

Building Readiness

Reopening Our Doors After COVID-19

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Agenda

- Planning for reopening
- Prevention
- Response
- Liability

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Building Readiness: Reopening Our Doors

<https://www.caplaws.org/resources/coronavirusupdates/reopening/intro.html>



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**Building Readiness:
Reopening Our Doors**

Intro
Planning
Prevention
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Introduction

As organizations across the Community Action network begin to reopen their doors to resume operations and services disrupted by the COVID-19 outbreak, it is critical to thoughtfully consider issues that are likely to arise and plan carefully to adjust to the new normal. The concerns that each Community Action Agency (CAA) faces will depend in large part on the issues specific to its community, including any local and state guidance for reopening, and are likely to evolve over time.

CAPLAW has developed this **Building Readiness: Reopening Our Doors** Frequently Asked Questions (FAQ) resource in an attempt to anticipate and address many of the questions on the forefront of CAAs' planning efforts. These questions are organized into five sections:

1. **Planning** for reopening;
2. **Prevention** and workplace safety protocols to minimize the spread of COVID-19;
3. **Response** to known or suspected cases of COVID-19 in the workplace;
4. **Liability** issues, actual or potential, with respect to COVID-19 related claims; and
5. **Resources** for additional guidance.

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CAA Reopening FAQs and Resources

- [Intro](#)
- [Planning](#)
- [Prevention](#)
- [Response](#)
- [Liability](#)
- [Resources](#)

Coronavirus Updates for the Community Action Network

- [National Partners Guidance](#)
- [Federal Agency Guidance](#)
- [General Guidance for Nonprofits](#)
- [Upcoming and Archived Webinars](#)
- [Other Resources](#)

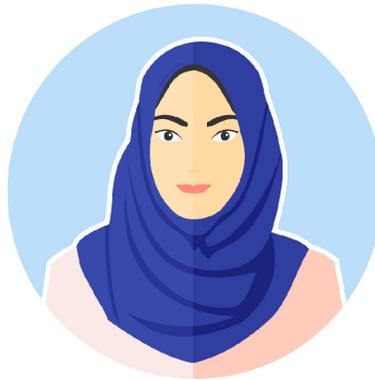
Planning

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Confused at County CAA

County CAA is a Community Action Agency (CAA) headquartered in Caplawtropolis, capital of a state that has been hit hard by the COVID-19 pandemic. While County CAA has continued to provide essential services to the community during the state-ordered shutdown, it has been forced to do so at a reduced capacity, with most employees working remotely. For the last three weeks, the COVID-19 curve in the county has been trending downward, and local officials have declared the county ready to begin its phased reopening.

Confused at County CAA



Nancy is CAA's Chief Operating Officer.

Confused at County CAA

1. What are the most important factors for Nancy to consider as she plans for when CAA should reopen?
 - a. State and local reopening guidance
 - b. Federal reopening guidance
 - c. The number of CAA employees who have had or currently have COVID-19 symptoms
 - d. Ability to protect employees at higher risk
 - e. A, B, and D

When to Reopen?

CDC Guidance

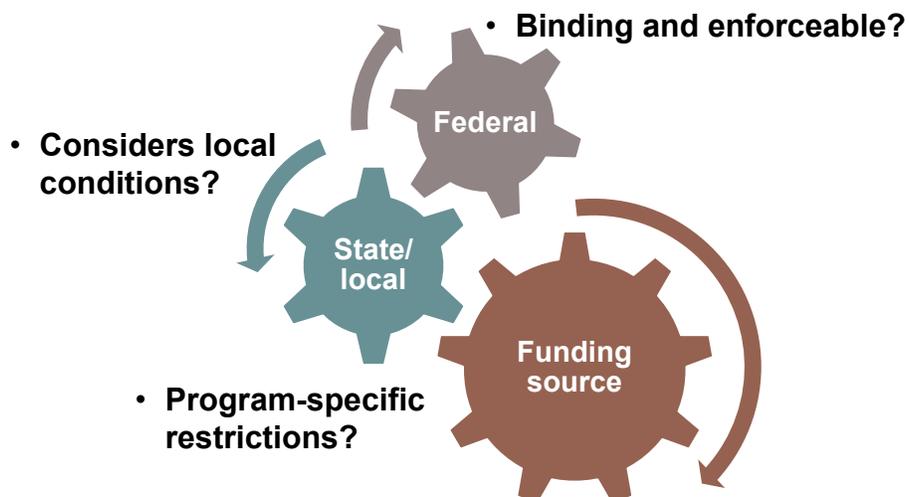
- **Prevent and reduce transmission**
 - Screenings, PPE
 - Procedures for sick employees
- **Maintain healthy business operations**
 - Supportive leave/remote work policies
 - Social distancing policies
- **Maintain a healthy work environment**
 - Building ventilation
 - Cleaning and sanitation

