

Q&A



Your COVID-19 Business Reopening Questions **ANSWERED**



Like you, we're closely monitoring the impact of the COVID-19 virus; we are putting a great focus on managing risk by following the guidance offered by state and federal health officials. While this global pandemic is impacting our businesses, families, and communities, we are here as your partner through this time.

PSA has hundreds of clients who are all asking questions. In response to this rapidly changing, unprecedented health threat, we have put together this Q&A resource to help you as you reopen your businesses.

REOPENING YOUR BUSINESS FAQs



As the Hero's Act (the Second Stimulus Bill) is debated in Congress a potential provision being promulgated by Senate Majority McConnell would exempt business from all liability to both workers and customers for infection from COVID-19, should it occur as a result of visiting a business during the pandemic. Details aren't clear and the likelihood of this provision's inclusion in the final bill sent to the President is even less clear. If it were to be passed there is little doubt that it would be challenged legally—a process that could potentially take years to resolve.

So, as a business owner looking to reopen as states begin to loosen the restrictions on business establishments previously closed under state regulations, what are your responsibilities and potential liabilities? I hope this short FAQ can act as a guide to address some of the issues that may arise. In no way is this intended to be an exhaustive list or legal advice. You should understand both your legal liabilities as well as local recommendations/regulations for the safe reopening of your business.

Q CAN I 'FORCE' AN EMPLOYEE TO RETURN TO WORK?

A Generally, Yes. But requiring employees to return to work still imposes on you, as the business owner or manager, a requirement to provide a safe working environment. This will likely continue to include appropriate social distancing and use of PPE (Personal Protection Equipment such as masks). Under certain circumstances, if an employee can demonstrate that their mental health (such as severe anxiety) would be negatively impacted, an employee could request to work from home as a reasonable accommodation under the ADA act.

Under normal circumstances, an employee refusing to return to work would likely be terminated. Under our current conditions, we recommend that if possible, consideration be given to allowing work from home if feasible. This potentially retains an otherwise good employee, builds goodwill, and potentially avoids negative publicity a business could receive for terminating employees over health concerns.

Q WHAT ARE MY OBLIGATIONS AS AN EMPLOYER TO PROVIDE A SAFE WORK ENVIRONMENT?

A According to the Occupational Safety and Health Act's [general duty clause](#), employers are required to provide their employees "places of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

In the event that an employee contracts the virus through exposure at work, [global law firm Seyfarth-Shaw](#) says employees are entitled to receive "temporary total disability benefits in lieu of wages, reasonable and necessary medical treatment, and an award for any resulting permanent disability."

If COVID-19 is proven to have been contracted at work, Workers Compensation insurance would likely cover the employee's injury.

Q WHAT GUIDELINES SHOULD I FOLLOW TO PROVIDE A 'SAFE' WORKPLACE

A As previously mentioned, existing [OSHA guidelines](#) are a good starting point. Additionally, [CDC guidelines](#) are an excellent resource to establish a workplace program that minimizes COVID-19 exposures to workers and clients. For your convenience, we've linked to the OSHA and CDC sites, which offer extensive guidance in establishing good practices.

REOPENING YOUR BUSINESS FAQs



Q AM I LIABLE IF A CUSTOMER COMES INTO MY BUSINESS AND LATER CLAIMS THEY CONTRACTED COVID-19 AS A RESULT OF THE VISIT?

A Maybe. Admittedly, it will be difficult to take one isolated case and determine with certainty that your business was the cause of infection. However, multiple cases with similar circumstances may start to build a case that your business was indeed the source. Again, best practices are going to typically be required by the state—wearing PPE, social distancing, curbside delivery, etc. ***These Best Practices will also prove to be your best defense that you were not negligent or the cause of the infection.*** Any violation of these rules or guidelines could result in a claim for which you may not have coverage. ***The courts generally require any claimant to prove their injury was caused by you and was due to your negligence.***

The issue of insurance coverage for such a claim is a complex one. It is possible that liability coverage will be excluded under the pollution provision of your policy or exclusions related to Fungi, Bacteria & Virus. It will also be very difficult to ascertain with certainty that your business was the cause—COVID-19 is potentially everywhere and can survive on surfaces for an extended period—so determining what other potential sources for the customer's illness will be critical in defending a claim.

Should a customer make a claim, irrespective if your business is determined to be the source, subject to policy terms and conditions of your policy, we recommend you file a claim under your General Liability policy in order to determine if your policy will respond to the claim.

Q ARE THERE OTHER INSURANCE COVERAGES I SHOULD CONSIDER?

A **Directors & Officers Insurance** is intended to cover claims made by shareholders or stakeholders, should decisions made by management/The Board of Directors, including information & representations provided by management or the board, turns out to have a negative impact to the claimants. The most common claim is where stockholders sue the Board alleging the drop in stock price was due to their negligence. However, we are seeing cases where shareholders felt the Board intentionally understated the impact of COVID-19. A privately held firm may not have shareholders, but we recommend speaking to your PSA Account Executive for advice if you may or may not need this coverage.

Employment Practices Liability Insurance covers claims brought by employees for allegations of wrongful termination, discrimination, sexual harassment, or similar employment related activities or practices. Returning to work in a pandemic may result in claims if workers are infected. For workers infected at work, we would anticipate these claims will be covered by Workers Compensation. However, if there was alleged or found to be Insufficient safeguards, lack of adherence to best practices, or disregard for employee safety, it is conceivable we could see claims being made under Employment Practices or Directors & Officers policies. This is untested territory for all insurance policies so prevention and following Best Practices, will be the best defense in all situations. Again, speak to your PSA Account Executive to determine if EPLI is available for your business.

Last but not least, PSA has a well-staffed **HR Solutions Practice** that can provide invaluable assistance to you should your HR staff be overwhelmed or unfamiliar with new requirements caused by COVID-19 imposed by either your state or Congress. We suggest you reach out to your PSA Account Executive to discuss what assistance may be available to help you with HR issues presented by COVID-19 as well as ongoing HR needs.

You can reach your PSA contact just like you normally would. If you are having trouble reaching your agency contact, please call 410-821-7766 or call toll free: 1-800-677-7887. We will be providing updates to you via email and updating our website at www.psafinancial.com/coronavirus.

