

Thinking Ahead: COVID-19 Considerations for Re-Opening Your School Campus

Legal and Risk Management Considerations: Developing Your Roadmap to Re-opening

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Looking Ahead: Still a Lot of Unknowns

- Will you be **back on campus** or **stay remote** – or both?
 - What about **day** versus **boarding** school consideration?
 - Will you follow what is mandated for **public schools**, or not? And why?
 - Will you allow **visitors** and hold open events, or **live stream** your events? What about **athletics**?
 - Will your community letters now be **community videos**?
 - What have we learned from **essential businesses** that have stayed in operation?
 - such as no self-serve cafeterias, wearing masks, limiting meeting sizes, etc.
 - How do you handle the employee who is simply “**afraid**” to come into work?
 - Do you have a **staggered return** and if so, what criterion do you have for who comes back and when?
 - Do you use **waivers** when you return? Do you have the right online **recording permissions**?
 - What about payment for **room and board** if the school doesn't return to on-campus?
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**The dialogue has begun and
the time for thoughtful planning is now.**

Overall Obligation

FOLLOW what is going on out there:

laws and regulations as well as recommendations and guidance documents

1. Federal, state and local mandated laws and regulations, and carefully consider non-mandatory recommendations
2. Recommended safety guidelines from the Centers for Disease Control (CDC) and from state and local health authorities
3. Governmental guidance and legal compliance documents such as from the Equal Employment Opportunity Commission (EEOC)

Caution

Employers should remember that guidance from public health authorities and other government agencies is likely to change as the COVID-19 pandemic evolves. Therefore, schools should continue to follow the most current information on maintaining workplace safety and legal compliance.

Federal Guidelines for “Opening Up America Again”

- Released on Thursday, April 16, 2020
- These guidelines are not directives to the states; rather recommendations based on Phased Openings
- Provides initial “**Gating Criteria**” which should be satisfied before implementing “Phased Openings.” The so-called Gating Criteria require the “downward trajectory” of Covid-19 symptoms and cases within a 14 day period.

- Once the Gating Criteria are met, the Guidelines suggest **three different phases** for normalizing daily life for individual and businesses. The Guidance provides “Guidelines for all phases.”
- For example, employers must develop and implement appropriate policies and procedures consistent with federal, state and local regulations and guidance regarding:
 - Social distancing
 - Sanitation
 - Use of disinfection
 - Travel
 - Protective equipment
 - Testing, isolating and contact tracing
 - Temperature checks

For all phases

The Guidelines for all phases suggest that employers:

- **monitor** workforce for indicative symptoms of Covid-19;
 - not allow symptomatic people to physically return to work until **cleared by a medical provider**; and
 - develop and implement policies and procedures for **workforce contact tracing** following employee COVID+ test.
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Phase One - Individuals

- **ALL VULNERABLE INDIVIDUALS** should continue to shelter in place. Members of households with vulnerable residents should be aware that by returning to work or other environments where distancing is not practical, they could carry the virus back home. Precautions should be taken to isolate from vulnerable residents.
 - All individuals, **WHEN IN PUBLIC** (e.g., parks, outdoor recreation areas, shopping areas), should maximize physical distance from others. Social settings of more than 10 people, where appropriate distancing may not be practical, should be avoided unless precautionary measures are observed.
 - Avoid **SOCIALIZING** in groups of more than 10 people in circumstances that do not readily allow for appropriate physical distancing (e.g., receptions, trade shows)
 - **MINIMIZE NON-ESSENTIAL TRAVEL** and adhere to CDC guidelines regarding isolation following travel.
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VULNERABLE INDIVIDUALS

1. Elderly individuals.
 2. Individuals with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy
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Phase One -Employers

Applies to states/regions that satisfy the basic “Gating Criteria.”

Phase One recommends that employers:

- Continue to **ENCOURAGE TELEWORK**, whenever possible and feasible with business operations.
- If possible, **RETURN TO WORK IN PHASES**.
- Close **COMMON AREAS** where personnel are likely to congregate and interact, or enforce strict social distancing protocols.
- Minimize **NON-ESSENTIAL TRAVEL** and adhere to CDC guidelines regarding isolation following travel.
- Strongly consider **SPECIAL ACCOMMODATIONS** for personnel who are members of a **VULNERABLE POPULATION**.

