

Commercial Property Management Considerations in the New COVID-19 Reality

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Commercial property management companies face unique operational challenges during the ongoing COVID-19 pandemic and a COVID-19 health and safety plan is becoming more important every day.

Not only do commercial property management companies have to address the COVID-19 health and safety needs of their own employees, but they also need to address the reimagined workplace needs of their tenants. This often means creating COVID-19 operational plans for their own employees and their tenants' employees, visitors, and customers.

Given the magnitude of federal, state and local laws and guidance (that seemingly change daily) keeping COVID-19 operational plans fully compliant is no easy task. Further, as more employers are encouraging, and in many cases requiring, their employees to return to the office, building managers face additional challenges to create COVID-19 operational plans that meet their tenants' increased needs.

Creating a COVID-19 health and safety plan that is continuously reviewed and updated as new laws and guidance are issued is a critical component in mitigating operational risk in the new COVID-19 reality. The constantly evolving COVID-19 situation means these plans also will need to be revised as conditions change and the number of employees working on-site increases. In states that have enacted limited liability laws, compliance with current health and safety directives often is required to take advantage of the liability protections offered.

Following are some of the obligations that property managers of commercial buildings will need to address as part of their COVID-19 operational plans:

- Social distancing protocols in common areas and amenity spaces: As the number of individuals entering the building daily continues to increase, be sure protocols are sufficient to maintain appropriate social distancing. Plans should address COVID-19 capacity requirements in common areas such as elevators, cafeteria spaces, and meetings rooms. In addition, if amenity spaces such as a building gym will be opened, compliance with health and safety obligations for gyms will need to be followed.
- Building ventilation: Many state and local orders have specific ventilation systems

requirements, including ensuring outdoor air circulation is increased to the extent possible, and tenants may be vocal on this issue. In many states, employers have an affirmative obligation to discuss ventilation systems improvements with building management.

- **Signage requirements:** Be sure to comply with state and local requirements regarding posting of specific notices. While some required postings are obvious, such as reminders to wear a mask in common areas and not to enter if experiencing COVID-19 symptoms, others are less so. For example, Georgia mandates posting of a sign with specific language to be covered by the limited liability law. New York requires posting of the safety plan in a conspicuous area.
- **Screening processes including temperature monitoring for use by tenant employees, visitors, and customers:** In many states, employers have a legal obligation to conduct daily health screening and temperature monitoring of their employees. Many of these rules allow employers to work in conjunction with building owners to satisfy the screening obligations. As the number of people entering the building continues to increase, consider more efficient ways to address this obligation both in terms of employees and on behalf of tenants. For example, many property owners and managers are installing temperature monitoring kiosks that employees and tenants can use to monitor temperatures. In creating any screening plan, it is important to ensure compliance with privacy requirements, as well as have a plan to address requests for reasonable accommodations.
- **Create a plan to respond to COVID-19 positive situations in the building:** In preparing a COVID-19 response plan, consider whether there is a legal obligation to notify employees, other tenants or visitors, or local health authorities of any positive cases. Notifications should protect the confidentiality of the positive individual. Like many COVID-19 obligations, response obligations to positive situations evolve continuously. In California, a new law will require all employers to issue a written notice containing specific information within one day of learning about a positive COVID-19 situation.

While the shift back to on-site work brings additional compliance related challenges, it is likely a welcome trade-off to see tenants returning to the office. To keep tenants' employees returning to the office, compliance with COVID-19 health and safety rules is critical. Many employers face an uphill battle in encouraging their employees to physically return to the office. Even absent a legal entitlement to remote work, employers are in a difficult position trying to enforce return-to-work plans when many of their workforce feel safer working at home. Having building space that is fully compliant with COVID-19 health and safety rules is the first step to a successful return-to-office process.

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