

# YOUR PARTNERS FOR THE NEXT NORMAL







**RETAIL TIPS FOR  
REOPENING**

**DAVIDSON COUNTY**



# STEPHANIE COLEMAN

Chief Growth Officer

---



# RALPH SCHULZ

President & CEO

---



# ROLAND MYERS

President & CEO

---



**TENNESSEE RETAIL**  
ASSOCIATION

# TNPledge.com



## Reopening Tennessee Responsibly

The "Tennessee Pledge" is a plan to help Tennesseans return to work in a safe environment, restore their livelihoods and reboot our state's economy.

# HUGH ATKINS

## Environmental Health Bureau Director

---



*Metro***Public Health***Dept*

N a s h v i l l e / D a v i d s o n   C o u n t y

---

Protecting, Improving, and Sustaining Health

# JOSH ARTERS

Associate

---





# INTRODUCTION

**An overview of all COVID-19 legal considerations could take hours, if not days**

- Covers matters ranging from employee leave, to hiring / termination / furlough procedures, to confidentiality concerns, and everything in between

**Keep in mind, this is entirely uncharted territory and many issues unfortunately remain unclear**

**I am only going to generally discuss four topics:**

- General Measures Retail Employers Should Consider
- OSHA Obligations
- How to Deal With Specific Employee-Related Situations
- Liability Issues

# GENERAL MEASURES RETAIL EMPLOYERS SHOULD CONSIDER

## **Stay informed**

- Monitor guidance from CDC, OSHA, WHO, Tennessee/Nashville orders and ordinances

## **Consider implementing employee response and communication plan**

- Consider appointing a COVID-19 point-person to stay abreast of rapidly changing developments
- Be flexible, and ready to modify as needed
- Prepare communication plan to employees addressing various employee issues, including vacation and standard sick leave policies, employee anxiety, and who is the employee's contact person with your company for COVID-19 issues
- Consider training sessions on how to comply with COVID-19 measures
- Post required signage (i.e., FFCRA rights notice)

## **Consider revising employment policies**

- How COVID-19 leave is requested
- Screening protocols
- Rules for social distancing
- Discipline for violations

# OSHA OBLIGATIONS

## **What does OSHA require?**

- Ensure workplaces are “free from recognized hazards that are causing or are likely to cause death or serious physical harm”

## **Does COVID-19 change things?**

- No new standards
- General OSHA obligations apply to COVID-19 related hazards

## **What should retail employers do?**

- Sanitize, provide PPE as required, implement protocols for sick employees
- Make expectations clear to all employees to ensure hazards are being addressed (i.e., using signage, posting instructions, etc.)
- Consider training sessions

# HOW TO DEAL WITH SPECIFIC EMPLOYEE-RELATED SITUATIONS

## **Employee's refusal to return to work based on generalized fear of COVID-19?**

- Likely need not agree to allow employee to remain home
- Consider remote work arrangement (if possible, which is unlikely for most retail employees) or unpaid leave where possible
- BE CONSISTENT to all similarly situated employees

## **Be mindful of the Americans with Disabilities Act (“ADA”)**

- If refusal to return to work is based on a disability, likely need to discuss potential accommodations
- Consider granting accommodations (if possible) on a temporary basis

## **Be mindful of employee leave laws**

- FFCRA
- EFMLEA
- ESPLA
- Other potential laws



# HOW TO DEAL WITH SPECIFIC EMPLOYEE-RELATED SITUATIONS (CONTINUED)

## **Employee's refusal to return to work because employee is vulnerable individual?**

- EEOC is encouraging flexible arrangements
- Employers may be scrutinized
- Could also have ADA implications

## **Employee's refusal to return to work because living with / caring for vulnerable individual?**

- No clear solution, and this is a case-by-case situation
- However, employers should do their best to BE CONSISTENT with how it treats similarly-situated employees

## **Employee's refusal to return to work because they want to continue drawing unemployment benefits?**

- Termination permitted (generally speaking)
- Refusing to work at a "suitable job" is typically a basis for a claimant's unemployment benefits to be cut-off

# HOW TO DEAL WITH SPECIFIC EMPLOYEE-RELATED SITUATIONS (CONTINUED)

## **Screening employees for COVID-19?**

- Generally does not violate the ADA under EEOC guidance during the pandemic when job–related and consistent with business necessity
- Justification is that EEOC currently considers COVID-19 a “direct threat”
- Nashville’s “Roadmap for Reopening” requires screening in retail environments in all phases
- Be mindful that EEOC may no longer consider COVID-19 a “direct threat”
- Important to stay abreast of any and all changes to federal, state, and local guidance on screening protocols

## **What about serological (antibody) testing?**

- EEOC has not yet stated whether employers can perform antibody testing on employees

# HOW TO DEAL WITH SPECIFIC EMPLOYEE-RELATED SITUATIONS (CONTINUED)

## **What if an employee refuses to be screened for COVID-19?**

- Generally, you can refuse to allow the employee to enter worksite
- EEOC allows employers to exclude employees who pose a “direct threat”
- COVID-19 does not supersede existing policies, likely still permitted to terminate for job abandonment

## **In ALL SITUATIONS:**

- Document communications with employees
- Be mindful of employees who complain on a group basis, as this could increase the risk of a retaliation claim under the National Labor Relations Act (“NLRA”)

