

Superior Court of the Virgin Islands



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May 27, 2020

The Honorable Rhys S. Hodge
Chief Justice
Supreme Court of the Virgin Islands
161B Crown Bay
St. Thomas, VI

Re: Report and Recommendation of the Judicial Branch COVID-19 Task Force

Dear Chief Justice Hodge,

The Supreme Court of the Virgin Islands established the COVID-19 Task Force by administrative order on May 19, 2020, and charged it with developing a proposed plan for the resumption of some or all of the operations of the Virgin Islands Judicial Branch. I am pleased to report that the COVID-19 Task Force met on an expedited basis to meet its mandate, and has finalized its report.

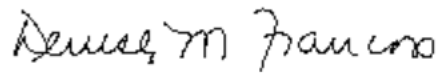
The report, which is enclosed with this letter, surveys the current operational status of the Virgin Islands Judicial Branch, and makes pragmatic recommendations to guide the Judicial Branch to the eventual resumption of full, unrestricted operations. To chart the Judicial Branch's progress, the Task Force recommends the adoption of four modes, or phases, with the complete suspension of all non-essential operations on one end and the full resumption of normal operations on the other.

Based on its review of Judicial Branch operations, the Task Force believes that the Judiciary is presently in a transition period between the second and third mode, but has the capacity to fully transition to the third mode by June 15, 2020, if certain conditions are met. While its report recommends that the Judicial Branch implement certain actions to complete that transition as well as a future transition to the full resumption of operations, the Task Force is cognizant that COVID-19 is an active pandemic and that the scientific community continues to learn new information about the virus, with federal and local public health authorities issuing updated guidance on a frequent basis. The Task Force further recognizes that each constituent part of the Virgin Islands Judiciary, and in particular the Judicial Branch Administrative Office, possess unique expertise with respect to their own operations. Therefore, the Task Force recommendations have been drafted with the understanding that the Judicial Branch Administrative Office and each court shall have broad discretion to implement the recommendation and that it may be necessary to adopt different procedures as new information becomes available.

Letter to Chief Justice Hodge
May 27, 2020
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On behalf of the COVID-19 Task Force, I thank you and the Supreme Court for providing us with the opportunity to advise the Judicial Branch on this critical matter.

Sincerely,

A handwritten signature in cursive script that reads "Denise M. Francois".

Denise M. Francois
Chair, Judicial Branch COVID-19 Task Force



REPORT & RECOMMENDATIONS OF THE VIRGIN ISLANDS JUDICIAL BRANCH COVID-19 TASK FORCE

May 27, 2020



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Superior Court of the Virgin Islands

Hon. Harold W.L. Willocks

Presiding Judge

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BACKGROUND

In December 2019, international health authorities reported a cluster of viral pneumonia-like cases traced to a novel coronavirus, COVID-19. The virus was identified as being highly contagious, and primarily spread between people during close contact, most often through transmission of small droplets produced when coughing, sneezing, and talking. Authorities learned that many individuals infected with the virus experienced only minor symptoms or no symptoms at all yet were still able to transmit the virus to others. Authorities also learned that individuals were most contagious before symptoms appeared.

The World Health Organization formally declared COVID-19 a public health emergency of international concern on January 30, 2020. The following day, United States Secretary of Health and Human Services Alex Azar declared a national public health emergency for the 2019 novel coronavirus, COVID-19. After several confirmed instances of local COVID-19 transmission within the United States, on March 6, 2020, the United States Centers for Disease Control and Prevention (“CDC”) issued guidelines directing older adults and people with chronic medical conditions to stay home as much as possible, advising all others to avoid mass gatherings and engage in physical or social distancing.

On March 13, 2020, the Governor of the U.S. Virgin Islands, Albert Bryan, Jr., and the President of the United States, Donald J. Trump, declared a state of emergency in the United States Virgin Islands and the nation, respectively, in response to the COVID-19 pandemic. Among other preventive measures, the Governor imposed a moratorium on mass gatherings and urged individuals to practice social distancing. Also on March 13, 2020, the Chief Justice of the U.S. Virgin Islands, Rhys S. Hodge, issued an administrative order imposing several precautionary measures with respect to the Judicial Branch of the Virgin Islands. Among other precautionary measures, the Chief Justice restricted individuals diagnosed with COVID-19 or potentially exposed to COVID-19 from accessing Judicial Branch facilities, imposed a moratorium on new civil and criminal jury trials, and restricted other hearings and court appearances to proceeding in-person only if allowed by the presiding judicial officer.

Shortly thereafter, on March 15, 2020, the CDC issued updated guidance further restricting gatherings of 50 or more people, and on March 16, 2020, the President of the United States, Donald J. Trump, announced that revised guidelines would be released recommending that gatherings of 10 or more people be avoided, and that workplaces, schools, bars, restaurants, and other venues where such gatherings occur either close or enact measures to prevent the spread of COVID-19. Chief Justice Hodge, in a March 17, 2020 administrative order, responded by imposing further precautionary measures: continuing most in-person court proceedings commencing on or before April 1, 2020; granting judicial officers discretion to conduct court proceedings through remote communication, i.e., video or telephone conference; suspending the issuance of new marriage licenses; authorizing judicial officers and court personnel to work from remote locations; and authorizing the Presiding Judge of the Superior Court to enact supplemental measures and otherwise facilitate the work of the Superior Court.



BACKGROUND

On March 19, 2020, Governor Bryan escalated emergency measures further to contain COVID-19 and prevent its spread in the Virgin Islands. The Governor suspended all non-essential government services, effective March 23, 2020, and ordered only essential government employees to report to work. Chief Justice Hodge, in a March 20, 2020 administrative order, likewise suspended all non-essential operations of the Judicial Branch effective March 23, 2020, directed judicial officers and court personnel whose duties could be performed from remote locations to continue working remotely, placed all other employees on paid administrative leave, and established interim procedures for the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands. The interim procedures tolled or suspended certain filing deadlines, imposed a moratorium on foreclosure and evictions, authorized the Clerk of the Superior Court to accept court filings by e-mail, and again authorized the Presiding Judge and the Administrator of Courts to enact any necessary supplemental measures.

On March 23, 2020, Governor Bryan issued a stay-at-home order, requiring the public to remain home and closing in-person operations at all non-essential businesses within the Territory. Presiding Judge Harold W.L. Willocks issued an administrative order on March 27, 2020, establishing emergency procedures for remote hearings to supplement the March 23, 2020 administrative order of the Chief Justice.

On March 29, 2020, President Trump extended the CDC's social distancing guidelines through April 30, 2020. In response, Governor Bryan extended the Territory's state of emergency through May 12, 2020, and the stay-at-home order through April 30, 2020.

On April 16, 2020, President Trump issued new guidelines, recommending that State and Territorial governors implement a phased approach to gradually resuming normal operations. In response, Governor Bryan issued an April 29, 2020 executive order that allowed the prior stay-at-home order to sunset on May 4, 2020, and replaced it with a stay-safer-at-home order that, among other things, allowed some private businesses to reopen but required all individuals to wear face masks or facial coverings while in public. In the interim, Chief Justice Hodge had, on April 23, 2020, issued an administrative order, extending all suspension measures and interim procedures through May 31, 2020. Recently, Governor Bryan extended the state of emergency through June 11, 2020, which the Legislature of the Virgin Islands ratified in Act No. 8293.

On May 17, 2020, Presiding Judge Willocks issued an administrative order extending the types of matters eligible to be heard remotely. Shortly thereafter, on May 19, 2020, Chief Justice Hodge issued an administrative order establishing the Virgin Islands Judicial Branch COVID-19 Task Force, and charged it with developing a proposed plan for the resumption of some or all of the operations of the Judicial Branch.

* * *



EXECUTIVE SUMMARY

The Task Force recommends the adoption of four modes, or phases, to transition from the complete suspension of all non-essential services to the full resumption of normal **Judicial Branch operations**. This approach is fully designed to permit the court system to operate to the greatest extent possible in a manner consistent with public safety based on guidance from federal and territorial public health authorities.

The modes suggested below track, to a large extent, the five-phase plan adopted by the Executive Branch as part of its “COVID-19: Path To A New Normal” initiative. But the Judicial Branch’s modes do not mirror the Executive Branch’s phases. Only in the rarest of times do courts close completely to the public. Cognizant that courthouses must remain open and accessible for critical functions of the Judiciary, the proposed plan merges the Executive Branch’s red and orange phases into one mode for the Judiciary, with the other modes corresponding to the same phases utilized by the Executive Branch:

Judicial Branch: Advisory Path to Full Resumption of Judicial Operations				
Suspension of Non-Essential Services		Cautious Access	Responsible Operations	Full Resumption
Total Quarantine	Stay At Home	Safer At Home	Open Doors	New Normal
Executive Branch: Path To A New Normal				

In order to give adequate notice to court staff and personnel as well as attorneys, the public, and all justice partners of when the Judicial Branch will transition between modes, a transition period should be implemented. These transition phases—from Orange Mode to Yellow Mode, from Yellow Mode to Blue Mode, and from Blue Mode to Green Mode—will give Administration sufficient time to procure necessary supplies, including personal protective equipment (PPE), provide training where necessary, and to give notice to attorneys and the public thereby reducing further disruptions to court operations. Additionally, the Task Force recommends that judicial officers be flexible once suspended deadlines are reinstated to reduce the burden on the Clerk’s Offices and the Bar.

* * *



EXECUTIVE SUMMARY

RECOMMENDATIONS FOR RESUMPTION OF OPERATIONS:

The following four modes represent the different phases the Judicial Branch may have to move between during unprecedented times like the COVID-19 pandemic.

Orange Mode Suspension of Non-Essential Services	Yellow Mode Cautious Access	Blue Mode Responsible Operations	Green Mode Full Resumption
<p>All services not directly necessary to the courts' core constitutional and statutory functions are suspended.</p> <p>Most filing deadlines tolled or suspended; moratorium on evictions and foreclosures.</p> <p>Clerks' offices remain open to accept filings, primarily by e-mail or e-filing.</p> <p>No in-person hearings.</p> <p>Courts to hold remote hearings for emergency matters, advice of rights, arraignments, family, and other designated matters.</p> <p>Judicial officers work remotely whenever possible. Non-essential court staff are placed on administrative leave or work remotely.</p> <p>Social distancing strictly observed.</p> <p>Judicial officers continue to issue orders in matters previously heard or which do not require a hearing.</p> <p>No access to court facilities by the public except for official business.</p>	<p>All proceedings eligible for remote hearing, other than jury trials.</p> <p>No automatic suspension of any filing deadlines.</p> <p>Modification of certain procedural rules, including suspension of rules mandating filing of paper documents.</p> <p>Certain employees cease remote work and return to physical facilities. Staff are assigned to at least two groups to work staggered shifts.</p> <p>Judicial Branch facilities are open to the public on a restricted basis. Health screenings and facial coverings are mandatory.</p> <p>Frequent deep cleaning and disinfecting of all areas which court staff or the public have access.</p> <p>Resumption of evictions in accordance with the CARES Act for non-residential, vacant, or abandoned properties.</p>	<p>All non-vulnerable employees resume working on-site.</p> <p>In-person hearings and bench trials permitted if social distancing and other public health protocols can be observed.</p> <p>Remote hearings continue to be held when appropriate.</p> <p>Reinstatement of certain rules requiring the filing of paper documents.</p> <p>Clerks, judicial officers, and attorneys should identify a backlog of cases.</p> <p>To combat case backlogs, the Judicial Branch shall reallocate caseloads and utilize complex litigation judges, magistrate judges, retired judges, special masters, and judicial adjuncts to the fullest extent authorized by law.</p>	<p>Full operations resume under normal conditions, including civil and criminal jury trials.</p> <p>Determine whether any temporary practices or procedures should be permanently adopted.</p> <p>Plan for a future pandemic.</p>



EXECUTIVE SUMMARY

Until recently, the Judicial Branch operated in Orange Mode. Except for exigent circumstances, all non-essential services were suspended, including in-person hearings, status conferences, and other court proceedings. Those court proceedings that did not occur remotely (via video or phone) were continued, some without date. The majority of judicial officers and court employees worked remotely, if possible, and those that could not were placed on paid administrative leave.

By the time the Task Force was formed, and this Report was prepared and submitted, the Judicial Branch had in large part moved into Yellow Mode. Many court officers and employees had increased the amount of time spent on-site in a Judicial Branch facility. Physical barriers had been or were being erected in many areas. Personal protective equipment, such as masks and facial coverings, and other equipment, like touchless thermometers, had been procured or were ordered. Signs had been posted, warning the public that they were required to wear masks while on Judicial Branch facilities. And additional proceedings eligible for remote hearings had been identified. But not all aspects of Yellow Mode have been implemented yet. Filing deadlines remain suspended under the administrative orders in effect at present but will soon be lifted. Rules that mandate paper filings or in-person attendance at depositions, for example, still must be modified on a comprehensive basis.

Because the Task Force is preparing this proposed plan as the pandemic is underway, the Report details all modes, including those the Judicial Branch may have already passed through. Time will tell if the Judicial Branch, or a particular facility within the Judicial Branch, may have to slide back to another mode – if, for example, a wave of infections hits again or a spike in cases occurs in one District. To that end, the Task Force has prepared a comprehensive plan, spanning from suspension of non-essential services to full resumption.

Based on all available data, it appears at present that the Judicial Branch is in Yellow Mode and one or more facilities may be able to move to Blue Mode once certain benchmarks are met. As detailed above, most—but not all—criteria have been met for Yellow Mode. And with the Territory soon moving to the Open Doors phase of the Executive Branch’s plan, the Judicial Branch may be able to follow soon thereafter. However, the Task Force does not recommend that the Judicial Branch rush forward just to keep in lock step with the Executive Branch. The judicial system is unlike other government agencies and business. Law enforcement officers cannot social distance from prisoners. Remotely conducting court proceedings, including hearings and trial, presents unique challenges. Additionally, several court proceedings were continued, often without date, due to the unpredictable nature of the current crisis. As a result, a backlog of work has built up, as some attorneys and litigants continued filing documents with the courts, even though filing deadlines were suspended – just to name a few examples. Moreover, with an influx of court documents on the way, including new cases and appeals, and proceedings in existing cases and appeals suspended, successfully navigating a path forward will require an all-hands-on-deck approach.



EXECUTIVE SUMMARY

For these reasons, the Task Force recommends that the Administrator of Court first assess and determine which mode each facility is at. If any facility is at a different phase, determine next whether it is best for all facilities to move into a new mode together. For example, the Superior Court does not share facilities with any other agencies at the R.H. Amphlett Leader Justice Complex on St. Croix. By contrast, the Superior Court does share space, to some degree, with the Virgin Islands Police Department at the Alexander A. Farrelly Justice Center on St. Thomas and coordination with other agencies may be necessary to ensure maximum safety for all persons entering Judicial Branch facilities. Thus, while the St. Croix facilities may be able to transition relatively quickly into Blue Mode—especially, for example, because the Clerk’s Office at the Superior Court on St. Croix has had plexiglass barriers installed for several years now—one or more facilities on St. Thomas may not be ready yet.

