

## Planning for Re-Opening: What Owners, Property Managers and Users of Office and Retail Properties Should Consider

Now is the time to prepare for when non-essential businesses will be allowed to re-open after the various state and local COVID-19 shutdown orders are lifted. We do not know when that date will be or how the orders will be lifted, but planning now can make that phase go smoother for building owners and managers as well as tenants in those buildings. One thing we can be certain of is that the use and operation of buildings will not be “back to normal” for a while.

Due to the unprecedented nature of the coronavirus public health emergency, there is no established standard of care for building owners in implementing policies and procedures for “re-opening” office buildings and enclosed malls after an extended shutdown. This includes building operations during the anticipated period when COVID-19 infections are reduced, but the possibility of infection is not eliminated. Directives and guidance come from multiple sources, including some such as the Center for Disease Control (“CDC”) and state and local public health departments not normally consulted by commercial building landlords and tenants. This client alert sets out issues and resources to be considered.

### ***Maintaining a safe workplace***

Certain measures will continue to be necessary to provide a safe workplace for tenants’ employees, as outlined by the [CDC](#), [OSHA](#), and local public health departments. These include the now-familiar social distancing protocols of maintaining 6-foot distances when possible, use of face masks, frequent and proper hand-washing, increased cleaning and disinfection of surfaces, urging employees to stay home if they feel ill and sending employees who become ill at the workplace home immediately.

Ensuring that the practices can be complied with can be challenging in a commercial building, urban or suburban shopping center and an individual business’ office environment. Decisions need to be made now regarding protocols in common areas and these protocols should be communicated to tenants and employees prior to re-opening. Considerations include: denial of access policies; identifying and creating policies for all aspects of access and egress, including safe distancing (lobby flow, elevators, parking garages, deliveries); enhanced disinfection protocols (prior to and after the building reopens); confirming HVAC and water systems are ready for safe operation; and rules for contractors, vendors and other service providers. For a more detailed description of these safe workplace considerations, click [here](#).

### ***Responding to a positive COVID-19 case***

Public health experts expect that COVID-19 infections will continue to occur after the current orders are lifted and business is re-opened, until a vaccine is developed or a sufficient number of individuals develop antibodies to create a herd immunity for the population at large. This means that landlords and tenants need to have plans for how to deal with a positive test result.

Although state and local public health officials will presumably handle investigating who may have been in close contact with the infected individual, landlords and tenants may have obligations to assist in that effort and should stay current on their local public health department's directions. In addition, the sensitive issue of balancing a duty to notify landlords or other tenants without violating medical privacy and disability laws needs to be considered in advance, not when a case is confirmed. For a more detailed description of these issues, please click [here](#).

As a general legal principle, a property owner's duty to exercise reasonable care under the circumstances to prevent injury to tenants, contractors and their employees and other invitees should be the guideline. An employer's duty to its employees is somewhat higher and places greater responsibility on the employer to ensure a safe work space for employees. It is important to review and revise work practices to adjust to anticipated post-COVID restrictions and responsibilities before employees start to return in order to fulfill those duties, even if those practices may need further revision due to shifting orders.

Buchalter is committed to helping clients navigate through these challenging and rapidly changing times. We have attorneys experienced in adapting and navigating clients through these trying environments and are here to help however, you need. If we can be of assistance, please feel free to contact any of the Buchalter Attorneys below.



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