When to Reopen?

White House Plan

- **3 phases:** Must satisfy gating criteria
 - **Phase I**
 - Encourage telework; return to work in phases
 - Close common areas
 - Minimize non-essential travel
 - **Phase II**
 - Same as Phase I, except consider allowing non-essential travel to resume
 - **Phase III**
 - Resume unrestricted staffing of worksites

Which Guidance to Follow?



Use Federal Funds to Pay for Workplace Response Efforts?

CSBG

- CARES Act: To prevent, prepare for, and respond to coronavirus
- IM #157: Making facilities safe (sanitation, gloves, cleaning)

Head Start

- CARES Act: To prevent, prepare for, and respond to coronavirus

? **Other funding sources**

Prevention

Screening for Symptoms

Maria is an intake employee returning for her first day since County CAA's reopening. Upon arrival, a safety volunteer for the CAA says she must take her temperature before Maria can enter. Maria feels fine. She cares deeply about her privacy and has reservations that the check is overly invasive. Can she refuse?



Screening for Symptoms

- Temperature checks are allowed
 - Employees
 - Clients/Vendors/Visitors
- Don't discriminate when conducting tests
- Think about the best location and method for safe, efficient screenings

Screening for Symptoms

- What about other screenings?
 - COVID-19 tests
 - Weigh factors such as pandemic prevalence in community, availability of tests, resources involved
 - Fitness-for-duty exams
 - Consider limits on availability during pandemic
 - Symptom questionnaires
 - Focus on COVID-19 symptoms

Screening for Symptoms

Remember, have protocols in place in the event that an employee, client, or visitor has a fever or other COVID-19 symptoms, or tests positive for the virus.

Social Distancing

Maria proceeds to her office next to the client intake waiting room. She realizes that her desk has been moved from her small office to the larger waiting room. A sign limits the number of people allowed in the room: "2." Her desk sits six feet from a single chair, and she sees a clear plastic partition now installed on it. Her first intake of the day is Norman, who has been waiting in a marked line outside the building to be told to enter. He downloaded and completed the CAA's client intake form at home and carries it with him to the meeting. Assess the CAA's efforts to promote social distancing.

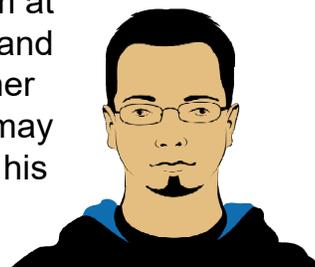


Social Distancing

- Reconfiguring the workplace to establish physical barriers and limit close contact
- Limiting the number of people in the workplace
- Reducing the amount of time that clients/vendors/visitors need to spend in it
- Providing clear, visible direction
- Other considerations: Ventilation system; staggered schedules
- Remember to check state and local requirements

PPE and Workplace Safety

Roland is a Home Health Aide for County CAA. The job requires him to work closely with elderly clients in their homes, often providing physical assistance. Given the nature of the work, he fears it puts him at increased risk of catching COVID-19 and spreading it to people who are at higher risk from the virus. He wonders if he may refuse to return to work and still keep his job?



