



# Legal Connections

LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

AUGUST 21, 2020

Check the CBA's website for the most up-to-date information on court operations during the COVID-19 pandemic: [cbalaw.org](http://cbalaw.org)

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## THE IMPORTANCE OF REMAINING ADAPTABLE

As of August 2020, there have been 4,974,959 COVID-19 cases in the United States. With the highest number of infections in the world, the U.S. has witnessed severe disruption to its healthcare system and economy within months of the first media mention of the virus.



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Although there is still much unknown about the novel coronavirus, businesses that learn to adapt and innovate during uncertain times will benefit from honing this valuable skill and be better prepared for future periods of disruption.

Here are three factors that businesses should approach with an adaptive mindset:

**Health and safety protocols.** First and foremost, COVID-19 is a global

health crisis, and the collective safety of communities and their individual members must remain at the forefront. Employers should:

- Educate and inform employees of safety protocols that are in place and confirm that safety protocols adhere to local, state and federal guidance.

- Be aware that unsafe work environment complaints are on the rise with certain administrative agencies.

- Implement a process that allows employees to report concerns without fear of retaliation. This can help manage complaints as employers may address concerns and adjust accordingly.

**Work flows and processes.** Technology is now at the forefront as a critical tool in maintaining business operations. Employers should implement remote work policies, redesign onboarding and training processes, and identify ways to address the unique challenges employees who are primary caregivers may face.

Businesses should consult with legal counsel before creating policies to mitigate risk. Additionally, employers should work closely with information technology teams regarding heightened cybersecurity as it pertains to client and employee information. Employers should review policies and remain adaptable to the ever-changing environment. Consistency in policy application helps minimize claims of discrimination and unfair treatment.

**Culture and engagement.** We are overwhelmed with information, data,

opinions and our own thoughts. It is important for employers to provide peace within the storm, when possible; transparency and consistency can build employee trust and boost productivity and engagement. Employers should clearly communicate:

- The importance of safety and communication.
- The company's financial performance.
- Ways to boost employee morale and stay engaged in the workforce, especially those who are working remotely.

While we have all heard the phrase, "these are unprecedented times," employers should avoid placing COVID-19 at the center of their business. Instead, employers should be ready to adjust planning and operations to engage employees and adapt. ■

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## CAN I STAY HOME? COVID-19 AND HIGH-RISK EMPLOYEES

The unprecedented impact of the COVID-19 pandemic has created new concerns in the workplace for certain employees who, because of their age or underlying health conditions, are considered at high risk of suffering severe complications from COVID-19. As employers contemplate bringing employees back

into workplace, two crucial questions arise: can high-risk employees be required to return to the work? Can they be required to remain at home?

To answer these questions in our new reality, employers must remember that all existing EEO and anti-discrimination laws still apply. Under the Americans with Disabilities Act, some employees with



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recognized disabilities are also high risk COVID-19 employees. For these high-risk employees, many may request a reasonable accommodation of telework. If the employee can work remotely and the telework does not cause the employer undue hardship, the employee should be accommodated.

For high risk employees who cannot telework or who wish to return to workplace, an employer cannot exclude them from the workplace solely because they are high risk. Rather, the employer must engage in the interactive process with the employee to determine whether a reasonable accommodation can be provided. Creativity and flexibility on the part of

both the employer and the employee is crucial in determining whether a reasonable accommodation is possible. Often these reasonable accommodations can take the form of low-cost solutions such as plexiglass dividers and barriers to ensure minimum distances. More involved accommodations can include temporary restructuring of the employee's marginal duties, temporary transfers or modifications of work shifts or schedules to limit exposure.

It may be that not every high-risk employee can return to the workplace. If the reasonable accommodation requested creates an undue hardship to the employer, an employer is not required to make the accommodation. Similarly, an employer may exclude a high-risk employee from the workplace if

## EDUCATION & EVENTS

### Live Webinar: Early Dispute Resolution Protocols

1.5 CLE Hours (0.75 Prof. Conduct)

### 2020 Probate Law Institute

Wednesday, September 9 • 9 a.m. – 4:30 p.m.  
6.5 CLE Hours (2.5 Prof. Conduct)

All classes listed are offered by the Columbus Bar Association through Zoom. To register, call 614-221-4112 or enroll online at [www.cbalaw.org](http://www.cbalaw.org).

that employee's disability poses a "direct threat" or significant risk of substantial harm to the health or safety of himself or others that cannot be eliminated or reduced by reasonable accommodation. ■



📅 September 9, 2020

🕒 9:00am–4:30pm on Zoom OR @ the CBA

**Probate  
Law Institute**  
→ 2020 ←

Join the Hon. Robert G. Montgomery and a stellar slate of instructors for the 2020 Probate Law Institute! Attend in person at the CBA (if COVID-19 restrictions allow) OR on Zoom as a live interactive webinar. **Approved for 6.5 CLE hours (with 2.5 Prof. Conduct), including specialty CLE credits.**

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