MANAGING THROUGH PANDEMICS

Preparing Your Buildings, Tenants and Staff

BOMA International

EXECUTIVE SUMMARY

Two decades into the 21st century, the world has already faced major pandemic outbreaks including severe acute respiratory syndrome (SARS) in 2003, the H1N1 flu pandemic in 2009 and coronavirus (COVID-19) in 2020. These pandemics forced commercial building owners and managers to rethink their emergency preparedness strategies. While each pandemic brought about new challenges, there are universal steps that can be taken to help reduce exposure and increase the safety of building occupants.

This guide explores critical components of an effective pandemic plan and is organized into six different sections:

- Creating a Pandemic Plan
- Preparing Building Staff
- Preparing Your Building
- Preparing Building Tenants
- Business Continuity
- Legal Considerations

These guidelines are meant to provide a basis for dealing with pandemics before, during and after the event, informing your own emergency preparedness plan and ensuring a safe, healthy and productive environment.

CREATING A PANDEMIC PLAN

Building managers have an obligation to provide healthy and safe environments for their occupants and employees. A comprehensive pandemic plan is one of the most valuable emergency preparedness tools property professionals can utilize, and the creation of a Pandemic Planning Committee is vital to the development and success of the plan. This committee should incorporate input from all critical areas—human resources, communications, information technology, finance, security, engineering, risk management and others—which will enable a thorough and comprehensive approach. These committee members should provide their input and professional expertise and share the work of writing and reviewing the plan.

Building managers have an obligation to provide healthy and safe environments for their occupants and employees.

Key elements to consider:

- **Integration and Adaptability.** Align your plan to integrate with local public health mandates. Consider various scenarios and how to adapt to different security levels.

- **Activation.** Define the triggers that will activate the plan and who is responsible for implementation. Ensure the support of senior leadership and assign a plan supervisor, who has the ability to create an initial program and manage it over time.

- **Communication.** Address who will communicate and the means of communication with all relevant stakeholders, including staff, tenants, media and suppliers. Ensure communication and messaging are consistent.

- **Business Continuity.** Outline the critical business functions needed to continue throughout a pandemic and how those functions will continue (*See "Business Continuity"*).

- **Human Resources.** Consider occupational health and safety concerns and outline company pandemic policies, such as telework, staggered work schedules, how to respond to a sick employee, travel, leave, sick days and vacations during a pandemic (*See "Preparing Building Staff"*).

- **Facility Management.** Specific cleaning protocols may vary depending on the health guidance recommended by public health authorities. Regardless of specific guidance, identify the initial steps that need to be taken as they relate to janitorial services, facility maintenance and building systems (*See "Preparing Your Building"*).

- **Legal Considerations.** Consult with legal counsel to stay abreast of any changes in labor laws and employee and tenant rights (*See "Legal Considerations"*).

- **Information Technology.** It is crucial to evaluate and test the IT infrastructure well before a pandemic occurs to avoid potential disruptions. Assess what equipment and services will be needed if staff members must work from home and incorporate these needs into the budgeting processes.

- **Cybersecurity.** Assess your cybersecurity level and identify the programs that are most susceptible to cyberattacks. Check with the U.S. Department of Homeland Security (DHS)'s Cybersecurity and Infrastructure Security Agency (CISA) to learn more about exploitation strategies that may be used during a pandemic.

- **Training and Exercise Strategy.** Incorporate training strategies to ensure proper execution of the plan and determine a frequency for reviews and practice of procedures and protocols.

PREPARING BUILDING STAFF

During a pandemic, the building staff will be a vital resource. Thus, it is important to make sure they know about and can help execute the company's pandemic plan. There are also personal health and human resources decisions that need to be made to ensure that they understand the proper protocols should a pandemic occur. The information in this section will guide property professionals in developing and practicing a pandemic plan, communicating effectively with staff and forming or altering human resources policies.

COMMUNICATING WITH YOUR STAFF

Developing a strategy for crafting clear messages and establishing open lines of communication with staff requires careful consideration. The following guidance may be helpful when determining communication strategy.

Trust. Building and maintaining trust is essential so that staff will take the necessary actions. Ensure that messaging is concise, prompt, accurate and delivered with empathy. Neither minimize people's concerns nor be afraid to acknowledge what you do not know. While the internet provides endless information at our fingertips, some of this information may be incorrect or misleading. Make sure the information and advice provided to staff aligns with the messages public health authorities are communicating. Direct staff to accurate, trustworthy and reliable sources of information about the pandemic, such as state and local public health departments, the U.S. Centers for Disease Control and Prevention (CDC) and the World Health Organization (WHO).

Timeliness and Transparency. It is important to release pandemic information to staff early; do not wait. Update staff often, providing current, science-based information. Correct errors as soon as they happen. When guidelines change, explain why.

A NOTE ABOUT SOCIAL MEDIA

An invaluable part of the communication toolbox is social media. Best practices recommend using social media to create connections and build relationships, provide real-time information, monitor and dispel rumors and share progress and other relevant news as a pandemic evolves.

When using social media during an emergency, utilize public health expertise to provide credible information. Also, strive to offer messages that promote self-efficacy and provide support. It is also important to understand that not everyone uses social media, so make sure to use other communication channels to interact with building staff throughout the pandemic.