With respect to filing deadlines, the Task Force recommends a two-week extension of the tolling and suspension period, resuming on Monday, June 15, 2020. Although the quantity of court documents that may have to be filed on the same date could be overwhelming, for attorneys and the courts, a two-week extension will allow sufficient time for Clerks’ Offices to prepare. But while filing deadlines should remain suspended or tolled until June 15th, attorneys should be strongly encouraged to file documents prior to that date if they do not need the extension.

To address the backlog of cases, which existed before the pandemic and has only been exacerbated since, the Task Force strongly recommends that the Judicial Branch use all available resources, including reallocating certain criminal cases to the Complex Litigation Division judge to ensure their timely adjudication; transferring to the Magistrate Division all cases within its original jurisdiction, including those where the amount in controversy is \$75,000 or less; recalling retired judicial officers to assist in moving cases; and appointing special masters and case managers, perhaps from among court employees, *cf.* V.I. R. APP. P. 41(b), who could be adjuncts to the judicial officers and gather information about the status of a case.

Lastly, new rules may have to be promulgated and other rules may have to be amended or temporarily suspended to accommodate the changes recommended in this Report. For example, new rules may be needed to address livestreaming of trials or the administration of oaths for a witness testifying remotely. Other rules, such as those requiring a party to produce a witness in person for a deposition, may have be modified.

These measures will require some time to implement and the Chief Justice and the Presiding Judge can, where necessary and appropriate, adopt or require modifications as necessary in the best interests of justice.

* * *



GUIDING PRINCIPLES

The Task Force recognizes that the Judicial Branch must ensure that measures are implemented that are appropriate to the COVID-19 pandemic, particularly concerning: social distancing and protective equipment; contact tracing procedures; sanitation of common and high-traffic areas; business travel; and reasonable accommodations for employees (e.g., children’s schools or daycare closed, fear or actual risk of exposure when using mass transit, caring for ill or vulnerable persons in the household). Judicial officers and court employees should self-monitor regularly for symptoms consistent with COVID-19 and stay home if they exhibit symptoms or feel ill. Employees who have had COVID-19 or its symptoms may return to work but only after consulting with and getting clearance from a medical provider.

The Task Force further recommends that the Judicial Branch follow the guiding principles listed below as everyone strives to resume normal day-to-day operations.

- 1) **Seek** to ensure the safety of the public and reduce the potential for spreading the novel coronavirus further.
- 2) **Encourage** all Judicial Branch officers and employees to comply with social distancing requirements and other public health regulations, not just when on-duty, but off-duty as well to avoid the possibility of asymptomatic transmission.
- 3) **Recognize** that resolving cases with individuals in custody pending trial must take priority over all other cases.
- 4) **Follow** all constitutional and statutory mandates prioritizing cases or imposing deadlines for resolving certain types of cases unless those mandates are waived or found to have been waived.
- 5) **Account for** the differences between jury and non-jury trials in scheduling cases.
- 6) **Recognize** that rule-based deadlines can be relaxed or suspended on a case-by-case basis where appropriate or required in the interests of justice, and that the Chief Justice, the Presiding Judge, and the Administrator of Courts retain the discretion to respond to changing circumstances.
- 7) **Accept** that technology of all types can be appropriate alternatives to in-person hearings, reducing traffic to court facilities and minimizing public interaction.
- 8) **Consider** asking retired judges and retired court employees, e.g., court clerks, interpreters, and court reporters, to assist with the backlog of work created by the pandemic, but within limitations set by law regarding retired personnel.
- 9) **Permit** other court employees, including court clerks, law clerks, and judicial secretaries, to assist the Judiciary by reaching out to attorneys of record, collectively, to ascertain the status of cases or motions, and gather additional information to report back to the presiding judicial officer.

Finally, because the Judicial Branch consists not just of the Supreme Court and the Superior Court, and the Judicial Council, but also several boards and commissions that perform adjudicative functions, including the Board on Professional Responsibility, Board on the Unauthorized Practice of Law, Commission on Judicial Conduct, Committee of Bar Examiners, and the Office of Disciplinary Counsel. Unless context requires otherwise, references to “courts” in this Report and Recommendations should be deemed to refer to these boards and commissions as well.



SUSPENSION OF NON-ESSENTIAL OPERATIONS

INVOCATION CRITERIA

“Stay at Home” or “Total Quarantine” status declared by the Governor of the Virgin Islands for the entire Territory or a district within the Territory

OR

There have been one or more confirmed or strongly suspected cases of COVID-19 traced to one or more facilities operated by the Virgin Islands Judicial Branch.

AND

The Chief Justice of the Virgin Islands has determined that non-essential Judicial Branch services cannot operate safely in a particular court facility or throughout the Territory.

The complete suspension of non-essential operations may be ordered on a Territory-wide basis or with respect to a single court, judicial district, or specific court-run facility, and will occur only if warranted by the circumstances. While the issuance of a “Stay at Home” or “Total Quarantine” order by the Governor of the Virgin Islands may serve as an indication that it is necessary to suspend all non-essential operations, a suspension may be warranted in other circumstances, such as an outbreak of COVID-19 traced to a particular Judicial Branch facility. In that instance, suspending non-essential Judicial Branch operations may be necessary only for that facility or courthouse without requiring the entire Judicial Branch to revert to stay-at-home conditions.

Because the courts of the Virgin Islands are constitutionally and statutorily obligated to remain open, the Judicial Branch must strive to provide essential services even when the Governor has declared the entire Territory to be under “Total Quarantine.” However, when performing essential functions, judicial officers and court staff must still observe appropriate protocols promulgated by federal and territorial public health authorities.

GUIDELINES: SUSPENSION OF NON-ESSENTIAL OPERATIONS

1. All services not directly necessary to the courts’ core functions are suspended.

The core constitutional and statutory functions of the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands are to hear cases. When operating under a suspension of non-essential operations, each court must temporarily cease any function not related to its core function. For example, the Supreme Court should cease actively processing applications to the Virgin Islands Bar, while the Superior Court should cease processing marriage applications and suspend the Rising Stars program. By contrast, neither court can mandate that judicial officers stop issuing orders in cases, or direct their respective Clerks’ Offices to not accept any filings.



SUSPENSION OF NON-ESSENTIAL OPERATIONS

2. No in-person court proceedings will be held.

Due to the nature of how COVID-19 spreads, in-person court proceedings shall not be held when circumstances warrant suspending all non-essential operations. The suspension of in-person court proceedings applies to all matters, including those that would qualify as an emergency matter.

3. Most filing deadlines are be tolled or suspended, and all temporary restraining orders will be automatically extended.

When all or part of the Territory is under quarantine or a stay-at-home order, attorneys may not have access to their law offices, or may be unable to devote all their working hours to their law practice. Therefore, when all non-essential services have been suspended, most filing deadlines in the Supreme Court and the Superior Court shall be tolled or suspended, and any temporary restraining orders set to expire during the period must also be automatically extended. Judicial officers may retain the discretion to impose different filing deadlines in emergency matters and other matters that have been designated to continue to be heard remotely.

4. Clerks' Offices remain open to accept filings electronically and to accept paper filings on a contactless basis.

Because the courts are constitutionally and statutorily mandated to remain open, the Clerk's Office for each court must also remain open to accept filings, particularly for emergency matters that require immediate action by a judicial officer. Attorneys and self-represented litigants, however, should be required or strongly encouraged to submit filings electronically, whether through an established e-filing system or by electronic mail to a designated email address or by use of the lockboxes located outside the courts' entrances so as to minimize to the greatest extent possible person-to-person contact between staff and the public. Court rules mandating certain deadlines and the submission of paper filings in conjunction with electronic filings must also be suspended.

Since some self-represented litigants and even some attorneys may not have regular or dependable access to a computer, internet, or e-mail during the pandemic, each Clerk's Office will have to continue to accept paper filings on a limited basis. However, court staff should avoid interacting with members of the public directly when accepting such filings. Instead, paper filings must be deposited on a contactless basis, with the person depositing the papers in a secure lockbox that will be checked twice daily, in the morning and immediately before close-of-business, by a Clerk's Office employee wearing appropriate personal protective equipment.

5. All emergency filings and other designated matters should be heard remotely.

Matters in which emergency relief has been requested, as well as a limited number



SUSPENSION OF NON-ESSENTIAL OPERATIONS

of other specially designated matter (such as advice of rights and arraignment in criminal cases, bail or release hearings for incarcerated persons, or abuse and neglect matters in juvenile cases) should be heard remotely by judicial officers, whether video or audio. Judicial officers, attorneys, litigants, court staff, and other essential participants should appear remotely from their home, office, or other appropriate location and avoid coming to court facilities to participate. The Judicial Branch will work with the Bureau of Corrections to establish arrangements for incarcerated individuals to appear at the remote hearing.

6. Judicial officers and, with limited exception, non-essential court staff work remotely; other court staff are placed on paid administrative leave.

All judicial officers, as well as non-essential court staff whose job duties can be performed remotely, should perform their duties from a remote location in accordance with the Judicial Branch's telework policies. Certain employees who perform essential functions that cannot be performed remotely – such as marshals or security officers – may have to perform their duties at a Judicial Branch facility. Other employees whose duties are non-essential and cannot be performed remotely must be placed on paid administrative leave. The Judicial Branch Administrative Office shall make necessary arrangements to enable remote work for court staff, including but not necessarily limited to ensuring that court staff have access to court-issued laptops or similar technology.

Any judicial officer or court employee who must enter a Judicial Branch facility will be subject to the Personnel Health Screening Protocol, as outlined in Appendix B. Any individual who is not a judicial officer or court employee but is nevertheless authorized to enter a Judicial Branch facility during this phase shall be subject to the Level 3 Health Screening Protocol, as outlined in Appendix C. Any individual who fails the screening shall not be permitted to enter the facility.

7. Judicial officers continue to address matters previously heard along with any that do not require a hearing.

Although certain matters – like emergency matters and criminal cases – must receive priority consideration by judicial officers, the adjudication of all cases remains a core function of the Judicial Branch. Consequently, even during the suspension of non-essential operations, judicial officers should continue to issue orders and opinions in all other cases, giving priority to any matters that have been submitted for decision or do not require a hearing in addition to matters that can be resolved on the papers.

* * *



CAUTIOUS ACCESS

INVOCATION CRITERIA

“Safer at Home” status declared by the Governor of the Virgin Islands for the entire Territory or a district within the Territory

OR

There have been no confirmed or suspected cases of COVID-19 in a court facility within a 14-day period.

AND

The Chief Justice of the Virgin Islands has determined that it is safe for one or more Judicial Branch facilities to partially reopen, subject to strict compliance with social distancing and other public health regulations.

GUIDELINES: TRANSITION PERIOD

The suspension of all non-essential Judicial Branch operations is an extreme step. Given the nature of how courts operate, a court cannot simply “flip a switch” and transition from suspended services to a limited resumption. Consequently, before fully transitioning to the Cautious Access phase, the Judicial Branch should enter a brief transition period to facilitate the safe and careful resumption of certain operations.

- 1. Some or all previously-suspended filing deadlines are reinstated; extensions and continuance liberally granted.**

While non-essential operations were suspended, almost all filing deadlines throughout the court system were tolled or suspended. Once the suspension or tolling of filing deadlines is lifted, a very large number of filings will become due all on the same day. Other documents, such as oppositions and replies to motions, will also have to be drafted and filed shortly after suspended filing deadlines are lifted. And many deadlines, such as discovery deadlines, may have to be revised entirely. The Task Force encourages all judicial officers to be liberal in granting extensions of time, excusing failures to meet deadlines where cause is shown, and in granting continuances. The Task Force also encourages attorneys to meet and confer and submit proposed modifications to scheduling orders and case management orders consideration, accommodating each other schedules and time constraints during these unprecedented times.

- 2. Sufficient notice is given to attorneys, the public, and justice partners before the Judicial Branch transitions to the Cautious Access phase.**

While non-essential operations were suspended, only emergency and specially-designated matters, such as advice of rights and arraignments, were heard remotely and all filing deadlines were suspended. Before the Judicial Branch transitions into Cautious Access (Yellow Mode), sufficient notice must be given in advance to attorneys, the public, and all justice partners of the intent to reinstate court filing deadlines and begin hearing



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non-priority matters remotely, so that interested persons make appropriate arrangements to facilitate their participation.

Although judicial officers and court staff may be available to resume additional operations, the same may not be the case for attorneys, litigants, or other government and non-governmental agencies such as the Department of Justice, the Office of the Territorial Public Defender, the Department of Human Services, or Legal Services of the Virgin Islands, for example. Moreover, attorneys as well as litigants may be serving as primary caregivers to children whose schools or daycares have closed or may have vulnerable individuals residing with them who are especially susceptible to the novel coronavirus. Others may have left the Territory before or during the pandemic and are unable to return. Sufficient advance notice will minimize additional disruptions to court proceedings and operations.

3. Protective barriers, social distancing tape, and other physical changes are implemented in all Judicial Branch facilities accessible to employees and the public.

While non-essential operations were suspended, public access to Judicial Branch facilities was limited. Before the Judicial Branch transitions into Cautious Access (Yellow Mode), social distancing and other public health regulations issued by federal and territorial public health authorities must be fully enforced in all Judicial Branch facilities.

During this transition period, physical barriers, tape markings, and similar items must be installed in all areas of Judicial Branch facilities that will be utilized by employees and members of the public during the Cautious Access phase. Public health officials have determined that the novel coronavirus spreads mainly through respiratory droplets and breathing the same air as an infected individual for a significant period of time can lead to infection. To minimize transmission through the air, plexiglass barriers shall be erected at all Clerks' Office counters and, whenever possible, between employee workstations.

The R.H. Amphlett Leader Justice Complex on St. Croix and to a lesser extent the Alexander A. Farrelly Justice Center on St. Thomas are unique in that movement between chambers, offices, and courtrooms may occur outdoors where air currents aid in dispersing airborne viral particles. Nonetheless, all chairs within vestibules or other public waiting areas should be moved to covered, outdoor locations, if possible, to reduce the number of individuals in enclosed areas. Members of the public that must wait to be seen by a clerk or to receive paperwork should wait in outdoor seating area for everyone's protection.

4. Personal protective equipment is procured for all employees expected to return to Judicial Branch facilities.

While non-essential operations were suspended, public access to Judicial Branch facilities was limited and most employees worked remotely. Before the Judicial Branch



CAUTIOUS ACCESS

transitions into Cautious Access (Yellow Mode), sufficient personal protective equipment must be procured before employees resume working on-site. The Judicial Branch Administrative Office shall establish and enforce guidelines for the wearing of face masks or other personal protective equipment by court staff and others entering Judicial Branch facilities.

- 5. All court personnel returning to Judicial Branch facilities must be trained on new protocols, including social distancing requirements and applicable public health regulations.**

Before the Judicial Branch transitions into Cautious Access (Yellow Mode), all court personnel must be given proper training on the symptoms of COVID-19, how COVID-19 is transmitted, social distancing protocols, the duty to wear masks around the public as well as other court employees, the need to maintain proper hygiene and sanitation both on- and off-site, and any other pertinent federal and local public health regulations. Such training will be reinforced with written materials, and all employees will receive updated training to comport with any additional guidance from federal or local public health authorities. All employees will be required to sign a document confirming that they received such training as a condition of returning to work in a Judicial Branch facility.