PPE and Workplace Safety

- Occupational Safety and Health Act (OSHA) § 13(a) and “Imminent Danger”
- Emergency Paid Sick Leave or Emergency FMLA?
- Have a discussion to understand fears and find other solutions
 - PTO, furloughs, telework
- Temporarily delay services to clients exhibiting symptoms?
 - Consult funding source

PPE and Workplace Safety

- Employers may require masks or other PPE in the workplace
- If an employer determines that masks or other PPE are **necessary for workplace safety**, the employer must provide employees with PPE and with training on its proper and effective use
- Consider state and local requirements

Employees at Higher Risk

Roland is immunocompromised, an underlying medical condition identified by the CDC as placing him at higher risk for severe illness from COVID-19. Can he refuse to return to work?



Employees at Higher Risk

- EEOC has said that employees with underlying medical conditions that heighten risk from COVID-19 may request reasonable accommodation from employer
- If employee doesn't request, employer doesn't need to take any action
- Concerned employer may exclude employee only if a "direct threat" and cannot be reasonably accommodated

Employees at Higher Risk

Now assume Roland is 65 years old without any underlying medical conditions. His age puts him at a higher COVID-19 risk. Can he now refuse to return to work?

If Roland wants to work, can the CAA exclude him from the workplace?



Employees at Higher Risk

- Age by itself is not a “medical condition”
- ADA and FFCRA do not protect or cover employees simply because they are older and at higher risk
- Employers cannot exclude solely based on age
- Other ways to reduce risks to employees 65 and older?

Response

Responding to a Potential Case

- Maria develops a cough, but she assumes it is just her yearly seasonal allergies. Three days later, when being screened at her worksite, she finds out she has a fever. Maria is not admitted to the building and is directed to return home immediately.
- You are Alicia, the HR Director at County CAA. What do you do?



Responding to a Potential Case

- Talk to Maria
- Direct her to CDC website, self-isolation guidelines
- Ask about her COVID-19 symptoms
- Ask about her contacts (staff and clients)
- Ask her to get tested
- Ask for her test results
- Arrange to have her workspace cleaned
- Determine if telework available

Reporting a Potential Case

- Identify and alert potentially exposed employees and clients **without disclosing Maria's confidential personal information**
- Not required to notify CDC or public health department
- Not required to report to OSHA

Reporting a Confirmed Case

- Identify and alert potentially exposed employees and clients **without disclosing Maria's confidential personal information**
- Not required to notify CDC or public health department
- Not required to report to OSHA unless:
 - COVID-19 results in fatality, in-patient hospitalization, amputation or loss of eye, OR
 - CAA is subject to the Recordkeeping Rule AND
 - COVID-19 case is **"recordable"**

Reporting a Confirmed Case

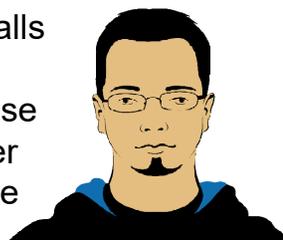
- COVID-19 Case Recordable if:
 - Confirmed as a COVID-19 illness
 - Involves one or more of the general recording criteria
 - Is “work-related”

Employee Records

- Confidential Medical Records – ADA
- Individualized, separate files
- Only accessible to authorized personnel
- Prevent unnecessary disclosures and obtain employee consent
- Data security
- HIPAA

Responding to Employee Concerns

- After hearing that he entered the home of a client who had been exposed to COVID-19, Roland calls his supervisor and says that he won't be coming into work because he is worried about infecting other staff and clients. He says he'd like to take the paid sick leave that Congress authorized for COVID-19-related leave. Can he do that or does he have to use PTO?



Responding to Employee Concerns

- **Emergency Paid Sick Leave** – employee qualifies if:
 1. Subject to a federal, state or local quarantine or isolation order related to COVID-19;
 2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. Caring for an individual who is subject to a quarantine order or is self-quarantining;
 5. Caring for a child whose school or childcare provider has been closed or is unavailable due to COVID-19 precautions; or
 6. Experiencing any other substantially similar condition specified by HHS in consultation with Treasury and DOL

Responding to Employee Concerns

- Concern about coming into work, even for the safety of others, is **not** a qualifying reason for EPSL
- Exposed employees may be eligible for EPSL if federal, state or local quarantine order prevents them from working
- Consider other CAA leave
- Watch out for requests for **reasonable accommodation**

Liability

Legal Troubles

Maria tests positive for COVID-19. Unfortunately, her symptoms get worse and she is unable to do any work from home. She calls Alicia, the HR Director, to let her know about the positive test and asks about filing for workers' compensation.