HUMAN RESOURCES CONSIDERATIONS

Human resources (HR) is a critical business function of a well-run operation in normal times. During a pandemic especially, employees will look to human resources for clarification on company policies. Existing policies may need to be adapted and new policies or procedures created. Here are some examples of issues that may arise:

Telework. During a pandemic, many staff may be working from home to mitigate the spread of disease, to care for children if schools and daycare are closed or because offices have been closed or have reduced their hours of operation. Telework policies should address which workers can perform their jobs remotely, flexible hours, overtime, maintaining occupational health and safety requirements, IT needs and remote access capabilities.

Sick Leave. Determine how to manage employees who have been exposed to the disease, those who are suspected of being ill and staff members who become ill while at work. Ensure that sick leave policies are not punitive

or discriminatory in nature and that they emphasize your company's commitment to a safe and healthy workplace.

If an employee tests positive, follow public health authorities' guidance to determine when it is safe for recovered employees to return to work.

Stress-Related Incidents and Mental Health. Pandemics can contribute to employee stress and affect overall mental health. Because they are extended emergencies that disrupt operations and expectations over time—and because they threaten health and well-being at the individual, family and business levels—staff may understandably experience significant stress, fear, anxiety, helplessness and hopelessness. From a business perspective, poor mental health can negatively affect morale, employee job performance, productivity and communication. Employers should acknowledge that people react differently to stress and that it is normal to feel a wide variety of emotions in the face of uncertainty and risk.

It is important to promote healthy ways to deal with these challenges and take care of oneself, such as taking breaks from media, a healthy diet, adequate sleep, regular exercise and regularly connecting with others. Virtual team meetings will allow staff, especially those working from home, to check in and not only report on their work projects, but also connect with colleagues on a personal level, share challenges and offer support.

Help staff recognize signs that may point to the need to seek more help, such as difficulties completing daily activities for several days in a row. Some employees may already be dealing with pre-existing mental-health conditions that can be exacerbated by the pandemic. Make sure employees are encouraged to seek additional support and know how to obtain professional services throughout the pandemic, including the company's employee assistance program, community support help lines and other resources in the local community. Have a policy that clearly explains how stress-related concerns and incidents will be identified and managed during a pandemic. Remember throughout the importance of privacy.

PROMOTING HEALTH AND SAFETY IN THE WORKPLACE

CLEAN WORKSPACES

Staying safe and healthy in the workplace requires a multi-faceted approach that incorporates the latest public health guidance. Employees should be encouraged to wash their hands frequently and thoroughly, use hand sanitizers in addition to soap and water, stay home when sick and observe proper hygiene. Also, discourage workers from sharing office equipment, such as phones and computers. If equipment is shared, provide cleaning and disinfection between uses and have cleaning supplies and personal protective equipment (PPE) close at hand. All of these measures should be communicated frequently and through various channels.

PERSONAL PROTECTIVE EQUIPMENT (PPE)

Government orders may recommend or mandate that employers provide employees with protective gear to keep them safe while performing their jobs. However, depending on the nature of the job, employees' risk of exposure to a particular disease may vary. The types of PPE recommended for a pandemic will be based on the risk of contracting the virus while working, the nature of the virus and the availability of the equipment.

PPE may include gloves, goggles, face shields, masks and respirators. Identify these needs and work with vendors to ensure an adequate supply is on hand. The equipment must be fitted correctly, properly worn, regularly maintained and replaced as necessary. Then, it should be properly removed and disposed of to avoid contamination.

For more detailed information on all aspects of physical health and safety, consult OSHA guidance.

PRACTICING THE PLAN

In order for a plan to be effective, staff education and regular exercises are key. This includes engaging employees at all levels of the organization. Staff should review the company's pandemic plan at least once per year; this review can include the use of e-learning modules, lunch-and-learn sessions or through full reviews during team meetings. Reviewing and practicing the plan will ensure that staff members are familiar with the policies, procedures, roles and responsibilities. Develop a multi-year training and strategy program using various types of exercises including:

- **Drills and tabletop or functional exercises.** Drills will include practicing the plan in full, whereas tabletop exercises are discussion-based sessions and functional exercises are an in-between simulation of the plan.

- **Community exercises.** Consider inviting public and private community partners, including first responders, local emergency management officials and local public health units, to participate in training and exercise sessions. This will benefit both the broader community and the company by promoting cooperation and collaboration in planning for and responding to pandemic emergencies. It is always preferable to have these connections in place before an emergency strikes.

PREPARING THE BUILDING

A pandemic will inevitably have an effect on building operations and systems, so it is important to take proactive measures to ensure the building has the resources and capabilities necessary to respond quickly. This will not only help reduce the spread of the virus, but it will also establish trust among employees and tenants during this uncertain time.

GATHERING SUPPLIES AND POSTING SIGNAGE

Preparing a building to face a pandemic is crucial to protect the health and safety of everyone who enters. Signage is key to communicating building protocols and promoting healthy hygiene. Place signage in key areas of the building, such as in the lobby, elevators, bathrooms and common areas. The CDC and WHO have downloadable signage, that encourages healthy habits.

In addition to the appropriate signage, make sure there are adequate supplies necessary to provide a safe and clean building environment. During a pandemic, providers may experience a shortage of supplies as essential items are placed on backorder. Stock up on products, such as hand sanitizers, janitorial cleaners, paper products and hand soap. In addition to having an ample supply in stock, work with your service providers to formulate a plan in the event supply chains are disrupted.