GUIDELINES: CAUTIOUS ACCESS

- 1. All proceedings are eligible for remote hearing, except bench and jury trials and some substantive hearings.**

While non-essential operations were suspended, only emergency and specially-designated matters, such as advice of rights and arraignments, were heard remotely. Once the Judicial Branch partially or fully transitions into Cautious Access (Yellow Mode), additional cases can be heard remotely, with the goal of eventually hearing all matters remotely other than bench and jury trials. Other substantive hearings, with multiple witnesses and evidence also may have to remain suspended. A judicial officer may be able to remotely conduct a *Daubert* hearing, for example, but not a suppression hearing with multiple police officers testifying.

To this end, judicial officers and court staff must allow for and accommodate new and different means by which attorneys and litigants can and should appear remotely, including, but not limited to, video conferencing through Skype, FaceTime, Zoom, WebEx, and other means, as well as telephonic conferences. Hearings involving witnesses or the presentation of evidence may be heard remotely through video conference so long as the clerk can administer the oath and the judicial officer is comfortable that the record will be clear. To the extent not already done so, requirements for notarization or administration of oaths shall be modified or relaxed to allow for remote administration of oaths and notarization of documents.



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While judicial officers are urged to be flexible with respect to how remote hearings are scheduled and conducted, attorneys and litigants should not be permitted to completely “opt out” of remote hearings.

2. Rules and procedures mandating the filing of paper documents, compelling in-person hearing, or prohibiting remote hearings remain suspended or must be modified.

While non-essential operations were suspended, all court papers and documents were filed electronically and all deadlines for filing papers were suspended or tolled. Once the Judicial Branch transitions into Cautious Access (Yellow Mode), any requirement that paper documents must accompany or follow electronically-filed documents, for example filing hard copies of appellate briefs, should remain suspended. Procedures permitting the electronic filing of documents with the Clerks’ Offices shall continue. If paper documents must be filed (such as documents filed by *pro se* prisoners), the provisions of Orange Mode, Guideline 4 should be followed.

Procedural rules that expressly or implicitly require in-person attendance at hearings or other case events or encourage that certain acts occur in-person rather than remotely, shall be suspended or modified. If necessary, new rules shall be issued to supersede any such suspended rules, such as in the area of civil discovery and remote depositions.

3. Certain employees cease working remotely and resume working from Judicial Branch facilities; modified and staggered schedules encouraged.

While non-essential operations were suspended, all but the most-essential court employees worked remotely if possible or were placed on paid administrative leave. Once the Judicial Branch transitions into Cautious Access (Yellow Mode), judicial officers and an appropriate number of court employees, other than those from vulnerable populations, will resume working from Judicial Branch facilities. All Judicial Branch officers and employees in supervisory positions, e.g., judicial officers, the Administrator of Courts, the Chief Virgin Islands Marshal, and the Clerks of Court, should consider making staggered shifts mandatory for employees within their respective chains of command. The goal is to increase the number of employees who can *safely* resume working on-site, while simultaneously ensuring that amount of individuals within a Judicial Branch facility at one time does not exceed the number imposed by public health regulations and guidelines.

All court employees and judicial officers who meet the definition of a vulnerable individual as defined by either federal or local public health authorities should not be mandated to return to Judicial Branch facilities, and will be encouraged to continue to work remotely. Governor Bryan’s Sixth Supplemental Executive Order and Proclamation, signed April 29, 2020, is consistent with federal guidance, and defines “vulnerable individuals” as those individuals who are 65 years and older, who have a chronic lung disease or severe



CAUTIOUS ACCESS

asthma, who have a serious heart condition, are pregnant, or immunocompromised. However, the class of individuals considered vulnerable may be expanded or restricted as more information about COVID-19 becomes available and updated guidance is issued by public health authorities. Additionally, any court employee or judicial officer who resides with one or more vulnerable individuals are strongly encouraged to continue working remotely. The Judicial Branch should provide laptop computers to accommodate vulnerable court employees and appropriate secure access to the Judicial Branch's network to enable vulnerable court employees to work remotely.

4. Judicial Branch facilities are open to the public on a restricted basis.

While non-essential operations were suspended, public access to Judicial Branch facilities was limited. Once the Judicial Branch transitions into Cautious Access (Yellow Mode), court facilities, such as the Clerk's Offices, the Cashier, and Probation, can reopen to the public. However, as noted above, in order to limit the number of people entering Judicial Branch facilities during this period, hearings, courts appearances, and conferences should continue remotely, through video or telephone conferencing.

Prior to entering any Judicial Branch facility, all judicial officers and court employees will be subject to the Personnel Health Screening Protocol, as outlined in Appendix B, while all members of the public will be subject to Level 2 Health Screening, as outlined in Appendix C. Any individual who fails the screening shall not be permitted to enter the facility.

Social distancing measures should be strictly followed at all times and court personnel must wear appropriate masks and protective equipment at all times, when interacting with each other as well as the public. The public is required to wear an appropriate mask before entering Judicial Branch facilities. The Judicial Branch should procure disposable masks for members of the public if someone comes to a Judicial Branch facility without wearing a mask or wearing an insufficient or inappropriate mask. Any individual who refuses to wear a mask should be refused entry unless the person has a legitimate reason for not wearing a mask.

5. All Judicial Branch facilities accessible to personnel and the public are deep-cleaned and disinfected frequently.

While non-essential operations were suspended, public access to Judicial Branch facilities was limited. Once the Judicial Branch transitions into Cautious Access (Yellow Mode), court facilities, custodial and maintenance employees become essential workers. All areas accessible to the public and to court personnel should be deep-cleaned and disinfected frequently, at least twice per workday at a minimum. Court administration should strongly consider requiring staggered and split shifts for maintenance and custodial staff and temporarily re-assigning other employees to complement custodial and maintenance staff



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in the performance of these duties. The Judicial Branch Administrative Office shall establish and enforce guidelines for the deep-cleaning and disinfection process.

Because vulnerable individuals should not be forced to resume in-person work during Cautious Access (Yellow Mode), it is possible that there may not be enough custodial and maintenance employees eligible to perform the required deep-cleaning and disinfecting. If this is the case, the Administrator of Courts shall implement alternate measures to ensure that the required sanitizing of Judicial Branch facilities occurs.

6. Resumption of foreclosures and evictions in accordance with the CARES Act for non-residential, vacant, and abandoned properties.

During the suspension of non-essential operations, the Judicial Branch placed a moratorium on all foreclosures and evictions in order to maintain the status quo during the period of limited operations. In the Cautious Access (Yellow Mode) phase, some foreclosures and evictions may proceed, consistent with federal and territorial law.

In Section 4 of the Supplemental Executive Order issued on March 23, 2020, Governor Bryan suspended the operation of 28 V.I.C. §§ 281, 751(b), and 782(a), citing the Superior Court's suspension of non-essential operations, and indicated that his intent was for "landlord-tenant matters (commercial and residential) be held in abeyance until there is a tribunal available to resolve disputes between such parties." Given this language, it appears that the suspension ordered by the Governor is intended to expire when the courts lift the moratorium on foreclosures and evictions. Consequently, no action by the Governor is necessary for the Judicial Branch to resume hearing foreclosure and eviction matters.

Nevertheless, sections 4022 through 4024 of the federal CARES Act place a moratorium on certain foreclosures and evictions through May 18, 2020, which the Federal Housing Authority by regulation extended through June 30, 2020. To briefly summarize, the CARES Act and the associated FHA regulations (1) prohibit a servicer of a federally-backed mortgage loan to initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale of a residential property; (2) prohibit a borrower that has received a forbearance of a federally-backed multifamily mortgage loan from evicting or initiating the eviction of a tenant from a dwelling unit during the forbearance period; and (3) prohibits any evictions of any residential properties that are participants in a covered housing program of the Violence Against Women Act, the rural housing voucher program under the Housing Act of 1949, or has a federally backed mortgage or a federally backed multifamily mortgage loan.

It is estimated that approximately 70 percent of all residential properties nationwide are covered by these provisions of the CARES Act. Rather than require judicial officers to discern whether a property is covered or not covered by the CARES Act, the better practice



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would be to continue the moratorium on foreclosures and evictions with respect to all residential properties that are not vacant or abandoned. Because the CARES Act does not apply to residential properties that are vacant or abandoned, the Judicial Branch may allow foreclosure and eviction actions with respect to those properties to proceed during the Cautious Access mode. Similarly, since the CARES Act does not apply to commercial properties, the Judicial Branch could consider lifting the moratorium on those properties as well, or could continue the moratorium only with respect to commercial properties that remain occupied.

- 7. The Virgin Islands Bar Association and the Office of Disciplinary Counsel should be authorized to grant discretionary exemptions from regulatory requirements, or to petition the Supreme Court for global relief.**

To maintain their active status, most Virgin Islands attorneys are required to pay dues, comply with mandatory continuing legal education (CLE) requirements, file an annual registration statement, and pay an annual assessment fee. The dues and CLE requirements are administered by the Virgin Islands Bar Association, while the annual registration statement and annual assessment fee requirements are administered by the Office of Disciplinary Counsel.

The deadlines to pay 2020 dues, report 2019 CLE compliance, file the 2020 annual registration statement, and pay the 2020 annual assessment fees have already passed for regularly-admitted attorneys, and so only a relatively small number of attorneys – primarily new bar admittees – were required to comply with those requirements during the COVID-19 pandemic. However, it is possible that a greater number of attorneys may find it difficult to earn some or all of their CLE credits for the 2020 reporting period, or to pay annual dues or the annual assessment for 2021. Yet we do not know whether this will be the case, since we cannot be certain of when the COVID-19 pandemic will be behind us.

Given this uncertainty, the Virgin Islands Bar Association and the Office of Disciplinary Counsel should be granted the discretion to grant waivers, exemptions, or deadline extensions, on a case-by-case basis, of any regulatory requirements they administer, provided that they notify the Supreme Court of all waivers that they have granted. To the extent the Virgin Islands Bar Association or the Office of Disciplinary Counsel conclude that a global waiver, exemption, or extension should be granted to all attorneys, they should be authorized to petition the Supreme Court to permit such relief.

* * *



RESPONSIBLE OPERATIONS

INVOCATION CRITERIA

“Open Doors” status declared by the Governor of the Virgin Islands for the entire Territory or a district within the Territory

OR

There have been no confirmed or suspected cases of COVID-19 in a court facility within a 30-day period.

AND

The Chief Justice of the Virgin Islands has determined that it is safe for one or more Judicial Branch facilities to fully reopen, subject to strict compliance with social distancing and other public health regulations.

GUIDELINES: TRANSITION PERIOD

1. All court personnel must receive updated training on new protocols, including social distancing requirements and applicable public health regulations.

Before the Judicial Branch transitions into Responsible Operations (Blue Mode), all court personnel must be given updated training on the symptoms of COVID-19, how COVID-19 is transmitted, social distancing protocols, the need to maintain proper hygiene and sanitation both on- and off-site, and any other pertinent federal and local public health regulations. Such training will be reinforced with written materials, and all employees will receive updated training to comport with any additional guidance from federal or local public health authorities. All employees will be required to sign a document confirming that they received such training as a condition of working in a Judicial Branch facility.

GUIDELINES: RESPONSIBLE OPERATIONS

1. All non-vulnerable employees resume working on-site.

While the Judicial Branch operated under Cautious Access (Yellow Mode), all vulnerable employees and some non-vulnerable employees continued to work remotely. Any employees with vulnerable individuals residing with them were also encouraged to work remotely. Once the Judicial Branch transitions to Responsible Operations (Blue Mode), all employees must resume working on-site except those who are vulnerable individuals. The Administrator of Courts may make allowances, however, for non-vulnerable individuals to continue to work remotely in exceptional circumstances (i.e. schools and daycares remain closed by order of the Governor and the employee must serve as the primary caregiver to children during ordinary working hours). As in Cautious Access (Yellow Mode), the Administrator of Courts and other supervisors may direct that employees report to work in staggered shifts to ensure proper social distancing and that the amount of individuals within a Judicial Branch facility at one time does not exceed the number imposed by public health regulations and guidelines.



RESPONSIBLE OPERATIONS

Because the Governor has ordered that all schools and daycares remain closed during the Executive Branch’s “Open Doors” phase, the Rising Stars program should also remain suspended during Responsible Operations (Blue Mode). However, employees associated with the Rising Stars program may be required to report to their duty stations to perform administrative or other appropriate tasks during the workday.

2. Proper sanitation of Judicial Branch facilities continues.

While the Judicial Branch operated under Caution Access (Yellow Mode), maintenance and custodial staff ensured that Judicial Branch facilities were frequently cleaned and disinfected. During Responsible Operations (Blue Mode), custodial and maintenance staff must continue to ensure that all facilities are cleaned and sanitized frequently, especially before and after court proceedings.

3. In-person court proceedings resume but on a limited basis. Jury trials still deferred.

While the Judicial Branch operated under Caution Access (Yellow Mode), most court proceedings occurred remotely, with in-person proceedings occurring only in exceptional circumstances. During Responsible Operations (Blue Mode), all in-person court proceedings, except jury trials, may resume, subject to certain limitations to comply with social distancing and other public health regulations.

Judicial officer and court clerks should increase the number of in-court days and decrease the number of cases scheduled per day to ensure more cases are heard but with fewer persons waiting in court. Judicial officers and court clerks are encouraged to stagger cases on calendars, rather than scheduling all cases to be heard at the same time, and to adhere strictly to the allotted time. Judicial officers are encouraged to continue conducting proceedings remotely where possible, particularly in those cases where attorneys reside off-island.

Jury trials generally should not resume during Responsible Operations (Blue Mode). During the Executive Branch’s “Open Doors” phase, no more than 50 individuals can be present in the same location, including staff and other business personnel, which is consistent with federal public health guidelines during the early stages of the COVID-19 pandemic. Without very substantial modifications, it is highly unlikely that jury trials can occur while observing proper social distancing and other public health regulations, because of the nature of voir dire, with many individuals seated in close proximity, as well as the nature of jury trials, where anywhere between six and fourteen individuals (including alternates) are seated together in the jury box.

In truly exceptional circumstance, however, and with appropriate safeguards, a jury trial may proceed at the discretion of the presiding judicial officer and with the approval of the Presiding Judge and the Administrator of Courts. Alternative seating arrangements



RESPONSIBLE OPERATIONS

should also be imposed for any jury trial that proceeds during Responsible Operations (Blue Mode). Jurors could be seated in the audience area, appropriately spaced out to ensure social distancing. Additionally, on St. Croix for example, witnesses could testify from the seat typically occupied by the marshal while the court reporter could sit where the witness sits. Doors (and windows on St. Croix) could be opened to increase ventilation. Jurors could deliberate in the courtroom or in another courtroom. Similarly, jury selection could occur in more than one courtroom at the same time.

Although public trials are a constitutionally-guaranteed right, and the closure of courtrooms ordinarily presents a structural error that is reversible per se, it is well-established that courts may restrict the number of individuals permitted to observe an in-person proceeding, such as to abide by fire codes. Therefore, although arrangements should be made to allow for some members of the public to observe a court proceeding in-person, the courtroom need not—and should not—be filled to maximum capacity. Nevertheless, judicial officers and court staff should implement alternate means to ensuring public access to jury trials, including, for example, streaming trials via the Judicial Branch’s Facebook page, providing closed-circuit feeds to other areas within the courthouse where the public can view the trial, or liaising with other government agencies to broadcast court proceedings via public access television. Further to this recommendation, the Task Force also recommends that the Supreme Court adopt rules pertaining to closed circuit / live streaming of court proceedings and remote testimony.

