

Developing and Implementing a Preparedness & Response Plan



COVID-19

DeAndre' Harris | Gerardyne Drozdowski | Gaëtan Gerville-Réache

April 17, 2020

© 2020 Warner Norcross + Judd LLP
These materials are for educational use only. This is not legal advice and does not create an attorney-client relationship.



Warner Norcross + Judd



DeAndre' Harris

- Labor and employment attorney who focuses on disability and leave, wage and hour, discrimination, harassment, and retaliation issues
- Guides clients through workplace safety and health issues
- Litigates labor and employment disputes



Gerardyne Drozdowski

- Represents employers on workers' compensation defense matters
- Helps employers with preventative measures, rehabilitation and litigation
- Health care background

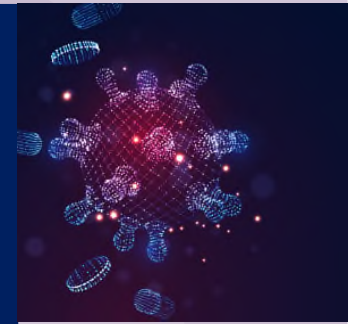


Gaëtan Gerville-Réache

- Represents businesses in a variety of civil litigation, with a special focus on handling state and federal appeals

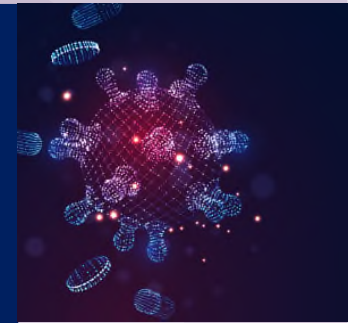
Overview

- Risks of operating without a properly implemented P&R plan
- Developing a plan that complies with Executive Order 2020-42
- Implementing the plan to minimize risk to employees and the company
- Q&A



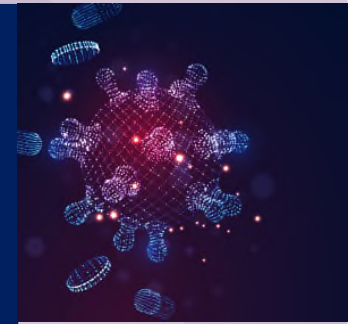
The Risks

- Death or injury to employees or their family members
- Criminal sanctions
- Business interruption
- Liability exposure
- Stigma



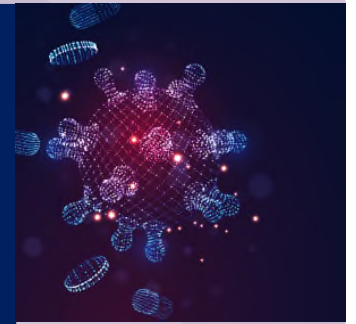
Exposure to Liability

- Worker's Comp will likely cover injury or death of employee infected at work
- Worker's Comp will NOT cover injury or death of infected household members
- Negligence claim



Exposure to Liability

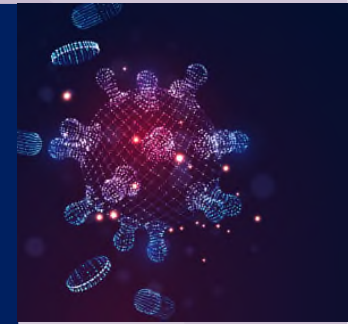
A fully developed and implemented Preparedness and Response Plan is the first and best line of defense.



Developing a Preparedness & Response Plan

Basic steps and principles

Develop a P&R Plan



What is the plan for?

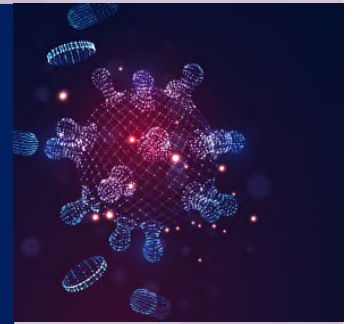
- Identify the risk of occupational exposure
- Determine appropriate control measures



Develop a P&R Plan

Steps in Developing a Plan:

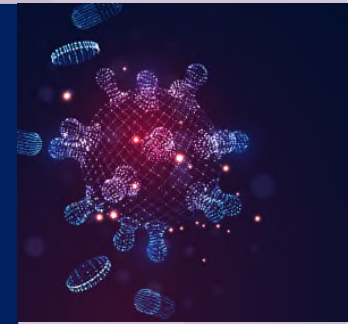
1. Identify baseline safety protocols
2. Identify worker risk levels
3. Determine additional controls to prevent exposure based on risk level



