings, they could be convicted of misdemeanors and receive a prison term of up to one year. Imprisonment may interfere with their ability to practice law and EOIR can sanction lawyers who have convictions that involve dishonesty or interfering with the administration of justice.³⁵

32. In contrast to the measures taken by other courts and New York State, the New York City Immigration Courts remain open to the public and continue to accept paper filings.³⁶

C. COVID-19 Has Spread in Immigration Courts Throughout the Country, Causing Abrupt Closings and Re-openings of Courthouses with Little Information Available to the Public

33. The NYC Immigration Courts are run by the Executive Office for Immigration Review (“EOIR”). Immigration Courts hold master calendar and merits hearings (also referred to as individual hearings). Master calendars are short, preliminary hearings for the Immigration Court to conference with the parties about the progress of the case. During merits hearings, the Immigration Court decides usually in three hours, whether a person in removal proceedings will be allowed to remain in the United States or will have to return to their country of origin. Filing

³⁴ See INA § 101(f).

³⁵ 8 C.F.R. § 1003.102(h).

³⁶ See *EOIR Operational Status During Coronavirus Pandemic*, U.S. DEPARTMENT OF JUSTICE, available at <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>.

deadlines for individual hearings are set by the Immigration Judge in each case and are usually fifteen or thirty days before the individual hearing.

34. EOIR has engaged in a pattern of behavior that shows no regard for the health concerns of litigants and the lawyers who appear in its Immigration Courts. EOIR's policy of requiring litigants to continue meeting deadlines for the filing of papers in the midst of the COVID-19 pandemic is not consistent with the President's projections regarding COVID-19 and with the measures that are in place in New York State and New York City to stop the spread of the disease.

35. There is no nationwide guidance from EOIR about when and if Immigration Courts should be reopened after a reported COVID-19 case. Since mid-March, Immigration Courts throughout the country have haphazardly closed for short periods of time (one or two days) after reporting confirmed or suspected cases of COVID-19 and then shortly thereafter reopened for filing and for detained hearings.³⁷ After reopening these courts, EOIR has failed to provide clear information to the public as to the measures taken to ensure public health after the various courts close as a result of confirmed cases.

36. Since the start of the pandemic, EOIR has regularly communicated key announcements, sometimes exclusively, through its social media accounts such as Twitter and Facebook.³⁸ This includes announcements about immigration court closures and changes to filing deadlines, which are often announced late in the evening or even on weekends. For instance, on March 13, 2020 at 8:17 p.m., EOIR posted on its Facebook page that non-detained master

³⁷ See *id.*

³⁸ See Executive Office for Immigration Review Facebook Account, *available at* <https://www.facebook.com/doj.eoir/> ("EOIR Facebook Account"); Executive Office for Immigration Review Twitter Account, *available at* https://twitter.com/DOJ_EOIR ("EOIR Twitter Account").

calendar hearings the next day in the Boston, Los Angeles (North Los Angeles, Olive, Van Nuys), Newark, New York City (Broadway, Federal Plaza, Varick), Sacramento and San Francisco Immigration Courts would be postponed. Three hours later, EOIR tweeted the same information. Litigants and lawyers who were unaware that EOIR was relaying critical information only via Facebook and Twitter went to Immigration Courts in person on March 14, 2020, only to find that they had unnecessarily risked exposure to COVID-19, thereby increasing their risk of contracting COVID-19, infecting others, and posing a health risk to their loved ones.

37. Since the start of the pandemic, EOIR has opened and closed the different New York City Immigration Courts with very short and limited notice. For instance, on March 23, 2020, EOIR announced on Facebook that following notice of a person with a confirmed case of COVID-19 at the Varick Street Immigration Court in New York City, that court would be closed the next day.³⁹ When the court re-opened on March 25, 2020, EOIR not only failed to announce this publicly,⁴⁰ but it also did not provide information about whether the court had been cleaned or about whether the individual infected had been to the 26 Federal Plaza and 290 Broadway Immigration Courts. Lawyers and litigants were forced to continue appearing at the Varick Street Immigration Court for hearings and to file documents with no assurance from EOIR that the area was no longer contaminated.

38. EOIR's erratic communications, particularly those announcing last-minute deadlines and providing unclear locations for filing of documents, have forced lawyers and

³⁹ See EOIR Facebook Account.

⁴⁰ See Mazin Sidahmed, *Varick St. Immigration Court Reopened Despite Court Staffer Testing Positive for COVID-19*, Documented NY (March 25, 2020), available at <https://documentedny.com/2020/03/25/varick-st-immigration-court-reopened-despite-court-staffer-testing-positive-for-covid-19/>.

litigants to rush to meet filing deadlines despite the risks and difficulties associated with filing documents with such short notice.

39. On March 17, 2020, EOIR announced on its Facebook page that all non-detained hearings nationwide would be postponed from March 18, 2020, through April 10, 2020.⁴¹ It also announced the closure of ten Immigration Courts across the country, including two located in New York City.⁴² Although EOIR did not explicitly state whether filing deadlines had changed for these hearings, its announcement on March 18, 2020 indicated that filing deadlines for non-detained hearings in the ten immigration courts listed had changed: “[e]mergency filing locations for the closed immigration courts are for emergencies only” and “[f]ilings due during the listed closures will be considered timely if received on the relevant court’s next business day. Filing deadlines for open courts remain.”⁴³ Relying on this information, many lawyers and litigants assumed that filing deadlines had changed and altered their course of preparation for the filings.

40. EOIR has also relayed conflicting information about filing locations and due dates through its social media accounts. For instance, in the morning on March 24, 2020, EOIR tweeted that while Immigration Courts in New York City were closed, filings could be delivered to the Elizabeth Immigration Court in New Jersey.⁴⁴ Five hours later, EOIR reversed course, tweeting that “due to a report of the presence of an individual with a test-confirmed coronavirus diagnosis, the Elizabeth Immigration Court will be closed for the rest of the day.” Later that evening, around 6:00 p.m., EOIR, in a since-deleted tweet, announced that certain Immigration

⁴¹ See EOIR Facebook Account.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ EOIR Twitter Account.

Courts would open on March 25th “for the limited purpose of filing” and that one of those courts was the 290 Broadway Immigration Court in New York City. EOIR tweeted that all filings due during the courts’ closures were “now due.”⁴⁵ Two hours later, EOIR updated its tweet to “[a]ny filings due during their closures should be filed by March 30.”⁴⁶ Similar posts were made by EOIR on its Facebook account.⁴⁷

41. EOIR’s March 24, 2020 Facebook announcement stating that any filings due during their court closures should be filed by March 30,⁴⁸ came as an unwelcome surprise, causing chaos, confusion, and fear among lawyers and litigants who were forced to rush to meet filing deadlines they reasonably assumed would be changed based on EOIR’s announcements.

D. EOIR’s Policies Addressing the COVID-19 Pandemic Are Unclear and Inadequate.

42. The CDC has warned that courthouses are especially susceptible to the rapid spread of COVID-19.⁴⁹ Given these warnings, continuing to require litigants and their lawyers to appear in Immigration Court for any reason whatsoever and to meet filing deadlines, is an invitation for a COVID-19 outbreak among people appearing in the Immigration Courts.

43. On March 18, 2020, Defendant McHenry issued a memorandum titled “Immigration Court Practices During the Declared National Emergency Concerning the COVID-19 Outbreak.” Footnote 2 of the memorandum states that all non-detained hearings, including

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *See* EOIR Facebook Account.

⁴⁸ *Id.*

⁴⁹ Coronavirus Disease 2019 (COVID-19), *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

individual hearings through April 10, 2020, would be rescheduled, but detained hearings would not be rescheduled.⁵⁰ The memorandum provides merely recommendations to Immigration Courts in regard to the COVID-19 outbreak and reminds Immigration Judges of their authority to consider applicable public health guidance in making decisions on individual cases, including as to late filings. The memorandum does not provide uniform mandates to close the Immigration Courts, does not direct Immigration Judges to waive all filing deadlines in non-detained cases for non-detained cases, and provides no specific guidance to Immigration Courts on how to proceed to protect the public in the event of COVID-19 confirmed cases in the courts. The uncertainty left by this directive, that an Immigration Judge may or may not decide to excuse a late filing of documents leaves the vast majority of litigants with a difficult decision. Litigants are left to decide whether to risk their health and lives by filing documents according to the set filing deadlines in their cases, or risk that an Immigration Judge may not excuse their late filing and order them removed to their country of origin, where they may face possible death.

44. Further, the McHenry memorandum includes a statement that in effect deprives respondents of their due process right to a hearing by “encourage[ing] immigration judges to resolve as many cases as practicable without the need for a hearing....” Specifically, the memorandum encouraged parties to resolve cases through pleadings, joint motions, and stipulations including orders of removal or orders of voluntary departure.⁵¹

45. EOIR has not responded to six requests that the NYC Immigration Courts postpone filing deadlines in non-detained cases. Each of the three NYC Immigration Courts

⁵⁰ IMMIGRATION COURT PRACTICES DURING THE DECLARED NATIONAL EMERGENCY CONCERNING THE COVID-19 OUTBREAK, OOD PM 20-10, JAMES R. MCHENRY III, DIRECTOR, March 18, 2020, *available at* <https://www.justice.gov/eoir/file/1259226/download>.

⁵¹ *Id.*

received two motions requesting standing orders that would postpone the filing deadlines in non-detained cases. A coalition of non-profit organizations filed a motion with each of the three NYC Immigration Courts on April 8. LSNYC filed motions for standing orders on March 25, April 3, and April 17. EOIR has not acted on the six motions.

46. Since 2018, immigration judges have strict and arbitrary quotas that force them to balance their job security against public health concerns. EOIR Director McHenry issued non-detained case completion goals requiring eighty five percent of non-detained removal cases to be completed within one year of case filing.⁵² In addition, ninety-five percent of hearings must be completed on the initial scheduled merits hearing date. Judges are rated on performance metrics and risk a poor review if they grant too many continuances so that they complete fewer than seven hundred cases per year.⁵³ Around a quarter of immigration judges are still on probation so they can be fired without cause. Judges who do not meet the quotas risk being fired. EOIR has not relaxed the strict quotas to account for immigration court closures. A litigant who asks an immigration judge to extend time to file documents must overcome the incentive for an immigration judge to value the judge's job security against the public's health, litigants' health, and complying with New York orders to stay home.

E. Defendants' Policies in Response to the COVID-19 Pandemic Endanger the Health of People Appearing in Immigration Court.

47. EOIR currently allows litigants to file documents in person, by mail, or through e-mail. By allowing some of its courts to remain open for filing and enforcing unreasonable

⁵² See Memorandum from James R. McHenry III to all Immigration Judges and Staff, Case Priorities and Immigration Court Performance Measures App. A (Jan. 17, 2018), *available at* <https://www.justice.gov/eoir/page/file/1026721/download>.

⁵³ See EOIR Performance Plan, ABA JOURNAL, *available at* https://www.abajournal.com/images/main_images/03-30-2018_EOIR_-_PWP_Element_3_new.pdf.

deadlines, EOIR has ignored the declared emergency in New York and has violated the orders from the NY Governor and NYC Mayor to close down all non-essential business and strictly adhere to social distancing.

48. Although litigants and their lawyers can file their submissions by mail, which EOIR has encouraged, the vast majority of litigants and lawyers who are working from home do not have the supplies they need to produce and mail documents to the courts. Therefore, they are compelled to leave their homes to purchase those supplies or to go to their offices, despite the lockdown, thus increasing their risk of contracting COVID-19 or passing it on. Further, meeting filing deadlines requires some lawyers and litigants to travel to meet with each other, thus risking exposure to COVID-19.

49. Mailing submissions to the immigration courts requires lawyers and litigants to travel to a post office or another delivery service, when, as often is the case, the envelope is too big to fit in the slot in a street mailbox, or if the advocate prudently decides to obtain proof of mailing. In New York City, where the primary mode of transportation is public transit, going anywhere to file documents will necessarily require litigants and lawyers going into the subway or riding buses and increasing the risk of contracting COVID-19 on the way to the post office and at the post office itself, where it may be difficult to stay six feet away from other people. This is particularly true for low-income litigants such as Plaintiffs, who may not have the means to hire a private car service to avoid public transportation. Even in private cars, the risk of contracting COVID-19 is not completely eliminated because the driver and passenger are not socially distancing.

50. Although on April 21, 2020, EOIR postponed non-detained hearings through May 15, 2020,⁵⁴ filing deadlines, which are usually a month or fifteen days before the merits hearing, remain in place for hearings scheduled after May 15, 2020.

51. EOIR's failure to issue a uniform order extending all deadlines forces litigants and their lawyers to leave their homes unnecessarily to go to a copy store and their offices, and to the post office or another delivery service and in doing so to fail to maintain appropriate social distancing. Because the consequences of not meeting deadlines can be grave, including removal to a country where a litigant may face serious harm or even death, litigants are forced to compromise their health in order to meet these deadlines.

52. Moreover, in light of the erratic pattern of openings and closings at EOIR courts, lawyers and litigants who utilize UPS, the post office or FedEx services have no guarantee that the staff at the courts will receive and accept their filings. Lawyers and litigants dealing with urgent deadlines, such as the one-year deadline for asylum applications, or call-up dates for individual hearings, have been left in a state of uncertainty when they have learned that whatever delivery services they used were unable to access the immigration court to deliver their filings.

53. On March 31, 2020, EOIR announced that it had established temporary e-mail accounts for immigration courts and would accept e-mail filings.⁵⁵ The EOIR Operational Status During Coronavirus Pandemic webpage notes that "all electronically-filed documents must meet the requirements of filings outlined in the Immigration Practice Court Manual,"⁵⁶ a Department of Justice Guide on uniform procedures and requirements for practice before Immigration

⁵⁴ Executive Office for Immigration Review, *EOIR Operational Status During Coronavirus Pandemic*, available at <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic> (last visited Apr. 20, 2020).

⁵⁵ See EOIR Operational Status During Coronavirus Pandemic, *Filing by Email - Immigration Courts*, U.S. DEPARTMENT OF JUSTICE, available at <https://www.justice.gov/eoir/filing-email>.

⁵⁶ *Id.*

Courts. Due to the exacting requirements for accepting submissions, the option to e-mail submissions to the immigration court does not meaningfully reduce the unnecessary risks that EOIR's deadlines impose on litigants and lawyers.

54. According to EOIR's e-mail filing instructions, EOIR may reject submissions for reasons like missing page numbers, incorrect document naming, incorrect document format, or poor resolution. This is unreasonably difficult for litigants and lawyers. There is also no assurance by EOIR that if a filing is rejected the litigant will receive additional time added to their deadline to fix the error. Additionally, EOIR can reject the filing at any time after it is filed, even after the deadline for filing has passed. The rejection of a filing by EOIR may have grave legal consequences. For example, it may cost an asylum applicant their eligibility for asylum if they file their application even a day after being in the United States for one year.

55. The option to e-mail filings to EOIR does not alleviate the problems litigants and lawyers face in filing documents and their continued exposure to COVID-19 if they are unable to e-mail their filings. Even those litigants who have access at home to a computer with current software, e-mail, and high-speed Internet, may have their filings rejected by EOIR. Additionally, litigants who do not have a lawyer do not know that EOIR just started accepting filings by e-mail and may continue risking their lives by filing documents in person and through the mail.

56. Many pre-hearing filings are hundreds of pages and are not easily prepared in home offices that lack large-capacity scanners and printers. Seemingly simple requirements imposed by EOIR, such as requiring documents to include page numbers, are impossible from a basic home office. Inserting page numbers requires either printing hundreds of pages, handwriting page numbers, and then rescanning the documents, or specialized software, such as Adobe Pro X (which costs hundreds of dollars) that allows for numbering of PDFs, which would

also require scanning hundreds of pages. EOIR may reject filings for lack of page numbers, incorrect document naming, incorrect document format, or improper resolution. Meeting all these requirements is unreasonably difficult, if not impossible, for litigants and lawyers working from home offices.

57. The Immigration Court Practice Manual (ICPM)⁵⁷ contains a plethora of rules that are extremely difficult to meet while the COVID-19 pandemic is ongoing. One such rule is the requirement that all documents not in English be accompanied by a certified English translation.⁵⁸ Affidavits from people who do not understand English must include a certificate of interpretation stating that the affidavit or declaration has been read to the person in a language that the person understands before signing. Because many lawyers' offices are inaccessible due to the lockdown, it will be difficult for them to retrieve such documents received from clients that are only available in physical files in their offices.

58. Additionally, EOIR continues to require signatures from respondents on documents such as affidavits. Although electronic signatures are now permitted, people who have cases in Immigration Court may lack computer literacy or the technology needed to e-mail an electronic signature to their lawyer. Producing an electronic signature requires a phone camera or expensive PDF software. Given the limitations, lawyers would have to travel to their offices or their clients to obtain the documents and signatures, causing exposure to COVID-19. Further, because most, if not all, offices are only operating at partial capacity, if they are operating at all, translation and interpretation services that lawyers could have expected before

⁵⁷ See generally Immigration Court Practice Manual, available at <https://www.justice.gov/eoir/office-chief-immigration-judge-0>.

⁵⁸ *Id.* at Ch. 3, Section 3, pg. 43.

the pandemic are likely not available to the same extent, thus making it extremely difficult to meet this requirement.

59. There are additional issues with EOIR's acceptance of filings by e-mail. EOIR's ICPM and the federal regulations do not authorize serving ICE counsel electronically.⁵⁹ Litigants and their lawyers must find a way to send copies to ICE by mail or a delivery service even if EOIR accepts filings by e-mail. ICE counsel provides a program called eService to send documents to them. EOIR's ICPM and the regulations do not authorize serving ICE through eService. When ICE receives documents through eService, it will not immediately give any proof of service, but it may take up to three business days to produce a receipt to the filer that confirms whether ICE accepts or rejects the documents. Additionally, ICE requires that all submissions on eService include a form EOIR-28, which only a lawyer or legal representative can sign.⁶⁰ Litigants who are unrepresented cannot comply with the eService requirements because they do not have a lawyer who can sign an EOIR-28 form. ICE also requires those who use eService to consent to receiving documents from ICE, which is a problem for lawyers and unrepresented litigants who do not have regular access to e-mail or may change e-mails in the future.

60. In the middle of a pandemic where scientists and media outlets are reporting that there will be around 200,000 deaths in the U.S., over 11,000 which have already occurred in New York City and where over 263,000 people in New York State have already been infected and over 15,000 have died, EOIR's behavior recklessly endangers litigants, advocates, and the public in a manner that shocks the conscience.

⁵⁹ Immigration Court Practice Manual 3.2(c); 8 C.F.R. § 1003.23.

⁶⁰ See ICE's eService pamphlet.

F. Defendants' Policies in Response to the COVID-19 Pandemic Endanger the Legal Rights of People Appearing in Immigration Court.

61. EOIR's failure to postpone all filing deadlines not only jeopardizes the health of litigants, lawyers, and the general public, but also severely curtails the legal rights of litigants including their right to counsel under the INA and the Due Process Clause.

62. Although litigants in Immigration Court have a statutory and regulatory right to counsel in immigration proceedings, EOIR's current policies violate this right. Lawyers may be unwilling or unable to meet with their clients to review documents in person, or to go to the post office or to the Immigration Court for in person filings. Further, litigants are deprived of valuable time to meaningfully prepare their cases with their lawyers in person as a result of EOIR's arbitrary deadlines and filing requirements.

63. The COVID-19 pandemic has created barriers for litigants needing to prepare their cases with their lawyers, including making it not only difficult but extremely risky to meet their lawyers or produce affiants for interviewing in person. Given the health risks associated with the spread of COVID-19 and meeting in person, lawyers and their clients are forced to attempt to complete important parts of the case over the telephone. Lawyers' ability to forge and maintain the necessary rapport and trust with their clients is diminished. Rapport and trust between lawyers and their clients is essential to draft and execute completely accurate declarations, which are essential components in their immigration cases. Inaccurate or incomplete declarations could lead to an incomplete record, and in some cases perceived inconsistencies by the Immigration Court. The policies imposed by Defendants in the midst of this pandemic have created a fractured, disjointed and onerous expectations on litigants and their lawyers. EOIR's inadequate policies compromises the quality of work product lawyers provide their clients.

64. In the case of unrepresented litigants, their right to access counsel is hindered because they must find lawyers willing to either represent a new client without meeting and engaging with them in-person to exchange documents and assess credibility the strength of their case or put their safety at risk to meet with new clients and comply with the unreasonable filing deadlines of EOIR. Further, unrepresented litigants may lack the technological equipment to be able to communicate with potential lawyers remotely.

65. With most cities and countries around the world on lock-down due to the COVID-19 pandemic, it has become nearly impossible for lawyers and litigants to gather important documents to support applications for relief from removal. Particularly in asylum cases, where police reports and witness statements are essential to making out a claim for relief, it may become impossible to obtain these documents from a litigant's country of origin. For instance, lawyers in other countries cannot meet with individuals to notarize statements, government agencies are closed, and supporting affiants are not be able to leave their homes to get documents notarized or mail an original document to a person in the United States.