Strict social distancing protocols remain in effect, but facial covering requirements could be relaxed in certain delineated circumstances, like when an individual is testifying at an in-person hearing. Prior to entering any Judicial Branch facility, all judicial officers and court employees will be subject to the Personnel Health Screening Protocol, as outlined in Appendix B, while all members of the public will be subject to Level 1 Health Screening, as outlined in Appendix C. Any individual who fails the screening shall not be permitted to enter the facility.

4. Remote hearings continue to be held when appropriate.

Although some in-person court proceedings have resumed, remote hearings should continue to be held, such as for matters that do not stand to substantially benefit from an in-person hearing; where a judicial officer, attorney, party, or witness belongs to a vulnerable population who have been encouraged by public health authorities to remain at home; or where an attorney, party, or other necessary party is not physically present in the U.S. Virgin Islands and would need to travel by plane to participate in an in-person hearing. Additionally, in criminal cases, defense counsel may, with appropriate documentation from their clients, waive the defendant’s presence for non-substantive court proceedings. Judicial officers also should consider letting some defendants appear remotely to reduce the number of individuals coming to and from the courthouse.

5. Reinstatement of certain rules requiring paper filings.



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Under Cautious Access (Yellow Mode), the filing of some paper filings was prohibited in the Supreme Court, and individuals were strongly encouraged to electronically file all court documents in both the Superior Court and the Supreme Court. During Responsible Operations (Blue Mode), electronic filings will continue to be accepted and encouraged, but Clerks' Offices may reinstate certain mandatory paper filings (i.e. paper copies of electronically-filed appellate briefs and appendices) if such filings can be accepted and handled while adhering to public health regulations.

6. Clerks, judicial officers, and attorneys should identify a backlog of cases.

While the Judicial Branch operated under Caution Access (Yellow Mode), filing deadlines resumed, initially on a staggered basis, but most court proceedings were conducted remotely. As a result of the suspension of non-essential operations and the tolling or suspension of most filing deadlines, it is highly likely that a case backlog may have developed, or an existing backlog become exacerbated, in one or more courts, judicial districts, or divisions. Moreover, the Judiciary's ability to respond to such backlogs is compromised by two of the ten active judgeships on the Superior Court bench remaining vacant.

Judicial officers, court clerks, and attorneys should work together to identify and address the backlog of cases. Judicial officers are encouraged to rule from the bench, even ruling remotely, wherever possible. Findings of fact and conclusions of law can be announced on the record and memorialized by a short order. A hearing held on suppression motions that was taken under advisement is one example where the judicial officer could announce her/his findings and conclusions and rule from the bench. Argument could be heard on many non-dispositive motions and some dispositive motions and rulings announced from the bench. Where a question of first impression is raised, a memorandum opinion could follow, if appropriate. Court clerks and law clerks should also, where appropriate, notify their respective judicial officers of all cases they believe should be given priority treatment. Additionally, to assist the courts in addressing the backlog of cases, attorneys of record should be encouraged to jointly notify the judicial officer assigned to a case in writing of all fully-briefed motions which all counsel believe should be prioritized as well as any cases that should be heard on a priority-basis.

Priority in this context refers to matters and cases where counsel, after meeting and conferring in good faith in an attempt to resolve an impasse or to settle the case, are unable to do so without further court action. A **joint-filing** requirement is recommended to reduce the likelihood of a deluge of notices being filed by one side that will only be objected to by the other side. Attorneys should be encouraged to put aside differences and work collaboratively as professionals and brethren of the bar to identify cases and motions that require immediate attention. All cases that are ready for trial, whether bench or jury, where all discovery disputes and ancillary issues have been addressed or resolved, should be identified by counsel by joint notice filed with the court.



RESPONSIBLE OPERATIONS

7. To combat case backlogs, the Judicial Branch shall reallocate caseloads and utilize complex litigation judges, magistrate judges, retired judges, special masters, and judicial adjuncts to the fullest extent authorized by law.

Because it is not likely that the Judicial Branch will be able to immediately address all cases as soon as non-essential operations resume, certain case types and issues presented must be prioritized, while reasonable efforts made to ensure that other cases are still heard as expeditiously as possible. Importantly, while criminal cases necessarily must receive priority given the liberty interests involved, it remains necessary to keep civil cases moving because the money or rights involved could mean the difference between a job and unemployment; a home or homelessness; or solvency or bankruptcy. Therefore, the Virgin Islands Judiciary should reallocate judicial resources in a manner that allows for quickly prioritizing some matters without substantially delaying other matters.

a. Reallocating Existing Criminal Caseloads

Criminal cases, and particularly those in which the defendant is in custody, must receive priority treatment pursuant to both constitutional and statutory law. Because of the current vacancies on the Superior Court, those cases are distributed amongst the six active judges, as assisted by a senior-sitting judge.

To ensure that criminal cases are addressed as quickly as possible, the Presiding Judge, upon finding that the current number of judges is not sufficient to handle the criminal caseload, or that criminal cases are not evenly distributed among those judges, should exercise his power of reassignment under 4 V.I.C. § 72b to equalize the assignment of criminal cases. This may include, but need not be limited to, temporarily assigning criminal cases to the judge assigned to the Complex Litigation Division until such time as the backlog of criminal cases is sufficiently addressed.

b. Utilize Magistrate Judges to the Fullest Extent Authorized by Law

Magistrate judges are judicial officers of limited jurisdiction. In 2016, the Legislature of the Virgin Islands amended 4 V.I.C. § 123 to expand the jurisdiction of magistrate judges by granting magistrate judges authority to (1) hear all criminal cases where the maximum punishment is limited to not more than 364 days imprisonment; and (2) hear all civil cases where the amount in controversy does not exceed \$75,000. Although this expanded jurisdiction is mandated by statute, the Superior Court of the Virgin Islands has not yet implemented this change in the law, in part due to concerns about Judicial Branch staffing, facilities, and accommodations.

Considering that the backlog of cases will likely be in areas that must exclusively be heard by a judge of the Superior Court—such as felony criminal matters—using the four magistrate judges to the full extent authorized and required by law is a critical component



RESPONSIBLE OPERATIONS

now to ensure that all cases, including those that may qualify for expedited or priority consideration, are nevertheless heard as expeditiously as possible. Hence, the Presiding Judge is urged to exercise his power under 4 V.I.C. § 72b to reassign to magistrate judges all matters that fall within the original jurisdiction of the Magistrate Division but remain currently assigned to a judge.

Because many misdemeanor crimes are punishable by up to 365 days in prison, there may be some difficulty in re-assigning misdemeanor cases from active judges to magistrate judges given that 4 V.I.C. § 123(4) provides that a magistrate judge may only hear a case where the maximum punishment is limited to not more than 364 days imprisonment. However, defendants should be encouraged to consent to having 14 V.I.C. § 4 invoked in misdemeanor cases to limit the term of imprisonment to six months so that the matter could be heard by a magistrate judge. Although the Supreme Court of the Virgin Islands found 14 V.I.C. § 4 unconstitutional when applied *unilaterally* by the court to deprive the defendant of a jury trial without his consent, *see Murrell v. People*, 54 V.I. 338 (V.I. 2010), the court nevertheless recognized that the defendant may consent to the waiver of a jury trial. *See id.* at 364-65. Accordingly, the Attorney General of the Virgin Islands and the Chief Territorial Public Defender are urged, after consultation with the appropriate persons including, most importantly, the defendant, to strongly consider stipulating or jointly moving for a bench trial pursuant to 14 V.I.C. § 4.

c. Maximum Utilization of Senior Sitting Judges

The Chief Justice may recall any retired judge of the Superior Court to temporary service anywhere within the judicial system in accordance with 4 V.I.C. § 24 and Supreme Court Rule 104, provided the retired judge consents to the appointment. While some retired judges have already been recalled as senior sitting judges for the purpose of hearing certain matters, both Section 24 and Rule 104 authorize the Chief Justice to recall a retired judge for all intents and purposes including managing a full caseload. Because the Superior Court currently has two judicial vacancies, the Chief Justice should immediately exercise his appointment power, within budget limitations and subject to any fiscal restraints, to recall as many retired judges as possible to hear as many cases as they are willing to hear, until the vacancies are filled, and the Chief Justice determines that the backlog of cases has been sufficiently addressed. Priority should be given to those cases said to be ready for trial or needing urgent attention in the notices filed jointly by attorneys of record.

d. Special Masters and Other Judicial Adjuncts

While special masters and similar judicial adjuncts are most commonly used in complex litigation matters, Rule 53 of the Virgin Islands Rules of Civil Procedure and Rule 41 of the Virgin Islands Rules of Appellate Procedure grant the Superior Court and the Supreme Court, respectively, broad authority to appoint masters in ordinary cases as well. Special masters and similar judicial adjuncts can be appointed to perform a wide array of functions: discovery oversight and management; facilitating the resolution of pretrial



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disputes; pretrial case management; advising and assisting in matters that require technical expertise; conducting privilege reviews and protecting the court from exposure to privileged material and settlement issues; and even presiding over advisory trials.

The Judicial Branch should consider utilizing special masters and judicial adjuncts to provide appropriate services for all civil cases, whether complex or not, to ensure that civil cases continue to move forward while judicial officers are focused on resolving more pressing matters that have arisen, or may yet arise, from the suspension of all non-essential operations. For example, in the past year, numerous courts have experimented with Online Dispute Resolution (ODR) programs to hold court-ordered or court-facilitated mediations and settlement conferences online. Other courts have experimented with ODR programs generally in an attempt to reduce case backlogs in areas such as small claims cases that are may not receive priority treatment until relatively late in the reopening process following the pandemic. The Superior Court may also hear conciliation cases, essentially court-annexed mediation, which could assist members of the public in having their grievances heard by a neutral third-party.

The Virgin Islands Judiciary has frequently referred civil cases, small claims cases, and certain family matters to mediation. Moreover, 28 V.I.C. § 531(b) provides for mandatory mediation before the Superior Court may enter a judgment of foreclosure. In order to continue to facilitate civil settlements, as well as enable compliance with section 531(b) in foreclosure cases, matters that would typically be referred to mediation should continue to be referred to mediation, but with such mediations occurring online or over the telephone and conducted or overseen by judicial adjuncts.

Lastly, several court employees, such as senior court clerks, law clerks, and judicial secretaries, can be used as quasi-case managers. While not true judicial adjuncts, these seasoned court employees can consult with attorneys of record, after a review of the case, either by letter or video or audio conference call, to determine the status of the case and all pending motions and, in civil cases, the status of the parties, i.e., whether any have been dismissed, whether mediation has been attempted or would be effective, and report the information gathered to the respective judicial officer for further action.

* * *



FULL RESUMPTION

INVOCATION CRITERIA

“New Normal” status declared by the Governor of the Virgin Islands for the entire Territory or a district within the Territory

OR

There have been no confirmed or suspected cases of COVID-19 in a court facility within a 60-day period.

AND

The Chief Justice of the Virgin Islands has determined that it is safe for one or more Judicial Branch facilities to fully reopen.

GUIDELINES: FULL RESUMPTION

1. Full operations resume

Upon entering Full Resumption (Green Mode), most or all prior restrictions are eliminated. Jury trials shall resume. Vulnerable employees will return to work on-site. Judicial officers, court staff, and members of the public will not need to submit to health screenings in order to enter a court facility. All operations, such as the Rising Stars Program, will fully resume.

2. Determine whether any temporary practices should be permanently adopted.

Throughout the COVID-19 pandemic, the Judicial Branch implemented significant departures from its ordinary procedures in a wide range of areas, including but not limited to holding remote hearings and expanding use of technology, suspending certain court rules and practices, authorizing employees to work from home, and implementing innovative case management strategies. Once full operations resume, the Judicial Branch should evaluate those practices and determine whether any are appropriate to carry forward as permanent changes to its ordinary operations.

3. Plan for a future pandemic.

Although the Virgin Islands Judiciary was perhaps more prepared to respond to COVID-19 than other court systems, a full pandemic plan had not been in place when the public health crisis began. Once the current emergency is behind it, the Judicial Branch should begin planning its response to a potential resurgence of COVID-19 or other pandemic, so that it may respond even more robustly in the event such a situation were to occur again.

* * *



APPENDIX A

PROPOSED ADMINISTRATIVE ORDER

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE:) **ADMIN ORDER. No. 2020-000_**
)
TRANSITION TO RESUMPTION OF)
CERTAIN JUDICIAL BRANCH)
OPERATIONS.)
)
)
_____)

ADMINISTRATIVE ORDER

WHEREAS, on March 13, 2020, this Court issued an Administrative Order adopting precautionary measures in response to a novel coronavirus (“COVID-19”), which the United States Centers for Disease Control and Prevention (“CDC”) had determined presents a serious public health threat, and for which the President of the United States and the Governor of the Virgin Islands have declared a state of emergency; and

WHEREAS, the Judicial Branch of the Virgin Islands has continued to closely monitor COVID-19, including updated guidance provided by the CDC, United States Department of Health and Human Services, the Virgin Islands Department of Health, and other public health authorities; and

WHEREAS, on March 15, 2020, the CDC issued updated guidance which, in addition to social distancing and other precautionary measures previously recommended, directs that mass gatherings of 50 people or more not occur for the next eight weeks, for large numbers of people congregating together may contribute to the spread of COVID-19; and

WHEREAS, on March 16, 2020, the President of the United States stated that revised guidelines would be released which, among other things, recommend that gatherings of ten or more people be avoided for the next fifteen days, and that workplaces, schools, bars, restaurants, and other venues where such gatherings occur either close or enact measures to prevent the spread of COVID-19, particularly to vulnerable populations; and

WHEREAS, in a March 17, 2020 Administrative Order, this Court established additional precautionary measures in response to COVID-19, including cancelling virtually all in-person judicial proceedings, suspending the issuance of new marriage license and in-court marriage ceremonies, and authorizing judicial officers and court personnel to work from remote locations; and

WHEREAS, on March 19, 2020, the Governor of the Virgin Islands announced the escalation of emergency measures to further contain COVID-19, including ordering that all non-essential government services be suspended effective March 23, 2020, and directing that only essential government employees report to work; and

WHEREAS, in a March 20, 2020 Administrative Order, this Court ordered the suspension of all non-essential services effective March 23, 2020, and continuing through further order of the Court, and established interim procedures and extended certain filing and regulatory deadlines in matters pending before the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands, to take effect through April 26, 2020; and

WHEREAS, on March 23, 2020, the Governor of the Virgin Islands issued a stay-at-home order, which among other things ordered the public to remain at home and ordered the closure of all in-person business operations at all non-essential businesses; and

WHEREAS, on March 29, 2020, the President of the United States extended the application of the CDC social distancing guidelines through April 30, 2020; and

WHEREAS, on March 30, 2020, the Governor of the Virgin Islands extended the state of emergency through May 12, 2020, and extended the stay-at-home order through April 30, 2020; and