Develop a P&R Plan – Step 1

Identify baseline safety protocols:

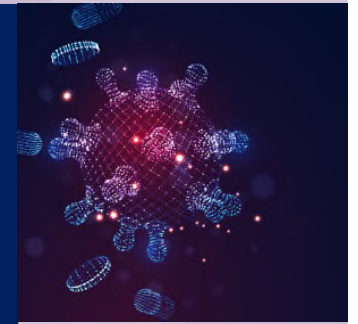
- OSHA Guidance on Preparing Workplaces for COVID-19
- CDC Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019
- State and Local Governmental Orders



Develop a P&R Plan – Step 1

Identify baseline safety protocols:

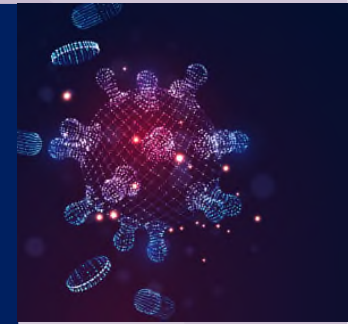
- Basic infection prevention measures
 - Promote social distancing;
 - Promote frequent handwashing, use of hand Sanitizer with 60% Alcohol;
 - Encourage workers to stay home if they are sick;
 - Encourage respiratory etiquette;
 - Provide tissues and no-touch trash cans;
 - Discourage the use of shared work tools/equipment, whenever possible;



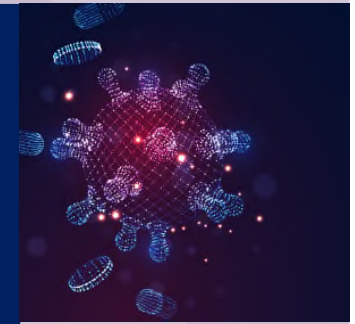
Develop a P&R Plan – Step 1

Identify baseline safety protocols:

- Basic infection prevention measures
- Procedures for prompt identification and isolation of sick people
 - Educate employees about the symptoms of COVID-19;
 - Develop a protocol for positive cases

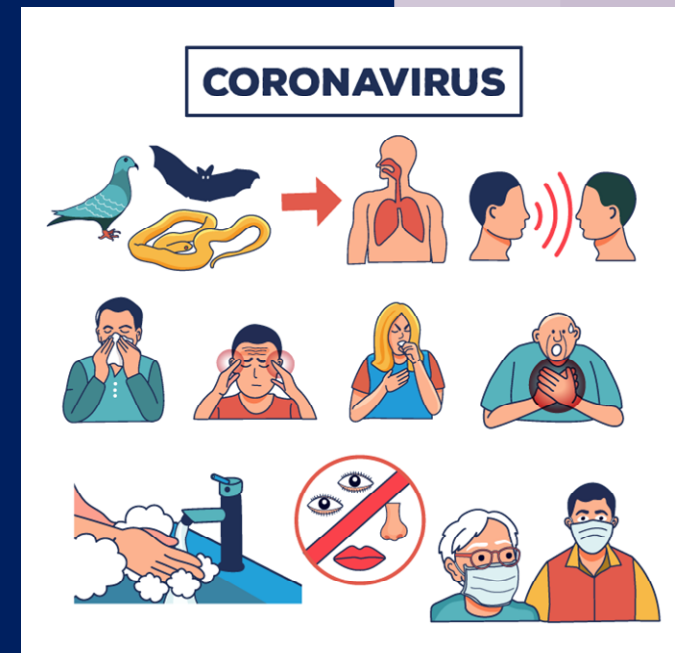


Develop a P&R Plan – Step 1



Identify baseline safety protocols:

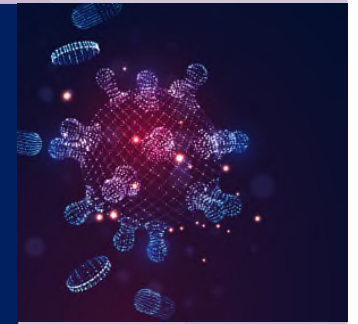
- Basic infection prevention measures
- Procedures for prompt identification and isolation of sick people
- Consider reviewing and updating policies related to sick leave or other time off to comply with guidance