# HOW TO DEAL WITH SPECIFIC EMPLOYEE-RELATED SITUATIONS (CONTINUED)

## **What if an employee contracts COVID-19?**

- CDC advises sending infected or symptomatic employees home
- Other exposed workers should likely self-quarantine
- Keep federal / state/ local laws and guidance in mind

## **Other measures to take if an employee contracts COVID-19?**

- Without revealing identity of employee, consider informing those who may have been in prolonged close contact of their potential exposure
- Consider informing the rest of the workforce, landlord, and state/local health officials
- CDC recommends cleaning your facility entirely and waiting 24 hours before reopening (and follow local health official instructions [here](#))



# LIABILITY ISSUES

## Can you be liable if one of your employees gets sick?

- Unclear
- Ultimately requires causation, which may be difficult
- Follow guidance
- Tennessee workers' compensation laws potentially cover COVID-19 sicknesses, but this is unclear given it may be considered an "ordinary disease of life" (likely not covered under Tennessee workers comp. laws)

## Can you be liable if a customer gets sick?

- Also unclear, and involves premises liability law
- Again, causation is a hurdle
- Tennessee law generally requires retailers to take reasonable measures to ensure premises is safe
- Follow guidance

## Insurance Check-Up

- Consider revisiting your insurance coverage to ensure your business is prepared to face workers' compensation liability, employment practices liability, and general commercial liability

**NORAH BUIKSTRA**

General Manager

---

THE MALL AT  
**GreenHills**

# THE MALL AT GreenHills

---

Create a report about re-opening with details for your employees

Signage is important for employees and customers

Think about how you are changing the customer experience

Walk through your facility as an employee, and as a customer

Temporary Curbside Service

Bring customers back into our businesses

# THE MALL AT GreenHills

---

DO YOUR PART

**SOCIAL  
DISTANCE  
WHILE YOU SHOP**

← 6 FEET →

For your safety and the safety of other shoppers,  
please stay 6 feet apart while you shop.

DO YOUR PART

**PLEASE  
DO NOT ENTER  
IF YOU ARE SICK**

If you feel unwell or have a fever,  
cough, or shortness of breath, please  
refrain from entering the building.

DO YOUR PART  
**FACE COVERING  
REQUIRED**

Per government order, all customers  
over the age of two must be wearing a face  
covering to enter the shopping center.



DO YOUR PART  
**FACE COVERING  
RECOMMENDED**

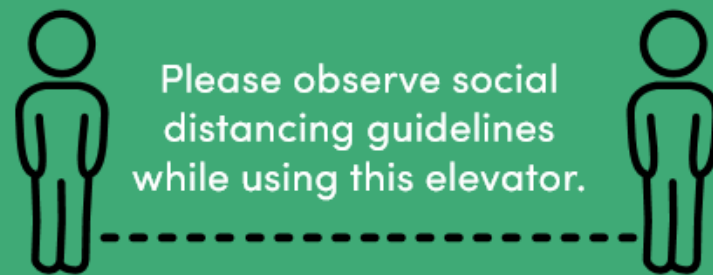
It is recommended that all customers  
over the age of two wear a face covering  
when entering the shopping center.



DO YOUR PART

**FOR YOUR SAFETY  
AND THE SAFETY OF  
OTHER SHOPPERS:**

← 6 FEET →

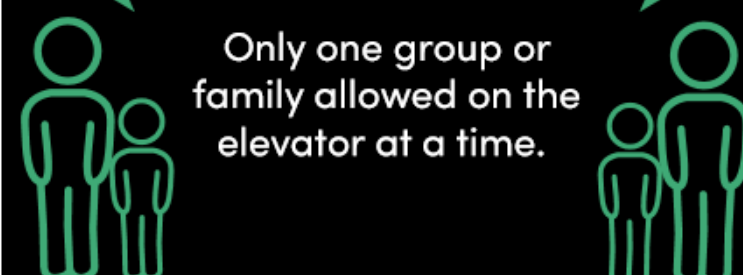


DO YOUR PART

**FOR YOUR SAFETY  
AND THE SAFETY OF  
OTHER SHOPPERS:**

←

Only one group or  
family allowed on the  
elevator at a time.



DO YOUR PART

**WASH  
YOUR HANDS**

Use soap and water and wash  
for at least 20 seconds.



DOING OUR PART

**Drinking Fountain  
CLOSED**

The health and safety of our  
customers, employees, and  
community is always our top priority.

As a precaution, this drinking fountain  
is out of service until further notice

**THANK YOU**



# MELISSA EADS

Corporate Affairs Manager, Nashville Division

---



# KrogerBlueprint.com



## Sharing What We've Learned: A Blueprint for Businesses

Last Revised May 6, 2020  
KrogerBlueprint.com







# Q&A





# PIVOTAL PARTNERS



BASS  
BERRY  
SIMS



# FRIENDS OF THE CHAMBER





# NASHVILLE CHAMBER'S REOPENING GUIDE

---

The Nashville Area Chamber has compiled resources for businesses in Davidson County and in outlying counties to understand when and how to reopen safely:

[nashvillechamber.com/public-policy/reopening-guide](https://nashvillechamber.com/public-policy/reopening-guide)

# ROADMAP FOR REOPENING NASHVILLE

---

Metro Nashville's Roadmap for Reopening Nashville can be found at:

[asafenashville.org](https://asafenashville.org)