66. Additionally, the inability to leave home in New York for any non-essential business makes it impossible for some witnesses and experts to provide litigants signed statements while complying with the order to stay home. Some witnesses and experts do not have the equipment in their homes needed to prepare signed statements and transmit them to litigants or their lawyers. The inability for witnesses and experts to prepare signed statements hinders lawyers in their ability to represent their clients adequately. It also hinders litigants' ability to receive meaningful representation of counsel and the ability of litigants who do not have lawyers to present their evidence.

67. The legal rights of litigants are also compromised when they and their witnesses cannot speak freely to their lawyer because they are not in secure locations to speak confidentially. Many litigants live in shared spaces or shelters with strangers or other people they may not trust, and may not feel comfortable disclosing traumatic experiences over the phone in the presence of people they do not want to share this information with.

68. Additionally, telephonic and Zoom connections are no replacement for in-person meetings, as there may be lost connections and the lawyer or client can miss very important information from the other person that may affect the outcome of the case.

69. Many legal organizations in New York utilize interdisciplinary work between social workers and attorneys to address the holistic needs of people who have cases in Immigration Court. Often, interdisciplinary work builds the trust necessary for clients to disclose traumatic experiences to their attorneys that affect the outcome of their immigration cases. Given the current pandemic, it is not possible for attorneys to effectively collaborate with social workers to assist clients in feeling more comfortable opening up about extraordinarily traumatic experiences the same way they would in an in-person meeting.

70. Defendants' failure to issue and implement uniform, reasonable policies for filing in the New York City Immigration Courts significantly interferes with Plaintiffs' right to obtain and consult with counsel under the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act.

G. Allegations Regarding Individual Plaintiffs

1. Nowshin Ali

71. Nowshin Ali is a citizen of India who is currently in removal proceedings before the New York Immigration Court. Around April 23, 2014, Ms. Ali filed an affirmative asylum application with the assistance of her prior attorneys. After attending her asylum interview in

2019, the asylum office referred her case to Immigration Court. Ms. Ali retained Brooklyn Legal Services for representation in her immigration case. Ms. Ali is currently seeking asylum and withholding of removal relief as well as relief under the Convention Against Torture.

72. Ms. Ali is currently scheduled for an individual hearing on May 19, 2020 before Immigration Judge Lena Golovnin. The filing deadline for documents in support of her case was April 19, 2020.

73. Ms. Ali's attorneys have not been able to comply with the April 19, 2020 filing deadline. Ms. Ali and her attorneys have not been able to speak in a confidential manner since her attorney's office closed to comply with the New York on PAUSE Executive Order. Ms. Ali currently resides with her minor son. She is a survivor of intimate partner violence, and it is very difficult for her to discuss the details of her case in the presence of her son.

74. Because Ms. Ali is unable to communicate with her attorneys in a confidential manner, her attorney has been unable to adequately draft her declaration. Additionally, the COVID-19 pandemic and related safety precautions have made it difficult for Ms. Ali's attorney to obtain declarations in support of Ms. Ali's case from individuals in India.

75. Around April 8, 2020, Ms. Ali's attorneys filed a motion to continue the May 19, 2020 individual hearing. As of April 24, 2020, Ms. Ali's attorneys have not received a decision on their motion, and the individual hearing remains on the court calendar.

76. Ms. Ali underwent surgery to remove parotid gland tumors and presently suffers from related comorbidities, including swollen lymph nodes, pulmonary problems, and anemia. Because of these health conditions, she is considered an immunocompromised individual. Her doctor has documented the medical condition and wrote a letter in support of the submitted motion to continue stating that, "[i]t is recommended that Nowshin Ali stays on self-quarantine

from present until the resolution of pandemic COVID-19. Ms. Ali is at high risk due to recent surgery, [treatment] of swollen lymph nodes, immunity activity. Her medical condition places her at high risk of morbidity if contact with COVID-19.”

2. Sonia Monir

77. Sonia Monir is a citizen of Bangladesh who is currently in removal proceedings before the New York Immigration Court after falling victim to attorney malpractice. The asylum office referred Ms. Monir to Immigration Court around 2008 after an attorney submitted a fraudulent Form I-589 in 1994. Later, an immigration judge administratively closed Ms. Monir’s case. She sought to reopen her Immigration Court case after a new form of relief became available. Around 2020, Ms. Monir retained Brooklyn Legal Services to help. Ms. Monir is currently seeking to adjust her status to that of a Lawful Permanent Resident before the New York Immigration Court.

78. Ms. Monir had an individual hearing scheduled for May 14, 2020, before Immigration Judge Barbara Nelson. The Immigration Judge set a filing deadline for documents in support of her case for April 14, 2020. The hearing has been postponed, but the filing deadline of April 14, 2020 is unchanged. When EOIR postponed non-detained hearings scheduled for May 4, 2020 to May 15, 2020, EOIR did not postpone filing deadlines that judges had set in those cases.

79. Ms. Monir’s first language is Bengali, and it is difficult for her lawyer to find reliable Bengali interpreters who can interpret over the phone. This has created a significant barrier for her ability to communicate with her lawyer.

80. Ms. Monir and her attorney were not able to comply with the April 14, 2020 filing deadline due to significant disruptions to daily life caused by the pandemic. Ms. Monir and her lawyer have not been able to speak in a confidential manner since her legal representative’s

office closed to comply with the New York on PAUSE Executive Order. Ms. Monir currently resides with her daughter. She is a survivor of intimate partner violence and it is very difficult for her to discuss the details of her case, especially the abuse, in the presence of her daughter.

81. Because Ms. Monir was unable to meet with her attorney in a confidential manner, her attorney has been unable to complete the new Form I-485, draft Ms. Monir's affidavit, obtain evidence, including the declarations of family members, or compile the evidence packet. Moreover, Ms. Monir feared that going to the post office to send documents to her attorney would put her at risk of being exposed to COVID-19.

82. Ms. Monir suffers from high blood pressure, also known as hypertension. Ms. Monir's hypertension makes her more susceptible to suffering complications if she contracts COVID-19.

3. Ron Cerreta

83. Ron Cerreta is a Senior Staff Attorney in the Immigrant Community Law Center of African Services Committee, a non-profit organization in New York City that focuses on serving the African community. Mr. Cerreta joined African Services Committee around July 2019 and has been practicing law for approximately eight years. Mr. Cerreta's practice includes representing non-detained clients in removal proceedings, including hearings in all three New York City Immigration Courts.

84. Mr. Cerreta was diagnosed as Human Immunodeficiency Virus (HIV)-positive around January 1986. Around December 1996, Mr. Cerreta was diagnosed with Acquired Immunodeficiency Syndrome (AIDS). Mr. Cerreta's physician is monitoring his medical condition, and he is currently receiving treatment. Due to his diagnosis, Mr. Cerreta is considered an immunocompromised individual.

85. Mr. Cerreta had a filing deadline on March 10, 2020, for an April 10, 2020 individual hearing at the Varick Street Immigration Court. Due to the COVID-19 pandemic, Mr. Cerreta decided he could not comply with the filing deadline because he could not risk his health and safety. The Varick Street Immigration Court had a confirmed case of COVID-19 and at the time remained open for filing purposes. Mr. Cerreta was forced to make the decision between meeting a deadline for his client and his own personal health and safety during the COVID-19 pandemic.

86. On March 16, 2020, Mr. Cerreta was scheduled to appear before Immigration Judge Dorothy Harbeck for an Individual Hearing at 26 Federal Plaza for a withholding-only removal proceeding. Mr. Cerreta's intention was to file a Motion for Continuance so that he would not have to appear that day, because New York State and other medical professionals had already issued guidance stating that immunocompromised individuals should be taking additional precautions and practicing social distancing. Mr. Cerreta could not reach Judge Harbeck's clerk in advance, and therefore felt compelled to appear in person with his motion because he did not want the court to issue an *in-absentia* order of removal for his client.

87. Mr. Cerreta prepared the Motion for Continuance on behalf of his client and prepared to head to 26 Federal Plaza. He did not feel that public transportation was a safe option for him and instead opted for a fifty-dollar taxi ride. Upon arriving to the Immigration Court, Mr. Cerreta noted that security personnel were not wearing protective equipment and were interacting with everyone entering 26 Federal Plaza without the use of masks, gloves, or hand sanitizer. He presented his motion and was forced to disclose on the record that he was requesting the continuance because he has a compromised immune system. Immigration Judge

Dorothy Harbeck granted the Motion for Continuance and noted on the record that counsel has a compromised immune system.

88. Mr. Cerreta is afraid of having to risk his health by filing documents with the Court in the future. Mr. Cerreta has an upcoming filing deadline on May 8, 2020, for an individual hearing scheduled for June 8, 2020, at 26 Federal Plaza. Mr. Cerreta anticipates not being able to meet the filing deadline because he is having trouble communicating with his client in order to complete the declaration. Maintaining attorney-client privilege is not possible for Mr. Cerreta's client under the current circumstances. Additionally, without being able to meet his client in person, Mr. Cerreta will encounter logistical challenges in collecting the necessary evidence to support his client's case. Lastly, Mr. Cerreta's ability to print, copy, and scan filings that are several hundreds of pages long is limited.

89. Defendants' actions have caused Mr. Cerreta to place himself in unreasonable danger as an immunocompromised individual by requiring him to attend an Immigration Court appearance during the COVID-19 pandemic. Additionally, Defendants' failure to extend all filing deadlines until the COVID-19 pandemic ends continues to put Mr. Cerreta at risk.

H. Allegations Regarding Organizational Plaintiffs

1. UnLocal, Inc.

90. UnLocal, Inc. ("UnLocal") is a community-centered non-profit organization that was founded in 2008. UnLocal's mission is to provide direct immigration legal representation and community education to New York City's undocumented immigrant communities, including providing legal representation to undocumented immigrants facing removal.

91. UnLocal attorneys work on asylum, cancellation of removal, and other forms of immigration relief for clients in removal proceedings. They focus on cases with highly complex issues of law and collateral social services needs that are not likely to get placed at other

immigration legal service providers. In the first four months of 2020, UnLocal staff had 27 non-detained court appearances scheduled, including 11 individual hearings.

92. Around March 16, 2020, UnLocal closed its offices in anticipation of the city and state-wide shutdown and to protect its staff. Around March 22, 2020, the New York State on PAUSE executive order went into effect.

93. Rebecca Press is UnLocal's Legal Director. In March 2020, Ms. Press contracted COVID-19. Ms. Press appeared at a New York Immigration Court on March 12, 2020 and started demonstrating symptoms of COVID-19 approximately one week later. During this time, she had to go into the UnLocal office to carry out duties related to her filing deadlines in Immigration Court. Ms. Press reasonably believes that she contracted COVID-19 during her appearance at the Immigration Court. Ms. Press also worries that she exposed others to the virus because she did not know she was carrying it during the period she was asymptomatic.

94. Around March 26, 2020, Ms. Press wrote a letter to the New York City Immigration Court informing them that she and at least one UnLocal client had contracted COVID-19 and raising concerns regarding New York City EOIR procedures. The letter read in part:

I have COVID-19, as does at least one client with an upcoming non-detained hearing at Varick. The idea that we have to be following the constant changes, announced at the close of business one day and to be in effect the next day, instead of taking care of ourselves with what is truly a dangerous virus is just abhorrent. Moreover, none of the realities of a well-functioning court system, of what due process requires, of properly preparing for a case, are reflected in these decisions. This is true for all cases, regardless of the C19 status of the respondent or attorney. But it actually shocks the conscience when the reality is that hundreds, if not thousands, of attorneys and respondents who are in proceedings in NYC are infected with C19, and have to contemplate risking their health and the health of others to comply with last minute changes.

NY EOIR responded to Ms. Press to wish her well and reminded her that non-detained cases had been postponed. They did not mention filing deadlines.

95. During Ms. Press's illness, she had filing deadlines scheduled for March 27, 2020 and March 30, 2020. Ms. Press described her illness as having "never been so sick in her life." She was ill for approximately two weeks. Before EOIR announced the postponement of hearings, Ms. Press sent requests to accept untimely filings and asked for continuances during her illness. Notably, the client with the March 30, 2020 filing deadline had also contracted COVID-19.

96. UnLocal has a small staff that is dedicated to the non-detained docket. There are only six staff members, including Ms. Press, that work with non-detained clients in removal proceedings. UnLocal's staff is too small to have staff members replace each another in Immigration Court or to cover filing deadlines if anyone contracts COVID-19. Additionally, UnLocal's staff is very junior, requiring Ms. Press to be involved in all aspects of representation for their clients in the non-detained proceedings. This placed an even further strain on her staff while Ms. Press recovered from her illness.

97. Elizabeth Wu is a staff attorney at UnLocal. Ms. Wu also appeared at a NYC Immigration Court on March 12, 2020. Around March 16, 2020, she traveled to the UnLocal office and then appeared at the Immigration Court. The only reason that Ms. Wu went into the UnLocal office on March 16, 2020, was to prepare for the filing deadline. The UnLocal offices were otherwise closed. Ms. Wu began demonstrating symptoms of COVID-19 around March 19, 2020 and reasonably believed she had contracted COVID-19 during her visits to NY EOIR. Ms. Wu is also concerned that she exposed others to the virus during her visits to NY EOIR and the UnLocal office.

98. Ms. Press and her staff had final hearings scheduled for May 5, 2020, May 6, 2020, and May 13, 2020, that have been postponed. UnLocal has an individual hearing scheduled

for May 27, 2020. Two of the four clients are presumed to have contracted COVID-19. The May 27, 2020 hearing is scheduled to move forward after NYC EOIR is scheduled to reopen on May 18, 2020. Ms. Press filed a motion to continue the May 27, 2020 individual hearing. As of April 23, 2020, UnLocal has not received a response to the motion and the hearing remains on the court calendar.

99. Filing deadlines are particularly stressful for UnLocal staff. In light of the New York State on PAUSE Executive Order, the staff is concerned for their safety when needing to go to the post office or leaving their homes to seek out the resources they need in order to prepare filings and have decided against placing themselves in danger. Instead, the staff is focusing on filing motions for late filings and continuances because the staff's inability to adequately prepare the filings is prejudicial to their clients.

100. UnLocal is extremely aware of the challenges that the COVID-19 pandemic places on their clients. In addition to having clients that have contracted COVID-19, their clients are struggling emotionally and financially. These circumstances make it extremely difficult to prepare their clients to testify over the phone and to discuss the worst things that have happened to them in their lives. The failure to extend all deadlines is prejudicial to UnLocal's clients and their immigration cases.

101. UnLocal is tremendously concerned for unrepresented respondents who have had a doubly difficult time finding legal counsel under these extraordinary circumstances. While UnLocal staff does all that it can to continue meeting with new clients telephonically, the reality is that individuals otherwise eligible for UnLocal's services are likely having a more difficult time accessing its help.

2. Catholic Migration Services

102. Catholic Migration Services (“CMS”) is a New York-based non-profit legal services provider affiliated with Catholic Charities Brooklyn and Queens and the Roman Catholic Diocese of Brooklyn. CMS was founded in 1971. Its mission is to empower and serve low-income immigrant communities through legal and educational services, including by assisting individuals facing removal from the United States before the Executive Office for Immigration Review. CMS currently represents more than two hundred non-detained individuals with cases docketed before the New York Immigration Courts.

103. CMS’s Immigration Program handles a variety of cases, including, but not limited to, asylum, humanitarian relief, and removal defense. CMS employs seven attorneys, one law graduate, one immigration paralegal, and one legal assistant who work directly in their Removal Defense Project within the Immigration Program at CMS.

104. CMS closed their office to the public on March 15, 2020, and all employees have been working from home since March 16, 2020. From March 11, 2020 to the present, CMS attorneys assisted in seven ongoing immigration matters with the New York City Immigration Courts, which encompasses the period since New York announced the New York State PAUSE plan.

105. Alexandra Gonçalves-Peña is the managing attorney of the Immigration Program at CMS. Ms. Gonçalves-Peña has three cases that currently are or have already been impacted by the COVID-19 pandemic. For example, one client’s individual hearing was scheduled for April 10, 2020 with a call-up date set for March 26, 2020. As a result of the Immigration Court closures in New York City, the hearing did not move forward, but it was unclear if the filing deadline still applied to the case. Due to the possible dangers of exposure to COVID-19 both to

herself and her client, Ms. Gonçalves-Peña did not file the call-up documents with EOIR on or before the filing deadline.

106. Ms. Gonçalves-Peña also had an Individual Hearing with Immigration Judge Jennifer Chung that was scheduled for May 10, 2020, with a filing deadline of April 14, 2020. As of April 21, 2020, this Individual Hearing will be postponed to an unknown future date. Ms. Gonçalves-Peña's client is a Honduran woman who currently lives in a single room in a shelter. The client shares this room with her adult daughter and three minor children. Ms. Gonçalves-Peña and her client began to work on her declaration prior to the city-wide quarantine and have attempted to continue working on it since then, but it is impossible for Ms. Gonçalves-Peña and the client to have a confidential conversation in light of the client's living arrangements. Ms. Gonçalves-Peña's client lost both her son and her husband on the same day in Honduras and speaking about this trauma over the phone while in a room with her four children was "awful." Ms. Gonçalves-Peña considered other methods of communication including Zoom, but the documented security risks of this program prevented it from being a viable option. Ultimately Ms. Gonçalves-Peña determined with her client that they could not reasonably comply with the call-up date given the circumstances. On Thursday April 2, 2020, Ms. Gonçalves-Peña filed a motion to file out of time, and as of April 23, 2020, she has not received a response to the motion. She did not file call-up documents on or before April 10, 2020. It is unclear if the filing deadline remains despite the individual hearing having since been postponed.

107. Ms. Gonçalves-Peña is also representing a family in an individual hearing before Immigration Judge Evalyn Douchy in NYC Immigration Court scheduled for May 25, 2020 with a May 10, 2020 filing deadline. Ms. Gonçalves-Peña and the client will not be able to prepare an updated Form I-589 because she cannot meet in person with her client and confidential

communication is not possible. There is also evidence, including a letter from the client's sister, that Ms. Gonçalves-Peña cannot obtain due to the global disruptions caused by COVID-19. The client's sister is located in Honduras where notaries are closed and there are issues with the mail due to the pandemic. Ms. Gonçalves-Peña plans to file a motion to file out of time as well as a motion to continue.

108. Ms. Gonçalves-Peña's ability to communicate with her clients has been significantly disrupted as a result of this pandemic, and often requires resources to which she and her clients do not have access. Because motions to file out of time and motions to continue hearings have yet to be decided, these cases quickly become a strain on resources as Ms. Gonçalves-Peña and her colleagues must prepare as if the cases are moving forward on the individual hearing dates. Preparing for an individual hearing under these circumstances requires that Ms. Gonçalves-Peña and her staff expend more time on each case than they otherwise would have to. This takes time away from other areas in their immigration practice.

109. Lynn Neugebauer, a supervising attorney at CMS, has two cases that are currently affected by the COVID-19 pandemic.

110. One of Ms. Neugebauer's clients had a one-year deadline to file his Form I-589 on April 21, 2020. She has been unable to meet with her client since CMS closed on March 15, 2020. Her client is in full self-quarantine because his son has Leukemia and is immunocompromised. Ms. Neugebauer worked with the client over the phone to assemble his application, and on April 8, 2020, she felt compelled to travel to her office to print the application and mail it to her client via the U.S. Postal Service for him to review and sign the I-589. As of April 15, 2020, the package has not been delivered to the client. Ms. Neugebauer is unsure if the client will receive and be able to return the signed documents in time to submit the

I-589 to EOIR within the one-year deadline. When her client mails the application to her, she must return to the office to scan the application and convert it to a PDF with the certificate of service, creating another window of possible exposure to COVID-19.

111. Ms. Neugebauer has an additional case impacted by the COVID-19 pandemic. Ms. Neugebauer's client has an individual hearing scheduled for June 12, 2020, with a filing deadline on June 1, 2020. Ms. Neugebauer is struggling to obtain original documents and declarations to support her client's case. Her client's family is located in El Salvador, where the mail system is down except for the delivery of emergency medical supplies. Additionally, Ms. Neugebauer and her client are having trouble reviewing and finalizing her client's declaration. Her client shares a room with her two children. This living arrangement makes it extremely difficult for her client to discuss any of the details of her case in a confidential manner. Lastly, Ms. Neugebauer's client's landlord has been trying to evict her from her apartment for the past month. This added strain has made it exceedingly difficult for her client to focus on her case.

112. Michael Shannon, a senior staff attorney at CMS, has three cases that are or have been affected by the COVID-19 pandemic.

113. For example, Mr. Shannon represented a client in a non-detained master calendar hearing at the Federal Plaza Immigration Court on March 11, 2020. He and his client both had to take the subway and then wait in the "crowded, poorly ventilated hallway and courtroom with many respondents, attorneys, and court staff." At that time, New York State had already issued guidance on social distancing measures. Attending this hearing put Mr. Shannon's health, his client's health, and the general public's health at risk.

114. Mr. Shannon attended another non-detained individual hearing at the Federal Plaza Immigration Court on March 12, 2020. Mr. Shannon's client is in his late sixties and has

multiple comorbidities, including diabetes, hypertension, hypothyroidism, asthma, and pulmonary disease, all of which put him at higher risk of suffering complications or death should he contract COVID-19. Between March 10, 2020 and March 12, 2020, Mr. Shannon made numerous calls to EOIR in an attempt to reach the Immigration Judge's legal assistant in order to alert the court of the possible health risks for his client and receive guidance on filing an emergency motion to waive his client's appearance at the same hearing. Mr. Shannon prepared the written motion to waive his client's appearance, and on March 12, 2020, he finally reached the assigned ICE Assistant Chief Counsel. The ICE lawyer stated that she would join his motion and informed the immigration judge of the situation. The Immigration Judge signed the order granting relief.