Phase One – Specific Types of Employers

- **SCHOOLS AND ORGANIZED YOUTH ACTIVITIES** (e.g., daycare, camp) that are currently closed should remain closed.
 - **LARGE VENUES** (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under strict physical distancing protocols.
 - **GYMS** can open if they adhere to strict physical distancing and sanitation protocols.
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Phase Two - Individuals

- **ALL VULNERABLE INDIVIDUALS** should continue to shelter in place. Members of households with vulnerable residents should be aware that by returning to work or other environments where distancing is not practical, they could carry the virus back home. Precautions should be taken to isolate from vulnerable residents.
 - All individuals, **WHEN IN PUBLIC** (e.g., parks, outdoor recreation areas, shopping areas), should maximize physical distance from others. Social settings of more than 50 people, where appropriate distancing may not be practical, should be avoided unless precautionary measures are observed.
 - **NON-ESSENTIAL TRAVEL** can resume.
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Phase Two - Employers

For States and Regions with no evidence of a rebound and that satisfy the gating criteria a second time.

- Continue to **ENCOURAGE TELEWORK**, whenever possible and feasible with business operations.
 - Close **COMMON AREAS** where personnel are likely to congregate and interact, or enforce moderate social distancing protocols.
 - Strongly consider **SPECIAL ACCOMMODATIONS** for personnel who are members of a **VULNERABLE POPULATION**.
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Phase Two – Specific Types of Employers

- **SCHOOLS AND ORGANIZED YOUTH ACTIVITIES** (e.g., daycare, camp) can reopen.
 - **LARGE VENUES** (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under moderate physical distancing protocols.
 - **GYMS** can remain open if they adhere to strict physical distancing and sanitation protocols.
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Phase Three - Individuals

For States and Regions with no evidence of a rebound and that satisfy the gating criteria a third time.

- **VULNERABLE INDIVIDUALS** can resume public interactions, but should practice physical distancing, minimizing exposure to social settings where distancing may not be practical, unless precautionary measures are observed.
 - **LOW-RISK POPULATIONS** should consider minimizing time spent in crowded environments.
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Phase Three – Employers

Resume **UNRESTRICTED STAFFING** of worksites.

Phase Three – Specific Types of Employers

- **LARGE VENUES** (e.g., sit-down dining, movie theaters, sporting venues, places of worship) can operate under limited physical distancing protocols.
 - **GYMS** can remain open if they adhere to standard sanitation protocols.
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Face Masks

More and more states are urging citizens to wear masks **when out in public** to slow the spread of the coronavirus.

Most state officials are asking the public not to wear surgical masks or N95 respirators and to reserve those types of masks for health care workers and first responders.

Instead, it is suggested that individuals wear their own cloth coverings such as bandanas, scarves or homemade cloth masks. The masks should cover both the mouth and nose.

CDC recommends wearing cloth face coverings: Schools should review [this guidance](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html) (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>) and consider how to provide, or assist employees and students in obtaining, face coverings for those on campus.

See e.g. <https://www.dhhs.nh.gov/dphs/cdcs/covid19/covid-mask-guidance.pdf>

Recent EEOC Guidance – updated frequently

- The EEOC has provided guidance (a publication entitled [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html) (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>) [[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.
 - *All EEOC materials related to COVID-19 are collected at www.eeoc.gov/coronavirus.*
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- 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) https://www.eeoc.gov/facts/pandemic_flu.html
 - 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.
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- When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic? (3/17/20) https://www.eeoc.gov/facts/pandemic_flu.html
 - 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.
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- Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19? (3/17/20) https://www.eeoc.gov/facts/pandemic_flu.html
 - 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.
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- When employees return to work, does the ADA allow employers to require a doctor's note certifying fitness for duty? (3/17/20) https://www.eeoc.gov/facts/pandemic_flu.html
 - 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.
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Other Return to School Considerations

