

MARCH 12, 2020 UPDATE

coronavirus webinar

**Protecting Your Dealership's Employees from Illnesses
and Staying Compliant with
OSHA, ADA, FMLA, and the Safeguards Rule**

PRESENTED BY ADAM CROWELL
PRESIDENT & GENERAL COUNSEL



complynet.com

THANKS FOR PROMOTING

- Chicago Automobile Trade Association
- Ohio Automobile Dealers Association
- Iowa Automobile Dealers Association
- Association of Dealership Compliance Officers (ADCO)
- Association of Finance and Insurance Professionals (AFIP)
- Corkill Insurance
- AutoMotoHR
- Strategic Source

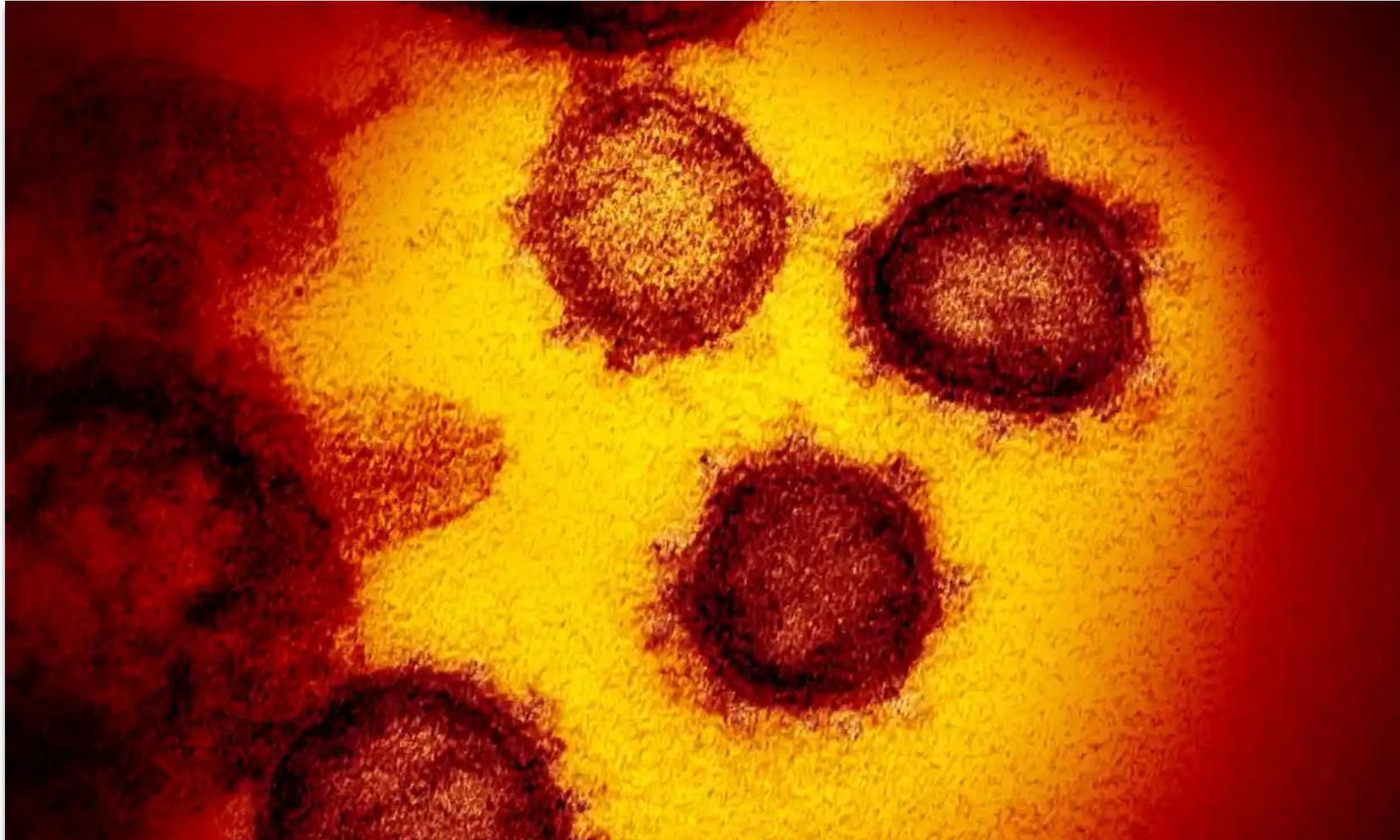
DISCLAIMER

- The contents of this presentation are intended to convey general information only and not to provide legal advice or opinions. The information provided herein should not be construed as, and should not be relied upon, for legal advice in any particular circumstance or fact situation. No action should be taken in reliance on the information contained herein and we disclaim all liability in respect to actions taken or not taken based on any or all of the contents of this site to the fullest extent permitted by law. Your attorney should be contacted for advice on specific legal issues.

