



EquipmentDealers
A S S O C I A T I O N

Getting Back to Work

Practical and Legal Considerations in Ensuring
Your Dealership is Ready for the “New Normal”

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PRESENTER INFO



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Upcoming Webinar: CARES Act Impact on Dealers

As part of their Coronavirus Crisis Series, HBK CPAs & Consultants have a scheduled a webinar on Thursday, May 7th at 10:00am (CDT).

A panel of experts leads an in depth discussion on issues impacting dealers. Just a few of the tricky topics to be addressed:

- The latest FAQ on PPP loan forgiveness
- How to calculate forgiveness
- Will I be penalized for employees not returning due to high unemployment pay?
- Should I have applied for the loan?
- Register: <https://attendee.gotowebinar.com/register/1491705632974294287>



Getting Back to Work A Long Road Ahead

- ❑ Bottom Line: Until there is a vaccine for COVID-19, “normal” will look different for almost every industry including equipment dealers and their supply chain.
- ❑ Remember:
 - This webinar provides a general overview of CDC, OSHA and EEOC Guidance we currently have.
 - Guidance changes often! Stay on top of changes by reading our COVID-19 updates.
 - This webinar does not address state and local laws which may be different for your dealership.
 - **This webinar does not constitute legal advice and should not be used a substitute for consulting with the attorney of your choice about the specific issues facing your dealership.**

Webinar Overview

- Practical and Legal considerations for dealership in developing a “Business As Usual” plan.
 - Commonly Asked Dealer Questions
 - Overview of CDC, OSHA and EEOC Resources to help guide dealers

CDC/OSHA Guidance

- ❑ Implement Policies and Practices to Reduce Transmission among employees and customers.
 - Date policies and all updates as guidance changes rapidly.
- ❑ These policies should written be reviewed by legal counsel.
- ❑ Employees and Customers must be educated on the new policies for them to be effective.

CDC Mitigation Guidance

- ❑ Important to Understand there is no one-size fits all policy for mitigation.
- ❑ The CDC's "Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission" is instructive for dealers.
- ❑ See Page 6: Guidance for Workplaces is divided into levels of risk.
 - "Potential mitigation activities according to level of community transmission or impact of COVID-19 by setting."
 - None to Minimal
 - Minimal to Moderate
 - Substantial
- ❑ Level of mitigation needed at your dealership (including individual locations) is not static – be prepared to adapt based upon conditions in your area.
 - <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>

CDC New Symptoms Guidance

- ❑ Symptoms may appear **2-14 days after exposure to the virus.**
- ❑ People with these symptoms or combinations of symptoms may have COVID-19: Cough, Shortness of breath or difficulty breathing

Or at least two of these symptoms:

- Fever
- Chills
- Repeated shaking with chills
- Muscle pain
- Headache
- Sore throat
- New loss of taste or smell

Citation: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

Basics: Health Screening Policy and Procedure

- ❑ Health Screenings at the start of work and/or during the course of work are permitted.
- ❑ For health screenings:
 - Ensure person performing screenings has proper PPE per CDC guidance and high risk OSHA classification.
 - Perform screenings in a uniform (non-discriminatory) manner.
 - Ensure any data gathered during the screenings is stored in compliance with ADA requirements.
 - Do not go beyond the scope of the pandemic screening.

Health Screening Policy and Procedure

- ❑ Employers should also 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.
- ❑ 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.

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Implement Other Policies and Procedures to Reduce Transmission Among Employees

- ❑ 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.
- ❑ 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.

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Implement Other Policies and Procedures to Reduce Transmission Among Employees and Customers

- ❑ 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 respiratory etiquette, including covering coughs and sneezes.
- ❑ Provide customers and the public with tissues and trash receptacles.

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Implement Other Policies and Procedures to Reduce Transmission Among Employees and Customers

- ❑ 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.

