

# Coronavirus: Legal and Practical Tips for Businesses and Employers



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STEIN  
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# Bernstein Shur's Coronavirus Legal Response Team



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# Agenda

- 1) Overview
- 2) Crisis Management and Communications
- 3) Employment
- 4) Business/Contractual
- 5) Risk Management
- 6) Question and Answer

# Overview

- 1) These are unprecedented times and the situation is rapidly evolving
- 2) Be purposeful about messaging and information that you are communicating to your employees
- 3) Go to the source for your information: US CDC, Maine CDC, WHO
- 4) Prepare for all contingencies, including the possibility that nonessential business activity could be curtailed

# Crisis Management and Communications

## Responding to a crisis

Most often, when we think about a crisis, we are thinking about a localized event. It impacts one business, one location, one community or one country.

This situation is different. It's worldwide and unprecedented in modern times. But the general outline of a response is similar to any crisis:

- 1) Verify and assess the issue
- 2) Notify pertinent staff and remind them of role in crisis
- 3) Assess the crisis level and develop action plan
- 4) Implement the plan, develop messages and manage communications
- 5) Monitor, evaluate and course correct if necessary



# Crisis Management and Communications

## Identifying your audiences:

- 1) **Employees**
- 2) Partner organizations
- 3) Customers/clients
- 4) Vendors
- 5) General Public

## Identifying your channels of communications:

- 1) Direct communication/in-person/telephone
- 2) Email
- 3) Social media
- 4) Website
- 5) Intranet





# Crisis Management and Communications

## Employee communication:

- 1) Put company leadership front and center. Employees want to hear from the boss.
- 2) Rely on experts: Direct people to the US CDC and the Maine CDC for guidance.
- 3) Be transparent and honest. It's OK to not to have all the answers.
- 4) You cannot over communicate. People want to understand what's happening and how it will impact them, including at work.
- 5) After you've developed your action plan and when you have new information, share it with employees. For example, they want to know what you're doing and what they can do:
  - a. Increased cleaning
  - b. Asking people to voluntarily self-quarantine
  - c. Updates from US/Maine CDC, new guidance, other health experts
  - d. Changes in work: Remote work options, changes in personnel/travel polices
  - e. Changes in hours of operation/visitors to the workplace/employment levels



# Crisis Management and Communications

## What employees want to know:

Global Strategy Group, a national polling company, conducted research on workers opinions around COVID-19/Coronavirus. Here's what they found:

- 1) Employees want to know how you plan to respond
- 2) They want to be informed and prepared (as much as possible)
  - a. 68% said it was most important for business to inform workers of what's happening
  - b. 63% prioritized preparing employees for what's happening
  - c. Only 32% prioritized being reassured

GSG also identified specific information that employees want to know.

- 1) 75% want to know how you plan to respond if someone tests positive for COVID-19
- 2) 74% want to know if someone has the illness
- 3) 73% want to know what steps they should take if they believe they've been in contact with someone who has the coronavirus
- 4) 72% want specific guidance on when they shouldn't come to work if they're sick and think they might have coronavirus.



# Crisis Management and Communications

## General rules for communicating during this crisis:

- 1) Things are changing quickly. You won't have the answer to every question.
- 2) You aren't expected to be an expert on pandemics or to see the future.
- 3) When things change, let people know.
- 4) You **CANNOT** over-communicate right now.
- 5) Everyone is under a lot of stress: Be informed. Be kind. Be patient.



# Employment: Top Five Things To Consider

- 1) Cancel all nonessential business-related travel; carefully consider whether “essential” business travel is truly essential
- 2) Impose a mandatory a 14-day quarantine for employees returning from travel to Warning Level 3 countries, known hotspots within the United States and cruises
- 3) Encourage remote work for those employees who can do so
- 4) Allow employees to take accrued PTO, sick or vacation while out on coronavirus related absences, but also consider creating a paid Coronavirus leave bank for impacted employees who may not otherwise have accrued time
- 5) If a temporary business shutdown occurs, employees should be able to utilized accrued PTO, sick and vacation, but may also qualify for unemployment (the Governor has drafted emergency legislation which would extend unemployment to employees impacted by the coronavirus)



# Issues Affecting Contracts

- Anticipate the impact of Coronavirus on contract performance – yours and that of the other party
- Contract and legal doctrines that may excuse performance
  - Force majeure contract clauses
    - General or specific
    - Notice obligations
    - Burden of proof
    - Choice of law
  - Doctrine of impossibility
  - Doctrine of impracticability



# Business/Contractual: Top Five Things To Consider

- 1) Review all mission critical contracts with counsel now
- 2) Prioritize contracts that have current performance requirements (by you or third party) to determine:
  - Do you have an alternative supplier/vendor?
  - Will you be able to perform your obligation
  - Will the opposing party be able to/prevented from performing?
- 3) Understand the basis for your (or third-party's) non-performance (does it fit into the applicable force majeure clause?)
- 4) Formulate a plan and talk to the third party as soon as possible
- 5) Consider whether long-term performance agreements can be renegotiated now



# Federal and Maine State Stimulus Response

- **Disaster Loans** – Governor Mills made necessary request to SBA to trigger availability of economic injury disaster loans
- **Unemployment Insurance** – Use of increased availability of UI for COVID-19 reasons will not impact employer rating
- **DECD** – Governor Mills directed DECD to examine additional ways to support Maine small businesses, including possible loans from FAME and other lenders



# Risk Management: Top Two Things To Consider

- 1) Take reasonable precautions to protect customers, visitors and employees.
- 2) Examine your insurance policies to determine whether you have business interruption or other coverage for disease, epidemics, pandemics, or the like.





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# Resources

- 1) [www.bernsteinshur.com](http://www.bernsteinshur.com)
- 2) [www.portlandregion.com](http://www.portlandregion.com)
- 3) [www.cdc.gov](http://www.cdc.gov)
- 4) [www.maine.gov/dhhs/mecdc](http://www.maine.gov/dhhs/mecdc)
- 5) [www.who.int/health-topics/coronavirus](http://www.who.int/health-topics/coronavirus)
- 6) <https://coronavirus.jhu.edu/map.html>



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