WHAT IS COVID-19?

- SARS-CoV-2 is the virus that is currently spreading
 - SARS = Severe Acute Respiratory Syndrome
- The disease it causes has been officially named “coronavirus disease 2019” (abbreviated “COVID-19”)
- There are 7 coronaviruses known to infect humans
- There are alpha and beta coronaviruses
- MERS-CoV and SARS-CoV are betacoronaviruses
 - SARS-CoV and SARS-CoV-2 belong to the same lineage of coronaviruses
- Officially classified as a pandemic by the World Health Organization (WHO)

WHAT DOES COVID-19 LOOK LIKE?



WHERE DID COVID-19 ORIGINATE?

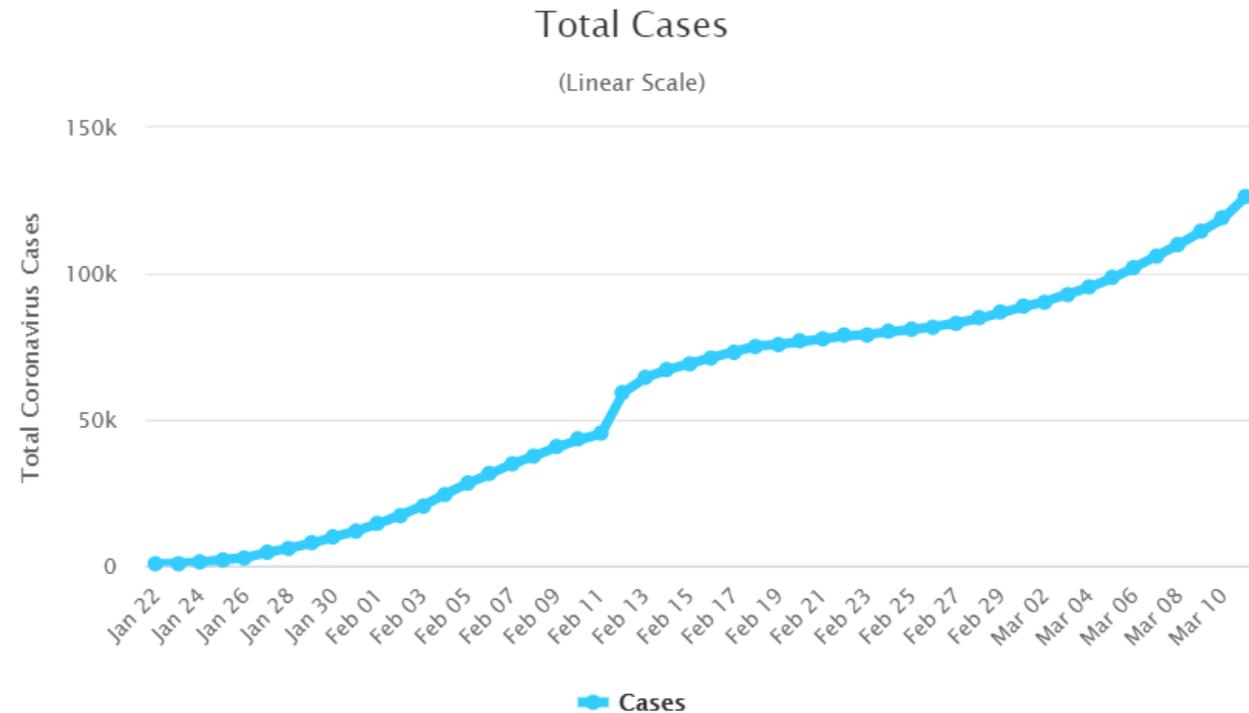
- Initial outbreak was linked to a large seafood and live animal market in Wuhan, China, suggesting animal-to-person spread
- Later, a growing number of patients reportedly did not have exposure to animal markets, indicating person-to-person spread
- Patients with confirmed COVID-19 infections have mild to severe respiratory illness with symptoms such as fever, cough, and shortness of breath
- People start to show signs 2 to 14 days after exposure