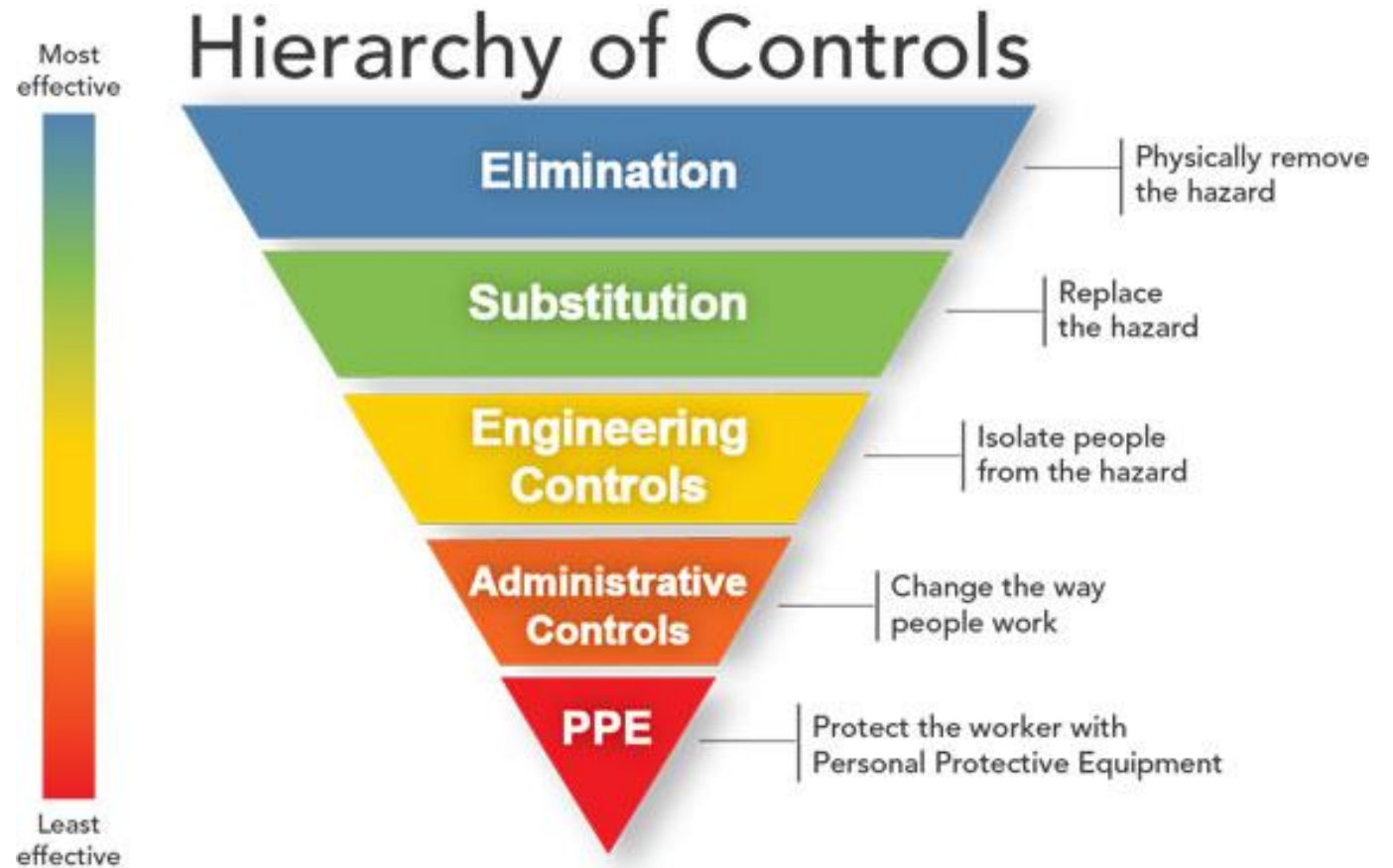
CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Implement Other Policies and Procedures to Reduce Transmission Among Employees and Customers

- ❑ Actively encourage sick employees to stay home.
- ❑ 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.**

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Understand the Hierarchy of Controls



CITATION: <https://www.cdc.gov/niosh/topics/hierarchy/>

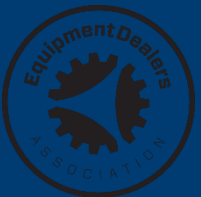


Understand the Hierarchy of Controls

Engineering controls are favored over administrative and personal protective equipment (PPE) for controlling existing worker exposures in the workplace because they are designed to remove the hazard at the source, before it comes in contact with the worker.

Administrative controls and PPE are frequently used with existing processes where hazards are not particularly well controlled. Administrative controls and PPE programs may be relatively inexpensive to establish but, over the long term, can be very costly to sustain. These methods for protecting workers have also proven to be less effective than other measures, requiring significant effort by the affected workers.

CITATION: <https://www.cdc.gov/niosh/topics/hierarchy/>



PPE – OSHA AND CDC

- ❑ 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.