Identify areas of the building where hand-sanitizing stations will be placed, such as in lobbies, mailrooms, parking facilities, near restrooms and other common areas. If the building has a fitness facility, remember to supply sanitizing wipes for guests to use before and after equipment use. If sanitizing wipes or face masks are required, place covered trash cans close by and also near entrances and exits. These covered trash containers should be emptied and disinfected regularly.

ESTABLISHING BUILDING ENTRY CONTROL PLANS

There are four areas of building entry control and traffic that must be addressed in advance of a pandemic:

MAIN ENTRY

The main points of building entry hold the most vulnerability for exposure. Post building entry rules and signage related to proper personal hygiene near the entrance. Depending upon the nature of the contagion, consider encouraging the use of face masks or coverings to prevent the spread of infection. To determine if masks are required, follow public health authorities' guidance. In addition to signage, also consider placing touch-free hand sanitizers in the building's lobby to further encourage proper personal hygiene.

To protect the safety of employees and tenants, consider installing physical barriers, such as sneeze and cough guards, and partition workspaces if possible. The building staff should, where applicable, properly log all visitors and contractors who enter the building. If someone who has visited becomes ill, these logs will help with contact tracing and may prevent others from unknowingly spreading the virus.

LOADING DOCKS AND SERVICE ENTRIES

The loading dock areas of a building require special attention for two essential reasons: First is the volume and variety of goods coming in from outside sources. Second are the drivers, who have presumably come into contact with many unknown individuals throughout their day. Therefore, the loading dock needs strict plans and rules all staff members must be aware of and follow.

ELEVATORS

Exposure to and transmission of the virus may affect how individuals travel between floors in the building. If social distancing requirements are recommended by public health authorities, controls will need to be put in place to limit the number of people allowed per elevator cab. Consider cab sizes, the number of building floors and the daily number of tenants and visitors when establishing social distancing guidelines for elevator riders.

To help tenants follow the new elevator protocols, place queuing marks in elevator lobbies to reinforce social distancing. Consider using stanchions, floor decals or mats to control elevator traffic. Also designate elevators for "up" and "down" to avoid longer ride times, and program elevators to return immediately to the ground floor for faster loading.

To further ease elevator traffic and wait times, consider opening stairwells, and designate "up" and "down" stairwells. Plan for more frequent and more thorough cleaning and disinfection of stairwells and handrails in response to increased traffic.

COMMON AREAS AND AMENITY SPACES

During the COVID-19 pandemic, many buildings either opted to or were mandated to shut down common spaces to help curb the spread of the virus. Consider how the virus is transmitted and identify if spaces will remain open, operate on a limited schedule or shut down completely.

As the outbreak slows and tenants begin to return to the building, consider keeping amenity spaces closed, restricting access to essential personnel only. Once these areas begin to resume normal operating hours, it may be necessary to rearrange or adjust the setup of the space to accommodate social distancing requirements. For example, increase the space between or restrict use of some equipment (e.g. every other stationary bike or treadmill) and implement protocols for fitness classes and personal training. Review existing waivers, revise them as needed and reissue them for users' signatures. In the building lobby, consider spacing out furniture or reducing seating to promote and support social distancing. Allow bike rooms to remain open and prepare for an increase in bike riders as commuters may seek alternatives to mass transit.

PROVIDING A CLEAN AND SAFE ENVIRONMENT

During a pandemic, building management must provide a clean and safe environment for all involved, be they staff, tenants or visitors. Equally important, management also must communicate the measures that are being taken.

SHARING PREVENTION STRATEGIES

Communicating common-sense prevention practices with tenants and staff can help to reduce the spread of a virus. We recommend the following:

Avoid close contact. The benefits of social distancing in times of a pandemic are well known.

A pandemic will inevitably have an effect on building operations and systems, so it is important to take proactive measures to ensure the building has the resources and capabilities necessary to respond quickly.

Stay home when you are sick. If at all possible, stay home from work and avoid non-essential trips to help prevent spreading the illness to others. Consult with a doctor.

Cover your mouth and nose. Flu and other serious respiratory illnesses, like respiratory syncytial virus (RSV), whooping cough and SARS, are spread by coughing, sneezing or unclean hands. Cover your mouth and nose with a tissue when coughing or sneezing. After using a tissue, throw it in the trash and wash your hands.

Clean your hands. Washing hands often will help protect you from germs. If soap and water are not available, use a hand sanitizer that contains at least 60 percent alcohol.

Avoid touching your eyes, nose or mouth. Germs are often spread when a person touches something that is contaminated with germs and then touches his or her eyes, nose or mouth.

Practice other good health habits. Clean and disinfect frequently touched surfaces at home or work, especially when someone is ill. Get plenty of sleep, be physically active, manage stress, drink plenty of fluids and eat nutritiously.

Reduce face-to-face contact. Moderating contact further reduces the spread of infection. Consider putting protocols in place for staff, clients, tenants and visitors. For staff, consider implementing remote work setups where possible. For tenants and clients, hold virtual meetings in place of in-person meetings.

ALTER CLEANING ROUTINES

Before altering cleaning routines, first understand the janitorial staff's daily schedule for cleaning and disinfection. Talk with service providers to learn more about their pandemic plans. Janitorial companies may refuse to service the property unless proper measures are put in place. Working with your provider, establish what types of cleaning products will be used. In the past, the CDC has recommended using routine cleaning agents that are EPA-certified. Monitor CDC guidance as the situation develops to determine the need to change the products the building is currently using. Depending on building class and occupancy, handheld UVC wands or electrostatic sprayers may be used for quick, high-volume disinfecting; flash restrooms when empty with UVC or electrostatic spray disinfection.