WHEREAS, in an April 23, 2020 Administrative Order, this Court extended the provisions

of the March 20, 2020 Administrative Order, including the suspension of non-essential operations and extension of certain filing and regulatory deadlines, through May 31, 2020; and

WHEREAS, on April 29, 2020, the Governor of the Virgin Islands allowed the prior stay-at-home order to sunset on May 4, 2020, and replace it with a stay-safer-at-home order that, among other things, allowed some private businesses to reopen but required all individuals to wear face masks or facial coverings while in public; and

WHEREAS, the Governor of the Virgin Islands extended, and the Legislature subsequently ratified through Act No. 8293, an extension of the state of emergency to July 11, 2020; and

WHEREAS, in accordance with the April 23, 2020 Administrative Order of this Court, on May 17, 2020, the Presiding Judge extended the types of matters eligible to be heard remotely; and

WHEREAS, in a May 19, 2020 Administrative Order, this Court established the Virgin Islands Judicial Branch COVID-19 Task Force, and charged it with developing a proposed plan for the resumption of some or all of the operations of the Judicial Branch; and

WHEREAS, on May 27, 2020, the COVID-19 Task Force timely submitted its report and recommendations; and

WHEREAS, this Court thanks the COVID-19 Task Force for its work, and shall use its recommendations as the basis for directing the transition to resumption of certain operations of the Judicial Branch of the Virgin Islands;

NOW, THEREFORE, IT IS ORDERED, that the Administrator of Courts, in consultation with the Chief Justice and the Presiding Judge, shall adopt and implement the protocols necessary to permit in-person hearings to resume in facilities operated by the Judicial

Branch of the Virgin Islands **beginning June 15, 2020**. Such protocols shall include but are not necessarily limited to health screenings; implementation of federal and territorial public health guidelines, such as social distancing and use of personal protective equipment; sanitation of common and high-traffic areas; erection of appropriate physical barriers and placement of social distancing tape; and appropriate training for judicial officers and court personnel in the proper use and implementation of such protocols. It is further

ORDERED that in-person hearings in the courts of the Virgin Islands **SHALL RESUME** in accordance with the following schedule:

1. **Through 11:59 p.m. on May 31, 2020**, in accordance with the March 23, 2020, and April 23, 2020 Administrative Orders of this Court and the May 14, 2020 Administrative Order of the Presiding Judge, no in-person court proceedings shall be held, and the following matters shall be eligible to be heard remotely:

- a. Advice of Rights;
- b. Arraignments;
- c. Change of plea;
- d. Sentencing, but only if the defendant is either already in the custody of the Bureau of Corrections or incarceration is not impending or immediate;
- e. Emergency abuse and neglect proceedings;
- f. Any other matter assigned to the Family Division, except for adjudicatory hearings and trials;
- g. Any hearing in any matter which has been designated as emergency or expedited by the Presiding Judge; and
- h. Any hearing in any civil, criminal, or probate case, whether or not designated as

an emergency or expedited, if the matter to be heard has already been fully briefed by the parties.

All previously adopted protocols to govern remote hearings, including those promulgated by the Presiding Judge with respect to advice of rights, arraignments, and juvenile matters, shall remain in effect until superseded or modified.

2. **Beginning 12:00 a.m. on June 1, 2020**, the prohibition on in-person court proceedings shall continue, but all matters may be heard remotely other than bench trials, jury trials, and substantive hearings which are impractical to hold remotely, i.e. a hearing with numerous testifying witnesses. Judicial officers and court clerks shall give calendar preference to cases that warrant priority consideration, including but not necessarily limited to criminal cases in which the defendant is incarcerated.

3. **Beginning 12:00 a.m. on June 15, 2020**, all in-person court proceedings besides jury trials may resume, provided that it is possible to hold the in-person proceeding while complying with social distancing protocols, federal and territorial public health regulations, and the policies enacted by the Judicial Branch Administrative Office. Judicial officers and court clerks are encouraged to stagger cases on calendars, to adhere strictly to the allotted time, and to take other measures to minimize the number of individuals waiting in court. However, while in-person proceedings are authorized, remote hearings shall continue to be held, and a remote hearing must be held in lieu of an in-person hearing if a judicial officer, attorney, party, or witness is not physically present in the U.S. Virgin Islands, or belongs to a vulnerable population who have been encouraged by public health authorities to remain at home.

4. **Beginning 12:00 a.m. on August 1, 2020**, jury trials may be held in-person at the discretion of a judicial officer with the approval of the Presiding Judge and the Administrator of

Courts, provided that all phases of the trial, including jury selection, can be held while complying with social distancing protocols, federal and territorial public health regulations, and the policies adopted by the Judicial Branch Administrative Office.

It is further

ORDERED that the automatic tolling, suspension, or extension of certain deadlines or acts first ordered in the March 20, 2020 Administrative Order of this Court and later extended by the April 23, 2020 Administrative Order of this Court **SHALL BE EXTENDED through 11:59 p.m. on Sunday, June 14, 2020, and that NO FURTHER AUTOMATIC EXTENSIONS SHALL BE GIVEN**. All attorneys, litigants, and members of the public are hereby advised that the effect of this final extension shall be as follows:

1. All documents that were due to be filed in the Supreme Court, the Superior Court, the Board on Professional Responsibility, the Board on the Unauthorized Practice of Law, the Commission on Judicial Conduct, or any other entity within the Judicial Branch between March 23, 2020, and June 14, 2020, shall be due on June 15, 2020. However, to reduce strain on Clerks' Offices, attorneys and litigants who do not need this further extension of time are strongly encouraged to file documents prior to June 15, 2020.

2. The period from March 23, 2020, through June 14, 2020, representing 84 calendar days, shall be excluded when determining the time to file a notice of appeal; the time to effectuate service of process; or when calculating any other legally-significant date as provided by law.

3. All temporary restraining orders, injunctions, and stays set to expire between March 23, 2020, and June 14, 2020, shall automatically be extended to June 15, 2020, unless the presiding judicial officer orders that the temporary restraining order, injunction, or stay be terminated earlier.

4. All individuals whose special or other admission to practice law in the Virgin Islands

was set to expire between March 23, 2020, and June 14, 2020, shall automatically have that admission extended to June 15, 2020. This provision shall not apply to extend the admission of those who have been ordered suspended or disbarred from the practice of law in the Virgin Islands.

It is further

ORDERED that all orders of foreclosure and orders of eviction not executed prior to March 23, 2020, shall remain stayed through 11:59 p.m. on June 14, 2020. Beginning at 12:00 a.m. on June 15, 2020, in all pending foreclosure and eviction matters, including matters where orders of foreclosure or orders of eviction have been entered but not executed, the plaintiff shall file with the court and serve on the defendant a certification that the foreclosure or eviction is not prohibited by federal Public Law 116-136 (the “CARES Act”) or any other law. The defendant may respond to the notice within the time ordinarily permitted by the applicable court rules. If the court, upon reviewing the parties’ filings, determines that a foreclosure or eviction would not be prohibited by the CARES Act or any other law, shall adjudicate hear the foreclosure and eviction proceeding consistent with ordinary procedures or, if an order of foreclosure or order of eviction had previously issued, shall permit enforcement of the order by writ of execution.. Otherwise, the court shall hold the matter in abeyance, dismiss the complaint, or take other appropriate action to effectuate the CARES Act or other applicable law. The Presiding Judge may enact a plan for the orderly disposition of foreclosure and eviction cases, including determining which cases if any shall receive calendaring priority. It is further

ORDERED that the Office of the Clerk of the Superior Court **SHALL RESUME** the issuance of marriage licenses and may do so remotely if available technology allows licenses to be properly issued. It is further

ORDERED that, until further order, the Office of the Clerk of the Superior Court **SHALL**

CONTINUE TO ACCEPT ELECTRONIC FILINGS BY E-MAIL pursuant to the procedure set forth in the April 23, 2020 Administrative Order of this Court. It is further

ORDERED that the following court rules **SHALL BE SUSPENDED OR MODIFIED** as indicated until further order of this Court:

1. The phrase “open court” as used in any court rule, including but not necessarily limited to Rule 43 of the Virgin Islands Rules of Civil Procedure, Rule 26 of the Virgin Islands Rules of Criminal Procedure, Rules 27 and 32 of the Virgin Islands Rules of Family Division Procedure, and Rule 16 of the Virgin Islands Rules for Probate and Fiduciary Proceedings, shall be construed so as to encompass a remote hearing.

2. The portions of Rules 26(f)(2) and 37-1(c)(2) of the Virgin Islands Rules of Civil Procedure which require or encourage in-person attendance at discovery conferences are suspended.

3. Rule 30(b)(4) of the Virgin Islands Rules of Civil Procedure, which in the absence of a stipulation requires court-approval of depositions taken by telephone or other remote means, is suspended.

4. Any deposition may be noticed to proceed technologically and remotely without a stipulation or court approval. For purposes of Rules 30 and 45 of the Virgin Islands Rules of Civil Procedure, a notice of a remote deposition or a subpoena to command attendance at a remote deposition states the “place” of the deposition if it includes the telephone number or other technological platform identification, access codes, or other pertinent information to effectuate access to the proceedings. Notaries and other persons qualified to administer an oath in the Virgin Islands may swear the deponent remotely, provided they can positively identify the deponent through the remote connection. Any writing or exhibits sought to be used at the deposition shall

be electronically exchanged no later than 24 hours prior to the deposition. The desire of a party to appear in person at a deposition or to conduct the deposition using a different technological platform is not, standing alone, sufficient grounds to quash a deposition notice.

An in-person deposition may occur only with the stipulation of all parties or an order of the court mandating an in-person deposition. A court may order an in-person deposition over the objection of a party only if it finds (1) that the deposition can be conducted in full compliance with all social distancing protocols and federal and territorial public health regulations; none of the individuals participating in the deposition is an individual vulnerable to COVID-19 as defined by either federal or local public health authorities; and (3) no individual will need to travel to the deposition by airplane or other means of transportation in which effective social distancing is not possible.

5. Rule 40.3(h) of the Virgin Islands Rules of Appellate Procedure, which requires the filing of paper copies of briefs and appendices that have been filed electronically, is suspended.

6. The interim procedures applicable to bar admissions matters promulgated in the April 16, 2020 Administrative Order of this Court shall continue to remain in effect, except that the Office of Bar Admissions and the Committee of Bar Examiners shall resume the active processing of all applications for admission to the Virgin Islands Bar.

7. Any other court rule that could be construed to impede the ability of a court, judicial officer, or clerk to use available technologies to eliminate or limit in-person contact in the course of judicial proceedings, or which mandates the filing of paper documents or prohibits the filing of documents electronically, is suspended.

It is further

ORDERED that, pending further order, all individuals required to report to or check-in

with the Office of Probation and Parole shall do so by telephone or other approved remote connection, without the need for an in-person appearance. It is further

ORDERED that notwithstanding any court rule to the contrary, the Virgin Islands Bar Association **MAY GRANT** discretionary waivers, exemptions, or deadline extensions to individual attorneys with respect to payment of Bar dues and compliance with mandatory continuing legal education requirements. The Bar Association **SHALL NOTIFY** the Office of Bar Admissions of any such waiver, exemption, or deadline extension it has granted within fourteen (14) days of granting the request. If the Bar Association determines that a waiver, exemption, or extension of a particular requirement should be granted to all attorneys, it **MAY FILE** a petition with the Supreme Court to request that such relief be ordered. It is further

ORDERED that notwithstanding any court rule to the contrary, the Office of Disciplinary Counsel **MAY GRANT** discretionary waivers, exemptions, or deadline extensions to individual attorneys with respect to the filing of the Annual Registration Statement and payment of the annual assessment. The Office of Disciplinary Counsel **SHALL NOTIFY** the Office of Bar Admissions of any such waiver, exemption, or deadline extension it has granted within fourteen (14) days of granting the request. If the Office of Disciplinary Counsel determines that a waiver, exemption, or extension of a particular requirement should be granted to all attorneys, it **MAY FILE** a petition with the Supreme Court to request that such relief be ordered. It is further

ORDERED that the Administrator of Courts and the Presiding Judge are **HEREBY AUTHORIZED** to take any other action not inconsistent with this Order to ensure the health and safety of judicial officers, court staff, and the public, and to otherwise facilitate the transition to the full resumption of Judicial Branch operations. It is further

ORDERED that copies of this order be directed to the appropriate parties.

SO ORDERED this ____ day of May, 2020.

RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

By: _____
Deputy Clerk

Dated: _____

Copies to:

Justices of the Supreme Court
Judges & Magistrate Judges of the Superior Court
Judges & Magistrate Judges of the District Court
The Honorable Albert Bryan, Governor of the Virgin Islands
The Honorable Novelle Francis, President, 33rd Legislature
Nesha R. Christian-Hendrickson, Esq., President, V.I. Bar Association
Hinda Carbon, Executive Director, V.I. Bar Association
Denise Counts, Esq., Attorney General of the Virgin Islands
Samuel Joseph, Esq., Chief Public Defender
Regina D. Petersen, Administrator of Courts
Veronica J. Handy, Esq., Clerk of the Supreme Court
Tamara Charles, Clerk of the Superior Court
Glenda L. Lake, Esq., Clerk of the District Court
Supreme Court Law Clerks
Supreme Court Secretaries
News Media
Order Book

APPENDIX B

HEALTH SCREENING PROTOCOLS FOR JUDICIAL AND COURT PERSONNEL

HEALTH SCREENING PROTOCOLS FOR JUDICIAL AND COURT PERSONNEL

All judicial officers and court personnel are required to conduct a daily wellness check, prior to coming into the workplace. This daily wellness check requires truthfully answering the following questions:

- ✓ Is your body temperature check higher than 100.4 degrees Fahrenheit?¹
- ✓ Do you have a cough?
- ✓ Are you experiencing shortness of breath or difficulty breathing?
- ✓ Do you have chills, muscle pain, or sore throat?
- ✓ Have you recently lost your sense of smell or taste?
- ✓ Have you had contact with someone who has tested positive for COVID-19 or has symptoms consistent with the COVID-19 virus during the last 14 days?
- ✓ Have you had a recent COVID-19 diagnosis or a positive test result?

Judicial officers and court personnel who answer “yes” to one or more of these questions should not go to work. Court personnel should notify their supervisor and Human Resources Department, while judicial officers notify either the Chief Justice or the Presiding Judge. Such individuals shall seek medical advice/treatment.

Information on COVID-19 symptoms and the self-check process can be found on the CDC website at [Symptoms of Corona Virus](#).

Courts should adopt return to work criteria consistent with CDC guidelines that include consideration that symptoms have ceased, that a diagnosis other than COVID-19 explains a symptom, or that negative COVID-19 test results no longer indicate COVID-19 infection.

¹ Having a temperature reading at 100.4 degrees Fahrenheit or above, does not necessarily mean a person is sick with COVID-19. Some activities, the intake of caffeine, and some medical conditions can raise your body temperature. If you are willing, please discuss with your supervisor if you feel a separate condition exists that may cause an elevated temperature reading.