SYMPTOMS

SYMPTOM	COLD	FLU	COVID-19
FEVER	COMMON	COMMON	COMMON
FATIGUE	UNCOMMON	COMMON	COMMON
COUGH	COMMON	COMMON	COMMON
SNEEZING	COMMON	NO	SOMETIMES
ACHES & PAINS	COMMON	COMMON	SOMETIMES
RUNNY/STUFFY NOSE	COMMON	COMMON	SOMETIMES
SORE THROAT	COMMON	COMMON	SOMETIMES
DIARRHEA	NO	SOMETIMES	SOMETIMES
HEACACHES	COMMON	COMMON	UNCOMMON
SHORTNESS OF BREATH	NO	NO	COMMON

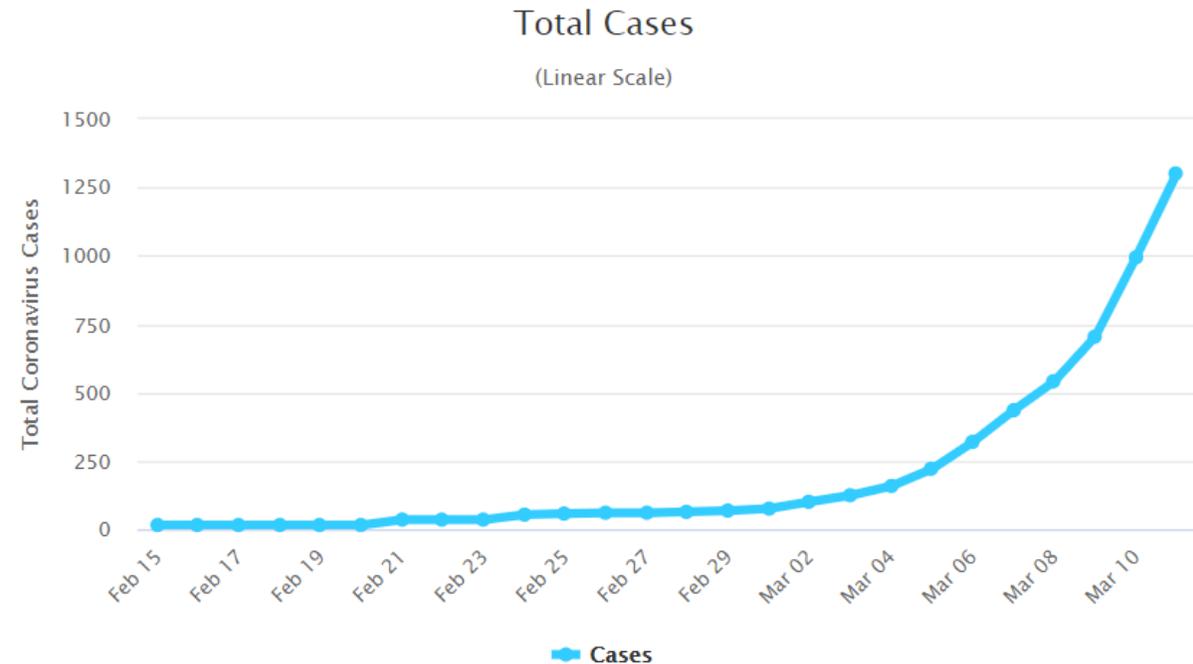
WORLD STATS (3.11.2020)

- Fatalities: 4,633
- All Cases: 126,369
 - Closed Cases: 72,937
 - Recovered: 68,304
 - Fatality Rate of Closed Cases: 6.35%
 - Active Cases: 53,432
 - Mild: 47,725
 - Serious or Critical: 5,707



U.S. STATS (3.11.2020)

- Fatalities: 38
- All Cases: 1,322
 - Closed Cases: 53
 - Recovered: 15
 - Fatality Rate of Closed Cases: 71.698%
 - Active Cases: 1269
 - Mild: 1259
 - Serious or Critical: 10



DEATH RATE COMPARISONS

Flu

0-4 years old

0.007%

5-17

0.002

18-49

0.02

50-64

0.06

65 and older

0.83

COVID-19

10-19 years old

0.02%

20-29

0.02

30-39

0.02

40-49

0.04

50-59

1.3

60-69

3.6

70-79

8

80 and older

14.8

Condition

Death rate

Cardiovascular disease

10.5%

Diabetes

7.3

Chronic respiratory disease

6.3

Hypertension

6

Cancer

5.6

None

0.9

WHY SUCH A WORRY?