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Explore Engineering Controls

- ❑ Engineering controls involve isolating employees from work related hazards.
 - 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.

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Examples

- ❑ Divide areas of the dealership operation to limit or eliminate the risk of cross contamination between departments;
- ❑ Install physical barrier between customers and employees;
- ❑ Install enhanced air filtration system in high traffic areas;
- ❑ Install sinks or other handwashing stations.

Explore Administrative Controls

- ❑ 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.
- ❑ 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).

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Examples

- ❑ Implement curbside/no contact parts service;
- ❑ Decrease staffing in areas servicing customers;
- ❑ Social Distancing signage;
- ❑ Decrease number of customers in store at one time;
- ❑ Clearly communicate changes in policy.

PPE – CDC

- ❑ CDC recommends [wearing cloth face coverings](#) in public settings where other social distancing measures are difficult to maintain, especially in areas of significant community transmission. **CDC does not recommend the use of PPE in workplaces where it is not routinely recommended.** ***Check contrary state and local orders. Many require masks.*
- ❑ These face coverings are not surgical masks or respirators and are not appropriate substitutes for them in workplaces where masks or respirators are recommended or required.
- ❑ Employees should continue to follow their routine policies and procedures for PPE (if any) that they would ordinarily use for their job tasks.
- ❑ When cleaning and disinfecting, employees should always wear gloves and gowns appropriate for the chemicals being used.

CITATION: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html#Reducing-the-Spread-of-COVID-19-in-Workplaces>

OSHA: Understanding Worker Risk

- ❑ 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.

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

OSHA: Understanding Worker 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.
 - 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.
- ❑ 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.

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Q&A

What should dealers do if a dealership employee is exposed?

Critical Infrastructure workers who have had an exposure but remain asymptomatic should adhere to the following practices prior to and during their work shift:

Pre-Screen: Employers should measure the employee's temperature and assess symptoms prior to them starting work. Ideally, temperature checks should happen before the individual enters the facility.

Regular Monitoring: As long as the employee doesn't have a temperature or symptoms, they should self-monitor under the supervision of their employer's occupational health program.

Wear a Mask: The employee should wear a face mask at all times while in the workplace for 14 days after last exposure. Employers can issue facemasks or can approve employees' supplied cloth face coverings in the event of shortages.

Social Distance: The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.

Disinfect and Clean work spaces: Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.

CITATION: <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>

Q&A

What if an employee's family member is sick and/or tests positive for COVID-19?

- ☐ Employee should be instructed to follow any physician orders.
- ☐ Employees, if not subject to a quarantine order by a physician, should abide by CDC Guidance on living with someone who has been diagnosed AND guidance for Critical Infrastructure workers. (*See prior slide*)
- ☐ Pay for any leave should be evaluated and provided in compliance with FFCRA.

Citation: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-prevent-spread.html#precautions>

CITATION: https://www.cdc.gov/coronavirus/2019-ncov/faq.html#anchor_1584388242595

Q&A

What to do if an employee tests positive?

- Make sure they do not come to the work-place to prevent a further infection of your employees.
- Instruct your employee to follow orders they are given from healthcare professionals regarding their diagnosis .
- Take all necessary precautions and continue to clean the workplace as recommended by the CDC.

If an employee is confirmed to have COVID-19 infection, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).

The fellow employees should then self-monitor for COVID-19 symptoms but are not required to immediately self quarantine by OSHA or CDC.

CITATION: <https://www.osha.gov/Publications/OSHA3990.pdf>

Q&A

Can employers ask employees what symptoms they are experiencing if they call in sick?

- ☐ Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace.
- ☐ The ADA does not interfere with employers following this advice. Employers are encouraged to screen employees for symptoms consistent with COVID-19 and to immediately send home employees if they are exhibiting signs. (Use a Standard Symptom Checklist).

CITATION:

https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

CITATION: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

Q&A

If an employee believes they contracted COVID at work, is this a workers' compensation claim?

- This depends on the state.
- Many states are changing worker's compensation laws to protect first responders and essential workers who get COVID-19.
- Generally, if there is no other way to establish proof of exposure outside the office and the employee can prove a workplace contact, then it likely would be compensable.

Q&A

Can we require taking temperatures for employees, screenings for symptoms and travel?