APPENDIX C

HEALTH SCREENING PROTOCOLS FOR THE PUBLIC

HEALTH SCREENING PROTOCOLS FOR THE PUBLIC

LEVEL 1: BASIC SCREENING (No Security Personnel; No Body Temperature Screening)

When entering a Judicial Branch facility, members of the public will be asked to self-screen for any of the following conditions or persistent unexplained symptoms:

- ✓ Shortness of breath or difficulty breathing
- ✓ Muscle pain
- ✓ Body temperature over 100.4 degrees Fahrenheit
- ✓ Sore throat
- ✓ Cough
- ✓ New loss of taste or smell
- ✓ Have had contact with someone who has tested positive for COVID-19 or has symptoms consistent with the COVID-19 virus during the last 14 days
- ✓ Have had a recent COVID-19 diagnosis or a positive test result

The Judicial Branch shall provide notice to the public of these protocols by press release, by posting the information on the court's website, and by posting appropriate signage at all courthouse entrances.

Service to Individuals Refused Entry: Courthouse visitors who are refused entrance will be provided contact information for the Clerk's Office and be referred to appropriate electronic or on-line options for finding information, filing of motions, or other court services. Security and other court staff should also take appropriate action to provide access to court services while maintaining appropriate safeguards. In person proceedings should not be scheduled for these individuals until cessation of symptoms, a diagnosis other than COVID-19 explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines.

Note: Information on COVID-19 symptoms and a self-check process can be found on the CDC website at [Symptoms of Corona Virus](#).

LEVEL 2: BASIC + ENHANCED SCREENING
(Security Personnel; No Body Temperature Screening)

When entering a Judicial Branch facility, security officers, or other designated court staff, shall ask courthouse visitors the following three questions:

- (1) Have you had the COVID-19 virus or been exposed to someone who has tested positive for the COVID-19 virus?
- (2) Do you have a cough?
- (3) Are you experiencing shortness of breath or difficulty breathing?

If a courthouse visitor answers yes to any of these questions, the visitor shall be excluded from entering the courthouse until cessation of symptoms, a diagnosis other than COVID-19 explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines.

The Judicial Branch shall provide notice to the public of the additional screening in communications court proceedings, by posting the information on the court's website, and by posting signage at all courthouse entrances.

Service to Individuals Refused Entry: Courthouse visitors who are refused entrance will be provided contact information for the Clerk's Office and be referred to appropriate electronic or on-line options for finding information, filing of motions, or other court services. Security and other court staff should also take appropriate action to provide access to court services while maintaining appropriate safeguards. In person proceedings should not be scheduled for these individuals until cessation of symptoms, a diagnosis other than COVID-19 explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines.

Security officers should be masked and gloved while screening courthouse visitors.

LEVEL 3: BODY TEMPERATURE SCREENING

Members of the public seeking to enter a Judicial Branch facility will be screened for body temperature at entrances to the courthouse if:

- (1) Temperature screening is conducted by court personnel with a non-touch, calibrated human electronic temperature device;
- (2) Security is masked and gloved; and
- (3) Equipment is frequently sanitized.

In the event that a courthouse visitor is found to have a temperature of 100.4 degrees Fahrenheit or above, the visitor should be retested after the initial temperature test. If the temperature is not below 100.4 degrees Fahrenheit, the visitor shall be excluded from entering the courthouse until body temperature is below 100.4 degrees Fahrenheit, a diagnosis other than COVID-19 explains an excessive temperature, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines.

The Judicial Branch shall provide notice to the public of this additional screening through communications about any court proceeding, by posting the information on the court's website, and by posting signage at all entrances at the courthouse.

Service to Individuals Refused Entry: Courthouse visitors who are refused entrance will be provided a phone number or e-mail to reschedule or be referred to appropriate electronic or on-line options for finding information, filing of motions, or other court services. Security and other court staff should take appropriate action to provide access to court services while maintaining appropriate safeguards. In person proceedings should not be scheduled for these individuals until cessation of symptoms, a diagnosis other than COVID-19 explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines.

Note: The Judicial Branch Administrative Office should check manufacturer specifications to confirm temperature screening devices being used are accurate when used in high-temperature climates.

APPENDIX D

EXECUTIVE BRANCH COVID-19 REOPENING PHASES



UNITED STATES VIRGIN ISLANDS
**COVID-19 PATH TO
 A NEW NORMAL**



OVERVIEW

The Government of the US Virgin Islands announces a five-part advisory plan designed to safely re-engage all operations in the territory in response to the COVID-19 pandemic.

For guidelines on each phase, please see below.

www.vi.gov



TOTAL QUARANTINE

- Curfew for everyone except emergency personnel

STAY AT HOME

- All non-essential businesses closed, public & private sector
- Restaurants – take-out only
- Schools, daycares closed
- Beaches closed on the weekends from noon
- Suspension of elective medical and dental procedures

SAFER AT HOME

- Non-essential businesses open, bars closed, hotel reservation systems closed
- Restaurants – take-out only
- Indoor/Outdoor recreation facilities open, no food or drink, facial covering required
- No gathering greater than 50, facial coverings and social distancing required
- Facial covering in all commercial entities
- Schools, daycares closed
- Nursing homes closed to visitation

OPEN DOORS

- All businesses open
- Indoor/Outdoor recreation facilities open, no food or drink (movies, bowling alley)
- No gathering greater than 50, no gathering without facial covering and social distancing
- Facial coverings in all commercial entities
- Schools, daycares closed
- Nursing homes limited visitation

NEW NORMAL

- Mass gathering and social distancing restrictions relaxed

APPENDIX E

**CDC GUIDANCE ON COVID-19
(AS OF MAY 26, 2020)**

Coronavirus Disease 2019 (COVID-19)

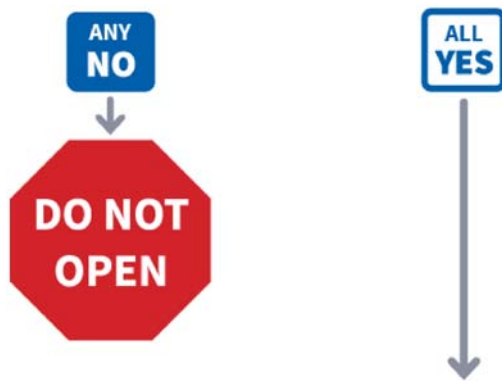
Workplace Decision Tool

Workplaces Considerations for Reopening During the COVID-19 Pandemic

The purpose of this tool is to assist employers in making (re)opening decisions during the COVID-19 pandemic, especially to protect vulnerable workers. It is important to check with state and local health officials and other partners to determine the most appropriate actions while adjusting to meet the unique needs and circumstances of the local community.

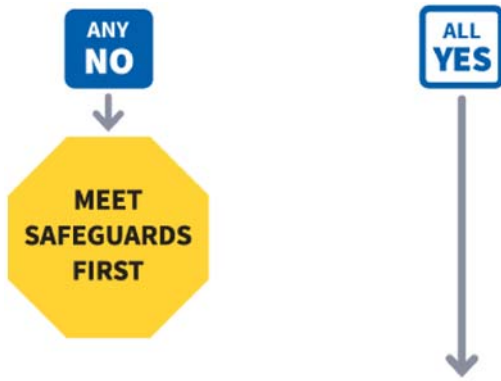
Should you consider opening?

- Will reopening be consistent with applicable state and local orders?
- Are you ready to protect employees at **higher risk** for severe illness?



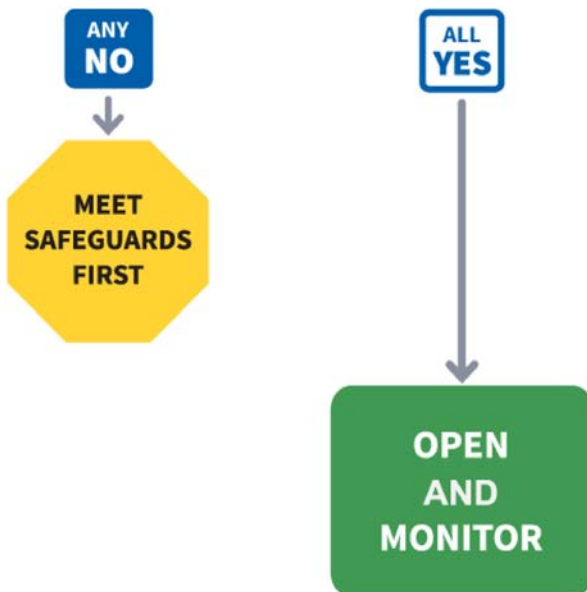
Are recommended health and safety actions in place?

- Promote **healthy hygiene practices** such as **hand washing** and **employees wearing a cloth face covering**, as feasible
- Intensify **cleaning, disinfection**, and ventilation
- Encourage **social distancing** and enhance spacing between employees, including through physical barriers, changing layout of workspaces, encouraging telework, closing or limiting access to communal spaces, staggering shifts and breaks, and limiting large events, when and where feasible
- Consider modifying travel and commuting practices. Promote telework for employees who do not live in the local area, if feasible
- Train all employees on health and safety protocols



Is ongoing monitoring in place?

- Develop and implement procedures to check for [signs and symptoms](#) of employees daily upon arrival, as feasible
- Encourage anyone who is sick to [stay home](#)
- Plan for if an employee gets sick
- Regularly communicate and monitor developments with local authorities and employees
- Monitor employee absences and have flexible leave policies and practices
- Be ready to consult with the local health authorities if there are cases in the facility or an increase in cases in the local area



Page last reviewed: May 15, 2020

APPENDIX F

**OSHA GUIDANCE ON PREPARING
WORKPLACES FOR COVID-19
(AS OF MAY 26, 2020)**



Guidance on Preparing Workplaces for COVID-19

OSHA 3990-03 2020



Occupational Safety and Health Act of 1970

“To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health.”

This guidance is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The Occupational Safety and Health Act requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act’s General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

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This information will be made available to sensory-impaired individuals upon request. Voice phone: (202) 693-1999; teletypewriter (TTY) number: 1-877-889-5627.

Guidance on Preparing Workplaces for COVID-19

U.S. Department of Labor
Occupational Safety and Health Administration

OSHA 3990-03 2020



U.S. Department of Labor

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Introduction

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the SARS-CoV-2 virus. It has spread from China to many other countries around the world, including the United States. Depending on the severity of COVID-19's international impacts, outbreak conditions—including those rising to the level of a pandemic—can affect all aspects of daily life, including travel, trade, tourism, food supplies, and financial markets.

To reduce the impact of COVID-19 outbreak conditions on businesses, workers, customers, and the public, it is important for all employers to plan now for COVID-19. For employers who have already planned for influenza pandemics, planning for COVID-19 may involve updating plans to address the specific exposure risks, sources of exposure, routes of transmission, and other unique characteristics of SARS-CoV-2 (i.e., compared to pandemic influenza viruses). Employers who have not prepared for pandemic events should prepare themselves and their workers as far in advance as possible of potentially worsening outbreak conditions. Lack of continuity planning can result in a cascade of failures as employers attempt to address challenges of COVID-19 with insufficient resources and workers who might not be adequately trained for jobs they may have to perform under pandemic conditions.

The Occupational Safety and Health Administration (OSHA) developed this COVID-19 planning guidance based on traditional infection prevention and industrial hygiene practices. It focuses on the need for employers to implement engineering, administrative, and work practice controls and personal protective equipment (PPE), as well as considerations for doing so.

This guidance is intended for planning purposes. Employers and workers should use this planning guidance to help identify risk levels in workplace settings and to determine any appropriate control measures to implement. Additional guidance may be needed as COVID-19 outbreak conditions change, including as new information about the virus, its transmission, and impacts, becomes available.

The U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) provides the latest information about COVID-19 and the global outbreak: www.cdc.gov/coronavirus/2019-ncov.

The OSHA COVID-19 webpage offers information specifically for workers and employers: www.osha.gov/covid-19.

This guidance is advisory in nature and informational in content. It is not a standard or a regulation, and it neither creates new legal obligations nor alters existing obligations created by OSHA standards or the *Occupational Safety and Health Act* (OSH Act). Pursuant to the OSH Act, employers must comply with safety and health standards and regulations issued and enforced either by OSHA or by an OSHA-approved State Plan. In addition, the OSH Act's General Duty Clause, [Section 5\(a\)\(1\)](#), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. OSHA-approved State Plans may have standards, regulations and enforcement policies that are different from, but at least as effective as, OSHA's. Check with your [State Plan](#), as applicable, for more information.

About COVID-19

Symptoms of COVID-19

Infection with SARS-CoV-2, the virus that causes COVID-19, can cause illness ranging from mild to severe and, in some cases, can be fatal. Symptoms typically include fever, cough, and shortness of breath. Some people infected with the virus have reported experiencing other non-respiratory symptoms. Other people, referred to as *asymptomatic cases*, have experienced no symptoms at all.

According to the CDC, symptoms of COVID-19 may appear in as few as 2 days or as long as 14 days after exposure.

How COVID-19 Spreads

Although the first human cases of COVID-19 likely resulted from exposure to infected animals, infected people can spread SARS-CoV-2 to other people.

The virus is thought to spread mainly from person-to-person, including:

- Between people who are in close contact with one another (within about 6 feet).
- Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) other people who may be infected with SARS-CoV-2.

It may be possible that a person can get COVID-19 by touching a surface or object that has SARS-CoV-2 on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the primary way the virus spreads.

People are thought to be most contagious when they are most symptomatic (i.e., experiencing fever, cough, and/or shortness of breath). Some spread might be possible before people show symptoms; there have been reports of this type of asymptomatic transmission with this new coronavirus, but this is also not thought to be the main way the virus spreads.

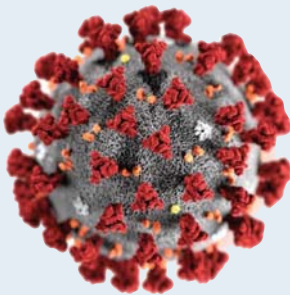
Although the United States has implemented public health measures to limit the spread of the virus, it is likely that some person-to-person transmission will continue to occur.

The CDC website provides the latest information about COVID-19 transmission: www.cdc.gov/coronavirus/2019-ncov/about/transmission.html.

How a COVID-19 Outbreak Could Affect Workplaces

Similar to influenza viruses, SARS-CoV-2, the virus that causes COVID-19, has the potential to cause extensive outbreaks. Under conditions associated with widespread person-to-person spread, multiple areas of the United States and other countries may see impacts at the same time. In the absence of a vaccine, an outbreak may also be an extended event. As a result, workplaces may experience:

- **Absenteeism.** Workers could be absent because they are sick; are caregivers for sick family members; are caregivers for children if schools or day care centers are closed; have at-risk people at home, such as immunocompromised family members; or are afraid to come to work because of fear of possible exposure.
- **Change in patterns of commerce.** Consumer demand for items related to infection prevention (e.g., respirators) is likely to increase significantly, while consumer interest in other goods may decline. Consumers may also change shopping patterns because of a COVID-19 outbreak. Consumers may try to shop at off-peak hours to reduce contact with other people, show increased interest in home delivery services, or prefer other options, such as drive-through service, to reduce person-to-person contact.
- **Interrupted supply/delivery.** Shipments of items from geographic areas severely affected by COVID-19 may be delayed or cancelled with or without notification.