The areas that experience the heaviest amount of foot traffic should receive the most attention. This includes elevators, entrance and exit routes, common areas and lobbies. Pay close attention to frequently touched surfaces in these areas.

If a building employee, tenant or visitor becomes ill or tests positive for the virus, schedule deep cleaning and disinfection in the affected and all building common areas. Follow a defined cleaning program provided by a qualified service provider.

FREQUENTLY TOUCHED SURFACES CLEANING CHECKLIST

- Workstations

- Countertops

- Doorknobs and handles

- Elevator buttons

- Security card readers

- Faucets

- Escalator handrails

ENHANCE BUILDING SYSTEMS MAINTENANCE

HVAC Systems: Determining what, if any, changes need to be made to the building's heating, ventilation and air conditioning (HVAC) system will depend on how the particular virus is transmitted. Review the appropriate ASHRAE standards for specific HVAC-related guidance.

During occupancy hours, it is best to operate HVAC systems normally and have their controls set to maximize the use of outside air. A common operations strategy to combat viruses is to use large volumes of outdoor air as a dilution mechanism for indoor contaminants. Most building codes require all outside air intakes to be at least 20 feet above outdoor grade level. At this height or greater, the outdoor air is clear from any human activity and xpresents a reduced risk of containing virus particles.

Air handlers should be kept in good high-flow operation, with their filters in top condition. Additional strategies can include upgrading MERV filter ratings to assist with capturing finer particles or increasing exhaust and infusion of outside air for re-entry for several weeks.

Plumbing & Water: Should the building face low or no occupancy due to stay-at-home orders or building closures, operate toilets and faucets regularly to avoid the accumulation of biofilm and other bacteria, which can happen in as little as three to five days. Consider flushing and cleaning systems before reopening. Refer to the International Code Council's latest *International Plumbing Code* for flushing and disinfection guidelines and consult with a third party if necessary and practical.

There is also a potential for water seals to dry out in low-occupancy circumstances where there is reduced water flow. Check P-traps to confirm that water seals have not dried out. It is also important to check and service all water systems—hot water heaters, ice machines and filtration systems—regularly.

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establish trust among employees and tenants during this uncertain time.

CONDUCTING EMERGENCY DRILLS

It is important to review existing evacuation procedures to determine if they can be amended to minimize potential exposure. Before implementing changes, contact your local fire official to discuss your plans. Keep in mind the importance of communicating any changes to evacuation plans with tenants to minimize any confusion.

Consider the following:

- Check with local fire officials for new guidance on fire and lockdown drill frequency.

- Ask local fire officials if they recommend suspending fire drills until social distancing requirements have eased or lifted.

- If the local fire official does not recommend drill suspension, request that in lieu of a full-scale evacuation, a lockdown drill be conducted. Lockdown drills were included in the 2018 *International Fire Code* and are designed to encourage practice procedures for active aggressor incidents. Practicing these drills can raise awareness of emergencies without requiring an evacuation.

- If the fire official states that fire evacuations must continue as scheduled without changes, communicate to building tenants that fire drills will still be conducted. Check with state and local guidelines on the use of face masks. Where applicable, consider issuing them to tenants, and require them to be worn in the event of all drills.

While it is important to plan for fire drills, it is even more important to be prepared should an actual fire emergency arise. In those cases where evacuation protocols conflict with social distancing requirements, exiting the building during a fire emergency should be given priority. The following recommendations explore other ways to mitigate exposure during an evacuation:

- If a building has a complete fire sprinkler system, consider asking local fire officials for a "defend-in-place strategy" with a floor-by-floor evacuation. Buildings with voice evacuation systems are especially helpful to guide the process based on where the emergency occurs.

- Consider altering reassembly areas. Designate multiple assembly places that have enough space for social distancing requirements. Ensure that floor fire wardens are familiar with new assembly areas and have them disseminate information to their groups. If possible, mark evacuation locations where they can be plainly seen if those areas are under the building owners' control (e.g. parking lots, green spaces, courtyard, etc.).

- Encourage tenants, staff and visitors to wear masks or face coverings when exiting the building after an alarm is activated. Supply floor wardens with extra masks they can use to disseminate to their groups.
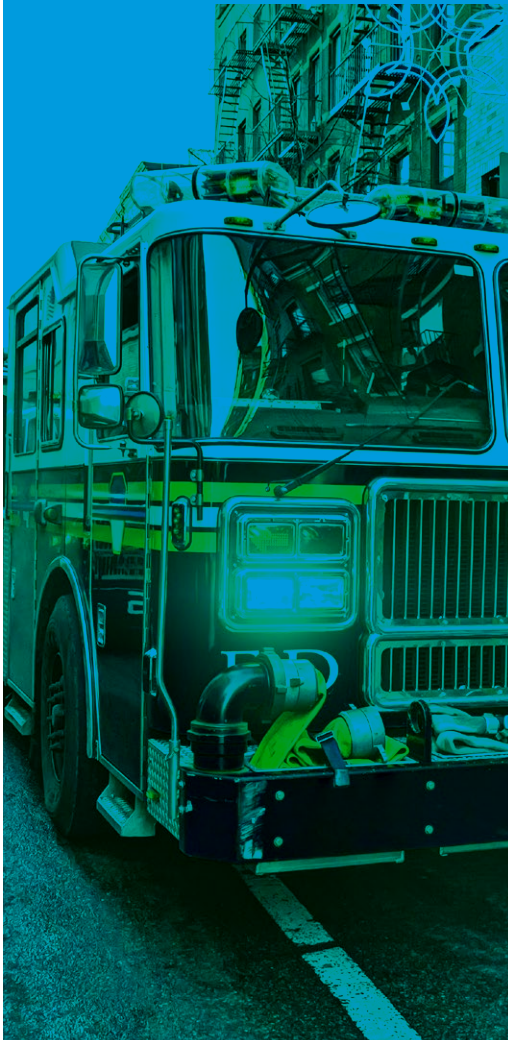
PREPARING BUILDING TENANTS