- ❑ Yes. Current EEOC guidance is permitting this but be aware it might change once the pandemic ends. Taking someone's temperature is a medical exam so ADA privacy obligations apply. Limit information gathered to COVID related symptoms.
- ❑ Consider CDC guidance on screenings to ensure compliance. Screening employees is an optional strategy that employers may use. There are several methods that employers can use to protect the employee conducting the temperature screening. The most protective methods incorporate social distancing (maintaining a distance of 6 feet from others), or physical barriers to eliminate or minimize the screener's exposures due to close contact with a person who has symptoms during screening.

CITATION: <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html#Reducing-the-Spread-of-COVID-19-in-Workplaces>

Q&A

How long should an employee who tests positive stay home for?

- ❑ Duration of Time prescribed by CDC for Home Isolation is as follows:
- ❑ People **with COVID-19 who have stayed home (home isolated)** can stop home isolation under the following conditions:
 - ***If you will not have a test*** to determine if you are still contagious, you can leave home after these three things have happened
 - You have had no fever for at least 72 hours (that is three full days of no fever without the use medicine that reduces fevers)
AND
 - other symptoms have improved (for example, when your cough or shortness of breath have improved)
AND
 - at least 7 days have passed since your symptoms first appeared
 - ***If you will be tested*** to determine if you are still contagious, you can leave home after these three things have happened:
 - You no longer have a fever (without the use medicine that reduces fevers)
AND
 - other symptoms have improved (for example, when your cough or shortness of breath have improved)
AND
 - you received two negative tests in a row, 24 hours apart. Your doctor will follow [CDC guidelines](https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html).

CITATION: <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>

Q&A

When employees return to work, does the ADA allow employers to require doctors' notes certifying their fitness for duty?

- ❑ Yes. Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.
- ❑ As a practical matter, the CDC does not recommend this. Employers should not require a positive COVID-19 test result or a healthcare provider's note for employees who are sick to validate their illness, qualify for sick leave, or to return to work. Healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely manner.
- ❑ Review human resources policies to make sure that policies and practices are consistent with public health recommendations and are consistent with existing state and federal workplace laws.

CITATION: https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

CITATION: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Q&A

How do we handle employees who refuse to return to work in the dealership, either due to an irrational fear or due to liking the work from home?

- ☐ Dealers can require them to return because attendance is an essential function of the job.
- ☐ Depending on the facts, may need to engage in the interactive process under the ADA or applicable state disability law.
- ☐ **Remember:** State/local orders may require leave (paid or unpaid) for employees who are susceptible/vulnerable to COVID-19.

Q&A

My employee is flying on vacation with family. I requested he/she self-quarantine for 14 days upon return. He/She said she will sue.

- ☐ Some states require this.
- ☐ It likely depends on the current state of the outbreak in the area they are traveling to at the time they are going. See CDC Guidance.
- ☐ A self-quarantine might be unreasonable if the state has reopened and area where the travel occurred is low risk.

Q&A

What FLSA issues are you seeing arising from COVID-19?

- ☐ Employers should pay employees for mandatory health screenings;
- ☐ Employers should pay employees for employer ordered testing.

Q&A

What exposure, if any, do we face for mishandling COVID related losses at the workplace?

- ❑ If the dealership implements (and documents) reasonable policies and procedures showing our efforts to limit COVID-19 in the workplace (and exposure to those in the workplace), this should minimize liability outside of worker's compensation.
- ❑ If the dealership is not engaging in reasonable measures, it might be possible.
 - Wal-Mart is facing two wrongful death lawsuits in IL.
- ❑ Expect that customers may make such claims if traced to dealership.

Q&A

Can we limit personal items in the workplace in order to keep a cleaner environment?

☐ Yes. Dealerships can do this as part of our return to work guidelines.

Can we eliminate food sharing (i.e. potlucks, bagels, doughnuts, etc) during this time?

☐ Yes. Dealerships can do this as part of our return to work guidelines.

Can you order food for people to share?

☐ This is not advisable if employees will have to come to a central location for the food.

Q&A

Can you require the use of masks?

- ☐ Yes, but if so, the dealership must provide them.
- ☐ Consider accommodation issues:
 - Disability
 - Religion

Other EDA Resources

- ❑ Customer Social Media Notice;
- ❑ “Essential Business” designation for employee use;
- ❑ CDC Guidance
- ❑ OSHA Workplace Guidance
- ❑ EEOC Pandemic Guidance
- ❑ Extensive Other Resources Available:

<https://www.equipmentdealer.org/covid-19-resources/>



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A S S O C I A T I O N

QUESTIONS?