- It's novel (aka new) and virtually no one has built-up immunities
- Known fatality rate is much higher than the known 0.1% fatality rate for influenza (flu)
- Fatality rate is lower than the 11% fatality rate of SARS, but COVID-19 has spread much more successfully
- Competing interests of employers and workers:
 - Your Dealerships need employees at dealership to operate
 - Your Dealerships want employees to be safe, and not come to work if sick
 - Non-sick workers do not want to get sick from co-workers
 - Dilemma for sick workers:
 - Option 1: Stay at home and lose money?
 - A 2017 Study from the Economic Policy Institute estimated that the average worker without paid sick-leave would lose his/her entire monthly grocery or utility budget if he/she stayed home for 3 days
 - Option 2: Go to work and create a health risk?

INDUSTRY EXPOSURE RISKS OF COVID-19

- As of March 11, 2020, the CDC and OSHA states that there is a low risk of exposure in most job sectors (currently)
- Workers with the highest risks of exposure:
 - Healthcare workers
 - Deathcare workers
 - Airline workers
 - Border protection agents
 - Waste management workers
 - Business travelers

THE SPREADING OF COVID-19

- It is thought to spread mainly via respiratory droplets produced when an infected person coughs or sneezes, and the droplets can land in the mouths or noses of people who are nearby or possibly inhaled into the lungs



- According to the CDC, it is currently unclear if a person can get COVID-19 by touching a surface or object that has the virus on it and then touching his or her own mouth, nose, or possibly eyes
 - According to CDC Director, the virus is believed to live on metallic surfaces for a couple of hours (and “longer” for cardboard and plastic surfaces)

HAZARD ASSESSMENTS

- OSHA requires employers assess hazards to which their workers may be exposed and, among other things, communicate identified hazards to employees via a written plan and training
- In assessing potential hazards, employers should consider whether or not their workers may encounter someone infected with COVID-19 in the course of their duties
 - These individuals may have signs, symptoms, and/or a history of travel to COVID-19-affected areas that indicate potential infection with the virus

HAZARD ASSESSMENTS

- OSHA standards that may apply:
 - General duty clause: must furnish to each employee a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. 29 U.S.C. 654, 5(a)1.
 - Hazard Communication. 1910.1200.
 - Personal protective equipment (PPE). 29 CFR 1910.132.
 - Respiratory protection. 29 CFR 1910.134.
 - Eye and face protection. 29 CFR 1910.133
 - Hand protection. 29 CFR 1910.138
 - Sanitation. 29 CFR 1910.141

IDENTIFYING POTENTIAL SOURCES OF EXPOSURE TO COVID-19

- In assessing potential hazards, employers should consider whether or not their workers may encounter someone infected with COVID-19 in the course of their duties
 - These individuals may have signs, symptoms, and/or a history of travel to COVID-19-affected areas that indicate potential infection with the virus

PERSONAL PROTECTIVE EQUIPMENT (PPE)

- World Health Organization (WHO) recently issued guidance on the use of personal protective equipment (PPE) in many settings
 - At this time, WHO is not recommending the use of PPE in public settings
 - For those directly caring for someone with COVID-19, WHO is recommending the use of:
 - Medical masks
 - Gloves
 - Gowns/Aprons
 - Eye Protection (Goggles or Face Shield)
 - If speaking with someone suspected to have COVID-19 in person, it is recommended that public health investigators conduct interviews outside, and that the suspected person wear a medical mask

RESPIRATORY PROTECTION

- Facemasks

- Not as effective
 - Only stops larger particles



- N95 Respirator

- Much more effective
 - Must be properly fitted
 - Can be hot and stuffy

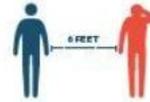


ISOLATION IS KEY

- In all workplaces where exposure to COVID-19 may occur, prompt identification and isolation of potentially infectious individuals is a critical first step in protecting workers, visitors, and others
 - Immediately isolate people suspected of having COVID-19 or that have been exposed by close contact (*i.e.*, move potentially infectious people to a location away from workers, customers, and other visitors)
 - *CDC defines "close contact" as being about six (6) feet from an infected person or within the room of an infected patient for a prolonged period while not wearing recommended PPE. Close contact also includes instances where there is direct contact with infectious secretions while not wearing recommended PPE. Close contact generally does not include brief interactions, such as walking past a person*

COVID-19

A new coronavirus, first identified in China in December 2019, has caused an outbreak of respiratory illness that the World Health Organization named COVID-19 in February 2020.



The virus usually spreads from **CLOSE PERSON-TO-PERSON CONTACT** through respiratory droplets from coughing and sneezing.