Tenant preparedness is critical to establishing and coordinating a cohesive approach to preventing exposure within the building. Tenants need to know what changes will take place to management-provided services, building access, deliveries and more. Building management's primary tool in maintaining this partnership will be relevant and timely communication.

SHARING INFORMATION

During a pandemic, tenants will rely on building management for key information on how they can access, operate and maintain their businesses. It is important to be nimble in all communications since guidance can shift quickly in the course of a crisis and may need to be amended as the situation evolves and governmental mandates are imposed, altered and lifted. Any amendments to policies, no matter how often they are made, must be communicated with tenants.

Additionally, if health and safety mandates or stay-at-home orders are issued, share the steps being taken to secure the building and those in it. Provide information and links to such mandates or orders.

It is equally important to have tenants communicate their needs with building management. Encourage tenants to reach out with questions or concerns related to building access, cleaning procedures and business continuity plans. This will help create a partnership in making the building environment safe for employees, guests and building staff. Key items to communicate with tenants include:

- **Building Access.** It is important to discuss tenants' building access regularly and throughout the duration of the pandemic. It is also important to remember that some tenants' businesses must remain open to maintain operations. Consider how they can maintain their operations without giving cause to claim that the building owner or manager is curtailing their ability to run their business (*See "Legal Considerations"*).

  Decide how the building will address visitors. The decision to restrict access or change policies for visitors is not to be taken lightly. Establishing open, constant communication will ensure that, should access need to be limited, tenants will understand the procedures that have been put in place.

- **Cleaning Procedures.** Once new cleaning protocols are established, communicate them with tenants. This not only makes them aware of what is happening in their spaces, it also helps them feel safer, knowing that building ownership and management are taking precautions on their behalf. Should any cleaning protocols require tenants' compliance, coordinate these protocols so tenants can adjust their own procedures accordingly.

- **Rent Abatement.** Pandemics can create a tumultuous situation for businesses, especially those whose ability to conduct business virtually is limited, such as restaurants, salons and some retail shops. These businesses may request financial relief in the form of rent abatement. It is important to be careful and clear in all communication with tenants seeking such relief. The answer may depend on a combination of the specific lease language, insurance policies that may apply, governmental financial aid and business decisions by building ownership. The approach may be varied.

If building ownership is not going to grant all tenants the same form of rent abatement, non-disclosure agreements should be included to prevent tenants from sharing confidential financial information. Specify if a new agreement will include common-area maintenance charges, utilities (if passed through) and other non-mortgage-related costs. Be aware of new laws and regulations regarding rent abatement that may be passed in response to the pandemic. It is important to engage legal counsel in all discussions revolving around finances and contracts.

ESTABLISHING COMMUNICATION PROTOCOLS

As previously stated, preparation for any type of emergency, including pandemics, requires a communications plan. It is necessary that these protocols be put in place before a crisis occurs. Consider reaching out quarterly to tenants to verify the accuracy of the current contact information that is on file. Delivering relevant and timely information to the appropriate people can help ensure that tenants and building managers are on the same page. It also is wise to use these protocols as a periodic test, much in the same way fire drills should be conducted. An emergency is not a good time to test out a new communications plan or system.

BUSINESS CONTINUITY

Business continuity planning relates to all threats to ongoing operations and is a vital tool to help an organization plan for the unexpected. The following practices should be considered as a business continuity plan (BCP) is developed.

CREATING A BUSINESS CONTINUITY PLAN

BCPs are essential for businesses to plan for and recover from disasters in the quickest time possible. Creating a BCP requires a comprehensive analysis of your business and its critical business functions. A helpful framework many businesses utilize to complete this analysis is the Prevention, Preparedness, Response and Recovery (PPRR) model. PPRR helps to anticipate crises and relies upon sequential planning and implementation of actions before, during and after an incident. Using this framework will help identify what should be included in a successful BCP.

PPRR Framework

Prevention. *Actions taken prior to an incident to reduce or eliminate the likelihood and effects of an incident.*

Preparedness. *Actions taken prior to an incident to ensure an effective response and recovery.*

Response. *Actions taken to respond to an incident in terms of containment, control and minimizing impacts.*

Recovery. *Actions taken to recover from an incident in order to minimize disruption and recovery times.*

PREVENTION: RISK MANAGEMENT

Disasters can occur without warning, making it difficult to avoid business disruption entirely. Proper risk assessment will help identify and document each of the functions and services that are likely to be impacted by business disruption. Answer the following questions to help develop recovery priorities and strategies:

- **Likelihood:** What is the probability of another pandemic and the variety of scenarios each might produce?