115. In the court prior to the hearing on March 12, 2020, the Immigration Judge and the ICE lawyer both mentioned that visibly sick attorneys and respondents had been present in the courtrooms at the Federal Plaza Immigration Court on that day and in the days leading up to March 12, 2020.

116. Mr. Shannon also represents a client who had a master calendar hearing scheduled on March 16, 2020 at the Broadway Immigration Court. On March 13, 2020, Mr. Shannon called the legal assistant for the Immigration Judge for his client's case and requested an update on the status of the March 16, 2020 hearing. The legal assistant said that there was no COVID-19 guidance and that the hearing was scheduled to move forward. Mr. Shannon asked the legal assistant if he could file a motion to continue or a motion to appear telephonically either by e-mail, fax, or phone. The legal assistant said this was not possible.

117. Mr. Shannon drafted a written motion and used ICE eService to submit the motion. He planned to attend the March 16, 2020 master calendar hearing in person and

recommended to his client that she not appear. On March 13, 2020, at or around midnight, Mr. Shannon learned through an immigrant advocates listserv that EOIR had announced on Twitter that non-detained master calendar hearings in New York City would be adjourned beginning March 16, 2020.

118. Although Mr. Shannon and his client did not have to attend the March 16, 2020 hearing, they are now navigating how to respond to the client's one-year filing deadline on May 7, 2020. As of April 23, 2020, Mr. Shannon is unsure if he will be able to meet the one-year filing deadline due to the unique difficulties of telephonic communication and the socio-economic toll that COVID-19 is having on his client. He and his client have had problems with the phone connection, and there are usually children making noises in the background. Additionally, his client and her neighbors have fallen ill with COVID-19 symptoms and his client has lost her job.

119. Another attorney at CMS has an individual hearing scheduled for May 8, 2020. Although the lawyer has previously submitted an evidentiary packet for the case, the lawyer intends to submit a supplementary filing with a motion to file out of time. In order to prepare for this filing, the lawyer has had to go to the office to obtain the requisite documents and print items, placing the lawyer in danger of contracting COVID-19.

120. The COVID-19 pandemic has greatly reduced CMS's ability to take on new cases, as their intake procedures have ceased. People otherwise eligible for CMS's services cannot meet with CMS staff to retain an attorney for representation. CMS remains concerned for individuals being forced to move forward in Immigration Court as unrepresented respondents.

121. The employees of CMS are acutely aware of the dangers of COVID-19. Their legal director has tested positive for the virus, and many of them have friends and family

members that have been affected. Ms. Gonçalves-Peña believes she cannot ethically ask her employees to risk their health in order to comply with these filing deadlines set forth by the Immigration Courts during the city, state, and national emergency.

FIRST CAUSE OF ACTION

**VIOLATION OF THE FIFTH AMENDMENT - SUBSTANTIVE DUE PROCESS
(STATE-CREATED DANGER)**

122. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein and incorporate them by reference.

123. The Fifth Amendment to the U.S. Constitution provides that no person shall be deprived of life, liberty, or property, without due process of law.

124. Defendants require litigants and their advocates to travel from their homes and interact with members of the public in order to meet their arbitrary filing deadlines. In doing so, Defendants act in a manner that increases the danger Plaintiffs and their members and employees face from COVID-19.

125. Defendants have no need, urgent or otherwise, to enforce filing deadlines for hearings that take place shortly after the projected court opening of May 18, 2020. Hearings and/or filing deadlines can be postponed, including deadlines for motions to re-open for cases with already existing removal orders. Given the rapidly changing nature of the responses to COVID-19, it is possible that Immigration Court closures will be extended past May 15, 2020. Forcing Plaintiffs to risk their health to prepare for hearings that may themselves be postponed is unnecessary and dangerous. Defendants, by refusing to extend filing deadlines until the pandemic ends, have acted with reckless indifference to expose Plaintiffs to grave health risks, and this conduct shocks the conscience.

126. Defendants’ failure and refusal to postpone filing deadlines in the New York City Immigration Courts therefore subjects Plaintiffs to a “state-created danger” that violates the Due Process Clause.

SECOND CAUSE OF ACTION

ADMINISTRATIVE PROCEDURE ACT

127. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein and incorporate them by reference.

128. The Administrative Procedure Act (“APA”), 5 U.S.C. § 702, provides that:

[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. Section 706 of the APA further states that the reviewing court shall:

hold unlawful and set aside agency action, findings and conclusions found to be
(A) arbitrary and capricious, an abuse of discretion or otherwise not in
compliance with law [or] ... (D) without observance of procedure required by
law[.]

129. Defendants’ lack of policy to postpone the deadlines for filing documents in the midst of a global pandemic, placing at risk the health and lives of both clients and their advocates, to advance proceedings that have no urgency, and failing to provide uniform guidance for Immigration Court deadlines and instead allowing deadlines to be set by each individual judge, is arbitrary and capricious and an abuse of discretion.

130. Defendant’s failure to enact a policy to postpone filing deadlines in the New York City Immigration Courts has placed an onerous burden on practitioners, clients, and unrepresented litigants, who have had the additional work of filing motions to continue and motions for untimely filings to request that filings are accepted and that non-detained hearings after May 1, 2020, are postponed. This failure has caused a Catch-22 situation where litigants

and their lawyers are forced to choose between breaking the law, contravening guidance from the federal government and orders from the Governor of New York State (and New Jersey and Connecticut), and endangering their health to comply with filing deadlines.

THIRD CAUSE OF ACTION

IMMIGRATION AND NATIONALITY ACT and the ADMINISTRATIVE PROCEDURE ACT – ACCESS TO COUNSEL

131. All the foregoing allegations are re-alleged and incorporated by reference.

132. The Immigration and Nationality Act, 8 U.S.C. § 1362, provides that “[i]n any removal proceedings before an immigration judge,” the individual “shall have the privilege of being represented” *See also* 8 C.F.R. § 1240.3.

133. The APA, 5 U.S.C. § 555(b), provides that “[a] person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.” Individuals subjected to removal procedures are compelled to appear in person before agency representatives.

134. Defendants’ refusal to postpone arbitrary deadlines in the New York City Immigration Courts has made it difficult if not impossible for unrepresented litigants who have upcoming deadlines to obtain attorneys who are willing to run the attendant health risks in order to represent them. Defendants refusal to postpone deadlines also makes it impossible for attorneys to provide effective and competent assistance to their clients. Defendants therefore have violated Plaintiffs’ right to representation by counsel guaranteed by the INA codified in 8 U.S.C. § 1362 and the APA, U.S.C. § 555(b).

FOURTH CAUSE OF ACTION

**VIOLATION OF THE FIFTH AMENDMENT
(RIGHT TO COUNSEL)**

135. All the foregoing allegations are re-alleged and incorporated by reference.

136. The Fifth Amendment to the U.S. Constitution guarantees the right to an attorney in removal proceedings. This constitutional right is memorialized in Immigration and Nationality Act, 8 U.S.C. § 1362, and Section 555(b) of the APA.

137. Defendants refusal to postpone arbitrary deadlines has made it difficult if not impossible for unrepresented litigants who have upcoming deadlines to obtain attorneys who are willing to run the attendant health risks in order to represent them. Defendants refusal to postpone deadlines also makes it impossible for attorneys to provide effective and competent assistance to their clients. Defendants therefore have violated Plaintiffs' right to representation by counsel guaranteed by the INA codified in 8 U.S.C. § 1362 and the APA, U.S.C. § 555(b).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court to:

- a. Declare Defendants' actions in this matter an abuse of discretion and not in accordance with the law pursuant to 5 U.S.C. § 706(1) and 28 U.S.C. §§ 2201-02, as well as a violation of the Due Process clause of the U.S. Constitution;
- b. Issue a preliminary and permanent injunction pursuant to 28 U.S.C. § 1361 and 5 U.S.C. § 706(1) prohibiting Defendants from enforcing filing deadlines or taking any adverse actions in non-detained New York City Immigration Court cases based on litigants' failure or inability to comply with such deadlines until 45 days after New York State and New York City lift all stay at home and social distance orders applicable to advocates and litigants appearing in NYC;

- c. Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*; and
- d. Grant such other relief as the Court deems necessary and proper.

Dated: April 29, 2020

LEGAL SERVICES NYC

By: /s/ Edward Josephson

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Presidential Documents

Title 3—

Proclamation 10014 of April 22, 2020

The President

Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak

By the President of the United States of America

A Proclamation

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted the livelihoods of Americans. In Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak), I declared that the COVID-19 outbreak in the United States constituted a national emergency, beginning March 1, 2020. Since then, the American people have united behind a policy of mitigation strategies, including social distancing, to flatten the curve of infections and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. This needed behavioral shift has taken a toll on the United States economy, with national unemployment claims reaching historic levels. In the days between the national emergency declaration and April 11, 2020, more than 22 million Americans have filed for unemployment.

In the administration of our Nation's immigration system, we must be mindful of the impact of foreign workers on the United States labor market, particularly in an environment of high domestic unemployment and depressed demand for labor. We must also conserve critical State Department resources so that consular officers may continue to provide services to United States citizens abroad. Even with their ranks diminished by staffing disruptions caused by the pandemic, consular officers continue to provide assistance to United States citizens, including through the ongoing evacuation of many Americans stranded overseas.

I have determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Excess labor supply affects all workers and potential workers, but it is particularly harmful to workers at the margin between employment and unemployment, who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and the disabled. These are the workers who, at the margin between employment and unemployment, are likely to bear the burden of excess labor supply disproportionately.

Furthermore, lawful permanent residents, once admitted, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. There is no way to protect already disadvantaged and unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents by directing those new residents to particular economic sectors with a demonstrated need not met by the existing labor supply. Existing immigrant visa processing protections are inadequate for recovery from the COVID-19 outbreak. The vast majority of immigrant visa categories do not require employers to account for displacement of United States workers.

While some employment-based visas contain a labor certification requirement, because visa issuance happens substantially after the certification is completed, the labor certification process cannot adequately capture the status of the labor market today. Moreover, introducing additional permanent residents when our healthcare resources are limited puts strain on the finite limits of our healthcare system at a time when we need to prioritize Americans and the existing immigrant population. In light of the above, I have determined that the entry, during the next 60 days, of certain aliens as immigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of this proclamation would, except as provided for in section 2 of this proclamation, be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Suspension and Limitation on Entry.* The entry into the United States of aliens as immigrants is hereby suspended and limited subject to section 2 of this proclamation.

Sec. 2. *Scope of Suspension and Limitation on Entry.* (a) The suspension and limitation on entry pursuant to section 1 of this proclamation shall apply only to aliens who:

- (i) are outside the United States on the effective date of this proclamation;
 - (ii) do not have an immigrant visa that is valid on the effective date of this proclamation; and
 - (iii) do not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.
- (b) The suspension and limitation on entry pursuant to section 1 of this proclamation shall not apply to:
- (i) any lawful permanent resident of the United States;
 - (ii) any alien seeking to enter the United States on an immigrant visa as a physician, nurse, or other healthcare professional; to perform medical research or other research intended to combat the spread of COVID-19; or to perform work essential to combating, recovering from, or otherwise alleviating the effects of the COVID-19 outbreak, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees; and any spouse and unmarried children under 21 years old of any such alien who are accompanying or following to join the alien;
 - (iii) any alien applying for a visa to enter the United States pursuant to the EB-5 Immigrant Investor Program;
 - (iv) any alien who is the spouse of a United States citizen;
 - (v) any alien who is under 21 years old and is the child of a United States citizen, or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications;
 - (vi) any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee;
 - (vii) any member of the United States Armed Forces and any spouse and children of a member of the United States Armed Forces;

(viii) any alien seeking to enter the United States pursuant to a Special Immigrant Visa in the SI or SQ classification, subject to such conditions as the Secretary of State may impose, and any spouse and children of any such individual; or

(ix) any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 3. *Implementation and Enforcement.* (a) The consular officer shall determine, in his or her discretion, whether an immigrant has established his or her eligibility for an exception in section 2(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 4. *Termination.* This proclamation shall expire 60 days from its effective date and may be continued as necessary. Whenever appropriate, but no later than 50 days from the effective date of this proclamation, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend whether I should continue or modify this proclamation.

Sec. 5. *Effective Date.* This proclamation is effective at 11:59 p.m. eastern daylight time on April 23, 2020.

Sec. 6. *Additional Measures.* Within 30 days of the effective date of this proclamation, the Secretary of Labor and the Secretary of Homeland Security, in consultation with the Secretary of State, shall review nonimmigrant programs and shall recommend to me other measures appropriate to stimulate the United States economy and ensure the prioritization, hiring, and employment of United States workers.

Sec. 7. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 8. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

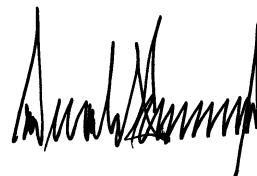
(i) the authority granted by law to an executive department or agency, or the head thereof; or,

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.





Guidance on Preparing Workplaces for COVID-19



Occupational Safety and Health Act of 1970

"To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health."

This guidance is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The Occupational Safety and Health Act requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

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Guidance on Preparing Workplaces for COVID-19

U.S. Department of Labor
Occupational Safety and Health Administration

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Introduction

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the SARS-CoV-2 virus. It has spread from China to many other countries around the world, including the United States. Depending on the severity of COVID-19's international impacts, outbreak conditions—including those rising to the level of a pandemic—can affect all aspects of daily life, including travel, trade, tourism, food supplies, and financial markets.

To reduce the impact of COVID-19 outbreak conditions on businesses, workers, customers, and the public, it is important for all employers to plan now for COVID-19. For employers who have already planned for influenza pandemics, planning for COVID-19 may involve updating plans to address the specific exposure risks, sources of exposure, routes of transmission, and other unique characteristics of SARS-CoV-2 (i.e., compared to pandemic influenza viruses). Employers who have not prepared for pandemic events should prepare themselves and their workers as far in advance as possible of potentially worsening outbreak conditions. Lack of continuity planning can result in a cascade of failures as employers attempt to address challenges of COVID-19 with insufficient resources and workers who might not be adequately trained for jobs they may have to perform under pandemic conditions.

The Occupational Safety and Health Administration (OSHA) developed this COVID-19 planning guidance based on traditional infection prevention and industrial hygiene practices. It focuses on the need for employers to implement engineering, administrative, and work practice controls and personal protective equipment (PPE), as well as considerations for doing so.

This guidance is intended for planning purposes. Employers and workers should use this planning guidance to help identify risk levels in workplace settings and to determine any appropriate control measures to implement. Additional guidance may be needed as COVID-19 outbreak conditions change, including as new information about the virus, its transmission, and impacts, becomes available.

The U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) provides the latest information about COVID-19 and the global outbreak: www.cdc.gov/coronavirus/2019-ncov.

The OSHA COVID-19 webpage offers information specifically for workers and employers: www.osha.gov/covid-19.

This guidance is advisory in nature and informational in content. It is not a standard or a regulation, and it neither creates new legal obligations nor alters existing obligations created by OSHA standards or the *Occupational Safety and Health Act* (OSH Act). Pursuant to the OSH Act, employers must comply with safety and health standards and regulations issued and enforced either by OSHA or by an OSHA-approved State Plan. In addition, the OSH Act's General Duty Clause, [Section 5\(a\)\(1\)](#), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. OSHA-approved State Plans may have standards, regulations and enforcement policies that are different from, but at least as effective as, OSHA's. Check with your [State Plan](#), as applicable, for more information.

About COVID-19

Symptoms of COVID-19

Infection with SARS-CoV-2, the virus that causes COVID-19, can cause illness ranging from mild to severe and, in some cases, can be fatal. Symptoms typically include fever, cough, and shortness of breath. Some people infected with the virus have reported experiencing other non-respiratory symptoms. Other people, referred to as *asymptomatic cases*, have experienced no symptoms at all.

According to the CDC, symptoms of COVID-19 may appear in as few as 2 days or as long as 14 days after exposure.

How COVID-19 Spreads

Although the first human cases of COVID-19 likely resulted from exposure to infected animals, infected people can spread SARS-CoV-2 to other people.

The virus is thought to spread mainly from person-to-person, including:

- Between people who are in close contact with one another (within about 6 feet).
- Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) other people who may be infected with SARS-CoV-2.

It may be possible that a person can get COVID-19 by touching a surface or object that has SARS-CoV-2 on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the primary way the virus spreads.

People are thought to be most contagious when they are most symptomatic (i.e., experiencing fever, cough, and/or shortness of breath). Some spread might be possible before people show symptoms; there have been reports of this type of asymptomatic transmission with this new coronavirus, but this is also not thought to be the main way the virus spreads.

Although the United States has implemented public health measures to limit the spread of the virus, it is likely that some person-to-person transmission will continue to occur.

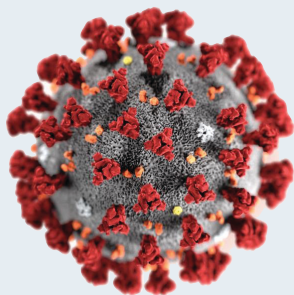
The CDC website provides the latest information about COVID-19 transmission: www.cdc.gov/coronavirus/2019-ncov/about/transmission.html.

How a COVID-19 Outbreak Could Affect Workplaces

Similar to influenza viruses, SARS-CoV-2, the virus that causes COVID-19, has the potential to cause extensive outbreaks.

Under conditions associated with widespread person-to-person spread, multiple areas of the United States and other countries may see impacts at the same time. In the absence of a vaccine, an outbreak may also be an extended event. As a result, workplaces may experience:

- **Absenteeism.** Workers could be absent because they are sick; are caregivers for sick family members; are caregivers for children if schools or day care centers are closed; have at-risk people at home, such as immunocompromised family members; or are afraid to come to work because of fear of possible exposure.
- **Change in patterns of commerce.** Consumer demand for items related to infection prevention (e.g., respirators) is likely to increase significantly, while consumer interest in other goods may decline. Consumers may also change shopping patterns because of a COVID-19 outbreak. Consumers may try to shop at off-peak hours to reduce contact with other people, show increased interest in home delivery services, or prefer other options, such as drive-through service, to reduce person-to-person contact.
- **Interrupted supply/delivery.** Shipments of items from geographic areas severely affected by COVID-19 may be delayed or cancelled with or without notification.



This illustration, created at the Centers for Disease Control and Prevention (CDC), reveals ultrastructural morphology exhibited by the 2019 Novel Coronavirus (2019-nCoV). Note the spikes that adorn the outer surface of the virus, which impart the look of a corona surrounding the virion, when viewed electron microscopically. This virus was identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China.

Photo: CDC / Alissa Eckert & Dan Higgins

Steps All Employers Can Take to Reduce Workers' Risk of Exposure to SARS-CoV-2

This section describes basic steps that every employer can take to reduce the risk of worker exposure to SARS-CoV-2, the virus that causes COVID-19, in their workplace. Later sections of this guidance—including those focusing on jobs classified as having low, medium, high, and very high exposure risks—provide specific recommendations for employers and workers within specific risk categories.

Develop an Infectious Disease Preparedness and Response Plan

If one does not already exist, develop an infectious disease preparedness and response plan that can help guide protective actions against COVID-19.

Stay abreast of guidance from federal, state, local, tribal, and/or territorial health agencies, and consider how to incorporate those recommendations and resources into workplace-specific plans.

Plans should consider and address the level(s) of risk associated with various worksites and job tasks workers perform at those sites. Such considerations may include:

- Where, how, and to what sources of SARS-CoV-2 might workers be exposed, including:
 - The general public, customers, and coworkers; and
 - Sick individuals or those at particularly high risk of infection (e.g., international travelers who have visited locations with widespread sustained (ongoing) COVID-19 transmission, healthcare workers who have had unprotected exposures to people known to have, or suspected of having, COVID-19).
- Non-occupational risk factors at home and in community settings.

- Workers' individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy).
- Controls necessary to address those risks.

Follow federal and state, local, tribal, and/or territorial (SLTT) recommendations regarding development of contingency plans for situations that may arise as a result of outbreaks, such as:

- Increased rates of worker absenteeism.
- The need for social distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing measures.
- Options for conducting essential operations with a reduced workforce, including cross-training workers across different jobs in order to continue operations or deliver surge services.
- Interrupted supply chains or delayed deliveries.

Plans should also consider and address the other steps that employers can take to reduce the risk of worker exposure to SARS-CoV-2 in their workplace, described in the sections below.

Prepare to Implement Basic Infection Prevention Measures

For most employers, protecting workers will depend on emphasizing basic infection prevention measures. As appropriate, all employers should implement good hygiene and infection control practices, including:

- Promote frequent and thorough [hand washing](#), including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.
- Encourage workers to [stay home if they are sick](#).
- Encourage [respiratory etiquette](#), including covering coughs and sneezes.

