

The logo for Fisher Phillips, featuring the company name in white text on a red, folded banner background.

**Fisher  
Phillips**

# **THE CORONAVIRUS AND YOUR WORKPLACE WEBINAR #3**

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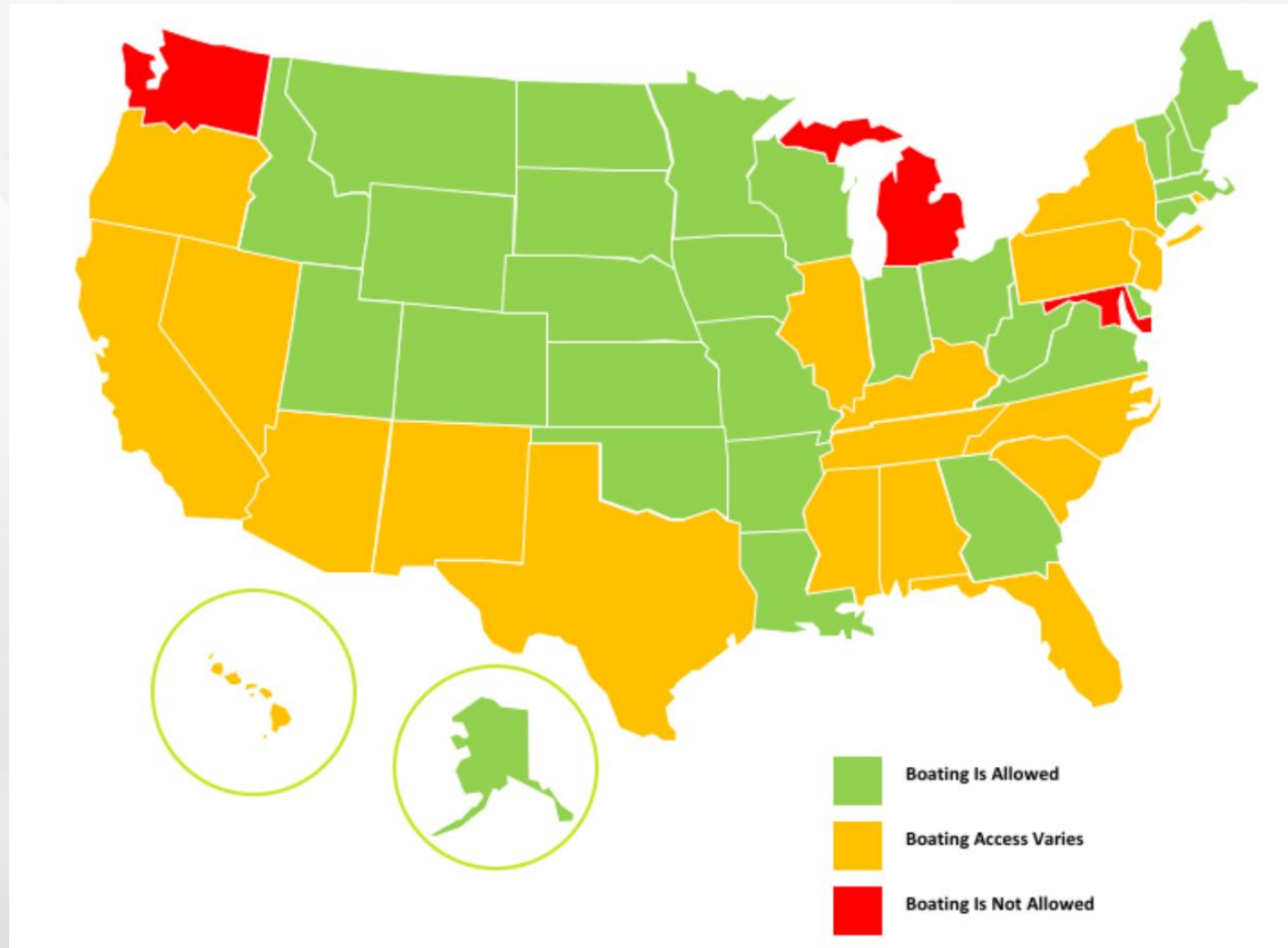
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# Agenda

- Boating Impact
- Taking Temperature of Employees
  - Use of Cloth Mask
  - Risk of Lawsuits
    - Questions

# Boating Impact



Source: NMMA

<http://www.nmma.org/press/article/23200>

# Boating Impact

- Financial Implications
  - Unemployment
  - Potential Increase in Expenses
  - Potential Decrease in Revenue
  - Inventory
  - Cash Flows

# Boating Impact

- Boating can be the path to return to normal.
  - Florida's guidelines balance safety & accessibility.
  - Fuel prices should be attractive.
  - Open Marinas must:
    - maintain social distancing in the marina,
    - have appropriate PPE,
    - have rigorous cleaning schedule, and
    - continue to educate customer.

# Temperature Taking- Why?

- Reduce the risk of spreading COVID-19 through workplace.
- Any individual, employee or visitor, whose temperature indicates a fever will not be permitted to enter the facility.
- Asymptomatic persons may have COVID-19 virus without presentation of symptoms including fever.