This illustration, created at the Centers for Disease Control and Prevention (CDC), reveals ultrastructural morphology exhibited by the 2019 Novel Coronavirus (2019-nCoV). Note the spikes that adorn the outer surface of the virus, which impart the look of a corona surrounding the virion, when viewed electron microscopically. This virus was identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China.

Photo: CDC / Alissa Eckert & Dan Higgins

Steps All Employers Can Take to Reduce Workers' Risk of Exposure to SARS-CoV-2

This section describes basic steps that every employer can take to reduce the risk of worker exposure to SARS-CoV-2, the virus that causes COVID-19, in their workplace. Later sections of this guidance—including those focusing on jobs classified as having low, medium, high, and very high exposure risks—provide specific recommendations for employers and workers within specific risk categories.

Develop an Infectious Disease Preparedness and Response Plan

If one does not already exist, develop an infectious disease preparedness and response plan that can help guide protective actions against COVID-19.

Stay abreast of guidance from federal, state, local, tribal, and/or territorial health agencies, and consider how to incorporate those recommendations and resources into workplace-specific plans.

Plans should consider and address the level(s) of risk associated with various worksites and job tasks workers perform at those sites. Such considerations may include:

- Where, how, and to what sources of SARS-CoV-2 might workers be exposed, including:
 - The general public, customers, and coworkers; and
 - Sick individuals or those at particularly high risk of infection (e.g., international travelers who have visited locations with widespread sustained (ongoing) COVID-19 transmission, healthcare workers who have had unprotected exposures to people known to have, or suspected of having, COVID-19).
- Non-occupational risk factors at home and in community settings.

- Workers' individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy).
- Controls necessary to address those risks.

Follow federal and state, local, tribal, and/or territorial (SLTT) recommendations regarding development of contingency plans for situations that may arise as a result of outbreaks, such as:

- Increased rates of worker absenteeism.
- The need for social distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing measures.
- Options for conducting essential operations with a reduced workforce, including cross-training workers across different jobs in order to continue operations or deliver surge services.
- Interrupted supply chains or delayed deliveries.

Plans should also consider and address the other steps that employers can take to reduce the risk of worker exposure to SARS-CoV-2 in their workplace, described in the sections below.

Prepare to Implement Basic Infection Prevention Measures

For most employers, protecting workers will depend on emphasizing basic infection prevention measures. As appropriate, all employers should implement good hygiene and infection control practices, including:

- Promote frequent and thorough [hand washing](#), including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.
- Encourage workers to [stay home if they are sick](#).
- Encourage [respiratory etiquette](#), including covering coughs and sneezes.

- Provide customers and the public with tissues and trash receptacles.
- Employers should explore whether they can establish [policies and practices](#), such as flexible worksites (e.g., telecommuting) and flexible work hours (e.g., staggered shifts), to increase the physical distance among employees and between employees and others if state and local health authorities recommend the use of social distancing strategies.
- Discourage workers from using other workers' phones, desks, offices, or other work tools and equipment, when possible.
- Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment. When choosing cleaning chemicals, employers should consult information on Environmental Protection Agency (EPA)-approved disinfectant labels with claims against emerging viral pathogens. Products with EPA-approved emerging viral pathogens claims are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses. Follow the manufacturer's instructions for use of all cleaning and disinfection products (e.g., concentration, application method and contact time, PPE).

Develop Policies and Procedures for Prompt Identification and Isolation of Sick People, if Appropriate

- Prompt identification and isolation of potentially infectious individuals is a critical step in protecting workers, customers, visitors, and others at a worksite.
- Employers should inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure.
- Employers should develop policies and procedures for employees to report when they are sick or experiencing symptoms of COVID-19.

- Where appropriate, employers should develop policies and procedures for immediately isolating people who have [signs and/or symptoms](#) of COVID-19, and train workers to implement them. Move potentially infectious people to a location away from workers, customers, and other visitors. Although most worksites do not have specific isolation rooms, designated areas with closable doors may serve as isolation rooms until potentially sick people can be removed from the worksite.
- Take steps to limit spread of the respiratory secretions of a person who may have COVID-19. Provide a face mask, if feasible and available, and ask the person to wear it, if tolerated. Note: A face mask (also called a surgical mask, procedure mask, or other similar terms) on a patient or other sick person should not be confused with PPE for a worker; the mask acts to contain potentially infectious respiratory secretions at the source (i.e., the person's nose and mouth).
- If possible, isolate people suspected of having COVID-19 separately from those with confirmed cases of the virus to prevent further transmission—particularly in worksites where medical screening, triage, or healthcare activities occur, using either permanent (e.g., wall/different room) or temporary barrier (e.g., plastic sheeting).
- Restrict the number of personnel entering isolation areas.
- Protect workers in close contact with (i.e., within 6 feet of) a sick person or who have prolonged/repeated contact with such persons by using additional engineering and administrative controls, safe work practices, and PPE. Workers whose activities involve close or prolonged/repeated contact with sick people are addressed further in later sections covering workplaces classified at medium and very high or high exposure risk.

Develop, Implement, and Communicate about Workplace Flexibilities and Protections

- Actively encourage sick employees to stay home.
- Ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.
- Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.
- Maintain flexible policies that permit employees to stay home to care for a sick family member. Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual.
- Recognize that workers with ill family members may need to stay home to care for them. See CDC's Interim Guidance for Preventing the Spread of COVID-19 in Homes and Residential Communities: www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html.
- Be aware of workers' concerns about pay, leave, safety, health, and other issues that may arise during infectious disease outbreaks. Provide adequate, usable, and appropriate training, education, and informational material about business-essential job functions and worker health and safety, including proper hygiene practices and the use of any workplace controls (including PPE). Informed workers who feel safe at work are less likely to be unnecessarily absent.

- Work with insurance companies (e.g., those providing employee health benefits) and state and local health agencies to provide information to workers and customers about medical care in the event of a COVID-19 outbreak.

Implement Workplace Controls

Occupational safety and health professionals use a framework called the “hierarchy of controls” to select ways of controlling workplace hazards. In other words, the best way to control a hazard is to systematically remove it from the workplace, rather than relying on workers to reduce their exposure.

During a COVID-19 outbreak, when it may not be possible to eliminate the hazard, the most effective protection measures are (listed from most effective to least effective): engineering controls, administrative controls, safe work practices (a type of administrative control), and PPE. There are advantages and disadvantages to each type of control measure when considering the ease of implementation, effectiveness, and cost. In most cases, a combination of control measures will be necessary to protect workers from exposure to SARS-CoV-2.

In addition to the types of workplace controls discussed below, CDC guidance for businesses provides employers and workers with recommended SARS-CoV-2 infection prevention strategies to implement in workplaces: www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html.

Engineering Controls

Engineering controls involve isolating employees from work-related hazards. In workplaces where they are appropriate, these types of controls reduce exposure to hazards without relying on worker behavior and can be the most cost-effective solution to implement. Engineering controls for SARS-CoV-2 include:

- Installing high-efficiency air filters.
- Increasing ventilation rates in the work environment.
- Installing physical barriers, such as clear plastic sneeze guards.

- Installing a drive-through window for customer service.
- Specialized negative pressure ventilation in some settings, such as for aerosol generating procedures (e.g., airborne infection isolation rooms in healthcare settings and specialized autopsy suites in mortuary settings).

Administrative Controls

Administrative controls require action by the worker or employer. Typically, administrative controls are changes in work policy or procedures to reduce or minimize exposure to a hazard.

Examples of administrative controls for SARS-CoV-2 include:

- Encouraging sick workers to stay at home.
- Minimizing contact among workers, clients, and customers by replacing face-to-face meetings with virtual communications and implementing telework if feasible.
- Establishing alternating days or extra shifts that reduce the total number of employees in a facility at a given time, allowing them to maintain distance from one another while maintaining a full onsite work week.
- Discontinuing nonessential travel to locations with ongoing COVID-19 outbreaks. Regularly check CDC travel warning levels at: www.cdc.gov/coronavirus/2019-ncov/travelers.
- Developing emergency communications plans, including a forum for answering workers' concerns and internet-based communications, if feasible.
- Providing workers with up-to-date education and training on COVID-19 risk factors and protective behaviors (e.g., cough etiquette and care of PPE).
- Training workers who need to use protecting clothing and equipment how to put it on, use/wear it, and take it off correctly, including in the context of their current and potential duties. Training material should be easy to understand and available in the appropriate language and literacy level for all workers.

Safe Work Practices

Safe work practices are types of administrative controls that include procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to a hazard. Examples of safe work practices for SARS-CoV-2 include:

- Providing resources and a work environment that promotes personal hygiene. For example, provide tissues, no-touch trash cans, hand soap, alcohol-based hand rubs containing at least 60 percent alcohol, disinfectants, and disposable towels for workers to clean their work surfaces.
- Requiring regular hand washing or using of alcohol-based hand rubs. Workers should always wash hands when they are visibly soiled and after removing any PPE.
- Post handwashing signs in restrooms.

Personal Protective Equipment (PPE)

While engineering and administrative controls are considered more effective in minimizing exposure to SARS-CoV-2, PPE may also be needed to prevent certain exposures. While correctly using PPE can help prevent some exposures, it should not take the place of other prevention strategies.

Examples of PPE include: gloves, goggles, face shields, face masks, and respiratory protection, when appropriate. During an outbreak of an infectious disease, such as COVID-19, recommendations for PPE specific to occupations or job tasks may change depending on geographic location, updated risk assessments for workers, and information on PPE effectiveness in preventing the spread of COVID-19. Employers should check the [OSHA](#) and [CDC](#) websites regularly for updates about recommended PPE.

All types of PPE must be:

- Selected based upon the hazard to the worker.
- Properly fitted and periodically refitted, as applicable (e.g., respirators).

- Consistently and properly worn when required.
- Regularly inspected, maintained, and replaced, as necessary.
- Properly removed, cleaned, and stored or disposed of, as applicable, to avoid contamination of self, others, or the environment.

Employers are obligated to provide their workers with PPE needed to keep them safe while performing their jobs. The types of PPE required during a COVID-19 outbreak will be based on the risk of being infected with SARS-CoV-2 while working and job tasks that may lead to exposure.

Workers, including those who work within 6 feet of patients known to be, or suspected of being, infected with SARS-CoV-2 and those performing aerosol-generating procedures, need to use respirators:

- National Institute for Occupational Safety and Health (NIOSH)-approved, N95 filtering facepiece respirators or better must be used in the context of a comprehensive, written respiratory protection program that includes fit-testing, training, and medical exams. See OSHA's Respiratory Protection standard, 29 CFR 1910.134 at www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134.
- When disposable N95 filtering facepiece respirators are not available, consider using other respirators that provide greater protection and improve worker comfort. Other types of acceptable respirators include: a R/P95, N/R/P99, or N/R/P100 filtering facepiece respirator; an air-purifying elastomeric (e.g., half-face or full-face) respirator with appropriate filters or cartridges; powered air purifying respirator (PAPR) with high-efficiency particulate arrestance (HEPA) filter; or supplied air respirator (SAR). See CDC/NIOSH guidance for optimizing respirator supplies at: www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy.

- Consider using PAPRs or SARs, which are more protective than filtering facepiece respirators, for any work operations or procedures likely to generate aerosols (e.g., cough induction procedures, some dental procedures, invasive specimen collection, blowing out pipettes, shaking or vortexing tubes, filling a syringe, centrifugation).
- Use a surgical N95 respirator when both respiratory protection and resistance to blood and body fluids is needed.
- Face shields may also be worn on top of a respirator to prevent bulk contamination of the respirator. Certain respirator designs with forward protrusions (duckbill style) may be difficult to properly wear under a face shield. Ensure that the face shield does not prevent airflow through the respirator.
- Consider factors such as function, fit, ability to decontaminate, disposal, and cost. OSHA's Respiratory Protection eTool provides basic information on respirators such as medical requirements, maintenance and care, fit testing, written respiratory protection programs, and voluntary use of respirators, which employers may also find beneficial in training workers at: www.osha.gov/SLTC/etools/respiratory. Also see NIOSH respirator guidance at: www.cdc.gov/niosh/topics/respirators.
- Respirator training should address selection, use (including donning and doffing), proper disposal or disinfection, inspection for damage, maintenance, and the limitations of respiratory protection equipment. Learn more at: www.osha.gov/SLTC/respiratoryprotection.
- The appropriate form of respirator will depend on the type of exposure and on the transmission pattern of COVID-19. See the NIOSH "Respirator Selection Logic" at: www.cdc.gov/niosh/docs/2005-100/default.html or the OSHA "Respiratory Protection eTool" at www.osha.gov/SLTC/etools/respiratory.

Follow Existing OSHA Standards

Existing OSHA standards may apply to protecting workers from exposure to and infection with SARS-CoV-2.

While there is no specific OSHA standard covering SARS-CoV-2 exposure, some OSHA requirements may apply to preventing occupational exposure to SARS-CoV-2. Among the most relevant are:

- OSHA's Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection. See: www.osha.gov/laws-regs/regulations/standardnumber/1910#1910_Subpart_I.
 - When respirators are necessary to protect workers or where employers require respirator use, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134). See: www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134.
- The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which requires employers to furnish to each worker "employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." See: www.osha.gov/laws-regs/oshact/completeoshact.

OSHA's Bloodborne Pathogens standard (29 CFR 1910.1030) applies to occupational exposure to human blood and other potentially infectious materials that typically do not include respiratory secretions that may transmit SARS-CoV-2.

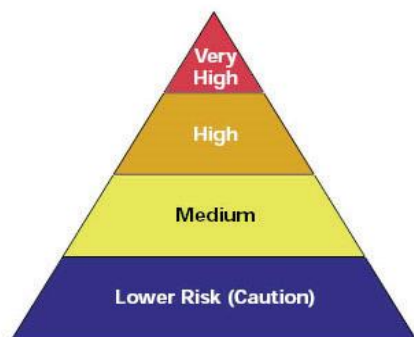
However, the provisions of the standard offer a framework that may help control some sources of the virus, including exposures to body fluids (e.g., respiratory secretions) not covered by the standard. See: www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1030.

The OSHA COVID-19 webpage provides additional information about OSHA standards and requirements, including requirements in states that operate their own OSHA-approved State Plans, recordkeeping requirements and injury/illness recording criteria, and applications of standards related to sanitation and communication of risks related to hazardous chemicals that may be in common sanitizers and sterilizers. See: www.osha.gov/SLTC/covid-19/standards.html.

Classifying Worker Exposure to SARS-CoV-2

Worker risk of occupational exposure to SARS-CoV-2, the virus that causes COVID-19, during an outbreak may vary from very high to high, medium, or lower (caution) risk. The level of risk depends in part on the industry type, need for contact within 6 feet of people known to be, or suspected of being, infected with SARS-CoV-2, or requirement for repeated or extended contact with persons known to be, or suspected of being, infected with SARS-CoV-2. To help employers determine appropriate precautions, OSHA has divided job tasks into four risk exposure levels: very high, high, medium, and lower risk. The Occupational Risk Pyramid shows the four exposure risk levels in the shape of a pyramid to represent probable distribution of risk. Most American workers will likely fall in the lower exposure risk (caution) or medium exposure risk levels.