- Provide customers and the public with tissues and trash receptacles.
- Employers should explore whether they can establish [policies and practices](#), such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), to increase the physical distance among employees and between employees and others if state and local health authorities recommend the use of social distancing strategies.
- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible.
- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment. When choosing cleaning chemicals, employers should consult information on Environmental Protection Agency (EPA)-approved disinfectant labels with claims against emerging viral pathogens. Products with EPA-approved emerging viral pathogens claims are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses. Follow the manufacturer's instructions for use of all cleaning and disinfection products (e.g., concentration, application method and contact time, PPE).

Develop Policies and Procedures for Prompt Identification and Isolation of Sick People, if Appropriate

- Prompt identification and isolation of potentially infectious individuals is a critical step in protecting workers, customers, visitors, and others at a worksite.
- Employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure.
- Employers should develop policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19.

- Where appropriate, employers should develop policies and procedures for immediately isolating people who have [signs and/or symptoms](#) of COVID-19, and train workers to implement them. Move potentially infectious people to a location away from workers, customers, and other visitors. Although most worksites do not have specific isolation rooms, designated areas with closable doors may serve as isolation rooms until potentially sick people can be removed from the worksite.
- Take steps to limit spread of the respiratory secretions of a person who may have COVID-19. Provide a face mask, if feasible and available, and ask the person to wear it, if tolerated. Note: A face mask (also called a surgical mask, procedure mask, or other similar terms) on a patient or other sick person should not be confused with PPE for a worker; the mask acts to contain potentially infectious respiratory secretions at the source (i.e., the person's nose and mouth).
- If possible, isolate people suspected of having COVID-19 separately from those with confirmed cases of the virus to prevent further transmission—particularly in worksites where medical screening, triage, or healthcare activities occur, using either permanent (e.g., wall/different room) or temporary barrier (e.g., plastic sheeting).
- Restrict the number of personnel entering isolation areas.
- Protect workers in close contact with (i.e., within 6 feet of) a sick person or who have prolonged/repeated contact with such persons by using additional engineering and administrative controls, safe work practices, and PPE. Workers whose activities involve close or prolonged/repeated contact with sick people are addressed further in later sections covering workplaces classified at medium and very high or high exposure risk.

Develop, Implement, and Communicate about Workplace Flexibilities and Protections

- Actively encourage sick employees to stay home.
- Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.
- Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.
- Maintain flexible policies that permit employees to stay home to care for a sick family member. Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual.
- Recognize that workers with ill family members may need to stay home to care for them. See CDC's Interim Guidance for Preventing the Spread of COVID-19 in Homes and Residential Communities: www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html.
- Be aware of workers' concerns about pay, leave, safety, health, and other issues that may arise during infectious disease outbreaks. Provide adequate, usable, and appropriate training, education, and informational material about business-essential job functions and worker health and safety, including proper hygiene practices and the use of any workplace controls (including PPE). Informed workers who feel safe at work are less likely to be unnecessarily absent.

- Work with insurance companies (e.g., those providing employee health benefits) and state and local health agencies to provide information to workers and customers about medical care in the event of a COVID-19 outbreak.

Implement Workplace Controls

Occupational safety and health professionals use a framework called the “hierarchy of controls” to select ways of controlling workplace hazards. In other words, the best way to control a hazard is to systematically remove it from the workplace, rather than relying on workers to reduce their exposure. During a COVID-19 outbreak, when it may not be possible to eliminate the hazard, the most effective protection measures are (listed from most effective to least effective): engineering controls, administrative controls, safe work practices (a type of administrative control), and PPE. There are advantages and disadvantages to each type of control measure when considering the ease of implementation, effectiveness, and cost. In most cases, a combination of control measures will be necessary to protect workers from exposure to SARS-CoV-2.

In addition to the types of workplace controls discussed below, CDC guidance for businesses provides employers and workers with recommended SARS-CoV-2 infection prevention strategies to implement in workplaces: www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html.

Engineering Controls

Engineering controls involve isolating employees from work-related hazards. In workplaces where they are appropriate, these types of controls reduce exposure to hazards without relying on worker behavior and can be the most cost-effective solution to implement. Engineering controls for SARS-CoV-2 include:

- Installing high-efficiency air filters.
- Increasing ventilation rates in the work environment.
- Installing physical barriers, such as clear plastic sneeze guards.

- Installing a drive-through window for customer service.
- Specialized negative pressure ventilation in some settings, such as for aerosol generating procedures (e.g., airborne infection isolation rooms in healthcare settings and specialized autopsy suites in mortuary settings).

Administrative Controls

Administrative controls require action by the worker or employer. Typically, administrative controls are changes in work policy or procedures to reduce or minimize exposure to a hazard. Examples of administrative controls for SARS-CoV-2 include:

- Encouraging sick workers to stay at home.
- Minimizing contact among workers, clients, and customers by replacing face-to-face meetings with virtual communications and implementing telework if feasible.
- Establishing alternating days or extra shifts that reduce the total number of employees in a facility at a given time, allowing them to maintain distance from one another while maintaining a full onsite work week.
- Discontinuing nonessential travel to locations with ongoing COVID-19 outbreaks. Regularly check CDC travel warning levels at: www.cdc.gov/coronavirus/2019-ncov/travelers.
- Developing emergency communications plans, including a forum for answering workers' concerns and internet-based communications, if feasible.
- Providing workers with up-to-date education and training on COVID-19 risk factors and protective behaviors (e.g., cough etiquette and care of PPE).
- Training workers who need to use protecting clothing and equipment how to put it on, use/wear it, and take it off correctly, including in the context of their current and potential duties. Training material should be easy to understand and available in the appropriate language and literacy level for all workers.

Safe Work Practices

Safe work practices are types of administrative controls that include procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to a hazard. Examples of safe work practices for SARS-CoV-2 include:

- Providing resources and a work environment that promotes personal hygiene. For example, provide tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
- Requiring regular hand washing or using of alcohol-based hand rubs. Workers should always wash hands when they are visibly soiled and after removing any PPE.
- Post handwashing signs in restrooms.

Personal Protective Equipment (PPE)

While engineering and administrative controls are considered more effective in minimizing exposure to SARS-CoV-2, PPE may also be needed to prevent certain exposures. While correctly using PPE can help prevent some exposures, it should not take the place of other prevention strategies.

Examples of PPE include: gloves, goggles, face shields, face masks, and respiratory protection, when appropriate. During an outbreak of an infectious disease, such as COVID-19, recommendations for PPE specific to occupations or job tasks may change depending on geographic location, updated risk assessments for workers, and information on PPE effectiveness in preventing the spread of COVID-19. Employers should check the [OSHA](#) and [CDC](#) websites regularly for updates about recommended PPE.

All types of PPE must be:

- Selected based upon the hazard to the worker.
- Properly fitted and periodically refitted, as applicable (e.g., respirators).

- Consistently and properly worn when required.
- Regularly inspected, maintained, and replaced, as necessary.
- Properly removed, cleaned, and stored or disposed of, as applicable, to avoid contamination of self, others, or the environment.

Employers are obligated to provide their workers with PPE needed to keep them safe while performing their jobs. The types of PPE required during a COVID-19 outbreak will be based on the risk of being infected with SARS-CoV-2 while working and job tasks that may lead to exposure.

Workers, including those who work within 6 feet of patients known to be, or suspected of being, infected with SARS-CoV-2 and those performing aerosol-generating procedures, need to use respirators:

- National Institute for Occupational Safety and Health (NIOSH)-approved, N95 filtering facepiece respirators or better must be used in the context of a comprehensive, written respiratory protection program that includes fit-testing, training, and medical exams. See OSHA's Respiratory Protection standard, 29 CFR 1910.134 at www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134.
- When disposable N95 filtering facepiece respirators are not available, consider using other respirators that provide greater protection and improve worker comfort. Other types of acceptable respirators include: a R/P95, N/R/P99, or N/R/P100 filtering facepiece respirator; an air-purifying elastomeric (e.g., half-face or full-face) respirator with appropriate filters or cartridges; powered air purifying respirator (PAPR) with high-efficiency particulate arrestance (HEPA) filter; or supplied air respirator (SAR). See CDC/NIOSH guidance for optimizing respirator supplies at: www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy.

- Consider using PAPRs or SARs, which are more protective than filtering facepiece respirators, for any work operations or procedures likely to generate aerosols (e.g., cough induction procedures, some dental procedures, invasive specimen collection, blowing out pipettes, shaking or vortexing tubes, filling a syringe, centrifugation).
- Use a surgical N95 respirator when both respiratory protection and resistance to blood and body fluids is needed.
- Face shields may also be worn on top of a respirator to prevent bulk contamination of the respirator. Certain respirator designs with forward protrusions (duckbill style) may be difficult to properly wear under a face shield. Ensure that the face shield does not prevent airflow through the respirator.
- Consider factors such as function, fit, ability to decontaminate, disposal, and cost. OSHA's Respiratory Protection eTool provides basic information on respirators such as medical requirements, maintenance and care, fit testing, written respiratory protection programs, and voluntary use of respirators, which employers may also find beneficial in training workers at: www.osha.gov/SLTC/etools/respiratory. Also see NIOSH respirator guidance at: www.cdc.gov/niosh/topics/respirators.
- Respirator training should address selection, use (including donning and doffing), proper disposal or disinfection, inspection for damage, maintenance, and the limitations of respiratory protection equipment. Learn more at: www.osha.gov/SLTC/respiratoryprotection.
- The appropriate form of respirator will depend on the type of exposure and on the transmission pattern of COVID-19. See the NIOSH "Respirator Selection Logic" at: www.cdc.gov/niosh/docs/2005-100/default.html or the OSHA "Respiratory Protection eTool" at www.osha.gov/SLTC/etools/respiratory.

Follow Existing OSHA Standards

Existing OSHA standards may apply to protecting workers from exposure to and infection with SARS-CoV-2.

While there is no specific OSHA standard covering SARS-CoV-2 exposure, some OSHA requirements may apply to preventing occupational exposure to SARS-CoV-2. Among the most relevant are:

- OSHA's Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection. See: www.osha.gov/laws-regs/regulations/standardnumber/1910#1910_Subpart_I.
 - When respirators are necessary to protect workers or where employers require respirator use, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134). See: www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134.
- The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which requires employers to furnish to each worker "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." See: www.osha.gov/laws-regs/oshact/completeoshact.

OSHA's Bloodborne Pathogens standard (29 CFR 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may transmit SARS-CoV-2.

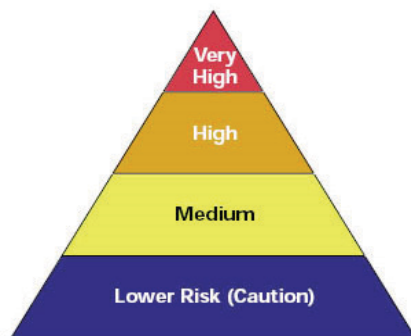
However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (e.g., respiratory secretions) not covered by the standard. See: www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1030.

The OSHA COVID-19 webpage provides additional information about OSHA standards and requirements, including requirements in states that operate their own OSHA-approved State Plans, recordkeeping requirements and injury/illness recording criteria, and applications of standards related to sanitation and communication of risks related to hazardous chemicals that may be in common sanitizers and sterilizers. See: www.osha.gov/SLTC/covid-19/standards.html.

Classifying Worker Exposure to SARS-CoV-2

Worker risk of occupational exposure to SARS-CoV-2, the virus that causes COVID-19, during an outbreak may vary from very high to high, medium, or lower (caution) risk. The level of risk depends in part on the industry type, need for contact within 6 feet of people known to be, or suspected of being, infected with SARS-CoV-2, or requirement for repeated or extended contact with persons known to be, or suspected of being, infected with SARS-CoV-2. To help employers determine appropriate precautions, OSHA has divided job tasks into four risk exposure levels: very high, high, medium, and lower risk. The Occupational Risk Pyramid shows the four exposure risk levels in the shape of a pyramid to represent probable distribution of risk. Most American workers will likely fall in the lower exposure risk (caution) or medium exposure risk levels.

**Occupational Risk Pyramid
for COVID-19**



Very High Exposure Risk

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures.

Workers in this category include:

- Healthcare workers (e.g., doctors, nurses, dentists, paramedics, emergency medical technicians) performing aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on known or suspected COVID-19 patients.
- Healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients (e.g., manipulating cultures from known or suspected COVID-19 patients).
- Morgue workers performing autopsies, which generally involve aerosol-generating procedures, on the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death.

High Exposure Risk

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19. Workers in this category include:

- Healthcare delivery and support staff (e.g., doctors, nurses, and other hospital staff who must enter patients' rooms) exposed to known or suspected COVID-19 patients. (Note: when such workers perform aerosol-generating procedures, their exposure risk level becomes *very high*.)
- Medical transport workers (e.g., ambulance vehicle operators) moving known or suspected COVID-19 patients in enclosed vehicles.
- Mortuary workers involved in preparing (e.g., for burial or cremation) the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death.

Medium Exposure Risk

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. In areas without ongoing community transmission, workers in this risk group may have frequent contact with travelers who may return from international locations with widespread COVID-19 transmission. In areas where there *is* ongoing community transmission, workers in this category may have contact with the general public (e.g., schools, high-population-density work environments, some high-volume retail settings).

Lower Exposure Risk (Caution)

Lower exposure risk (caution) jobs are those that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2 nor frequent close contact with (i.e., within 6 feet of) the general public. Workers in this category have minimal occupational contact with the public and other coworkers.

Jobs Classified at Lower Exposure Risk (Caution): What to Do to Protect Workers

For workers who do not have frequent contact with the general public, employers should follow the guidance for “[Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2](#),” on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

Additional engineering controls are not recommended for workers in the lower exposure risk group. Employers should ensure that engineering controls, if any, used to protect workers from other job hazards continue to function as intended.

Administrative Controls

- Monitor public health communications about COVID-19 recommendations and ensure that workers have access to that information. Frequently check the CDC COVID-19 website: www.cdc.gov/coronavirus/2019-ncov.
- Collaborate with workers to designate effective means of communicating important COVID-19 information.

Personal Protective Equipment

Additional PPE is not recommended for workers in the lower exposure risk group. Workers should continue to use the PPE, if any, that they would ordinarily use for other job tasks.

Jobs Classified at Medium Exposure Risk: What to Do to Protect Workers

In workplaces where workers have medium exposure risk, employers should follow the guidance for “[Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2](#),” on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

- Install physical barriers, such as clear plastic sneeze guards, where feasible.

Administrative Controls

- Consider offering face masks to ill employees and customers to contain respiratory secretions until they are able leave the workplace (i.e., for medical evaluation/care or to return home). In the event of a shortage of masks, a reusable face shield that can be decontaminated may be an acceptable method of protecting against droplet transmission. See CDC/NIOSH guidance for optimizing respirator supplies, which discusses the use of surgical masks, at: www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy.

- Keep customers informed about symptoms of COVID-19 and ask sick customers to minimize contact with workers until healthy again, such as by posting signs about COVID-19 in stores where sick customers may visit (e.g., pharmacies) or including COVID-19 information in automated messages sent when prescriptions are ready for pick up.
- Where appropriate, limit customers' and the public's access to the worksite, or restrict access to only certain workplace areas.
- Consider strategies to minimize face-to-face contact (e.g., drive-through windows, phone-based communication, telework).
- Communicate the availability of medical screening or other worker health resources (e.g., on-site nurse; telemedicine services).

Personal Protective Equipment (PPE)

When selecting PPE, consider factors such as function, fit, decontamination ability, disposal, and cost. Sometimes, when PPE will have to be used repeatedly for a long period of time, a more expensive and durable type of PPE may be less expensive overall than disposable PPE.

Each employer should select the combination of PPE that protects workers specific to their workplace.

Workers with medium exposure risk may need to wear some combination of gloves, a gown, a face mask, and/or a face shield or goggles. PPE ensembles for workers in the medium exposure risk category will vary by work task, the results of the employer's hazard assessment, and the types of exposures workers have on the job.

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19.

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures that involve aerosol generation or specimen collection/handling.

In rare situations that would require workers in this risk category to use respirators, see the PPE section beginning on [page 14](#) of this booklet, which provides more details about respirators. For the most up-to-date information, visit OSHA's COVID-19 webpage: www.osha.gov/covid-19.

Jobs Classified at High or Very High Exposure Risk: What to Do to Protect Workers

In workplaces where workers have high or very high exposure risk, employers should follow the guidance for “[Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2](#),” on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

- Ensure appropriate air-handling systems are installed and maintained in healthcare facilities. See “Guidelines for Environmental Infection Control in Healthcare Facilities” for more recommendations on air handling systems at: www.cdc.gov/mmwr/preview/mmwrhtml/rr5210a1.htm.
- CDC recommends that patients with known or suspected COVID-19 (i.e., person under investigation) should be placed in an airborne infection isolation room (AIIR), if available.
- Use isolation rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19. For postmortem activities, use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death. See the CDC postmortem guidance at: www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-postmortem-specimens.html. OSHA also provides guidance for postmortem activities on its COVID-19 webpage: www.osha.gov/covid-19.

- Use special precautions associated with Biosafety Level 3 when handling specimens from known or suspected COVID-19 patients. For more information about biosafety levels, consult the U.S. Department of Health and Human Services (HHS) “Biosafety in Microbiological and Biomedical Laboratories” at www.cdc.gov/biosafety/publications/bmbl5.

Administrative Controls

If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected individuals and for protecting workers.

- Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.
- Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
- Consider offering enhanced medical monitoring of workers during COVID-19 outbreaks.
- Provide all workers with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training.
- Ensure that psychological and behavioral support is available to address employee stress.

Safe Work Practices

- Provide emergency responders and other essential personnel who may be exposed while working away from fixed facilities with alcohol-based hand rubs containing at least 60% alcohol for decontamination in the field.

Personal Protective Equipment (PPE)

Most workers at high or very high exposure risk likely need to wear gloves, a gown, a face shield or goggles, and either a face mask or a respirator, depending on their job tasks and exposure risks.

Those who work closely with (either in contact with or within 6 feet of) patients known to be, or suspected of being, infected with SARS-CoV-2, the virus that causes COVID-19, should wear respirators. In these instances, see the PPE section beginning on [page 14](#) of this booklet, which provides more details about respirators. For the most up-to-date information, also visit OSHA's COVID-19 webpage: www.osha.gov/covid-19.

PPE ensembles may vary, especially for workers in laboratories or morgue/mortuary facilities who may need additional protection against blood, body fluids, chemicals, and other materials to which they may be exposed. Additional PPE may include medical/surgical gowns, fluid-resistant coveralls, aprons, or other disposable or reusable protective clothing. Gowns should be large enough to cover the areas requiring protection. OSHA may also provide updated guidance for PPE use on its website: www.osha.gov/covid-19.

NOTE: Workers who dispose of PPE and other infectious waste must also be trained and provided with appropriate PPE.

The CDC webpage “Healthcare-associated Infections” (www.cdc.gov/hai) provides additional information on infection control in healthcare facilities.

Workers Living Abroad or Travelling Internationally

Employers with workers living abroad or traveling on international business should consult the “Business Travelers” section of the OSHA COVID-19 webpage (www.osha.gov/covid-19), which also provides links to the latest:

- CDC travel warnings: www.cdc.gov/coronavirus/2019-ncov/travelers
- U.S. Department of State (DOS) travel advisories: travel.state.gov

Employers should communicate to workers that the DOS cannot provide Americans traveling or living abroad with medications or supplies, even in the event of a COVID-19 outbreak.

As COVID-19 outbreak conditions change, travel into or out of a country may not be possible, safe, or medically advisable. It is also likely that governments will respond to a COVID-19 outbreak by imposing public health measures that restrict domestic and international movement, further limiting the U.S. government's ability to assist Americans in these countries. It is important that employers and workers plan appropriately, as it is possible that these measures will be implemented very quickly in the event of worsening outbreak conditions in certain areas.

More information on COVID-19 planning for workers living and traveling abroad can be found at: www.cdc.gov/travel.

For More Information

Federal, state, and local government agencies are the best source of information in the event of an infectious disease outbreak, such as COVID-19. Staying informed about the latest developments and recommendations is critical, since specific guidance may change based upon evolving outbreak situations.

Below are several recommended websites to access the most current and accurate information:

- Occupational Safety and Health Administration website: www.osha.gov
- Centers for Disease Control and Prevention website: www.cdc.gov
- National Institute for Occupational Safety and Health website: www.cdc.gov/niosh

OSHA Assistance, Services, and Programs

OSHA has a great deal of information to assist employers in complying with their responsibilities under OSHA law. Several OSHA programs and services can help employers identify and correct job hazards, as well as improve their safety and health program.

Establishing a Safety and Health Program

Safety and health programs are systems that can substantially reduce the number and severity of workplace injuries and illnesses, while reducing costs to employers.

Visit www.osha.gov/safetymanagement for more information.

Compliance Assistance Specialists

OSHA compliance assistance specialists can provide information to employers and workers about OSHA standards, short educational programs on specific hazards or OSHA rights and responsibilities, and information on additional compliance assistance resources.

Visit www.osha.gov/complianceassistance/cas or call 1-800-321-OSHA (6742) to contact your local OSHA office.

No-Cost On-Site Safety and Health Consultation Services for Small Business

OSHA's On-Site Consultation Program offers no-cost and confidential advice to small and medium-sized businesses in all states, with priority given to high-hazard worksites. On-Site consultation services are separate from enforcement and do not result in penalties or citations.

For more information or to find the local On-Site Consultation office in your state, visit www.osha.gov/consultation, or call 1-800-321-OSHA (6742).