The virus may also spread **THROUGH AIRBORNE TRANSMISSION**, when tiny droplets remain in the air even after the ill person leaves the area.



SYMPTOMS MAY DEVELOP WITHIN 14 DAYS OF EXPOSURE to the illness.



Only **DESIGNATED LABORATORY TESTS** can diagnose the virus.

SYMPTOMS OF COVID-19 INCLUDE:



COUGH



FEVER



SHORTNESS OF BREATH

In rare cases, it can lead to severe respiratory problems, kidney failure or death.

THE BEST WAY TO PROTECT YOURSELF



Wash your hands frequently and thoroughly using soap and water for at least 20 seconds. Use alcohol-based hand sanitizer if soap and water aren't available.



Cough or sneeze into a tissue or flexed elbow, then throw the tissue in the trash.



Avoid touching your eyes, nose or mouth with unwashed hands.



Avoid close contact with people who are sick, sneezing or coughing.



Stay home when you are sick.



Clean and disinfect surfaces and objects people frequently touch.



Only wear a face mask if you have respiratory symptoms or are caring for someone with respiratory symptoms.



If you have traveled outside the U.S. in the past 28 days, have a fever, cough or shortness of breath, or had recent contact with someone with fever, cough or shortness of breath, please tell a nurse, doctor or other health care professional as soon as possible. Call before you arrive at the doctor's office or emergency room and tell them about your symptoms.

For more information, please visit hopkinsmedicine.org/coronavirus.

FMLA CONSIDERATIONS

- Employee eligibility requirements for serious health conditions of themselves and immediate family members (spouse, child, parent):
 - Employee must have been employed with the company for at least 12 months
 - Employee must have worked at least 1250 hours during the 12 months prior to the start of FMLA leave
 - Employee is employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site
- If the employee becomes incapacitated due to the point that he or she is unable to work, employee would be entitled to FMLA protection (12 workweeks of job-protected leave) if eligible

ADA CONSIDERATIONS

- Generally, conditions that are minor and temporary (such as the cold and flu) are not protected by the American Disabilities Act
 - However, short-term illnesses may qualify as a disability if it substantially limits one or more major life activities
 - Examples of Major Life Activities:
 - Walking
 - Seeing
 - Sitting
 - Hearing
 - Speaking
 - Breathing
 - Learning
 - Lifting
 - Performing Manual Tasks
 - Taking Care of Oneself

ADA CONSIDERATIONS

- Be mindful that the ADA does prohibit discrimination against *perceived* disabilities
 - Example: Refusing to hire or promote upon the belief that the candidate has a compromised immune system and will contract and spread COVID-19
- Section 1630.2(r) of the ADA does permit employers to require an employee undergo a medical evaluation if the employee's condition could pose a "direct threat" to the workforce due to the employee's medical condition
 - "Direct threat" means "a significant risk of substantial harm to the health or safety of the individual or to others that cannot be eliminated or reduced by reasonable accommodation"
 - Must consider the "(1) the duration of the risk; (2) the nature and severity of the harm; (3) the likelihood that potential harm will occur; and (4) the imminence of the potential harm"

ADA CONSIDERATIONS

- In planning ahead, there are ADA-compliant ways for employers to identify which employees are more likely to be unavailable for work in the event of a pandemic
 - Structure a “Yes” or “No” inquiry that is designed to identify potential non-medical reasons for absence during a pandemic.
 - Ex: If schools or day-care centers were closed, you would need to care for a child?
 - Compliments of ComplyNet, a free ADA compliant *Pre-Pandemic Employee Survey* is available to any dealership that requests one

ADA CONSIDERATIONS

- Can you send an employee home if he or she is exhibiting signs and symptoms of COVID-19?
 - Yes, if you have appropriate leave plans and policies in place that are compliant with the laws prohibiting discrimination in the workplace
- Can you require an employee who is out sick to provide a doctor's note, submit to a medical exam, or remain-symptom free for a specified amount of time before returning to work?
 - Yes, if these requirements are consistent and non-discriminatory
- Get creative: think about whether certain employees can telecommute

REPORTABLE TO OSHA?