- Who can or should continue to telework
 - Disinfecting Procedures – every day and following a confirmed COVID-19 presence
 - Health Considerations – quarantining, isolation, health center capacities, local health provider relationships; self-reporting, PPE, personal hygiene
 - Waivers and Releases – e.g. no guarantee that a student or employee will not get COVID-19
 - Enrollment Agreement and Employment Agreement – force majeure clauses
 - Handbook policies
 - Trip and travel policies
 - Continuing some amount of online learning even when campus is open
 - Employee considerations – compliance with wage and hour laws, restructuring, change in job duties, morale
 - Food services – social distancing, self-service, etc.
 - Athletics, events, meetings and functions
 - If you accepted PPP, the issue of compliance with federal laws and regulations like Title IX
 - COMMUNICATIONS
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And let's not forget:

Your Mission, Values, Compassion and Caring

Maintain pragmatic optimism and
know that what is good endures.

CDC Guidance Documents – check frequently

- Traveling within the US guidance (https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html?deliveryName=USCDC_2067-DM25771);
- CDC offers guidance for those returning from international travel (<https://www.cdc.gov/coronavirus/2019-ncov/travelers/after-travel-precautions.html>);
- Visiting playgrounds and playing sports/activities guidance (https://www.cdc.gov/coronavirus/2019-ncov/community/parks-rec/visitors.html?deliveryName=USCDC_2067-DM25771);
- guidance (<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>) for childcare centers that remain open;
- cleaning and disinfecting guidance (<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>) applicable to schools.
- The CDC issued guidance on Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19 (<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>);
- CDC Issues Domestic Travel Advisory for New York, New Jersey, and Connecticut (March 28) (https://www.cdc.gov/media/releases/2020/s038-travel-advisory.html?deliveryName=USCDC_2067-DM23953)
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CDC Websites contd.

- [CDC issues new/updated guidance: Children and Coronavirus: Tips to Keep Children Healthy While School Is Out](https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/children.html?deliveryName=USCDC_2067-DM23953) (March 28) (https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/children.html?deliveryName=USCDC_2067-DM23953)
- On March 16, the CDC [recommended](https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html) (<https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>) that large events and mass gatherings (defined as 50 or more people) should be canceled or postponed for the next eight weeks.
- On March 31, the CDC updated its [additional Guidance for School Settings](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/index.html) (<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/index.html>) to include an updated version of [Considerations for School Closures](https://www.cdc.gov/coronavirus/2019-ncov/downloads/considerations-for-school-closure.pdf) (<https://www.cdc.gov/coronavirus/2019-ncov/downloads/considerations-for-school-closure.pdf>).
- Review the CDC's [School Decision Tree](https://www.cdc.gov/coronavirus/2019-ncov/downloads/considerations-for-school-closure.pdf) (<https://www.cdc.gov/coronavirus/2019-ncov/downloads/considerations-for-school-closure.pdf>) and other charts and analysis, along with [updated guidance for pre-K through 12th grade schools](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html) (<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>)

Other good resources

- NBOA COVID-19 resources and webinars
 - NAIS COVID-19 resources and webinars
 - Regional school association COVID-19 resources and webinars
 - Law firm COVID-19 resources and webinars
 - CDC, EEOC, USDOL, USDOE, US Dept. of State
 - **Return to School Roadmap**, An Opportunity Labs Initiative:
 - Found at: <https://returntoschoolroadmap.org/facilities/school/>
 - Covers: Facilities, Governance, Wellness, Instructions, School Operations, Technology
 - **Safe Work Playbook**, created by Lear, found at: <https://www.lear.com/Site/Company/Safe-Work-Playbook.aspx>
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IMPORTANT NOTE:

The information provided in this webinar and slides are NOT LEGAL ADVICE. For specific matters, schools should seek specific legal advice as to the application of the laws, regulations or guidelines to their school or situation.

Also, as stated at the outset, schools should monitor the ongoing changes being made in laws, regulations, guidance documents and recommendations.



About the Presenter, Linda S. Johnson

Linda Johnson is a director with McLane Middleton and Co-Chair of the firm's Education Law Group. She focuses her practice on understanding and serving the needs of independent and boarding schools. She serves as outside legal counsel to many of the country's top independent day and boarding schools. She also provides counseling services, policy development and review, and trainings to public schools especially in the area of safe schools and employment law.

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