Under the consultation program, certain exemplary employers may request participation in OSHA's **Safety and Health Achievement Recognition Program (SHARP)**. Worksites that receive SHARP recognition are exempt from programmed inspections during the period that the SHARP certification is valid.

Cooperative Programs

OSHA offers cooperative programs under which businesses, labor groups and other organizations can work cooperatively with OSHA. To find out more about any of the following programs, visit www.osha.gov/cooperativeprograms.

Strategic Partnerships and Alliances

The OSHA Strategic Partnerships (OSP) provide the opportunity for OSHA to partner with employers, workers, professional or trade associations, labor organizations, and/or other interested stakeholders. Through the Alliance Program, OSHA works with groups to develop compliance assistance tools and resources to share with workers and employers, and educate workers and employers about their rights and responsibilities.

Voluntary Protection Programs (VPP)

The VPP recognize employers and workers in the private sector and federal agencies who have implemented effective safety and health programs and maintain injury and illness rates below the national average for their respective industries.

Occupational Safety and Health Training

OSHA partners with 26 OSHA Training Institute Education Centers at 37 locations throughout the United States to deliver courses on OSHA standards and occupational safety and health topics to thousands of students a year. For more information on training courses, visit www.osha.gov/otiec.

OSHA Educational Materials

OSHA has many types of educational materials to assist employers and workers in finding and preventing workplace hazards.

All OSHA publications are free at www.osha.gov/publications and www.osha.gov/ebooks. You can also call 1-800-321-OSHA (6742) to order publications.

Employers and safety and health professionals can sign-up for *QuickTakes*, OSHA's free, twice-monthly online newsletter with the latest news about OSHA initiatives and products to assist in finding and preventing workplace hazards. To sign up, visit www.osha.gov/quicktakes.

OSHA Regional Offices

Region 1

Boston Regional Office
(CT*, ME*, MA, NH, RI, VT*)
JFK Federal Building
25 New Sudbury Street, Room E340
Boston, MA 02203
(617) 565-9860 (617) 565-9827 Fax

Region 2

New York Regional Office
(NJ*, NY*, PR*, VI*)
Federal Building
201 Varick Street, Room 670
New York, NY 10014
(212) 337-2378 (212) 337-2371 Fax

Region 3

Philadelphia Regional Office
(DE, DC, MD*, PA, VA*, WV)
The Curtis Center
170 S. Independence Mall West, Suite 740 West
Philadelphia, PA 19106-3309
(215) 861-4900 (215) 861-4904 Fax

Region 4

Atlanta Regional Office
(AL, FL, GA, KY*, MS, NC*, SC*, TN*)
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Room 6T50
Atlanta, GA 30303
(678) 237-0400 (678) 237-0447 Fax

Region 5

Chicago Regional Office
(IL*, IN*, MI*, MN*, OH, WI)
John C. Kluczynski Federal Building
230 South Dearborn Street, Room 3244
Chicago, IL 60604
(312) 353-2220 (312) 353-7774 Fax

Region 6

Dallas Regional Office
(AR, LA, NM*, OK, TX)
A. Maceo Smith Federal Building
525 Griffin Street, Room 602
Dallas, TX 75202
(972) 850-4145 (972) 850-4149 Fax

Region 7

Kansas City Regional Office
(IA*, KS, MO, NE)
Two Pershing Square Building
2300 Main Street, Suite 1010
Kansas City, MO 64108-2416
(816) 283-8745 (816) 283-0547 Fax

Region 8

Denver Regional Office
(CO, MT, ND, SD, UT*, WY*)
Cesar Chavez Memorial Building
1244 Speer Boulevard, Suite 551
Denver, CO 80204
(720) 264-6550 (720) 264-6585 Fax

Region 9

San Francisco Regional Office
(AZ*, CA*, HI*, NV*, and American Samoa,
Guam and the Northern Mariana Islands)
San Francisco Federal Building
90 7th Street, Suite 2650
San Francisco, CA 94103
(415) 625-2547 (415) 625-2534 Fax

Region 10

Seattle Regional Office
(AK*, ID, OR*, WA*)
Fifth & Yesler Tower
300 Fifth Avenue, Suite 1280
Seattle, WA 98104
(206) 757-6700 (206) 757-6705 Fax

*These states and territories operate their own OSHA-approved job safety and health plans and cover state and local government employees as well as private sector employees. The Connecticut, Illinois, Maine, New Jersey, New York and Virgin Islands programs cover public employees only. (Private sector workers in these states are covered by Federal OSHA). States with approved programs must have standards that are identical to, or at least as effective as, the Federal OSHA standards.

Note: To get contact information for OSHA area offices, OSHA-approved state plans and OSHA consultation projects, please visit us online at www.osha.gov or call us at 1-800-321-OSHA (6742).

How to Contact OSHA

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

**For assistance, contact us.
We are OSHA. We can help.**





U.S. Department of Labor

For more information:



www.osha.gov (800) 321-OSHA (6742)



What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

Technical Assistance Questions and Answers - Updated on May 7, 2020

- All EEOC materials related to COVID-19 are collected at www.eeoc.gov/coronavirus.
- The EEOC enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic Information Nondiscrimination Act.
- The EEO laws, including the ADA and Rehabilitation Act, continue to apply during the time of the COVID-19 pandemic, but they do not interfere with or prevent employers from following the [guidelines and suggestions made by the CDC or state/local public health authorities](#) about steps employers should take regarding COVID-19. **Employers should remember that guidance from public health authorities is likely to change as the COVID-**

19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.

- The EEOC has provided guidance (a publication entitled [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act \[PDF version\]](#)), consistent with these workplace protections and rules, that can help employers implement strategies to navigate the impact of COVID-19 in the workplace. This pandemic publication, which was written during the prior H1N1 outbreak, is still relevant today and identifies established ADA and Rehabilitation Act principles to answer questions frequently asked about the workplace during a pandemic. It has been updated as of March 19, 2020 to address examples and information regarding COVID-19; **the new 2020 information appears in bold.**
- The World Health Organization (WHO) has declared COVID-19 to be an international pandemic. The EEOC pandemic publication includes a [separate section](#) that answers common employer questions about what to do after a pandemic has been declared. Applying these principles to the COVID-19 pandemic, the following may be useful:

A. Disability-Related Inquiries and Medical Exams

A.1. How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic? (3/17/20)

During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

A.2. When screening employees entering the workplace during this time, may an employer only ask employees about the COVID-19 symptoms EEOC has identified as [examples](#), or may it ask about any symptoms identified by public health authorities as associated with COVID-19? (4/9/20)

As public health authorities and doctors learn more about COVID-19, they may expand the list of associated symptoms. Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease. These sources may guide employers when choosing questions to ask employees to determine whether they would pose a direct threat to health in the workplace. For example, additional symptoms beyond fever or cough may include new loss of smell or taste as well as gastrointestinal problems, such as nausea, diarrhea, and vomiting.

A.3. [When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?](#) (3/17/20)

Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

A.4. [Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?](#) (3/17/20)

Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

A.5. [When employees return to work, does the ADA allow employers to require a doctor's note certifying fitness for duty?](#) (3/17/20)

Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify that an individual does not have the pandemic virus.

A.6. May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace? (4/23/20)

The ADA requires that any mandatory medical test of employees be “job related and consistent with business necessity.” Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take steps to determine if [employees entering the workplace have COVID-19](#) because [an individual with the virus will pose a direct threat](#) to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review [guidance](#) from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities, and check for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a particular test. Finally, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later.

Based on guidance from medical and public health authorities, employers should still require – to the greatest extent possible – that employees observe

infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

B. Confidentiality of Medical Information

B.1. May an employer store in existing medical files information it obtains related to COVID-19, including the results of taking an employee's temperature or the employee's self-identification as having this disease, or must the employer create a new medical file system solely for this information? (4/9/20)

The ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file, thus limiting access to this [confidential information](#). An employer may store all medical information related to COVID-19 in existing medical files. This includes an employee's statement that he has the disease or suspects he has the disease, or the employer's notes or other documentation from questioning an employee about symptoms.

B.2. If an employer requires all employees to have a daily temperature check before entering the workplace, may the employer maintain a log of the results? (4/9/20)

Yes. The employer needs to maintain the confidentiality of this information.

B.3. May an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19? (4/9/20)

Yes.

B.4. May a temporary staffing agency or a contractor that places an employee in an employer's workplace notify the employer if it learns the

employee has COVID-19? (4/9/20)

Yes. The staffing agency or contractor may notify the employer and disclose the name of the employee, because the employer may need to determine if this employee had contact with anyone in the workplace.

C. Hiring and Onboarding

C.1. If an employer is hiring, may it screen applicants for symptoms of COVID-19? (3/18/20)

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

C.2. May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam? (3/18/20)

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

C.3. May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it? (3/18/20)

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

C.4. May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it? (3/18/20)

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

C.5. May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19? (4/9/20)

No. The fact that the CDC has identified those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer. However, an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

D. Reasonable Accommodation

In discussing accommodation requests, employers and employees may find it helpful to consult the Job Accommodation Network (JAN) website for types of accommodations, www.askjan.org. JAN's materials specific to COVID-19 are at <https://askjan.org/topics/COVID-19.cfm>.

D.1. If a job may only be performed at the workplace, are there reasonable accommodations for individuals with disabilities, absent undue hardship, that could offer protection to an employee who, due to a preexisting disability, is at higher risk from COVID-19? (4/9/20)

There may be reasonable accommodations that could offer protection to an individual whose disability puts him at greater risk from COVID-19 and who therefore requests such actions to eliminate possible exposure. Even with the constraints imposed by a pandemic, some accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer.

Low-cost solutions achieved with materials already on hand or easily obtained may be effective. If not already implemented for all employees, accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers whenever feasible per [CDC guidance](#) or other accommodations that reduce chances of exposure.

Flexibility by employers and employees is important in determining if some accommodation is possible in the circumstances. Temporary job restructuring of marginal job duties, temporary transfers to a different position, or modifying a work schedule or shift assignment may also permit an individual with a disability to perform safely the essential functions of the job while reducing exposure to others in the workplace or while commuting.

D.2. If an employee has a preexisting mental illness or disorder that has been exacerbated by the COVID-19 pandemic, may he now be entitled to a reasonable accommodation (absent undue hardship)? (4/9/20)

Although many people feel significant stress due to the COVID-19 pandemic, employees with certain preexisting mental health conditions, for example, anxiety disorder, obsessive-compulsive disorder, or post-traumatic stress disorder, may have more difficulty handling the disruption to daily life that has accompanied the COVID-19 pandemic.

As with any accommodation request, employers may: ask questions to determine whether the condition is a disability; discuss with the employee how the requested accommodation would assist him and enable him to keep working; explore alternative accommodations that may effectively meet his needs; and request medical documentation if needed.

D.3. In a workplace where all employees are required to telework during this time, should an employer postpone discussing a request from an

employee with a disability for an accommodation that will not be needed until he returns to the workplace when mandatory telework ends? (4/9/20)

Not necessarily. An employer may give higher priority to discussing requests for reasonable accommodations that are needed while teleworking, but the employer may begin discussing this request now. The employer may be able to acquire all the information it needs to make a decision. If a reasonable accommodation is granted, the employer also may be able to make some arrangements for the accommodation in advance.

D.4. What if an employee was already receiving a reasonable accommodation prior to the COVID-19 pandemic and now requests an additional or altered accommodation? (4/9/20)

An employee who was already receiving a reasonable accommodation prior to the COVID-19 pandemic may be entitled to an additional or altered accommodation, absent undue hardship. For example, an employee who is teleworking because of the pandemic may need a different type of accommodation than what he [uses in the workplace](#). The employer [may discuss](#) with the employee whether the same or a different disability is the basis for this new request and why an additional or altered accommodation is needed.

D.5. During the pandemic, if an employee requests an accommodation for a medical condition either at home or in the workplace, may an employer still request information to determine if the condition is a disability? (4/17/20)

Yes, if it is not obvious or already known, an employer may ask questions or request medical documentation to determine whether the employee has a "disability" as defined by the ADA (a physical or mental impairment that substantially limits a major life activity, or a history of a substantially limiting impairment).

D.6. During the pandemic, may an employer still engage in the interactive process and request information from an employee about why an accommodation is needed? (4/17/20)

Yes, if it is not obvious or already known, an employer may ask questions or request [medical documentation](#) to determine whether the employee's disability necessitates an accommodation, either the one he requested or any other.

[Possible questions](#) for the employee may include: (1) how the disability creates a limitation, (2) how the requested accommodation will effectively address the limitation, (3) whether another form of accommodation could effectively address the issue, and (4) how a proposed accommodation will enable the employee to continue performing the "essential functions" of his position (that is, the fundamental job duties).

D.7. If there is some urgency to providing an accommodation, or the employer has limited time available to discuss the request during the pandemic, may an employer provide a temporary accommodation? (4/17/20)

Yes. Given the pandemic, some employers may choose to forgo or shorten the exchange of information between an employer and employee known as the "interactive process" (discussed in D.5 and D.6., above) and grant the request. In addition, when government restrictions change, or are partially or fully lifted, the need for accommodations may also change. This may result in more requests for short-term accommodations. Employers may wish to adapt the interactive process - and devise end dates for the accommodation - to suit changing circumstances based on public health directives.

Whatever the reason for shortening or adapting the interactive process, an employer may also choose to place an end date on the accommodation (for example, either a specific date such as May 30, or when the employee returns to the workplace part- or full-time due to changes in government restrictions limiting the number of people who may congregate). Employers may also opt to provide a requested accommodation on an interim or trial basis, with an end

date, while awaiting receipt of medical documentation. Choosing one of these alternatives may be particularly helpful where the requested accommodation would provide protection that an employee may need because of a pre-existing disability that puts her at greater risk during this pandemic. This [could also apply](#) to employees who have disabilities exacerbated by the pandemic.

Employees may request an extension that an employer must consider, particularly if current government restrictions are extended or new ones adopted.

D.8. May an employer ask employees now if they will need reasonable accommodations in the future when they are permitted to return to the workplace? (4/17/20)

Yes. Employers may ask employees with disabilities to request accommodations that they believe they may need when the workplace re-opens. Employers may begin the "interactive process" - the discussion between the employer and employee focused on whether the impairment is a disability and the reasons that an accommodation is needed.

D.9. Are the circumstances of the pandemic relevant to whether a requested accommodation can be denied because it poses an undue hardship? (4/17/20)

Yes. An employer does not have to provide a particular reasonable accommodation if it poses an "[undue hardship](#)," which means "significant difficulty or expense." In some instances, an accommodation that would not have posed an undue hardship prior to the pandemic may pose one now.

D.10. What types of undue hardship considerations may be relevant to determine if a requested accommodation poses "significant difficulty" during the COVID-19 pandemic? (4/17/20)

An employer may consider whether current circumstances create "significant difficulty" in acquiring or providing certain accommodations, considering the

facts of the particular job and workplace. For example, it may be significantly more difficult in this pandemic to conduct a needs assessment or to acquire certain items, and delivery may be impacted, particularly for employees who may be teleworking. Or, it may be significantly more difficult to provide employees with temporary assignments, to remove marginal functions, or to readily hire temporary workers for specialized positions. If a particular accommodation poses an undue hardship, employers and employees should work together to determine if there may be an alternative that could be provided that does not pose such problems.

D.11. What types of undue hardship considerations may be relevant to determine if a requested accommodation poses "significant expense" during the COVID-19 pandemic? (4/17/20)

Prior to the COVID-19 pandemic, most accommodations did not pose a significant expense when considered against an employer's overall budget and resources (always considering the budget/resources of the entire entity and not just its components). But, the sudden loss of some or all of an employer's income stream because of this pandemic is a relevant consideration. Also relevant is the amount of discretionary funds available at this time - when considering other expenses - and whether there is an expected date that current restrictions on an employer's operations will be lifted (or new restrictions will be added or substituted). These considerations do not mean that an employer can reject any accommodation that costs money; an employer must weigh the cost of an accommodation against its current budget while taking into account constraints created by this pandemic. For example, even under current circumstances, there may be many no-cost or very low-cost accommodations.

D.12. Do the ADA and the Rehabilitation Act apply to applicants or employees who are classified as “[critical infrastructure workers](#)” or “[essential critical workers](#)” by the CDC? (4/23/20)

Yes. These CDC designations, or any other designations of certain employees, do not eliminate coverage under the ADA or the Rehabilitation Act, or any other equal employment opportunity law. Therefore, employers receiving requests for reasonable accommodation under the ADA or the Rehabilitation Act from employees falling in these categories of jobs must accept and process the requests as they would for any other employee. Whether the request is granted will depend on whether the worker is an individual with a disability, and whether there is a reasonable accommodation that can be provided absent undue hardship.

E. Pandemic-Related Harassment Due to National Origin, Race, or Other Protected Characteristics

E.1. What practical tools are available to employers to reduce and address workplace harassment that may arise as a result of the COVID-19 pandemic?

(4/9/20)

Employers can help reduce the chance of harassment by explicitly communicating to the workforce that fear of the COVID-19 pandemic should not be misdirected against individuals because of a protected characteristic, including their [national origin](#), [race](#), or other prohibited bases.

Practical anti-harassment tools provided by the EEOC for small businesses can be found here:

- Anti-harassment [policy tips](#) for small businesses
- Select Task Force on the Study of Harassment in the Workplace (includes detailed recommendations and tools to aid in designing effective anti-harassment policies; developing training curricula; implementing complaint,

reporting, and investigation procedures; creating an organizational culture in which harassment is not tolerated):

- [report](#);
- [checklists](#) for employers who want to reduce and address harassment in the workplace; and,
- [chart](#) of risk factors that lead to harassment and appropriate responses.

E.2. Are there steps an employer should take to address possible harassment and discrimination against coworkers when it re-opens the workplace? (4/17/20)

Yes. An employer may remind all employees that it is against the federal EEO laws to harass or otherwise discriminate against coworkers based on race, national origin, color, sex, religion, age (40 or over), disability, or genetic information. It may be particularly helpful for employers to advise supervisors and managers of their roles in watching for, stopping, and reporting any harassment or other discrimination. An employer may also make clear that it will immediately review any allegations of harassment or discrimination and take appropriate action.

F. Furloughs and Layoffs

F.1. Under the EEOC's laws, what waiver responsibilities apply when an employer is conducting layoffs? (4/9/20)

Special rules apply when an employer is offering employees severance packages in exchange for a general release of all discrimination claims against the employer. More information is available in EEOC's [technical assistance document on severance agreements](#).

G. Return to Work

G.1. As government stay-at-home orders and other restrictions are modified or lifted in your area, how will employers know what steps they can take consistent with the ADA to screen employees for COVID-19 when entering the workplace? (4/17/20)

The ADA permits employers to make disability-related inquiries and conduct medical exams if job-related and consistent with business necessity. Inquiries and reliable medical exams meet this standard if it is necessary to exclude employees with a medical condition that would pose a direct threat to health or safety.

Direct threat is to be determined based on the best available objective medical evidence. The guidance from CDC or other public health authorities is such evidence. Therefore, employers will be acting consistent with the ADA as long as any screening implemented is consistent with advice from the CDC and public health authorities for that type of workplace at that time.

For example, this may include continuing to take temperatures and asking questions about symptoms (or require self-reporting) of all those entering the workplace. Similarly, the CDC recently posted [information](#) on return by certain types of critical workers.

Employers should make sure not to engage in unlawful disparate treatment based on protected characteristics in decisions related to screening and exclusion.

G.2. An employer requires returning workers to wear personal protective gear and engage in infection control practices. Some employees ask for accommodations due to a need for modified protective gear. Must an employer grant these requests? (4/17/20)

An employer may require employees to wear [protective gear](#) (for example, masks and gloves) and observe [infection control practices](#) (for example, regular hand washing and social distancing protocols).

However, where an employee with a disability needs a related reasonable accommodation under the ADA (e.g., non-latex gloves, modified face masks for interpreters or others who communicate with an employee who uses lip reading, or gowns designed for individuals who use wheelchairs), or a religious accommodation under Title VII (such as modified equipment due to religious garb), the employer should discuss the request and provide the modification or an alternative if feasible and not an undue hardship on the operation of the employer's business under the ADA or Title VII.

G.3. What does an employee need to do in order to request reasonable accommodation from her employer because she has one of the [medical conditions](#) that CDC says may put her at higher risk for severe illness from COVID-19? (5/5/20)

An employee – or a third party, such as an employee’s doctor – must [let the employer know](#) that she needs a change for a reason related to a medical condition (here, the underlying condition). Individuals may request accommodation in conversation or in writing. While the employee (or third party) does not need to use the term “reasonable accommodation” or reference the ADA, she may do so.

The employee or her representative should communicate that she has a medical condition that necessitates a change to meet a medical need. After receiving a request, the employer may [ask questions or seek medical documentation](#) to help decide if the individual has a disability and if there is a reasonable accommodation, barring [undue hardship](#), that can be provided.

G.4. The CDC identifies a number of medical conditions that might place individuals at [“higher risk for severe illness”](#) if they get COVID-19. An

employer knows that an employee has one of these conditions and is concerned that his health will be jeopardized upon returning to the workplace, but the employee has not requested accommodation. How does the ADA apply to this situation? (5/7/20)

First, if the employee does not request a reasonable accommodation, the ADA does not mandate that the employer take action.