- **Impact:** What would the impact of different pandemic scenarios be on your operations?

- **Timing and Duration:** At what points in time will an interruption have the greatest impact (e.g. the season, end of the month or the quarter)? How long might those interruptions last?

- **Risk Tolerance:** Given the projected impacts on business objectives, at what point in time must the function be restored and to what level?

PREPAREDNESS: BUSINESS IMPACT ANALYSIS

A full analysis of how the pandemic will affect the business is key to being prepared. Analyze all critical areas:

- **Operational Impacts:** Which operations will be impacted the most? What is the disruptive impact of time on each function?

- **Organizational Structure.** Does the organizational structure align with the critical business functions that need to be protected?

- **Financial Impacts:** Will there be lost sales and income, negative cash flow, increased expenses or contractual penalties? At what point in time must a function or process be recovered to sustain the business?

- **Resource Impacts:** What resources are needed (human, technological, physical) to reduce adverse effects? How will they be secured?

To help prioritize business functions and services, create a matrix of interruptions rated by minor, moderate and significant impacts.

	MINOR IMPACT	MODERATE IMPACT	SIGNIFICANT IMPACT
SERVICE	Little or no disruption to service	Some disruption to service	Loss of service for a period of time
REPUTATION	Little to no damage to reputation	Media coverage or some other damage to reputation	Extensive media coverage or some other damage to reputation
FINANCE	Minor (or no) financial impact	Some financial impact	Significant financial impact
GOALS	Little effect on the company's goals and objectives	Impact on a company's ability to achieve goals and objectives	Major disruption to the company's business

RESPONSE: INCIDENT MANAGEMENT

In order to respond effectively to and manage an incident, have a response plan ready to activate immediately to minimize business disruption. In general, the response plan should include the following:

- **Purpose and Scope.** A statement to all stakeholders of the mission of the plan.

- **Document Manager**. Assign an individual to manage the plan and review, amend and update it at regular intervals.

- **Plan Activation**. Identify who has the authority to activate the response plan and under what circumstances activation is allowed or required.

- **Roles and Responsibilities**. Define specific roles in the implementation of the plan.

- **Contact Details.** Essential contact details for all key stakeholders, including staff involved in implementing the plan.

- **Finances.** Regularly update financial impacts to the business. Track expenses related to the pandemic separate from ongoing operations.

RECOVERY: GETTING BACK TO BUSINESS

It is just as important to plan for recovery from a disaster as it is to prepare for one. How well the company adjusts will have a lasting impact on the affected business functions. The following strategies may minimize the amount of time the business is impacted:

PEOPLE	PREMISES	TECHNOLOGY	INFORMATION	SUPPLY CHAIN
Redeploy existing staff to assist with recovery	Relocate staff to other facilities	Have multiple data center sites	Ensure data is backed-up (off site)	Use multiple sources of materials
Cross training	Displace staff in less critical roles to allow room for staff performing critical activities	Use cloud storage	Store essential documents in secure storage	Identify alternative suppliers
Succession planning		Hold older equipment as emergency replacement or spares		Make sure suppliers/partners have a validated business continuity plan
Use of third-party support, backed by contractual agreements	Remote working—from home or other locations	Control network access		

EXERCISING AND REVIEWING YOUR BCP

Once you have successfully used the PPRR framework to develop the BCP, establish a schedule for exercising and reviewing the plan. A debrief session should be held afterward to both identify any lessons learned and implement changes based on new information gleaned from the exercise.

Keep accurate records of the exercise and debrief sessions. Review these records before the next planned practice to address any issues or implement changes. If changes are made, they must be communicated appropriately.

LEGAL CONSIDERATIONS

In order to create a fully functioning emergency preparedness plan, it is vital to first understand a building's legal obligations. This section will explore contractual, regulatory and tort obligations and insurance considerations.

CONTRACTUAL OBLIGATIONS

Most leases, vendor contracts, loans or other contractual agreements do not adequately take into consideration the impact of a global health crisis. Building owners and managers need to understand and evaluate their contractual obligations to third-party providers.

It is important to identify clearly what everyone is committing to and what performance entails. After all, the contract governs all parties' respective obligations for performance. The contractual obligations may include:

- **Tenant Leases.** In a lease, a landlord makes a defined space available for a tenant's use in exchange for rent.

- **Vendor Contracts.** In a vendor contract, the vendor provides goods and services at specified times in exchange for payment.

- **Service Contracts.** In a service contract, the vendor agrees to provide an objective level of service, such as responding to calls within a specified time.

- **Loans.** Loan agreements, contracts between borrower and lender that outline the loan terms and the responsibilities of each party, can have specific standards imposed on the building owner as borrower.

Whatever the contract, and no matter if the obligation is express or implied, a party's performance under the contract may be limited as a result of external forces. Understanding the standard of performance is important to evaluating risk, liability and the potential for default.

Regardless of whether it is a lease, vendor or service contract, identify all contracts for all services that were in effect or in final negotiations prior to stay-at-home mandates. Once all appropriate contractual obligations have been identified, determine which contracts should be amended, canceled or delayed.

Also evaluate if there are objective standards governing performance. In the context of a lease, these performance standards are either express (e.g. the building owner or manager is obligated to provide janitorial services five days a week consistent with a scope of work, while the tenant is obligated to be open) or implied (e.g. maintaining the premises in a habitable condition without breaching a statutory obligation assigned in the lease).