# Temperature Taking- Best Practices.

- Test employees prior to starting work each day.
- Person taking temperature must have requisite knowledge to do so and to assess results (CDC states 100.4°F or greater).
- Employees should maintain social distance while waiting for temperature to be taken.
- Thermometers should be disinfected between use if it comes into contact with employee.
- A No-Contact Forehead Thermometer is recommended.

# Temperature Taking- Best Practices.

- Employee thermometer readings will not be revealed to other employees. Test one employee at a time in a private space.
- If an employee is found to have a fever, appropriate steps will be taken to maintain confidential medical information. Will be challenging for small businesses.
- If records are kept, they must remain confidential.
- Direct employees to report symptoms experienced during the workday.



# Temperature Taking- Best Practices.

- Employer must provide PPE to employee administering temperature readings.
- If temperature is being taken in California, a compliant notice pursuant to the California Consumer Privacy Act (CCPA) must be provided.
- Employees should be compensated for time waiting to be tested and during testing procedure.

# Cloth Mask

- CDC recently recommended use of cloth face mask in public.
- Is a cloth face mask considered PPE?
  - Is the employer required to provide?
  - Is the employer required to cover cost?
- No definitive answer from OSHA at this point, but this may place additional obligations on employers.

# Cloth Mask

- OSHA's PPE standard applies to all protective equipment including PPE for eyes, face, head, extremities, protective clothing, respiratory protection, and protective shields and barriers.
- Employer must complete:
  - Hazard Assessment
  - Alternative Options (Engineering Controls)
  - Identify Proper PPE
  - Train Employees (care, use, maintenance, and replacement)
  - Documented Plan

# Cloth Mask

- Employers are not required to provide “everyday clothing”.
  - Long Sleeve shirt, pants, normal work boots, parkas, jackets, gloves, rain coats, Sunglasses, Sun Screen. (Items to protect from weather).
- One may argue that a cloth face mask is everyday clothing if made from a bandanna or t-shirt.
- Some states are requiring employees to wear mask when interacting with the public.
- Employers requiring face mask should provide or pay for them.

# Risk for Lawsuits

- Wrongful Death Lawsuits are beginning to be filed alleging exposure in the workplace led to fatality.
- Expect increase in lawsuits related to terminations, layoff, or downsizing.

# Why would a lawsuit be filed instead of a Worker's Compensation claim?

- Plaintiff's attorneys are bypassing to achieve higher and quicker payout for their clients.
- WC claims are generally capped.
- Some claims cite willful exposure to COVID-19 which may lead to higher recovery.

# In addition to the potential higher payout:

- **Publicity-** take advantage of media coverage. WC claims are not as alluring as complaints in state or federal court.
- **Right to Jury Trial-** generally a WC claim is heard by hearing officer or judge. In a wrongful death claim, plaintiff could elect to have a jury trial. Juries tend to award higher amounts than judges.
- **Access to Additional Funds & Early Settlement-** Lawyers may file lawsuits in lieu of, or in addition to, workers' compensation claims, to gain access to other funds, like general liability insurance policies. To avoid the publicity and costs of protracted litigation, defendants may settle these claims quickly, giving the family a quick payout rather than enduring the lengthy workers' compensation process.

# Ways to avoid or defend such lawsuits:

- Follow CDC's Interim Guidance for Business
  - Includes best practices for social distancing,
  - Quarantining employees with exposure, and
  - Sending employees showing signs of illness home.
- Educate employees and stay engaged with them.
- Inform employees of any confirmed cases of COVID-19 in the workplace.
  - Failing to do so could be a violation of OSHA General Duty Clause.



# What do I do if a lawsuit is filed?

- Notify Counsel and Insurers.
  - General Liability, WC, and Premise Liability.
- Determine with Counsel if early dismissal is possible.
- If lawsuit proceeds, prepare witnesses and gather documents related to company's COVID-19 response.
- Lawsuit may be dismissed if you can show that, given your safety practices, it would be nearly impossible to contract the disease at work due to company's actions or omissions.

# Frequently Asked Questions

# FREQUENTLY ASKED QUESTIONS

**Q: One of our employees self-reported that they came into contact with someone who had a presumptive positive case of COVID-19. What should we do?**

**A:** Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that the employee is asymptomatic for the virus but you are acting out of an abundance of caution. For critical infrastructure workers, they may continue to work if they are asymptomatic and you implement the additional precautions discussed above.

# FREQUENTLY ASKED QUESTIONS

**Q: One of our employees has been exposed to the virus but only found out after they had interacted with clients and customers. What should we do?**

**A:** With respect to coworkers, treating the situation as if the exposed employee has a confirmed case of COVID-19 and sending home potentially infected employees that he came into contact with. As for third parties, you should communicate with customers and vendors that came into close contact with the employee to let them know about the potential of a suspected case.

# FREQUENTLY ASKED QUESTIONS

**Q: When may an employee discontinue home isolation?**

**A:** Have the infected employee follow the direction of their medical provider or local health official regarding the duration of self-isolation. If that guidance is unavailable, there are three options per the CDC for determining when a person may end home isolation, using either (1) a time-since-illness-onset option (7 days),  
(2) a time-since-recovery option (3 days), or  
(3) a test-based option.

# Questions?





# Thank You



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