If the employer is concerned about the employee's health being jeopardized upon returning to the workplace, the ADA does not allow the employer to exclude the employee – or take any other adverse action – *solely* because the employee has a disability that the CDC identifies as potentially placing him at “higher risk for severe illness” if he gets COVID-19. Under the ADA, such action is not allowed unless the employee's disability poses a “direct threat” to his health that cannot be eliminated or reduced by reasonable accommodation.

The ADA direct threat requirement is a high standard. As an affirmative defense, direct threat requires an employer to show that the individual has a disability that poses a “significant risk of substantial harm” to his own health under [29 C.F.R. section 1630.2\(r\)](#). A direct threat assessment cannot be based solely on the condition being on the CDC's list; the determination must be an individualized assessment based on a reasonable medical judgment about this employee's disability – not the disability in general – using the most current medical knowledge and/or on the best available objective evidence. The ADA regulation requires an employer to consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. Analysis of these factors will likely include considerations based on the severity of the pandemic in a particular area and the employee's own health (for example, is the employee's disability well-controlled), and his particular job duties. A determination of direct threat also would include the likelihood that an individual will be exposed to the virus at the

worksite. Measures that an employer may be taking in general to protect all workers, such as mandatory social distancing, also would be relevant.

Even if an employer determines that an employee's disability poses a direct threat to his own health, the employer still cannot exclude the employee from the workplace – or take any other adverse action – unless there is no way to provide a reasonable accommodation (absent undue hardship). The ADA regulations require an employer to consider whether there are reasonable accommodations that would eliminate or reduce the risk so that it would be safe for the employee to return to the workplace while still permitting performance of essential functions. This can involve an interactive process with the employee. If there are not accommodations that permit this, then an employer must consider accommodations such as telework, leave, or reassignment (perhaps to a different job in a place where it may be safer for the employee to work or that permits telework). An employer may only bar an employee from the workplace if, after going through all these steps, the facts support the conclusion that the employee poses a significant risk of substantial harm to himself that cannot be reduced or eliminated by reasonable accommodation.

G.5. What are examples of accommodation that, absent undue hardship, may eliminate (or reduce to an acceptable level) a direct threat to self?

(5/5/20)

[Accommodations](#) may include additional or enhanced protective gowns, masks, gloves, or other gear beyond what the employer may generally provide to employees returning to its workplace. Accommodations also may include additional or enhanced protective measures, for example, erecting a barrier that provides separation between an employee with a disability and coworkers/the public or increasing the space between an employee with a disability and others. Another possible reasonable accommodation may be elimination or substitution of particular “marginal” functions (less critical or incidental job duties as distinguished from the “essential” functions of a particular position).

In addition, accommodations may include temporary modification of work schedules (if that decreases contact with coworkers and/or the public when on duty or commuting) or moving the location of where one performs work (for example, moving a person to the end of a production line rather than in the middle of it if that provides more social distancing).

These are only a few ideas. Identifying an effective accommodation depends, among other things, on an employee's job duties and the design of the workspace. An employer and employee should discuss possible ideas; the Job Accommodation Network (www.askjan.org) also may be able to assist in helping identify possible accommodations. As with all discussions of reasonable accommodation during this pandemic, employers and employees are encouraged to be creative and flexible.



Coronavirus Disease 2019 (COVID-19)

Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), May 2020

Plan, Prepare and Respond to Coronavirus Disease 2019

Older adults and people who have severe underlying chronic medical conditions like heart or lung disease or diabetes seem to be at higher risk for developing more serious complications from COVID-19 illness.
[Find more information here.](#)

Summary of Changes to the Guidance:

Below are changes as of May 6, 2020

- Updated strategies and recommendations for employers responding to COVID-19, including those seeking to resume normal or phased business operations:
 - Conducting daily health checks
 - Conducting a hazard assessment of the workplace
 - Encouraging employees to wear cloth face coverings in the workplace, if appropriate
 - Implementing policies and practices for social distancing in the workplace
 - Improving the building ventilation system
- A table outlining the engineering controls, administrative controls, and personal protective equipment (PPE) that employers may use to help prevent the spread of COVID-19 in the workplace


Below are changes as of March 21, 2020

- Updated cleaning and disinfection guidance
- Updated best practices for conducting social distancing
- Updated strategies and recommendations that can be implemented now to respond to COVID-19

CDC Industry Guidance

- [Resources for Airlines](#)
- [Resources for the Ship Industry](#)

OSHA/HHS Guidance

- [Guidance on Preparing Workplaces for COVID-19](#) 

Purpose

This interim guidance is based on what is currently known about the coronavirus disease 2019 (COVID-19). COVID-19 is a respiratory illness that can spread from person to person. The outbreak first started in China, but the virus continues to spread internationally and in [the United States](#). There is much more to learn about the

transmissibility, severity, and other characteristics of COVID-19 and investigations are ongoing. Updates are available on CDC's web page at <https://www.cdc.gov/coronavirus/2019-ncov/>. CDC will update this interim guidance as additional information becomes available.

This interim guidance may help prevent workplace exposures to COVID-19 in non-healthcare settings (separate guidance is available for [healthcare settings](#)). CDC has also provided guidance for [critical infrastructure workers who may have had exposure to a person known or suspected to have COVID-19](#). Unless otherwise specified, this interim guidance for businesses and employers applies to critical infrastructure workplaces as well.

Role of Businesses and Employers in Responding to COVID-19

Businesses and employers can prevent and [slow the spread of COVID-19 within the workplace](#). Employers should respond in a way that takes into account the level of disease transmission in their communities and revise their business response plans as needed. Employers should follow the [White House Guidelines for Opening Up America Again](#) [↗](#), a phased approach based on current levels of transmission and healthcare capacity at the state or local level, as part of resuming business operations. Business operation decisions should be based on both the level of disease transmission in the community and your readiness to protect the safety and health of your employees and customers.

Businesses and employers are encouraged to coordinate with [state](#) [↗](#) and [local](#) [↗](#) health officials to obtain timely and accurate information to inform appropriate responses. Local conditions will influence the decisions that public health officials make regarding community-level strategies. CDC has [guidance for mitigation strategies](#) [📄](#) according to the level of community transmission or impact of COVID-19.

As an employer, if your business operations were interrupted, resuming normal or phased activities presents an opportunity to update your COVID-19 preparedness, response, and control plans. All employers should implement and update as necessary a plan that:

- Is specific to your workplace,
- identifies all areas and job tasks with potential exposures to COVID-19, and
- includes control measures to eliminate or reduce such exposures.

Talk with your employees about planned changes and seek their input. Additionally, collaborate with employees and unions to effectively communicate important COVID-19 information.

See the [OSHA COVID-19 guidance](#) [📄](#) [↗](#) for more information on how to protect workers from potential exposures, according to their exposure risk. Plans should consider that employees may be able to [spread COVID-19](#) even if they do not show symptoms.

All employers need to consider how best to decrease the spread of COVID-19 and lower the impact in your workplace. This should include activities to:

- prevent and reduce transmission among employees,
- maintain healthy business operations, and
- maintain a healthy work environment.


Prevent and Reduce Transmission Among Employees



Monitor federal, state, and local public health communications about COVID-19 regulations, guidance, and recommendations and ensure that workers have access to that information. Frequently check the [CDC COVID-19 website](#).




Actively encourage sick employees to stay home:

- Employees who have [symptoms](#) should notify their supervisor and stay home.
- Sick employees should follow [CDC-recommended steps](#). Employees should not return to work until the criteria to [discontinue home isolation](#) are met, in consultation with healthcare providers.
- Employees who are well but who have a sick family member at home with COVID-19 should notify their supervisor and follow [CDC recommended precautions](#).

Consider conducting daily in-person or virtual health checks (e.g., symptom and/or temperature screening) of employees before they enter the facility, in accordance with state and local public health authorities and, if available, your occupational health services:

- If implementing in-person health checks, conduct them safely and respectfully. Employers may use social distancing, barrier or partition controls, or personal protective equipment (PPE) to protect the screener. However, reliance on PPE alone is a less effective control and is more difficult to implement, given PPE shortages and training requirements.
 - See the “Should we be screening employees for COVID-19 symptoms?” section of [General Business Frequently Asked Questions](#) as a guide.
- Complete the health checks in a way that helps maintain social distancing guidelines, such as providing multiple screening entries into the building.
- Follow guidance from the [Equal Employment Opportunity Commission](#)  regarding confidentiality of medical records from health checks.
- To prevent stigma and discrimination in the workplace, make employee health screenings as private as possible. Do not make determinations of risk based on race or country of origin and be sure to maintain confidentiality of each individual’s medical status and history.

Identify where and how workers might be exposed to COVID-19 at work. Employers are responsible for providing a [safe and healthy workplace](#) . Conduct a thorough [hazard assessment](#)  of the workplace to identify potential workplace hazards related to COVID-19. Use appropriate combinations of controls from the [hierarchy of controls](#) to limit the spread of COVID-19, including engineering controls, workplace administrative policies, and personal protective equipment (PPE) to protect workers from the identified hazards (see table below):

- Conduct a thorough hazard assessment to determine if workplace hazards are present, or are likely to be present, and determine what type of controls or PPE are needed for specific job duties.
- When engineering and administrative controls cannot be implemented or are not fully protective, employers are required by OSHA standards to:
 - Determine what PPE is needed for their workers’ specific job duties,
 - Select and provide appropriate PPE to the workers at no cost, and
 - Train their workers on its correct use.
- Encourage workers to wear a cloth face covering at work if the hazard assessment has determined that they do not require PPE, such as a respirator or medical facemask for protection.
 - CDC recommends wearing a cloth face covering as a measure to contain the wearer’s respiratory droplets and help protect their co-workers and members of the general public.
 - Cloth face coverings are not considered PPE. They may prevent workers, including those who don’t know they have the virus, from spreading it to others but may not protect the wearers from exposure to the virus that causes COVID-19.
- Remind employees and customers that [CDC recommends wearing cloth face coverings](#) in public settings where other social distancing measures are difficult to maintain, **especially** in areas of significant community-based transmission. Wearing a cloth face covering, however, does not replace the need to practice social distancing.
- See the [OSHA COVID-19](#)  webpage for more information on how to protect workers from potential COVID-19 exposures and [guidance for employers](#)  , including steps to take for jobs according to exposure risk.

Separate sick employees:

- Employees who appear to have [symptoms](#) upon arrival at work or who become sick during the day should immediately be separated from other employees, customers, and visitors, and sent home.
- Have a procedure in place for the safe transport of an employee who becomes sick while at work. The employee may need to be transported home or to a healthcare provider.

Take action if an employee is suspected or confirmed to have COVID-19 infection:

In most cases, you do not need to shut down your facility. If it has been less than 7 days since the sick employee has been in the facility, close off any areas used for prolonged periods of time by the sick person:

- Wait 24 hours before cleaning and disinfecting to minimize potential for other employees being exposed to respiratory droplets. If waiting 24 hours is not feasible, wait as long as possible.
- During this waiting period, open outside doors and windows to increase air circulation in these areas.

If it has been 7 days or more since the sick employee used the facility, additional cleaning and disinfection is not necessary. Continue routinely cleaning and disinfecting all high-touch surfaces in the facility.

Follow the CDC [cleaning and disinfection recommendations](#):

- Clean dirty surfaces with soap and water before disinfecting them.
- To disinfect surfaces, use [products that meet EPA criteria for use against SARS-Cov-2](#) [↗](#), the virus that causes COVID-19, and are appropriate for the surface.
- Always wear gloves and gowns appropriate for the chemicals being used when you are cleaning and disinfecting.
- You may need to wear additional PPE depending on the setting and disinfectant product you are using. For each product you use, consult and follow the manufacturer's instructions for use.

Determine which employees may have been exposed to the virus and may need to take additional precautions:

- Inform employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the [Americans with Disabilities Act \(ADA\)](#) [↗](#).
- Most workplaces should follow the [Public Health Recommendations for Community-Related Exposure](#) and instruct potentially exposed employees to stay home for 14 days, telework if possible, and self-monitor for [symptoms](#).
- [Critical infrastructure](#) [↗](#) workplaces should follow the guidance on [Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19](#). Employers in critical infrastructure also have an obligation to manage potentially exposed workers' return to work in ways that best protect the health of those workers, their co-workers, and the general public.

Educate employees about steps they can take to protect themselves at work and at home:

- Encourage employees to follow any new policies or procedures related to illness, cleaning and disinfecting, and work meetings and travel.
- Advise employees to:
- Stay home if they are sick, except to get medical care, and to learn [what to do if they are sick](#).
- Inform their supervisor if they have a sick family member at home with COVID-19 and to learn what to do [if someone in their home is sick](#).
- Wash their hands often with soap and water for at least 20 seconds or to use hand sanitizer with at least 60% alcohol if soap and water are not available. Inform employees that if their hands are visibly dirty, they should use soap and water over hand sanitizer. Key times for employees to clean their hands include:
 - Before and after work shifts
 - Before and after work breaks

- After blowing their nose, coughing, or sneezing
- After using the restroom
- Before eating or preparing food
- After putting on, touching, or removing cloth face coverings
- Avoid touching their eyes, nose, and mouth with unwashed hands.
- Cover their mouth and nose with a tissue when you cough or sneeze, or use the inside of their elbow. Throw used tissues into no-touch trash cans 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.
- Practice routine cleaning and disinfection of 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. Clean and disinfect them before and after use.
- Practice social distancing by avoiding [large gatherings](#) and maintaining distance (at least 6 feet) from others when possible.

For employees who commute to work using public transportation or ride sharing, consider offering the following support:

- Offer employees incentives to use forms of transportation that minimize close contact with others, such as offering reimbursement for parking or single-occupancy ride shares.
- Allow employees to shift their hours so they can commute during less busy times.
- Ask employees to [clean their hands](#) as soon as possible after their trip.

Maintain Healthy Business Operations

Identify a workplace coordinator who will be responsible for COVID-19 issues and their impact at the workplace.

Implement flexible sick leave and supportive policies and practices:

- Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of and understand these policies.
- Maintain flexible policies that permit employees to stay home to care for a sick family member or take care of children due to school and childcare closures. Additional flexibilities might include giving advances on future sick leave and allowing employees to donate sick leave to each other.
- Employers that do not currently offer sick leave to some or all of their employees should consider drafting non-punitive "emergency sick leave" policies.
- Employers should not require a COVID-19 test result or a healthcare provider's note for employees who are sick to validate their illness, qualify for sick leave, or to return to work.
 - Under the American's with Disabilities Act, employers are permitted to [require a doctor's note from your employees](#) [↗](#) to verify that they are healthy and able to return to work. However, as a practical matter, be aware that healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner. Most people with COVID-19 have mild illness and can recover at home without medical care and can follow CDC recommendations to determine when to [discontinue home isolation](#) and return to work.
 - The U.S. Equal Employment Opportunity Commission (EEOC) has established guidance regarding [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) [↗](#). The guidance enables

employers to take steps to protect workers consistent with CDC guidance, including requiring workers to stay home when necessary to address the direct threat of spreading COVID-19 to others.

- Review human resources policies to make sure that your policies and practices are consistent with public health recommendations and with existing state and federal workplace laws (for more information on employer responsibilities, visit the [Department of Labor's](#) and the [Equal Employment Opportunity Commission's](#) websites).
- Connect employees to employee assistance program (EAP) resources, if available, and community resources as needed. Employees may need additional social, behavioral, and other services, for example, to help them [manage stress and cope](#).

Protect employees at higher risk for severe illness through supportive policies and practices. Older adults and people of any age who have serious underlying medical conditions are at higher risk for severe illness from COVID-19.

- Support and encourage options to telework, if available.
- Consider offering [vulnerable workers](#) duties that minimize their contact with customers and other employees (e.g., restocking shelves rather than working as a cashier), if the worker agrees to this.
- Offer flexible options such as telework to employees. This will eliminate the need for employees living in higher transmission areas to travel to workplaces in lower transmission areas and vice versa.
- Ensure that any other businesses and employers sharing the same workspace also follow this guidance.

Communicate supportive workplace policies clearly, frequently, and via multiple methods. Employers may need to communicate with non-English speakers in their preferred languages.

- Train workers on how implementing any new policies to reduce the spread of COVID-19 may affect existing health and safety practices.
- Communicate to any contractors or on-site visitors about changes that have been made to help control the spread of COVID-19. Ensure that they have the information and capability to comply with those policies.
- Create and test communication systems that employees can use to self-report if they are sick and that you can use to notify employees of exposures and closures.
- Consider using a hotline or another method for employees to voice concerns anonymously.

Assess your essential functions and the reliance that others and the community have on your services or products.

- Be prepared to change your business practices, if needed, to maintain critical operations (e.g., identify alternative suppliers, prioritize existing customers, or temporarily suspend some of your operations).
- Identify alternate supply chains for critical goods and services. Some goods and services may be in higher demand or unavailable.
- If other companies provide your business with contract or temporary employees, talk with them about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- Talk with business partners about your response efforts. Share best practices with other businesses in your communities (especially those in your supply chain), chambers of commerce, and associations to improve community response efforts.
- When resuming onsite business operations, identify and prioritize job functions for continuous operations. Minimize the number of workers present at worksites by resuming business operations in phases, balancing the need to protect workers with support for continuing operations.

Determine how you will operate if absenteeism spikes from increases in sick employees, those who stay home to care for sick family members, and those who must stay home to watch their children until [childcare programs and K-12 schools](#) resume.

- Plan to monitor and respond to absenteeism at the workplace.

- Implement plans to continue your essential business functions in case you experience higher-than-usual absenteeism.
- Prepare to institute flexible workplace and leave policies.
- Cross-train employees to perform essential functions so the workplace can operate even if key employees are absent.

Establish policies and practices for [social distancing](#). Alter your workspace to help workers and customers maintain social distancing and physically separate employees from each other and from customers, when possible. Here are some strategies that businesses can use:

- Implement flexible worksites (e.g., telework).
- Implement flexible work hours (e.g., rotate or stagger shifts to limit the number of employees in the workplace at the same time).
- Increase physical space between employees at the worksite by modifying the workspace.
- Increase physical space between employees and customers (e.g., drive-through service, physical barriers such as partitions).
- Use signs, tape marks, or other visual cues such as decals or colored tape on the floor, placed 6 feet apart, to indicate where to stand when physical barriers are not possible.
- Implement flexible meeting and travel options (e.g., postpone non-essential meetings or events in accordance with state and local regulations and guidance).
- Close or limit access to common areas where employees are likely to congregate and interact.
- Prohibit handshaking.
- Deliver services remotely (e.g., phone, video, or web).
- Adjust your business practices to reduce close contact with customers — for example, by providing drive-through service, click-and-collect online shopping, shop-by-phone, curbside pickup, and delivery options, where feasible.
- Move the electronic payment terminal/credit card reader farther away from the cashier, if possible, to increase the distance between the customer and the cashier.
- Shift primary stocking activities to off-peak or after hours, when possible, to reduce contact with customers.

If you have more than one business location, consider giving local managers the authority to take appropriate actions outlined in their COVID-19 response plans based on their local conditions

Maintain a healthy work environment

Since COVID-19 may be spread by those with no symptoms, businesses and employers should evaluate and institute controls according to the [hierarchy of controls](#) to protect their employees and members of the general public.

Consider improving the engineering controls using the building ventilation system. This may include some or all of the following activities:

- Increase ventilation rates.
- Ensure ventilation systems operate properly and provide acceptable indoor air quality for the current occupancy level for each space.
- Increase outdoor air ventilation, using caution in highly polluted areas. With a lower occupancy level in the building, this increases the effective dilution ventilation per person.
- Disable demand-controlled ventilation (DCV).
- Further open minimum outdoor air dampers (as high as 100%) to reduce or eliminate recirculation. In mild weather, this will not affect thermal comfort or humidity. However, this may be difficult to do in cold or hot weather.

- Improve central air filtration to the MERV-13 or the highest compatible with the filter rack, and seal edges of the filter to limit bypass.
- Check filters to ensure they are within service life and appropriately installed.
- Keep systems running longer hours, 24/7 if possible, to enhance air exchanges in the building space.

Note: Some of the above recommendations are based on the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) [Guidance for Building Operations During the COVID-19 Pandemic](#). Review these ASHRAE guidelines for further information on ventilation recommendations.

Ensure the safety of your building water system and devices after a prolonged shutdown:

- Follow the [CDC Guidance for Building Water Systems](#), which describes 8 steps to take before you reopen your business or building.

Give employees, customers, and visitors what they need to clean their hands and cover their coughs and sneezes:

- Provide tissues and no-touch trash cans.
- Provide soap and water in the workplace. If soap and water are not readily available, use alcohol-based hand sanitizer that is at least 60% alcohol. Ensure that adequate supplies are maintained.
- Ideally, place touchless hand sanitizer stations in multiple locations to encourage hand hygiene.
- Place [posters](#) that encourage [hand hygiene](#) to help [stop the spread](#) at the entrance to your workplace and in other workplace areas where they are likely to be seen. This should include signs for non-English speakers, as needed.
- Discourage handshaking. Encourage employees to use other noncontact methods of greeting.
- Direct employees to visit CDC's [coughing and sneezing etiquette](#) and [clean hands webpage](#) for more information.