Think about what circumstances would excuse objective-based performance standards. In the leasing context, invariably the obligation to pay rent is abated in the event of destruction, but there may be a notice and opportunity to cure any breach or default.

Similar clauses in other contracts may either excuse performance or allow for early termination of performance. Many agreements include force majeure or excused-performance clauses, but COVID-19 demonstrated the ambiguity and inadequacy of such provisions. These clauses most likely have a high trigger threshold, generally do not excuse monetary performance and typically excuse performance only for the duration of the event. Interpretation of such clauses generally requires judicial intervention, but in reality, that ambiguity limits the efficacy of such clauses.

In order to create a fully functioning emergency preparedness plan, it is vital to first understand a building's legal obligations.

Acts of war, hurricanes, floods, strikes and the like are frequently specified as conditions excusing performance. However, pandemics are absent in most standard contracts. Government recommendations to stay home or to temporarily close non-essential businesses are likely insufficient to trigger excuse of performance or force majeure provisions. Additionally, these provisions are not usually identified in a party's financial inability to perform. Determine what excuses performance in the contracts, the duration of the excusal period and its ultimate consequence.

Here are a few applications of these concepts in specific contractual relationships:

Tenants. Review and consider revising leases to include new and additional tenant insurance requirements, the building owner's protection from rent abatement and loss-of-use claims and hold harmless protections. In evaluating leases, the building owner or manager also needs to take into consideration not only its obligations to the tenant but also its compliance with governmental regulations and its general obligations to the public. Leases should be evaluated to state clearly all mutual obligations. For instance:

- Does the building owner or manager have a right to close the premises in the event of an emergency?

- Do they have the right to limit access to the property or impose additional security measures on tenants, their employees and visitors?

- Does the tenant have an obligation to meet minimum hours of operation? If the tenant closes for an extended period of time, is it permitted to do so or has it committed to continuous operation?

- Has the building owner or manager assumed a specific additional duty to provide an enhanced level of service to the tenant for security or janitorial services?

- If one tenant's actions or use of its premises threatens the well-being of other tenants, does the building owner or manager have an obligation under the lease to address and fix the issue?

Remember, ultimately, every lease is different. Legal counsel should be sought on the applicability, enforceability and resolution of these types of issues.

Employees. Whether the employees are individual contractors or part of a collective bargaining unit, there will be contractual obligations that must be considered. At-will employees also have certain rights that are contractual in nature, such as the rate of compensation, work hours and benefits. These obligations need to be evaluated by the employer and should include such questions as:

- What express obligations exist with building employees? Can the terms of their employment be modified in an emergency?

- Will complying with governmental regulations modify the terms of their employment?

- What obligations does building management have to employees when another worker, a tenant or a member of the public becomes ill on the premises?

Understand and follow employment-related laws and regulations before implementing new staffing rules, procedures, work requirements, hours/shifts and other requirements and protocols. These include:

- OSHA, Equal Employment Opportunity Commission and National Labor Relations Act.

- State and local orders about essential businesses, returns to work and PPE use; Americans with Disabilities Act (ADA) and state and local anti-discrimination laws.

- State and local sick-leave and virus-specific leave and protection laws.

- Obligations under any legislation passed in response to the pandemic.

- National origin discrimination laws.

- Federal and state laws regarding potential harassment or discrimination of employees.

While many of questions ultimately will be addressed by governmental regulations, the contractual employment obligations should be evaluated by building owners and managers, with their legal counsel's input and advisement.

Vendors. Contracts with vendors are critical to the operation and management of buildings. Frequently, these contracts are revisited only during budget season or when it comes time for a renewal.

In the event of a pandemic, these relationships become critical to the building's ongoing operation. If a vendor commits to delivering certain goods or services, what happens when they are unable to do so? Vendors may have difficulty meeting staffing levels and obtaining necessary supplies. Evaluate the minimum level of service that is required from vendors to satisfy obligations to staff, tenants and visitors.

With that in mind, ask:

- What are vendors' operational and continuity plans? Do they have adequate supplies to meet short-term surges in demand?

- How will they address staffing shortages?

- What are they doing to ensure that their employees are not exposing the property to risk or damage?

- Does every vendor have full insurance coverage? Remember, vendors may be technically exempt, but they will frequently hire independent contractors to assist with their workload. Consider the potential situation where independent contractors state that they were exposed to a contagion at work and possibly bring a claim against the building owner or manager because the vendor did not have coverage.

Every vendor must document that they have a health and safety plan for their staff and for the property. Where appropriate, ask vendors to certify their staff is properly trained in the use of PPE.

Lenders. Loan obligations and covenants should be reviewed and evaluated to determine what flexibility the building owner has in addressing tenant needs and to educate themselves as to what notice is required to the lender. Communication with lenders is critical. Early discussions can help avoid miscommunications, defaults and much more difficult issues. Keep in mind that financial regulations and loan requirements in complex collateralized loans potentially limit the degree of flexibility lenders possess.

REGULATORY LIABILITY

Employees are protected by a variety of regulatory structures. Workers' compensation programs, occupational health and safety regulations, employment-discrimination regulations and health protections are regular sources of oversight and control for HR departments, and they are understandably complex, especially in times of significant health issues.

