



About the Firm

Shapiro Sher was founded in 1972 with the mission of providing outstanding legal counsel for businesses of all sizes. Based in Baltimore, the firm is nationally recognized for its practices in business and employment law, litigation, bankruptcy, and creditors' rights.

Our employment law team works to help companies meet their many obligations while maintaining productive, harmonious work environments. Whether your business has hundreds of employees or only a few, Shapiro Sher's knowledgeable and experienced employment lawyers are prepared to assist at a moment's notice.

We serve as outside counsel to small, mid-size, and large businesses as well as schools and institutions. Our clients turn to us not only during times of crisis, but also for day-to-day counsel regarding new developments in state and federal law and general human resource policies. Co-chaired by **Eric R. Harlan** and **Renée Lane-Kunz**, our employment practice group shares each client's interest in establishing workplaces that advance the client's overall business goals.

Though our emphasis is on avoiding litigation, we know that sometimes litigation is inevitable. In these instances, Shapiro Sher's experienced employment litigators are prepared to defend clients facing lawsuits brought by individuals as well as by the EEOC and other regulatory agencies. For more information about our employment law practice, please visit ShapiroSher.com.

ISSUES FACING BUSINESSES THAT REMAIN OPEN DURING THE COVID-19 PANDEMIC

By Eric R. Harlan

The novel coronavirus, recently declared a pandemic by the World Health Organization, has drastically altered our daily lives and shuttered countless workplaces. Still, there are some businesses that remain open—from banks and gas stations, to small retailers and carry-out restaurants. Businesses still operating to serve the community must pay close attention to protecting their employees and the public if they are to remain open and safe.

Premises Liability and Duty to Provide a Safe Workplace

As a general rule, businesses owe their customers and vendors a duty to protect them from, and warn them of, dangers that are not open and obvious. Businesses must have reasonable knowledge of the danger, and must take reasonable measures to discharge that duty. At the same time, an employer must provide and maintain a safe workplace for its employees, free from recognized hazards that are causing or are likely to cause death or serious physical harm. Key to the analysis amid the pandemic are an employer's knowledge of the risk of spreading COVID-19 at its business and the actions it takes to safeguard against it.

The Occupational Safety and Health Administration (OSHA) has published its [Guidance on Preparing Workplaces for COVID-19](#) that outlines steps businesses can take—based on one of four levels of risk—to protect their employees. The CDC has also issued coronavirus [Guidelines for Businesses and Employers](#).

Screening and Cleaning

In this environment, businesses should routinely screen their employees for signs of the virus and consistently clean the workplace to prevent potential contamination. Employers are permitted (and in fact encouraged) to ask an employee to stay home or leave work if they exhibit symptoms of COVID-19 or the flu. And the EEOC now permits employers to take the temperatures of their employees—despite such being considered a “medical examination” under the Americans with Disabilities Act (ADA).

Business should also limit or restrict the movement of vendors and delivery personnel about the premises and refuse access to anyone who appears visibly ill. They should routinely clean all frequently touched surfaces in the workplace, such as any workstations, countertops, keypads, [Continued >>](#)



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and doorknobs, and provide disposable wipes so that employees can wipe down common surfaces before each use or contact. At this time, however, the CDC does not recommend additional disinfection beyond routine cleaning.

Can Employees Refuse to Work?

Employees may only refuse to work if they believe they are in imminent danger. OSHA defines “imminent danger” to include conditions or practices in any place of employment “which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided” by the OSHA Act. In the context of COVID-19, “imminent danger” includes a reasonable expectation that “health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency.”

Fortunately, most working conditions in the U.S. do not meet this standard, and the risk of contracting the virus remains relatively low. However, this is general guidance, and each employer should determine when employment conditions may rise to this state such as to justify a refusal to work. Note that, under the National Labor Relations Act, employees are protected against discipline or discharge for engaging in a “protected concerted activity for mutual aid or protection,” which can extend to two or more employees complaining about unsafe working conditions—in a union or non-union setting—and regardless whether the working condition meets the OSHA “imminent danger” standard.

Confirmed Exposure = Notice

Given the highly contagious nature of COVID-19, where a business owner or employee tests positive for the virus—or where a person connected to or in regular contact with the business has been exposed to it—the business is on notice of a potentially unsafe workplace. Absent mitigation (which may range from self-quarantining to temporary closure), employees as well as business invitees may be at risk of imminent danger, exposing the business to potentially significant liability.

For more information about these or other employment or business issues, please do not hesitate to contact Eric R. Harlan or Renée Lane-Kunz. (For a compendium of Maryland directives and programs affecting businesses, please visit: <https://businessexpress.maryland.gov/coronavirus>).

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