Perform routine cleaning:

- Follow the [Guidance for Cleaning and Disinfecting](#) to develop, implement, and maintain a plan to perform regular cleanings to reduce the risk of exposure to COVID-19.
- Routinely clean all frequently touched surfaces in the workplace, such as workstations, keyboards, telephones, handrails, and doorknobs.
 - If surfaces are dirty, clean them using a detergent or soap and water before you disinfect them.
 - For disinfection, most common, EPA-registered, household disinfectants should be effective. A list of [products that are EPA-approved for use against the virus that causes COVID-19](#) is available on the EPA website. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method, and contact time).
- Discourage workers from using each other's phones, desks, offices, or other work tools and equipment, when possible.
- Provide disposable disinfecting wipes so that employees can wipe down commonly used surfaces (e.g., doorknobs, keyboards, remote controls, desks, other work tools and equipment) before each use.
- Store and use disinfectants in a responsible and appropriate manner according to the label.
- Do not mix bleach or other cleaning and disinfection products together. This can cause fumes that could be very dangerous to breathe in.
- Advise employees to always wear gloves appropriate for the chemicals being used when they are cleaning and disinfecting and that they may need additional PPE based on the setting and product.

Perform enhanced cleaning and disinfection after persons suspected/confirmed to have COVID-19 have been in the facility:

- If a sick employee is suspected or confirmed to have COVID-19, follow the [CDC cleaning and disinfection recommendations](#).

Limit travel and advise employees if they must travel to take additional precautions and preparations:

- Minimize non-essential travel and consider resuming non-essential travel in accordance with state and local regulations and guidance.
- Check the [CDC’s Traveler’s Health Notices](#) for the latest guidance and recommendations for each country where you will travel. Specific travel information for travelers going to and returning from countries with travel advisories, and information for aircrew, can be found on the [CDC website](#).
- Advise employees to check themselves for [symptoms of COVID-19](#) before starting travel and to notify their supervisor and stay home if they are sick.
- Ensure employees who become sick while traveling or on temporary assignment understand that they should notify their supervisor and promptly call a healthcare provider for advice if needed.
- If they are outside the United States, sick employees should follow company policy for obtaining medical care or contact a healthcare provider or overseas medical assistance company to help them find an appropriate healthcare provider in that country. A U.S. consular officer can help locate healthcare services. However, U.S. embassies, consulates, and military facilities do not have the legal authority, capability, or resources to evacuate or give medicines, vaccines, or medical care to private U.S. citizens overseas.

Minimize risk to employees when planning [meetings and gatherings](#):

- Use videoconferencing or teleconferencing when possible for work-related meetings and gatherings.
- Cancel, adjust, or postpone large work-related meetings or gatherings that can only occur in-person in accordance with state and local regulations and guidance.
- When videoconferencing or teleconferencing is not possible, hold meetings in open, well-ventilated spaces

The table below presents examples of controls to implement in your workplace. The most effective controls are those that rely on engineering solutions, followed by administrative controls, then PPE. PPE is the least effective control method and the most difficult to implement. Worksites may have to implement multiple complementary controls from these columns to effectively control the hazard.

Employers: Use the table below to implement the most appropriate controls for your workplace

TABLE: Example Controls to Prevent the Spread of COVID-19 in Work Environments		
Engineering	Administrative	Personal Protective Equipment (PPE)
<div>Facilities and Equipment</div> <ul style="list-style-type: none">• Assess job hazards for feasibility of engineering controls• Ensure ventilation and water systems operate properly• Alter workspaces to maintain social distancing. Examples include:<ul style="list-style-type: none">◦ Configure partitions as a	<div>Management and Communications</div> <ul style="list-style-type: none">• Monitor state and local public health communications about COVID-19• Encourage sick workers to report symptoms, stay home, and follow CDC guidance• Develop strategies to:<ul style="list-style-type: none">◦ manage worker concerns◦ communicate with workers• Remind workers of available support services	<div>PPE</div> <ul style="list-style-type: none">• Conduct workplace hazard assessment• Determine what PPE is needed for their workers’ specific job duties based on hazards and other controls present• Select and provide appropriate PPE to the workers at no cost.


<div><div>barrier shield</div><div><div><div>◦ Move electronic payment reader away from cashier</div><div>◦ Use verbal announcements, signage, and visual cues to promote social distancing</div><div>◦ Remove/rearrange furniture</div><div>◦ Provide remote shopping alternatives (e.g., delivery, pick-up)</div></div></div></div>	<div><div><div><div>• Communicate to partners, suppliers, other contractors on policies and practices</div><div>• Encourage social distancing and the use of cloth face coverings (if appropriate) in the workplace</div><div>• Use technology to promote social distancing (e.g., telework and virtual meetings)</div><div>• Cancel group events</div><div>• Close/limit use of shared spaces</div><div>• Ask customers who are ill to stay home</div><div>• Consider policies that encourage flexible sick leave and alternative work schedules.</div><div>• Schedule stocking during off-peak hours</div></div></div><div><div>Cleaning and Disinfection</div><div><div><div>• Clean and disinfect frequently touched surfaces, (e.g., counters, shelving, displays)</div><div>• Provide employees with disposable disinfectant wipes, cleaner, or sprays that are effective against the virus that causes COVID-19</div></div></div></div><div><div>Training</div><div><div>Provide employees with training on:</div><div><div><div>• Policies to reduce the spread of COVID-19</div><div>• General hygiene</div><div>• Symptoms, what to do if sick</div><div>• Cleaning and disinfection</div><div>• Cloth face covers</div><div>• Social distancing</div><div>• Use of PPE</div><div>• Safe work practices</div><div>• Stress management</div></div></div></div></div></div>	
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Resources for more information:
CDC Guidance

- [COVID-19 Website](#)

- [Business and Workplaces webpage](#)
- [General Business Frequently Asked Questions](#)
- [Small Business](#)
- [Transportation and Delivery](#)
- [What You Need to Know About COVID-19](#)
- [What to Do If You Are Sick With COVID-19](#)
- [What Workers and Employers Can Do to Manage Workplace Fatigue during COVID-19](#)
- [People at Higher Risk of Severe Illness](#)
- [Public Health Recommendations for Community-Related Exposures](#)
- [Public Health Recommendations after Travel-Associated COVID-19 Exposure](#)
- [Health Alert Network](#)
- [Travelers' Health Website](#)
- [National Institute for Occupational Safety and Health's Small Business International Travel Resource Travel Planner](#) 
- [Managing Workplace Fatigue](#)

Other Federal Agencies and Partners

- [OSHA COVID-19 Website](#) 
- [OSHA Guidance for Preparing Workplaces for COVID-19](#)  

Page last reviewed: May 5, 2020

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COVID-19 and Human Rights







Last Updated: May 11, 2020

Harassment and discrimination on the basis of race, national origin, age, and disability (including having COVID-19 or another serious illness) is illegal under the New York City Human Rights Law. In recent months, we have seen a sharp increase in instances of hostility and harassment directed at Chinese and other Asian communities related to COVID-19 anxiety. The Commission on Human Rights, the Mayor's Office for the Prevention of Hate Crimes, and the Mayor's Office of Immigrant Affairs are coordinating closely to educate the public about their rights and protections in light of COVID-19 related stigma and hate crimes. If you have faced harassment or discrimination in housing, at work, or in any public place, contact the Commission by filling out our online form or by calling 311 and asking for "human rights." If you are a victim of or witness a hate crime, call 911.

Information about coronavirus (COVID-19) is changing at a rapid pace. For the latest information, text "COVID" to 692-692 or visit the NYC Department of Health and Mental Hygiene (DOHMH) website at [NYC.gov/coronavirus](https://www1.nyc.gov/site/cchr/media/covid19.page) where you will find information about preventing the spread of this disease, symptoms, and guidance on citywide mandates such as school and business closures.

Expand All

Collapse All

Click a topic, or press the enter key on a topic, to reveal its answer.

▼ Fact Sheet on Hate and Bias Incidents Related to COVID-19

Hate or discrimination on the basis of race, national origin, or other characteristics is not tolerated in NYC. The New York City Commission on Human Rights, the Office for the Prevention of Hate Crimes, and the New York City Police Department are monitoring and responding to hate and bias incidents related to COVID-19. Download this resource for additional resources to address bias, harassment, discrimination and to access mental health support.

(Adobe download required)

عربي (Arabic)

বাংলা (Bengali)

简体中文 (Chinese -Simplified)

繁體中文 (Chinese - Traditional)

English

Français (French)

Kreyòl Ayisyen (Haitian Creole)

日本語 (Japanese)

한국어 (Korean)

Polskie (Polish)

русский (Russian)

Español (Spanish)

Tiếng Việt (Vietnamese)

اردو (Urdu)

יידיש (Yiddish)

▼ Case Deadlines

For claims set to expire between March 20, 2020 and June 6, 2020, the deadline to file a complaint under the New York City Human Rights Law is extended to June 7, 2020. For more information, see Governor Cuomo's initial Executive Order and most recent modified Executive Order. Deadlines in ongoing cases at the Commission have also been extended during this time period. If you have questions about this, fill out our online form or call 311 and ask for "human rights."

▼ Appeals in Cases Dismissed for Administrative Cause or No Probable Cause

Due to the disruption that COVID-19 has caused, the Commission will postpone issuing decisions on appeals in cases where the complaint was dismissed by the Law Enforcement Bureau for (1) administrative cause, under section 8-113(a), or (2) no probable cause under section 8-113(d) of the New York City Human Rights Law. If you have questions about this, contact policy@cchr.nyc.gov, and review our fact sheet about appeals of dismissals for administrative cause and fact sheet about appeals of dismissals for no probable cause.

Housing Protections

Your landlord cannot harass or discriminate against you, kick you out, or ask you to leave your apartment because of fears or stigma around COVID-19, and your landlord may not harass you or discriminate against you on the basis of actual or perceived race, national origin, disability, or other protected classes.

Based on current available information, the Commission considers actual or perceived infection with COVID-19 to be protected as a disability under the New York City Human Rights Law (NYCHRL).

General prohibitions against discrimination: Even in the midst of a pandemic, protections against discrimination under the NYCHRL remain in effect. If a housing provider learns or believes that a resident has or had COVID-19, they cannot retaliate or discriminate against the resident by, for example, seeking to remove the resident, or charging the resident additional fees related to cleaning or disinfecting the building. Housing providers may take reasonable steps to protect the health and safety of their staff and residents, and should follow local, state, and federal public health orders and recommendations.

Reasonable accommodations: Housing providers have an ongoing duty to provide residents with reasonable accommodations for disabilities, including those related to COVID-19. Housing providers must accommodate people with disabilities, unless doing so poses an undue hardship. This obligation extends to all disabilities, including both those directly related to COVID-19 and underlying conditions for which exposure to COVID-19 may pose a particular risk of complication. Policies implemented to ensure the safety and health of residents, including, for example, limiting visitors or deliveries, must allow for reasonable accommodations for people with disabilities who may require a visitor to assist with basic needs or to carry deliveries to a person's

door, rather than leaving them in a lobby. Housing providers must engage in a cooperative dialogue with their residents to determine what accommodation would meet the residents' need and not pose an undue hardship.

If a housing provider learns about a resident's infection with COVID-19, it should maintain that information in a confidential manner.

If you are facing harassment and discrimination by your landlord, please contact the NYC Commission on Human Rights. Learn more about COVID-19 and your housing rights.

▼ Employment Protections

On March 20, 2020, Governor Cuomo announced statewide guidance directing non-essential employees to remain at home. Learn more at <https://coronavirus.health.ny.gov/home>.

Your employer cannot harass or discriminate against you because of fears or stigma around COVID-19, including on the basis of actual or perceived race, national origin, age, disability, or other protected class. Based on current available information, the Commission considers actual or perceived infection with COVID-19 to be protected as a disability under the New York City Human Rights Law (NYCHRL).

In response to the current public health crisis posed by COVID-19, the Commission has adopted the Equal Employment Opportunity Commission's guidance, "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act," originally published on October 9, 2009, and reissued on March 19, 2020. In general, compliance with the EEOC guidance will

satisfy employers' obligations with respect to disability protections under the NYCHRL, as they relate to COVID-19.

Supplemental information and key things to note regarding the Commission's application of the EEOC guidance:

Scope of adoption: The Commission's adoption of EEOC guidance to address the current public health crisis does not constitute a wholesale adoption of federal disability law, nor does it limit the NYCHRL beyond the scope of what is covered within the EEOC guidance.

General prohibitions against discrimination: Even in the midst of a pandemic, protections against discrimination under the NYCHRL remain in effect. Employers must be sure that their policies and practices, including those implemented in response to COVID-19, do not discriminate against or treat workers less well based on their protected status, including race, national origin, citizenship, immigration status, and disability, among others. Employers may take reasonable steps to protect the health and safety of their staff and clients, and should follow local, state, and federal public health orders and recommendations.

Reasonable accommodations: Employers have an ongoing duty to provide employees with accommodations for disabilities, including those related to COVID-19, unless doing so poses an undue hardship. This obligation extends to all disabilities, including both those directly related to COVID-19 and underlying conditions for which exposure to COVID-19 may pose a particular risk of complication. Employers also have an ongoing duty to provide reasonable accommodations for workers who are pregnant. Examples of reasonable accommodations include allowing an employee to telework, modifying an employee's work duties, changing their schedule, and/or providing certain personal protective equipment.

Important distinction from the ADA: Under the NYCHRL, employers are required to engage in a cooperative dialogue with an employee when

they know or have reason to know that the employee may require a reasonable accommodation for a disability. This means that, in contrast with guidance from the EEOC in question G.4 of *What You Should Know About the ADA, the Rehabilitation Act and the Coronavirus* (updated May 5, 2020), if an employer knows that an employee has a medical condition that might place them at “higher risk for severe illness” if they get COVID-19, the employer is required to engage the employee in a cooperative dialogue about a potential accommodation, even if the employee has not requested a reasonable accommodation. For more information about the cooperative dialogue process under the NYCHRL and how to initiate it where an employer knows or has reason to know of an employee’s disability, see the Commission’s Legal Enforcement Guidance on Discrimination on the Basis of Disability.

Medical notes: During the current pandemic, it may be impracticable for employees to obtain documentation from a healthcare provider confirming the need for a disability- or pregnancy-related accommodation. To the extent employers require such documentation in order to grant reasonable accommodations, the Commission recommends waiving those requirements until such time as the employee can reasonably obtain documentation. This is consistent with employers’ obligation to engage in good faith in the cooperative dialogue process. At the same time, employees have a similar obligation to engage in good faith in the cooperative dialogue process, including by undertaking reasonable efforts to provide their employer with necessary documentation in support of a request for reasonable accommodation. Employers are encouraged to adopt a flexible approach to handling requests for reasonable accommodation and confirming the nature of an employee’s need for such accommodation.

Returning to work: Consistent with employers’ need to take reasonable steps to protect the health and safety of their businesses, employers may require employees to provide evidence of their ability to safely return to the

workplace after recovering from COVID-19, and to confirm that they are not contagious.

Testing: As the EEOC has noted, based on guidance from the CDC and public health authorities, the COVID-19 pandemic qualifies as a direct threat and employers may undertake medical examinations, such as temperature testing, to confirm whether a particular employee may pose a direct threat due to infection. Employers are cautioned, however, to ensure that such testing is undertaken consistent with current medical knowledge and the best available objective evidence, including by selecting tests with reasonably confirmed rates of accuracy and by strictly following test manufacturers' guidelines and instructions for use. Employers should also note that many symptoms of COVID-19 that have been identified by public health authorities do not present in all cases and, conversely, that the same symptoms may present in people who are not infected with COVID-19. Please consult the CDC's website for updates on COVID-19 testing and symptoms.

Commission resources: Please consult the Commission's Legal Enforcement Guidance on Discrimination on the Basis of Disability and Legal Enforcement Guidance on Discrimination on the Basis of Pregnancy: Local Law No. 78 (2013); N.Y.C. Admin. Code § 8-107(22) for additional information about employees' rights to reasonable accommodations and to be free from discrimination.

The Commission may update this guidance as the situation related to COVID-19 develops. You are encouraged to check back to this site.

▼ Public Accommodations Protections

It is illegal for business owners or staff at places of public accommodations (e.g., grocery stores, medical facilities, restaurants, among others) to kick you out, refuse to serve you, or otherwise treat you less well than other customers because of fears or stigma around COVID-19, including harassment or discrimination on the basis of actual or perceived race, national origin, disability, or other protected classes. Based on current available information, the Commission considers actual or perceived infection with COVID-19 to be protected as a disability under the New York City Human Rights Law (NYCHRL). Business owners may enforce requirements that customers wear facial coverings and maintain social distance while on their premises, subject to the requirements of the NYCHRL that reasonable accommodations be made for members of protected groups, as described below.

General prohibitions against discrimination: Even in the midst of a pandemic, protections against discrimination under the NYCHRL remain in effect. Providers of public accommodations must be sure that their policies and practices, including those implemented in response to COVID-19, do not discriminate against or treat patrons less well based on their protected status, including race, national origin, citizenship, immigration status, and disability, among others. Providers of public accommodation may take reasonable steps to protect the health and safety of their staff and customers, and should follow local, state, and federal public health orders and recommendations.

Special guidance for essential retail services: Essential retail services, such as grocery stores and restaurants, face special challenges in the midst of the COVID-19 crisis. This guidance is intended to assist those businesses in complying with the NYCHRL, while also taking steps to protect their customers and employees, for example through policy changes recommended in the City's April 20, 2020 Frequently Asked Questions (FAQs) For Essential Retail Businesses and Their Customers During the

COVID-19 Public Health Emergency. Essential retail services should bear in mind the following considerations about the NYCHRL.

- Reasonable accommodations must be made available for people based on disability, including pregnancy-related disability. Examples may include:
 - Allowing people who are unable to stand in line for extended periods because of a disability to enter the store without waiting in the same line as other customers, or to shop during hours reserved for vulnerable populations.
 - Allowing people with disabilities who rely on the assistance of another person to enter the store with a companion, despite general policy limits restricting access to one person at a time.
- The Commission has received reports that some stores have excluded parents and caregivers seeking to enter with a child or other dependent, on the ground that only one person may enter at a time. The City and the New York State Department of Agriculture and Markets have advised that stores “have one family member shop at a time, *if possible*”; however, store policies that categorically exclude customers from entering with a child or dependent may expose them to potential liability under the NYCHRL for discrimination based on age, gender, or disability. Stores may limit the total number of people admitted at a time, but should allow entrance to customers who need to carry out their shopping with their children or other dependents.
- When faced with a request for a reasonable accommodation for a disability, stores should limit their questions to understanding the type of accommodation that would address the customer's disability-related need. Invasive inquiries about the nature of a person's disability or demands for proof are prohibited. Bearing in mind the added difficulties that people with disabilities may face when shopping during the ongoing crisis, essential retail services are encouraged to take a generous approach to providing reasonable accommodations and to ensure that,

regardless of disability, all customers are able to safely obtain their services.

▼ Additional Information

Price gouging is illegal: Medical masks, hand sanitizer, and disinfectant wipes have been temporarily declared in short supply. This means it is illegal for stores to overcharge you for these items during the shortage due to the new coronavirus. For more information, visit the NYC Department of Consumer and Worker Protection.

Paid Safe and Sick Leave Law: With some exceptions, employees who work more than 80 hours in a calendar year are guaranteed paid sick leave under New York City's Paid Safe and Sick Leave Law. For workers who are sick and have paid sick leave, please use your paid sick leave time. Contact the NYC Department of Consumer and Worker Protection if you face retaliation or face other adverse action such as threats or discipline for using your sick leave. There are additional provisions related to leave under state and federal law that may be applicable to you.

NYSBA WORKING GROUP

GUIDANCE ON RE-OPENING LAW FIRMS

Law firms are in Phase II of Governor Cuomo's economic re-opening plan. Phase I is scheduled to start in three (3) regions of the state on May 15. There will be two-week pauses before the institution of the next phase to monitor possible resurgence of the COVID-19 virus.

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GOVERNOR'S CRITERIA

Regional re-opening depends on seven (7) predicate criteria:

1. Net hospitalizations for COVID-19 show a 14-day decline or total no more than 15 new hospitalizations daily on average over three days.
2. A 14-day decline in virus-related hospital deaths, or fewer than five a day, averaged over three days.
3. A three-day rate of new hospitalizations below two per 100,000 residents a day.
4. A hospital-bed vacancy rate of at least 30 percent.
5. An ICU bed availability rate of at least 30 percent.
6. A weekly average of 30 virus tests per 1,000 residents a month.
7. At least 30 working contact tracers per 100,000 residents as part of a program funded by former New York City Mayor Michael R. Bloomberg.



WORKING GROUP'S PLAN FOR RE-OPENING LAW FIRMS

On April 28 NYSBA President Hank Greenberg appointed a Working Group on Re-Opening Law Firms to review issues to be considered and addressed before a return to bricks and mortar offices is possible. This work in progress will be amended as new challenges and strategies arise.