Develop a P&R Plan – Step 2

Identify worker risk levels (low, medium, high, very high):

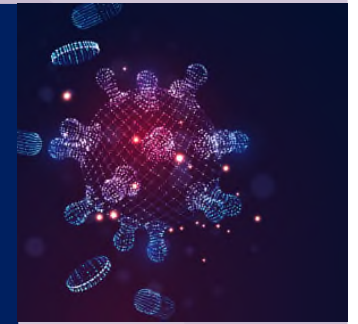
- Which workers having regular contact with others?
- Which workers deal with customers, visitors, deliveries?
- Which workers work side-by-side on machinery or in office cubicles?



Develop a P&R Plan – Step 3

Determine controls based on risk levels:

- Low risk employees: OSHA recommends that employers provide ordinary PPE for the job
- Medium risk employees: provide additional PPE and consider engineering controls (e.g., sneeze guards, barriers)
- High and very high risk employees



Develop a Plan – Do's

Do:

- Tailor the plan to your operations and the risk level of your workers
- Rely on Guidance Provided by the CDC, OSHA, and State/Local Governments



Develop a Plan – Don'ts

DO NOT:

- Use only a template or adopt another company's plan
- Fail to implement the plan

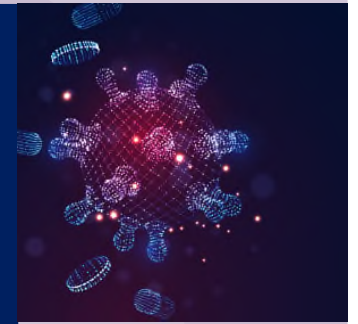


Implementing the P&R Plan

Minimizing risk to employees
and the company

Implement the P&R Plan

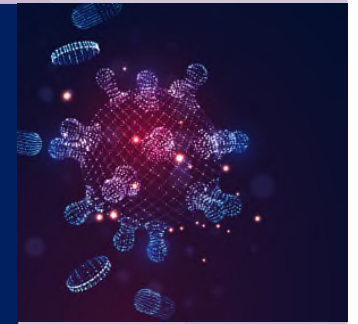
1. Identify who will be responsible to carry out which part (contractor, hygienist, attorney, employee)
2. Set feasible but swift deadlines for completion—time is short now.
3. Follow up and follow through



Implement the plan – standards

What should the exact measures be?

- There are no precise regulatory standards – just guidance and common sense
- But, there are 2 general legal standards that may apply:
 - Section 5(a)(1) of the Occupational Safety and Health Act
 - Common law “ordinary care” standard

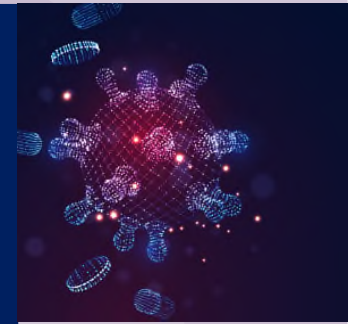


Implement the plan – standards

OSHA § 5(a)(1) – failure to provide a workplace free of “recognized” hazards

- “recognized” either because employer knew better or should have known based on common sense

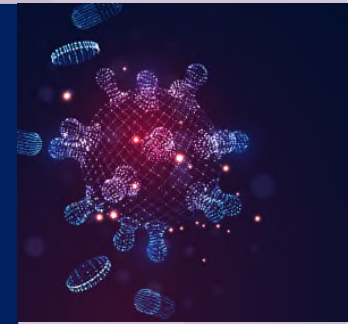
Common law negligence – failing to exercise the ordinary care that a “reasonably careful” person



Implement the plan

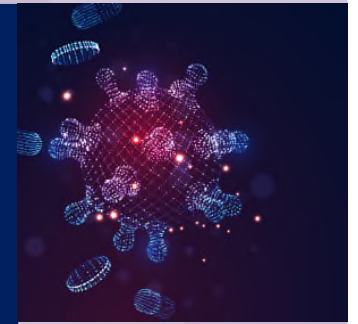
Be the reasonably careful person:

- Do what CDC and local authorities require AND what they recommend
- When in doubt, assign the higher risk level to your workers
- Enforce all safety protocols, always
- Put all employees on watch for violations



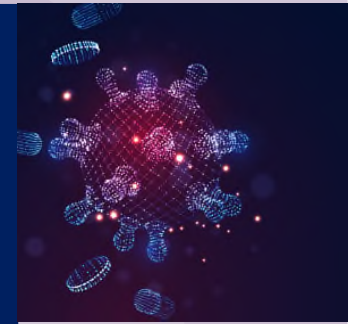
Update the P&R Plan

- Learning new information every day
- The CDC guidance changes
- The Governor's orders change
- The local health regulations change
- Who is going to keep you updated?