One such complication comes in the duty to warn employees of health risks, which may actually be limited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Also, an employer's response to a general risk may require additional accommodation of an employee under the ADA or the Rehabilitation Act.

In terms of specific risk, it is important to mention here that, if the building owner or manager becomes aware that an individual who tested positive for a virus was at the premises (whether a tenant, visitor or member of the building staff), there may be a duty to warn others or prevent access to certain areas in the building. However, be sure to protect the identity of the infected person and his/her employer; it is suggested you announce only the floor or area of the building where that person worked or visited.

Federal, state and local authorities may impose obligations upon a building owner or manager with respect to public interaction with their properties. Health recommendations may change over time as more information becomes available. Continually monitor guidance to ensure procedures are up to date. Regular consultation with local public health experts, academic resources, the CDC and others can assist owners and managers in following the latest in best practices.

TORT LIABILITY

Even if there is no contractual or regulatory obligation imposed upon an owner or manager, tort liability may arise. Although the nature of the risk is different in a pandemic, the general rules are likely to be the same.

Regardless of what duty exists, proving liability in a premises case requires:

- Establishing the existence of a duty;

- Showing a breach of that duty by the building owner or manager;

- An injury arising from and proximately caused by the breach; and

- Some type of damage.

There are three main classifications for individuals who enter a property: invitee, licensee or trespasser. Each jurisdiction is slightly different, and many jurisdictions have statutorily replaced the traditional common-law approach, which was to first determine the classification of the individual to then determine what duty was owed to them.

COMMON-LAW APPROACH

In the common-law approach, invitees are customers, vendors, tenants and others who enter the property at the invitation of the building owner or manager. With respect to invitees, they then have the obligation to keep the premises in a reasonably safe condition or to warn the invitee of hidden or concealed danger.

Licensees are individuals who enter the property with the permission of the building owner or manager for the licensee's own purpose and benefit. Again, the owner has a duty to inform the licensee of dangerous conditions or activities.

Trespassers are individuals who intentionally and without consent enter the property of another. Generally, a building owner or manager owes no duty to a trespasser except to avoid willful injury.

ALTERNATIVE APPROACH

On the other hand, the alternative approach followed in a significant number of states is to recognize the existence of a general duty of care being allowed to all visitors. Where the common-law approach has been repealed, it has been replaced with either judicial or statutory guidance as to the general, reasonable duty of care.

So, how do these concepts apply in the setting of managing commercial property in a pandemic? Building owners and managers cannot reasonably control and limit all risks; however, they can pursue reasonable practices to minimize and manage it.

A variety of people enter buildings every day—and for a variety of purposes. Protecting the property, the tenants and the public in a pandemic is essentially no different than managing the property during adverse weather or other risk-intensive events.

Building owners and managers should ensure that the property is regularly inspected, evaluated and maintained consistent with best practices (*See "Preparing Your Building"*). Where unique or unanticipated circumstances arise, then reasonable efforts should be taken to warn tenants, their employees, their visitors and vendors. This may also necessitate taking measures to limit access or providing additional notice.

In undertaking such efforts, it is important that any duty assumed by an owner or manager be performed completely, consistent with best practices. Generally, if there is no duty to act, then there is no liability for the failure to do so. However, if building management acts, it assumes the duty, and the obligation to perform it reasonably is imposed.

INSURANCE CONSIDERATIONS

As in any crisis, the breadth and availability of recourse from insurance policies is established only after the fact. Insurance is nothing more than a contractual obligation allocating risk. Building owners and managers impose insurance obligations on tenants via the lease; lenders impose obligations on owners via the loan covenants; governmental entities impose certain obligations by regulation. Insurance policies are contractual arrangements that are subject to both general and special rules of contract interpretation.

In the commercial leasing context, the standard (that is, best practice) is to require general liability insurance for protection in the event of personal injury. Building owners often require tenants to have business-interruption insurance; lenders require this of owners; and worker's compensation insurance will almost always be statutorily mandated. However, the insurance contract is then further subject to exclusions, exceptions, deductibles or other limitations.

Generally, because insurance contracts are not negotiated, any ambiguity in the agreement will be construed against the insurer. They have had years of experience insuring risks, paying claims and litigating losses. Many policy holders are discovering that insurers, for reasons related to the discussion above regarding excuse of performance or force majeure, are taking the view that a risk such as a pandemic is not covered or their express exclusions extend to prevent claims associated with public health emergencies.

It is imperative for owners and managers to know what coverage they have obligated tenants to maintain; what coverage their lenders obligated them to obtain; what these policies cover; what they exclude; what limitations there are; and what the process is for making claims. The issue of insurance coverage should be of critical, proactive consideration—before there is a loss—for this to be an effective tool of risk management.

CONCLUSION

Pandemics happen on an infrequent basis, but the devastation they bring can be catastrophic. History has proven that pandemics have far-reaching effects and having a well-thought-out pandemic plan can help mitigate the negative impact a pandemic can have on critical business functions.

The commercial real estate industry is unique in that preparing a pandemic plan requires property professionals to look at the business through an objective lens as they consider how to prepare staff, tenants and the building itself while taking into account legal considerations and business continuity practices. BOMA International's approach to developing a pandemic plan takes these important perspectives into account to help craft an all-encompassing strategy that will be successful for years to come. While future pandemic may be transmitted differently, the foundation of your plan—providing a safe and healthy building for staff, occupants and visitors—will remain the same.