GUIDANCE FOR THE SAFE RE-OPENING OF LAW FIRM OFFICES

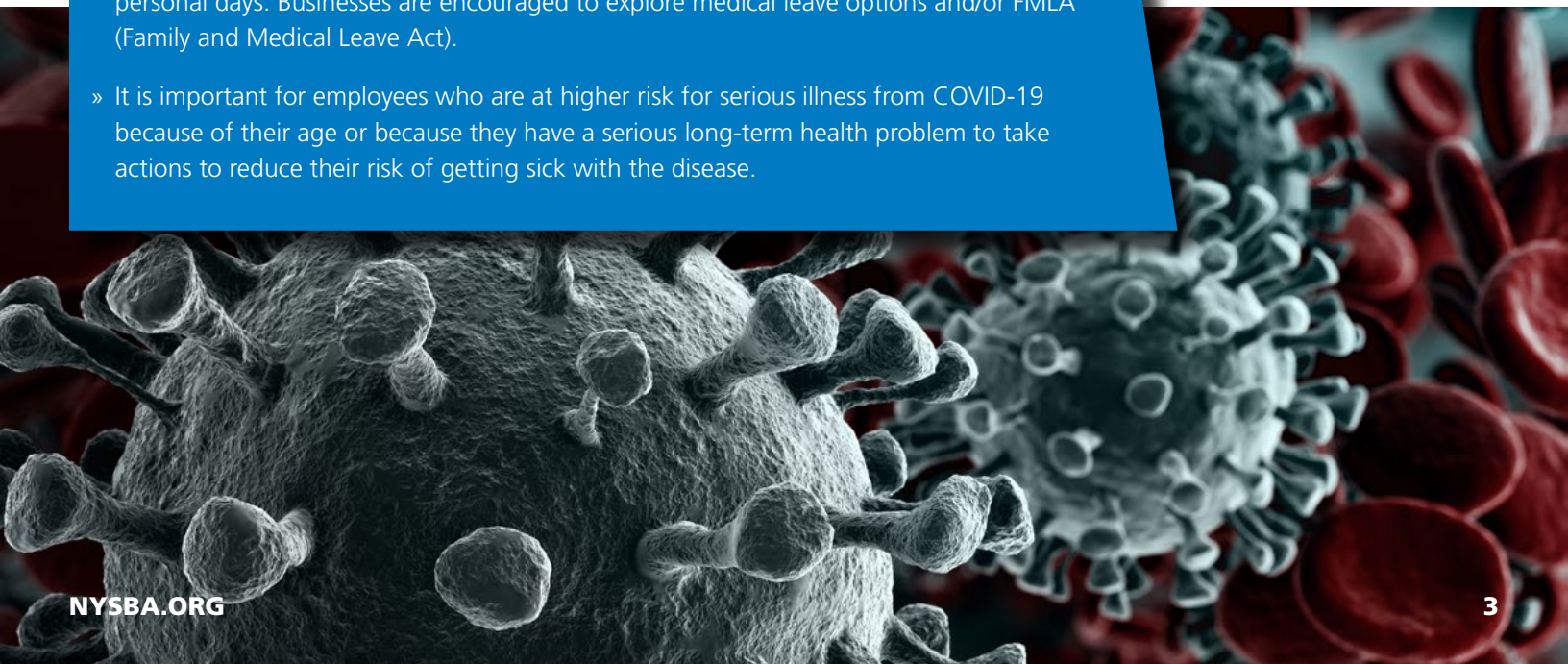
The following are suggested steps for law firms to take to foster their safe return to office:

Create an Office Re-Opening Transition Team to:

- » Monitor oversight of the re-opening plan and implementation;
- » Develop and update, as needed, internal policies and procedures for the transition from remote work to the workplace;
- » Communicate with legal and support staff with one voice regarding the transition process, set forth clear expectations and offer firm-wide training, as needed;
- » Field questions or concerns;
- » Become familiar with federal and state statutes and programs governing office safety and human resource issues;
- » Develop an employee testing plan for testing employees for the virus;
- » Develop client and visitor policies.

Implement and Communicate Strict Rules on Sick or At-Risk Individuals

- » Employees feeling ill should remain home and consult their physician. If remote work is not possible, then appropriate policies should be implemented regarding sick days or personal days. Businesses are encouraged to explore medical leave options and/or FMLA (Family and Medical Leave Act).
- » It is important for employees who are at higher risk for serious illness from COVID-19 because of their age or because they have a serious long-term health problem to take actions to reduce their risk of getting sick with the disease.



Prepare the Workplace:

- » Focus on employee safety;
- » Recognize geographic differences, with earlier openings for less-infected areas in accordance with the Governor's guidelines;
- » Assess workplace mechanical components – including HVAC, fire/life safety systems, entry systems, and water temperature at hand washing locations – and assure they meet recommended guidelines;
- » Coordinate with landlords and other tenants on opening and safety procedures in common areas and elevators;
- » Stagger workstations and occupied offices to increase the distance between employees in attendance;
- » Install barriers for receptionists or other employees at high foot traffic locations;
- » Inventory cleaning and other supplies to maintain a disinfected environment. Continue to develop supply sources and re-order well in advance;
- » Develop a cleaning and sanitizing protocol in accordance with recommended CDC and OSHA guidelines;
- » Install signage on social distancing and hygiene guidelines;
- » Develop one-way foot traffic patterns if the workplace facility allows for it.



Reduce Touchpoints

Examples: Desks and chairs; breakroom tables and chairs; door handles and push plates; handrails; kitchen and bathroom faucets and fixtures; light switches; buttons on copiers, vending machines and elevators; shared telephones; computer keyboards and mice



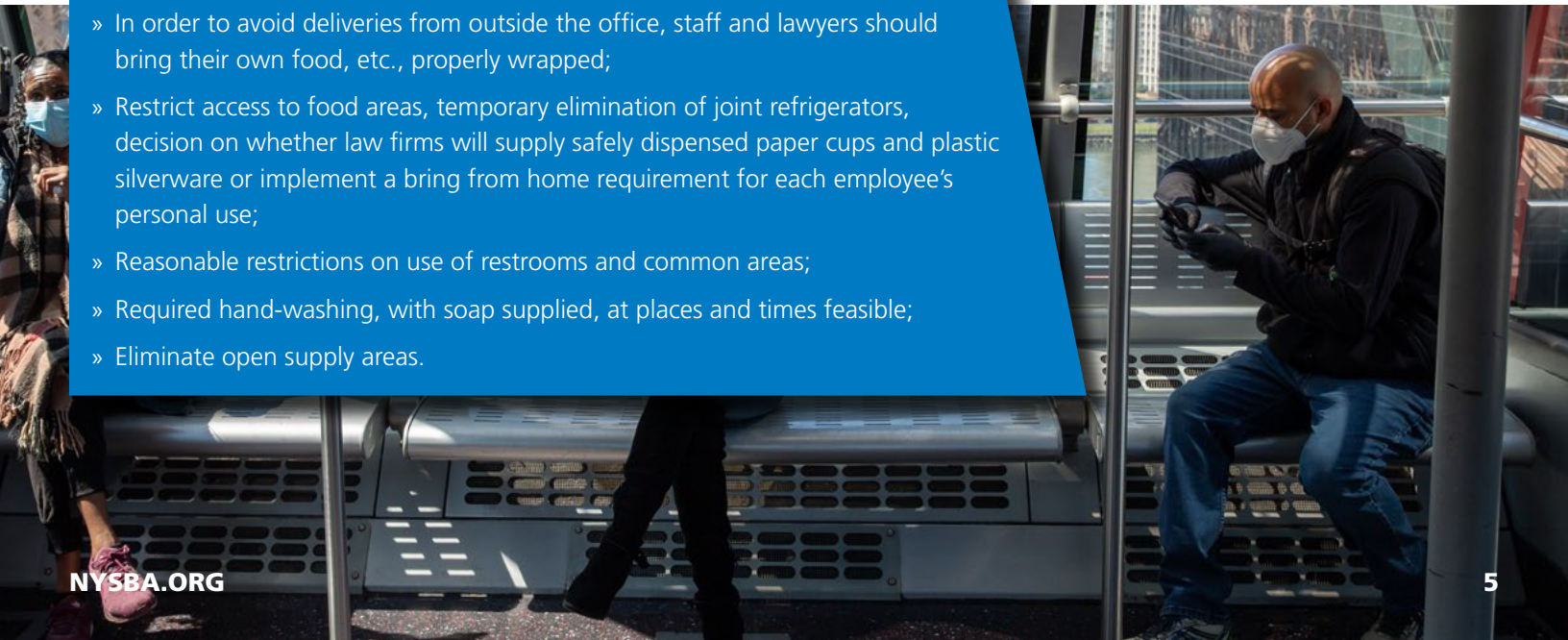
Prepare Your Employees:

- » Decide which employees will return to the workplace. Encourage those who can continue to work effectively remotely to do so until further notice – irrespective of the points below;
- » Recognize the safety guidelines may have to be implemented differently for individual practices or with less than a specified number of employees (e.g. 10);
- » Stagger workday hours and monitor returns
 - Take into consideration lawyers and support staff in more critical areas of practices less attuned to remote employment and phase in other practice areas over designated periods;
 - Anyone who can effectively work remotely should continue to do so until further notice;
 - Discourage visits by lawyers from other branch offices;
 - Maintain attendance sheets to provide responsible contact tracing information, if needed, and to limit and track hours in the office.



Best Practices to Minimize Risk of Spreading Infection at the Office

- » To the extent practical, in the office but outside the individual workplace wear masks and utilize other protective equipment and sanitizing hygiene practices (e.g. when going to restrooms or where others may need to be);
- » Discourage travel by mass transit due to the risk of infection in the absence of enforced social distancing and use of personal protective equipment. If mass transit is unavoidable, educate employees on best practices for minimizing risk;
- » No socializing outside the workplace before coming into the office;
- » Implement and insist on social distancing;
- » In order to avoid deliveries from outside the office, staff and lawyers should bring their own food, etc., properly wrapped;
- » Restrict access to food areas, temporary elimination of joint refrigerators, decision on whether law firms will supply safely dispensed paper cups and plastic silverware or implement a bring from home requirement for each employee's personal use;
- » Reasonable restrictions on use of restrooms and common areas;
- » Required hand-washing, with soap supplied, at places and times feasible;
- » Eliminate open supply areas.



Conduct of Business

- » Encourage the use of technology for remote mediations/ hearings/arguments and depositions;
- » No in-person meetings in the office among attorneys and support staff for at least a specified time;
- » Limit the number of people coming in the office at the same time;
- » Limit unnecessary employee movement within the office;
- » Specify what work people need to do in the office to attempt to limit time in office;
- » Implement the virtual notarization requirements to limit in person contact;
- » Restrict the use of office printers and copiers to avoid personal contact.



NEW YORK STATE BAR ASSOCIATION

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Office of the District Court Executive

COLLEEN MCMAHON
Chief Judge

EDWARD A. FRIEDLAND
District Court Executive

MEMORANDUM

TO: SDNY BAR
FROM: Edward Friedland, District Executive
DATE: March 20, 2020
SUBJECT: COVID-19 Protocols

In light of the ongoing public health emergency, please be advised of the following updated operational protocols for the conduct of business in the United States District Court for the Southern District of New York:

Effective 9:00 a.m. on Monday, March 23, 2020 the Southern District of New York essential functions will continue as follows:

- Criminal Case Operations will proceed at the Daniel Patrick Moynihan (DPM) Courthouse in Foley Square and the Charles L. Brieant (WP) Courthouse in White Plains, limited to the processing of New Arrests, Arraignments, Bail Appeals, and Emergency Matters. Arraignments will take place before the Duty Magistrate in Courtroom 24B in the DPM Courthouse, rather than in the usual smaller courtroom on the fifth floor (5A). In multiple defendant cases, no more than two persons will be arraigned at one time. Spectators will be required to sit in designated seats in order to preserve social distancing procedures. Counsel may apply to appear by telephone at arraignments or bail hearings, which applications may be granted at the discretion of the presiding judge.
- All other in-court matters will be held in the following courtrooms:
 - **Daniel Patrick Moynihan Courthouse: 23B or 24A (DPM)**
 - **Thurgood Marshall Courthouse: 110 or 318 (TM)**

▪ **Charles L. Brieant: 218 (WP)**

- Other criminal matters will be held at the discretion of the presiding judge.
- Part I (emergency civil part) will operate out of the DPM or TM Courthouses (depending on who is on duty) in Foley Square, and will be handled in the usual manner by the judge to whom the case is wheeled out to in WP. Part I will be operational for civil matters only between the hours of 8:30 AM and 4:00 PM Monday through Friday; Part I will not be staffed after 4:00 pm or on weekends for civil matters. Please see below under the heading “Clerk of Court: Emergency Applications and Part I” for instructions about how to file papers that are to be directed to Part I. Argument on applications in civil matters for temporary restraining orders and other emergency relief, if ordered by the Part I judge, will take place in one of the Courtrooms listed above. Applications to participate by teleconference will be entertained and decided by the presiding judge. Counsel should be available by telephone to discuss requests for sealing or issues relating to the filing of papers or service of process; please be sure that any applications to Part I include the name and telephone number of an attorney authorized to deal with such issues. Once emergency relief has been considered and either granted or denied, further proceedings (including motions for preliminary injunction) will ordinarily be handled by the assigned judge, not the Part I judge.
- Part I (emergency criminal matters) will operate in the usual manner and will take place in one of the Courtrooms listed above. Filing papers with chambers by email is strongly encouraged. Emergency criminal applications that must be heard over weekends may be scheduled by consulting the duty roster and telephoning the Part I judge’s deputy clerk.
- Civil Case Operations will proceed at the discretion of the individual Judge. In-court appearances will be limited strictly to Emergency Matters, and even these should be conducted by teleconference or (if the presence of witnesses is required) videoconference if possible. If videoconference is not possible, they will also take place in one of the Courtrooms listed above.

Many judges have updated their individual rules and practices or adopted emergency rules and practices for the current situation. Any new or revised rules are available on the court website at: www.nysd.uscourts.gov/judges

For more information, please visit the Court’s website: www.nysd.uscourts.gov/covid-19-coronavirus or call: (212) 805-0005.

Clerk’s Office: The Clerk’s Office will continue to operate as follows:

PLEASE NOTE: Any documents submitted for filing in a drop box must be time-stamped, sealed in an envelope addressed to the Clerk of Court, and must include the filer’s contact information.

- Office of the Clerk of Court: Foreign mailings will be accepted through the drop box located in the lobbies of the Daniel Patrick Moynihan (DPM) and the White Plains (WP) courthouses.

- Records Management: The Records Management Unit will accept and fulfill records requests through the mail. Sealed filings in civil and criminal matters can be left in the drop box located in the lobbies of the DPM and WP courthouses.
- Finance: The Finance Unit will accept restitution payments through the mail and the drop box located in the lobbies of the DPM and WP courthouses. Subpoena requests can be left in the drop box located in the lobbies of the DPM and WP courthouses. The subpoena request must include a self-addressed stamped envelope and will be processed and returned to the attorney through the mail.
- Self-Represented (Pro Se) Filings: All filings will be accepted through the mail and the drop box located in the lobbies of the DPM and WP courthouses. Assistance with procedural questions will be provided by phone: Pro Se Intake Unit (212) 805-0175.
- Civil and Miscellaneous Case Openings: Cases filed electronically will continue to be processed and assigned to judges. False Claims Act (Qui Tam) cases filed pursuant to 31 U.S.C. §3729 may be submitted to the court by placing the filing in the drop box located in the lobbies of the DPM and WP courthouses.
- Miscellaneous Operations: Civil appeals, orders and judgments, Help Desk and attorney admissions will continue to provide support by phone (212) 805-0800 and through email: HelpDesk@nysd.uscourts.gov.
- Criminal Case Operations: The Arraignment Unit will be staffed and providing support for all presentments, bail hearings, pleas, magistrate judge applications and bond signings. Criminal appeals will be accepted in person in the DPM courthouse, and criminal appeals may be submitted in WP through the drop box in that courthouse location.
- Emergency Applications and Part I: For emergency applications that are submitted in a case pending before the court, attorneys are directed to file the emergency application in ECF and call chambers and leave a voicemail alerting the judge to the filing. If the emergency application is not associated with a pending case before the court, attorneys are advised to submit the application to the court, along with contact information, through the drop box located in the lobbies of the DPM and WP courthouses and to call the Clerk's Office at (212) 805-0140 to alert the Clerk of Court to the filing.
- Mediation: Court ordered mediation will no longer take place in the courthouses. Mediators and the parties are encouraged to use alternate locations or other methods of convening mediation sessions. Please contact the Mediation Office for further guidance regarding this change in practice: (212) 805-0643.

For any questions, concerns or requests related to the above, please contact the main Clerk's Office telephone line at (212) 805-0136, or the Clerk's Office website: www.nysd.uscourts.gov.

District Executive Office: The District Executive's Office will continue to operate as follows:

- Attorney Service Passes: No new applications for an Attorney Service Pass will be processed. The court will renew existing passes through the mail. for further information, see: <https://nysd.uscourts.gov/sites/default/files/pdf/covid-19/Suspension%20of%20Attorney%20Service%20Passes.pdf>
- Audio Visual Services: Assistance with remote setups for teleconferencing and other A/V related inquiries will continue. Contact 212-805-0134 or e-mail AV_NYSD@nysd.uscourts.gov for assistance.
- Case Inquiries: For inquiries regarding cases in SDNY, you may call 212-805-0500. For media related inquiries, submit inquiries to media_inquiries@nysd.uscourts.gov
- Courthouse Deliveries: Deliveries of goods to the SDNY will continue uninterrupted. Contact 212-805-0500 for assistance.
- Grievance Committee: Contact Julie Allsman at Julie_allsman@nysd.uscourts.gov for inquiries related to the Grievance Committee.
- Statements of Discipline: Statements of Discipline will continue for attorneys being admitted in other states. See <https://nysd.uscourts.gov/statement-of-discipline> for further instructions.

Pretrial Services: The Pretrial Services Office will continue to operate as follows:

- Bail Interviews: Bail interviews will be performed telephonically. Bail reports will continue to be provided in hard copy format to all counsel. Officers will continue to provide in-person coverage for all bail-related court proceedings.
- Supervision: Defendants under Pretrial Services supervision will continue to report if directed to do so.

For any questions, concerns or requests related to the processing of new arrests, please contact pretrial services bail investigation department at 212-805-4344.

Probation Services

- Supervision: Persons under supervision who are subject to drug testing, and other persons under supervision who need to be seen by an officer, will report as directed to either the White Plains or New York City offices. Persons under supervision who have been released from BOP facilities are required to report to the probation office within 72 hours after their release. We will perform our intake process on these cases in both the White Plains and New York City offices.
- Probation officers will also continue to conduct field work as long as conditions allow.

For any questions, concerns or requests related to the above, please contact the Probation Department at 212-805-0040, or the probation website: <http://probation.nysd.uscourts.gov>.



PRESS RELEASE

**New York State
Unified Court System**

**Hon. Lawrence K. Marks
Chief Administrative Judge**

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www.nycourts.gov/press

Date: May 13, 2020

New York State Court System to Begin Return to In-Person Courthouse Operations

*Judges and Staff in Counties Meeting Governor's Benchmarks
to Return to Their Courthouses; New Case Filings Will Be Accepted*

NEW YORK—As the New York State court system continues to navigate the challenges presented by the COVID-19 pandemic, Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence K. Marks today announced the gradual return of judges and staff to courthouses in upstate counties that have met the Governor's established safety benchmarks.

Spanning five Judicial Districts, the return to courthouses will start next week in 30 upstate counties: on Monday, May 18, in the counties of Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga, Tompkins, Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates, Fulton, Herkimer, Montgomery, Oneida, Otsego and Schoharie; followed by Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis and St. Lawrence counties on Wednesday, May 20.

While remaining open for business during the pandemic, the court system had limited operations, consolidated court facilities, implemented and expanded virtual court operations, and taken a wide range of other measures over the past two months to restrict courthouse traffic and contain the spread of COVID-19. With guidance from

public health officials, plans to safely resume more normalized court operations have been ongoing.

Beginning next week, New York State court system judges and chambers staff, along with designated clerks and support staff, in the previously named upstate counties will return to their courthouses. Importantly, new cases may be filed in these counties electronically.

Courthouse areas that will be used in this first phase include judges' chambers, clerks' offices and back offices. Social distancing and other steps restricting courthouse traffic will be enforced to protect the health and safety of judges and staff, attorneys, litigants and members of the public. Among other safety measures:

- Non-employee court visitors will be required to undergo COVID-19 screening before entering the courthouse.
- All staff who interact with court visitors must wear a mask.
- Anyone entering the courthouse will be required to wear a mask, with masks available for those who need one.
- Courtroom and other areas will be carefully marked to ensure proper physical distancing.
- Court facilities will be regularly sanitized.
- Hand sanitizer dispensers will be available throughout the courthouse.
- Acrylic barriers and other safety features will be installed in courthouse areas as needed.

The plans in these jurisdictions will serve as a template for the return of judges and staff to courthouses in other counties of the State.

"I look forward to next week's return of judges and staff to courthouse facilities in many of our upstate counties—marking a major first step in our resumption to in-person court operations. I am thankful to Administrative Judges Craig Doran and Anthony Cannataro, who are leading our statewide planning efforts, and to all the judges and staff in these upstate counties, for their hard work in preparation for this milestone," said Chief Judge DiFiore.

Added Judge Marks, "As we enter this first phase of our return to our courthouses, we will move carefully and steadily. We will regularly review our safety and other practices,

adapting our protocols and facilities as needed, as we strive to serve the justice needs of New Yorkers while balancing the safety of all those who work in and visit our courthouses.”

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