Maria, Intake Employee



Alicia, HR Director

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Workers' Compensation

Employees

- Dictated by **state law**
- Injury usually must **“arise out of and in the course of” employment**
 - E.g., contracted virus after exposure in the workplace or within scope of employment
 - Injury resulted in medical treatment and/or time off to recover
- Benefits may include medical expenses and partial earnings
- Also consider **work travel** and **remote work** claims

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Workers' Compensation

Employees

- COVID-19 changes:
 - Some states: Temporary measures shifting burden to **employer** to show that exposure to virus was not work-related
 - Businesses also seeking state and national legislation protecting employers against liability

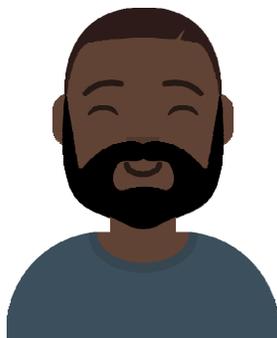
Workers' Compensation

Employees

- **National Council on Compensation Insurance:**
 - Workers' Comp Legislative Tracker
 - https://www.ncci.com/Articles/Pages/II_LegislativeActivity.aspx
 - State Presumptions for Workers' Comp & COVID-19
 - https://www.ncci.com/Articles/Documents/II_Covid-19-Presumptions.pdf

What About Norman?

- Can Norman bring a claim against County CAA if he gets sick after Roland leaves?
- Can County CAA do anything to prevent Norman's lawsuit?



Personal Injury & Wrongful Death

Employees + Clients

- **State law (tort claims)**
 - Wrongful death; personal injury
 - Derivative liability
 - *Evans v. Walmart* (IL)
- Reasons for these claims
 - Some WC laws may not cover COVID-19 injuries
 - Exclude “ordinary diseases of life to which public is exposed”
 - Higher potential payout than workers' compensation

Personal Injury & Wrongful Death

Employees + Clients

- **Protecting against claims**
 - Take precautions to prevent transmission
 - Follow state/local/federal guidance
 - Educate employees and clients about virus
 - Engage with employees and clients about workplace safety
 - Err on the side of transparency in disclosing exposure

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Invasion of Privacy

Employees + Clients

- **State law (tort claims)**
- **Employees**
 - Screening for symptoms is allowable
 - Ensure applied in consistent, non-discriminatory manner
- **Clients/Visitors**
 - Typically, no reasonable expectation of privacy in a public space

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Liability Waivers

- Dictated by **state law**
- **Not clear whether enforceable**
 - Employees → most likely not
 - Clients/visitors → maybe
 - If enforceable, must:
 - Be clear and unambiguous
 - Express mutual intent to relieve one party of liability
 - Indicate that client/visitor understands risks associated with the services, as well as the rights they intend to waive
 - Be fairly bargained for and voluntarily entered into

Insurance Coverage

- **Review existing policies and consider need for additional coverage**
 - General liability
 - D&O liability
 - Business interruption
 - Pollution or environmental
 - Event cancellation

CAPLAW's Coronavirus Update Page

www.capl原因.org/resources/coronavirusupdates.html



Coronavirus Updates for the Community Action Network

In light of increasing concerns about a broader coronavirus outbreak and the impacts on normal business operations, CAPLAW has compiled resources that are particularly relevant to the Community Action network. We will be closely monitoring the situation and will update this page as new developments occur, particularly when federal awarding agencies issue program-specific guidance.

Last updated March 25, 2020

<ul style="list-style-type: none">National Partners GuidanceFederal Agency GuidanceGeneral Guidance for NonprofitsUpcoming and Archived WebinarsOther News	<h3>National Partners Guidance</h3> <ul style="list-style-type: none">CAPLAWCommunity Action Partnership
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Questions?

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