**Occupational Risk Pyramid
for COVID-19**



Very High Exposure Risk

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures.

Workers in this category include:

- Healthcare workers (e.g., doctors, nurses, dentists, paramedics, emergency medical technicians) performing aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on known or suspected COVID-19 patients.
- Healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients (e.g., manipulating cultures from known or suspected COVID-19 patients).
- Morgue workers performing autopsies, which generally involve aerosol-generating procedures, on the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death.

High Exposure Risk

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19. Workers in this category include:

- Healthcare delivery and support staff (e.g., doctors, nurses, and other hospital staff who must enter patients' rooms) exposed to known or suspected COVID-19 patients. (Note: when such workers perform aerosol-generating procedures, their exposure risk level becomes *very high*.)
- Medical transport workers (e.g., ambulance vehicle operators) moving known or suspected COVID-19 patients in enclosed vehicles.
- Mortuary workers involved in preparing (e.g., for burial or cremation) the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death.

Medium Exposure Risk

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. In areas without ongoing community transmission, workers in this risk group may have frequent contact with travelers who may return from international locations with widespread COVID-19 transmission. In areas where there *is* ongoing community transmission, workers in this category may have contact with the general public (e.g., schools, high-population-density work environments, some high-volume retail settings).

Lower Exposure Risk (Caution)

Lower exposure risk (caution) jobs are those that do not require contact with people known to be, or suspected of being, infected with SARS-CoV-2 nor frequent close contact with (i.e., within 6 feet of) the general public. Workers in this category have minimal occupational contact with the public and other coworkers.

Jobs Classified at Lower Exposure Risk (Caution): What to Do to Protect Workers

For workers who do not have frequent contact with the general public, employers should follow the guidance for [“Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2,”](#) on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

Additional engineering controls are not recommended for workers in the lower exposure risk group. Employers should ensure that engineering controls, if any, used to protect workers from other job hazards continue to function as intended.

Administrative Controls

- Monitor public health communications about COVID-19 recommendations and ensure that workers have access to that information. Frequently check the CDC COVID-19 website: www.cdc.gov/coronavirus/2019-ncov.
- Collaborate with workers to designate effective means of communicating important COVID-19 information.

Personal Protective Equipment

Additional PPE is not recommended for workers in the lower exposure risk group. Workers should continue to use the PPE, if any, that they would ordinarily use for other job tasks.

Jobs Classified at Medium Exposure Risk: What to Do to Protect Workers

In workplaces where workers have medium exposure risk, employers should follow the guidance for “[Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2](#),” on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

- Install physical barriers, such as clear plastic sneeze guards, where feasible.

Administrative Controls

- Consider offering face masks to ill employees and customers to contain respiratory secretions until they are able leave the workplace (i.e., for medical evaluation/care or to return home). In the event of a shortage of masks, a reusable face shield that can be decontaminated may be an acceptable method of protecting against droplet transmission. See CDC/NIOSH guidance for optimizing respirator supplies, which discusses the use of surgical masks, at: www.cdc.gov/coronavirus/2019-ncov/hcp/respirators-strategy.

- Keep customers informed about symptoms of COVID-19 and ask sick customers to minimize contact with workers until healthy again, such as by posting signs about COVID-19 in stores where sick customers may visit (e.g., pharmacies) or including COVID-19 information in automated messages sent when prescriptions are ready for pick up.
- Where appropriate, limit customers' and the public's access to the worksite, or restrict access to only certain workplace areas.
- Consider strategies to minimize face-to-face contact (e.g., drive-through windows, phone-based communication, telework).
- Communicate the availability of medical screening or other worker health resources (e.g., on-site nurse; telemedicine services).

Personal Protective Equipment (PPE)

When selecting PPE, consider factors such as function, fit, decontamination ability, disposal, and cost. Sometimes, when PPE will have to be used repeatedly for a long period of time, a more expensive and durable type of PPE may be less expensive overall than disposable PPE.

Each employer should select the combination of PPE that protects workers specific to their workplace.

Workers with medium exposure risk may need to wear some combination of gloves, a gown, a face mask, and/or a face shield or goggles. PPE ensembles for workers in the medium exposure risk category will vary by work task, the results of the employer's hazard assessment, and the types of exposures workers have on the job.

High exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19.

Very high exposure risk jobs are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures that involve aerosol generation or specimen collection/handling.

In rare situations that would require workers in this risk category to use respirators, see the PPE section beginning on [page 14](#) of this booklet, which provides more details about respirators. For the most up-to-date information, visit OSHA's COVID-19 webpage: www.osha.gov/covid-19.

Jobs Classified at High or Very High Exposure Risk: What to Do to Protect Workers

In workplaces where workers have high or very high exposure risk, employers should follow the guidance for “[Steps All Employers Can Take to Reduce Workers’ Risk of Exposure to SARS-CoV-2](#),” on page 7 of this booklet and implement control measures described in this section.

Engineering Controls

- Ensure appropriate air-handling systems are installed and maintained in healthcare facilities. See “Guidelines for Environmental Infection Control in Healthcare Facilities” for more recommendations on air handling systems at: www.cdc.gov/mmwr/preview/mmwrhtml/rr5210a1.htm.
- CDC recommends that patients with known or suspected COVID-19 (i.e., person under investigation) should be placed in an airborne infection isolation room (AIIR), if available.
- Use isolation rooms when available for performing aerosol-generating procedures on patients with known or suspected COVID-19. For postmortem activities, use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of people who are known to have, or suspected of having, COVID-19 at the time of their death. See the CDC postmortem guidance at: www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-postmortem-specimens.html. OSHA also provides guidance for postmortem activities on its COVID-19 webpage: www.osha.gov/covid-19.

- Use special precautions associated with Biosafety Level 3 when handling specimens from known or suspected COVID-19 patients. For more information about biosafety levels, consult the U.S. Department of Health and Human Services (HHS) “Biosafety in Microbiological and Biomedical Laboratories” at www.cdc.gov/biosafety/publications/bmbl5.

Administrative Controls

If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected individuals and for protecting workers.

- Develop and implement policies that reduce exposure, such as cohorting (i.e., grouping) COVID-19 patients when single rooms are not available.
- Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face masks.
- Consider offering enhanced medical monitoring of workers during COVID-19 outbreaks.
- Provide all workers with job-specific education and training on preventing transmission of COVID-19, including initial and routine/refresher training.
- Ensure that psychological and behavioral support is available to address employee stress.

Safe Work Practices

- Provide emergency responders and other essential personnel who may be exposed while working away from fixed facilities with alcohol-based hand rubs containing at least 60% alcohol for decontamination in the field.

Personal Protective Equipment (PPE)

Most workers at high or very high exposure risk likely need to wear gloves, a gown, a face shield or goggles, and either a face mask or a respirator, depending on their job tasks and exposure risks.

Those who work closely with (either in contact with or within 6 feet of) patients known to be, or suspected of being, infected with SARS-CoV-2, the virus that causes COVID-19, should wear respirators. In these instances, see the PPE section beginning on [page 14](#) of this booklet, which provides more details about respirators. For the most up-to-date information, also visit OSHA's COVID-19 webpage: www.osha.gov/covid-19.

PPE ensembles may vary, especially for workers in laboratories or morgue/mortuary facilities who may need additional protection against blood, body fluids, chemicals, and other materials to which they may be exposed. Additional PPE may include medical/surgical gowns, fluid-resistant coveralls, aprons, or other disposable or reusable protective clothing. Gowns should be large enough to cover the areas requiring protection. OSHA may also provide updated guidance for PPE use on its website: www.osha.gov/covid-19.

NOTE: Workers who dispose of PPE and other infectious waste must also be trained and provided with appropriate PPE.

The CDC webpage “Healthcare-associated Infections” (www.cdc.gov/hai) provides additional information on infection control in healthcare facilities.

Workers Living Abroad or Travelling Internationally

Employers with workers living abroad or traveling on international business should consult the “Business Travelers” section of the OSHA COVID-19 webpage (www.osha.gov/covid-19), which also provides links to the latest:

- CDC travel warnings: www.cdc.gov/coronavirus/2019-ncov/travelers
- U.S. Department of State (DOS) travel advisories: travel.state.gov

Employers should communicate to workers that the DOS cannot provide Americans traveling or living abroad with medications or supplies, even in the event of a COVID-19 outbreak.

As COVID-19 outbreak conditions change, travel into or out of a country may not be possible, safe, or medically advisable. It is also likely that governments will respond to a COVID-19 outbreak by imposing public health measures that restrict domestic and international movement, further limiting the U.S. government's ability to assist Americans in these countries. It is important that employers and workers plan appropriately, as it is possible that these measures will be implemented very quickly in the event of worsening outbreak conditions in certain areas.

More information on COVID-19 planning for workers living and traveling abroad can be found at: www.cdc.gov/travel.

For More Information

Federal, state, and local government agencies are the best source of information in the event of an infectious disease outbreak, such as COVID-19. Staying informed about the latest developments and recommendations is critical, since specific guidance may change based upon evolving outbreak situations.

Below are several recommended websites to access the most current and accurate information:

- Occupational Safety and Health Administration website: www.osha.gov
- Centers for Disease Control and Prevention website: www.cdc.gov
- National Institute for Occupational Safety and Health website: www.cdc.gov/niosh

OSHA Assistance, Services, and Programs

OSHA has a great deal of information to assist employers in complying with their responsibilities under OSHA law. Several OSHA programs and services can help employers identify and correct job hazards, as well as improve their safety and health program.

Establishing a Safety and Health Program

Safety and health programs are systems that can substantially reduce the number and severity of workplace injuries and illnesses, while reducing costs to employers.

Visit www.osha.gov/safetymanagement for more information.

Compliance Assistance Specialists

OSHA compliance assistance specialists can provide information to employers and workers about OSHA standards, short educational programs on specific hazards or OSHA rights and responsibilities, and information on additional compliance assistance resources.

Visit www.osha.gov/complianceassistance/cas or call 1-800-321-OSHA (6742) to contact your local OSHA office.

No-Cost On-Site Safety and Health Consultation Services for Small Business

OSHA's On-Site Consultation Program offers no-cost and confidential advice to small and medium-sized businesses in all states, with priority given to high-hazard worksites. On-Site consultation services are separate from enforcement and do not result in penalties or citations.

For more information or to find the local On-Site Consultation office in your state, visit www.osha.gov/consultation, or call 1-800-321-OSHA (6742).

Under the consultation program, certain exemplary employers may request participation in OSHA's **Safety and Health Achievement Recognition Program (SHARP)**. Worksites that receive SHARP recognition are exempt from programmed inspections during the period that the SHARP certification is valid.

Cooperative Programs

OSHA offers cooperative programs under which businesses, labor groups and other organizations can work cooperatively with OSHA. To find out more about any of the following programs, visit www.osha.gov/cooperativeprograms.

Strategic Partnerships and Alliances

The OSHA Strategic Partnerships (OSP) provide the opportunity for OSHA to partner with employers, workers, professional or trade associations, labor organizations, and/or other interested stakeholders. Through the Alliance Program, OSHA works with groups to develop compliance assistance tools and resources to share with workers and employers, and educate workers and employers about their rights and responsibilities.

Voluntary Protection Programs (VPP)

The VPP recognize employers and workers in the private sector and federal agencies who have implemented effective safety and health programs and maintain injury and illness rates below the national average for their respective industries.

Occupational Safety and Health Training

OSHA partners with 26 OSHA Training Institute Education Centers at 37 locations throughout the United States to deliver courses on OSHA standards and occupational safety and health topics to thousands of students a year. For more information on training courses, visit www.osha.gov/otiec.

OSHA Educational Materials

OSHA has many types of educational materials to assist employers and workers in finding and preventing workplace hazards.

All OSHA publications are free at www.osha.gov/publications and www.osha.gov/ebooks. You can also call 1-800-321-OSHA (6742) to order publications.

Employers and safety and health professionals can sign-up for *QuickTakes*, OSHA's free, twice-monthly online newsletter with the latest news about OSHA initiatives and products to assist in finding and preventing workplace hazards. To sign up, visit www.osha.gov/quicktakes.

OSHA Regional Offices

Region 1

Boston Regional Office
(CT*, ME*, MA, NH, RI, VT*)
JFK Federal Building
25 New Sudbury Street, Room E340
Boston, MA 02203
(617) 565-9860 (617) 565-9827 Fax

Region 2

New York Regional Office
(NJ*, NY*, PR*, VI*)
Federal Building
201 Varick Street, Room 670
New York, NY 10014
(212) 337-2378 (212) 337-2371 Fax

Region 3

Philadelphia Regional Office
(DE, DC, MD*, PA, VA*, WV)
The Curtis Center
170 S. Independence Mall West, Suite 740 West
Philadelphia, PA 19106-3309
(215) 861-4900 (215) 861-4904 Fax

Region 4

Atlanta Regional Office
(AL, FL, GA, KY*, MS, NC*, SC*, TN*)
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Room 6T50
Atlanta, GA 30303
(678) 237-0400 (678) 237-0447 Fax

Region 5

Chicago Regional Office
(IL*, IN*, MI*, MN*, OH, WI)
John C. Kluczynski Federal Building
230 South Dearborn Street, Room 3244
Chicago, IL 60604
(312) 353-2220 (312) 353-7774 Fax

Region 6

Dallas Regional Office
(AR, LA, NM*, OK, TX)
A. Maceo Smith Federal Building
525 Griffin Street, Room 602
Dallas, TX 75202
(972) 850-4145 (972) 850-4149 Fax

Region 7

Kansas City Regional Office
(IA*, KS, MO, NE)
Two Pershing Square Building
2300 Main Street, Suite 1010
Kansas City, MO 64108-2416
(816) 283-8745 (816) 283-0547 Fax

Region 8

Denver Regional Office
(CO, MT, ND, SD, UT*, WY*)
Cesar Chavez Memorial Building
1244 Speer Boulevard, Suite 551
Denver, CO 80204
(720) 264-6550 (720) 264-6585 Fax

Region 9

San Francisco Regional Office
(AZ*, CA*, HI*, NV*, and American Samoa,
Guam and the Northern Mariana Islands)
San Francisco Federal Building
90 7th Street, Suite 2650
San Francisco, CA 94103
(415) 625-2547 (415) 625-2534 Fax

Region 10

Seattle Regional Office
(AK*, ID, OR*, WA*)
Fifth & Yesler Tower
300 Fifth Avenue, Suite 1280
Seattle, WA 98104
(206) 757-6700 (206) 757-6705 Fax

*These states and territories operate their own OSHA-approved job safety and health plans and cover state and local government employees as well as private sector employees. The Connecticut, Illinois, Maine, New Jersey, New York and Virgin Islands programs cover public employees only. (Private sector workers in these states are covered by Federal OSHA). States with approved programs must have standards that are identical to, or at least as effective as, the Federal OSHA standards.

Note: To get contact information for OSHA area offices, OSHA-approved state plans and OSHA consultation projects, please visit us online at www.osha.gov or call us at 1-800-321-OSHA (6742).

How to Contact OSHA

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

**For assistance, contact us.
We are OSHA. We can help.**





U.S. Department of Labor

For more information:

OSHA[®] Occupational
Safety and Health
Administration
www.osha.gov (800) 321-OSHA (6742)