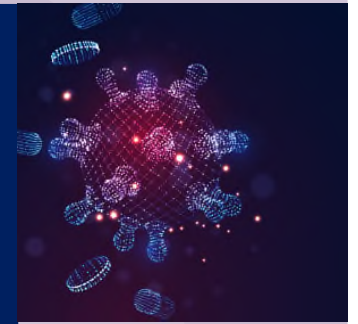


What Warner Can Do to Help

- Help you develop a plan
- Review existing plans to ensure compliance
- Keep your plan up to date as guidance and regulations change



Q&A



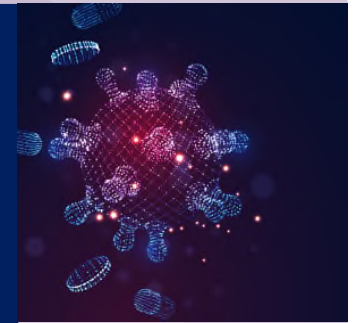
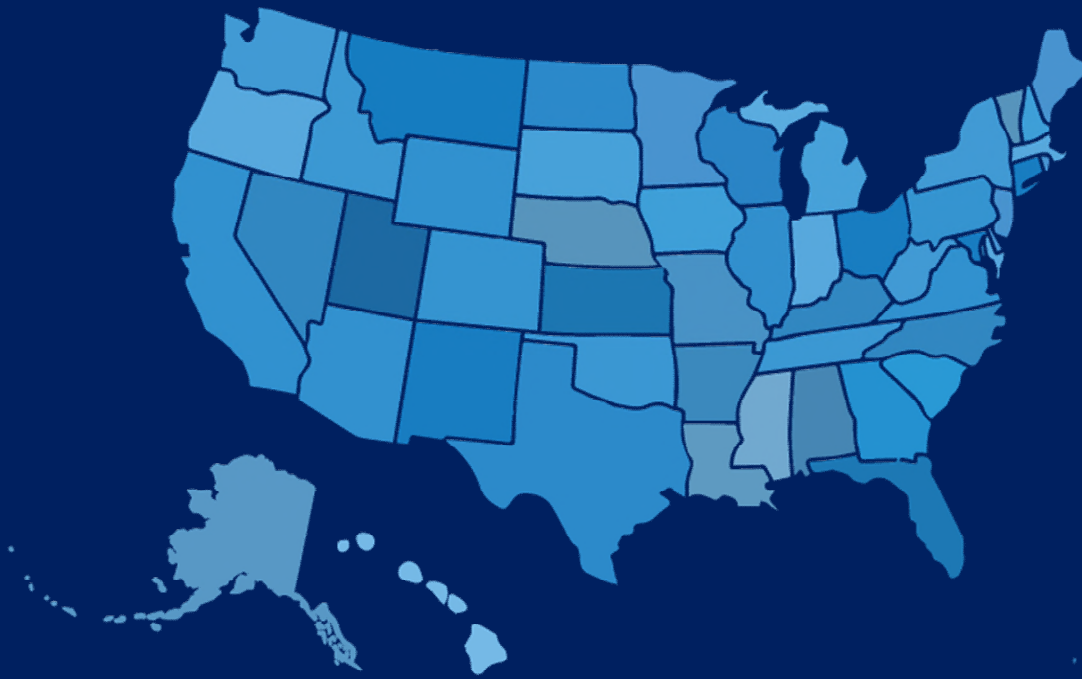
Screening:

- When
- Where
- How



Q&A

Do we have to have a plan if we operate outside of Michigan?



Be Careful Out There



COVID-19

DeAndre' Harris | dharris@wnj.com | 616.752.2331

Gerardyne Drozdowski | gdrozdowski@wnj.com | 616.752.2110

Gaëtan Gerville-Réache | greache@wnj.com | 616.752.2207

© 2020 Warner Norcross + Judd LLP
These materials are for educational use only. This is not legal advice and does not create an attorney-client relationship.



Warner Norcross + Judd