- Generally, the following workplace incidents need to be reported to OSHA within the following time frames:
 - Worker fatality within 8 hours
 - Amputation within 24 hours
 - Loss of Eye within 24 hours
 - Inpatient hospitalization within 24 hours if the inpatient hospitalization occurs within 24 hours of the incident
- Death is a possibility (death is reportable if death occurs within 30 days of contracting the virus at work)
- Inpatient hospitalization is unlikely due to gestation period
- Possible Exceptions:
 - Fatality occurred as a result of visiting the establishment as member of general public. 29 CFR 1904.5(b)(2)(i).
 - Could apply, but not likely. Depends on the circumstances.
 - Illness was contracted on a commercial or public transportation system while travelling for work. 29 CFR 1904.39(b)(4).
 - Could apply if dealership employee was flying to a 20 Group meeting, convention, etc.

RECORDABLE ON OSHA FORMS?

- Injuries and illness that occur in the work environment, and results in a fatality, days away from work, job transfer or restriction, or medical treatment beyond first aid are recordable (if your dealership has more than 10 employees)
 - Must be a confirmed case
 - Viral culture or real-time RT-PCR
 - Must be work related
 - Look for a known exposure in the workplace setting
- Possible Exceptions:
 - Common cold or flu does not need to be recorded. 29 CFR 1904.5(b)(2)(viii).
 - Does not apply. COVID-19 is not common cold or flu.
 - Contract illness while visiting establishment as member of general public. 29 CFR 1904.5(b)(2)(i).
 - Could apply, but not likely. Depends on the circumstances.

PRIVACY CONCERNS FOR OSHA FORM 300

- Certain injuries or illnesses require the substitution of “Privacy Case” instead of the worker’s name on the OSHA 300 log
 - None specified in the regulations would qualify for COVID-19, however, be mindful that “if the employee voluntarily requests that his or her name not be entered on the log,” then “Privacy Case” should be substituted for the name on the OSHA 300 log
 - *See, 29 CFR 1904.29(b)(7)(vi)*

PRIVACY CONCERNS – CUSTOMER INFORMATION – SAFEGUARDS RULE

- In order to develop, implement, and maintain your information security program, you shall:
 - (a) Designate an employee or employees to coordinate your information security program.
 - (b) Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such a risk assessment should include consideration of risks in each relevant area of your operations, including:
 - (1) Employee training and management;
 - (2) Information systems, including network and software design, as well as information processing, storage, transmission and disposal; and
 - (3) Detecting, preventing and responding to attacks, intrusions, or other systems failures.
 - (c) Design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.
 - (d) Oversee service providers, by:
 - (1) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue; and
 - (2) Requiring your service providers by contract to implement and maintain such safeguards.
 - (e) Evaluate and adjust your information security program in light of the results of the testing and monitoring required by paragraph (c) of this section; any material changes to your operations or business arrangements; or any other circumstances that you know or have reason to know may have a material impact on your information security program.

PRIVACY CONCERNS – CUSTOMER INFORMATION – SAFEGUARDS RULE

- In order to develop, implement, and maintain your information security program, you shall:
 - (a) Designate an employee or employees to coordinate your information security program.
 - (b) Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such a risk assessment should include consideration of risks in each relevant area of your operations, including:
 - (1) Employee training and management;
 - (2) Information systems, including network and software design, as well as information processing, storage, transmission and disposal; and
 - (3) Detecting, preventing and responding to attacks, intrusions, or other systems failures.
 - (c) Design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.
 - (d) Oversee service providers, by:
 - (1) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue; and
 - (2) Requiring your service providers by contract to implement and maintain such safeguards.
 - (e) Evaluate and adjust your information security program in light of the results of the testing and monitoring required by paragraph (c) of this section; any material changes to your operations or business arrangements; or any other circumstances that you know or have reason to know may have a material impact on your information security program.

THINGS YOU CAN DO

- Survey you employees to anticipate attendance issues
- Develop a written plan
 - Who's in charge
 - Who are the essential employees at your locations
 - Who can telecommute
 - What access do they need
 - What security measures need to be put in place
 - Who travels
 - Risks with vendors
- Review your Attendance, Leave, and PTO policies
- Review Loan and Pay Advance policies
- Consider what you will do if an employee refuses to come to work
- Encourage employees to stay home if sick and to return when cleared by doctor
- Strategically place sanitizer, tissue, and trash cans around your establishments



Adam Crowell
President & General Counsel
614.634.8843
adam.crowell@complynet.com

 **ComplyNet**
complynet.com

EJ Shelby
National Director of Sales
219.308.2649
ej.shelby@complynet.com

 **ComplyNet**
complynet.com

John Cohn
Sales & Compliance Consultant
561.420.5550
John.cohn@complynet.com

 **ComplyNet**
complynet.com