



## **TMA Virtual Town Hall Meeting Minutes**

Monday, April 4, 2020, 11:00AM-12:00 PM [ET] *via* GoToWebinar

**Hosts:** TMA President Don Young, *ADT* and TMA Executive Director Celia T. Besore

**Special Guests:** Steven A. Schmit, Senior Staff Engineer, *UL*; Susan K. Ross, Partner, *MSK*; Jeremy Mittman, Partner, *MSK*; and, Stephen Franz, Associate, *MSK*

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The meeting opened with a brief welcome by TMA Executive Director Celia Besore. Ms. Besore introduced the various attendee controls for questions and attendee engagement before introducing TMA President Don Young, *ADT*.

President Young welcomed attendees and guest speakers and offered his appreciation to Ms. Besore for developing and hosting the weekly Virtual Town Hall meetings. He expressed how valuable the information provided by guest speakers is for TMA member companies as each strives to protect their teams, customers, and vendors.

Ms. Besore then highlighted some of the newest resources that had been uploaded to [TMA's website](#), which included:

- Updates to VA and IL licensing and regulations
- Joint Survey conducted by *ESA*, *SIA*, and *TMA* on the impact of the pandemic on members
- Two new sets of guidelines from *DHS CISA*
- A set of Q&As from *EEOC*

### **Steve A. Schmit, UL presentation.**

#### **Highlights from his presentation:**

- *UL's* task force is in the middle of reviewing comments; Noting new to report.
- There was a tremendous response from the industry to a call for comments on the initial release of its Virtual Workplace Guidelines.
- The deadline to provide initial feedback for the new standard is Thurs., May 7, but Mr. Schmit anticipates an extension of one week due to the magnitude of comments.

Ms. Besore introduced special guest speakers from the law firm of Mitchell Silberberg & Knupp LLP, which included Susan K. Ross, Partner; Jeremy Mittman, Partner; and, Stephen Franz, Associate. Each specializes in a facet of employment law.

Ms. Ross began by identifying basic/general steps to prepare for the return of vendors, contractors, or visitors to the place of business. She advised:

1. Appoint a COVID-19 Czar or Team that can speak with one voice regarding policies and can reliably answer questions.
2. Develop a well thought out plan for policies and procedures. Make certain that your plan is in compliance with any standing facility policies and procedures.

Mr. Mittman continued the presentation. He first addressed the question of how to identify which employee(s) should return to work first. He strongly advised employers to focus on job functions; not individual employees – cautioning against any perception of discrimination. Deeply analyze what positions are most needed when re-opening. An employee’s level of engagement and willingness to return to work may also be considered.

When selecting employees, the employer should (recommended, not required) document his/her legitimate reasons for selecting one employee as opposed to another. A company may give special consideration to high-risk employees, or those that have known issues that make them more vulnerable, i.e. advanced age, pregnancy or other health concerns. This is one of the trickiest questions for employers as it carries the potential for a discrimination claim. It is the law vs protecting an individual. **USE CAUTION.**

What about an employee with school-aged children? Do you discriminate between those with children and those without children? This is an area that has less probability for a discrimination suit being raised.

What if an employee expresses concern or a lack of desire to return to the workplace? An employer who has taken reasonable steps within the workplace to protect employees from exposure to COVID-19 does not legally have to accommodate the employee’s request and has the latitude to separate from that employee.

It is suggested that employers ease the transition back to the workplace for employees. Recommendations include staggering shifts, facilitating a “ramp-up period”, and continuing to offer telework opportunities.

Mr. Mittman called for employers to consider implementing a routine for returning employees. The EEOC has issued some guidelines for employers to reference.

### **Some key questions:**

1. *Can an employer require an employee to be tested for COVID-19?*

Yes, an employer can require employees to be tested for COVID-19. The results of the test must be kept confidential. Results must be kept in a separate employee health file – not filed with their HR/employee records. Employers need to realize that this test is only a “snap-shot in time” and be careful making decisions based upon the result.

2. *Can an employer take the temperature of employees? Vendors? Visitors?*

Yes, an employer can take the temperature of employees, vendors, and visitors with limitations. Mr. Mittman notes that temperatures are unreliable (i.e. an employee could run around the parking lot before entering the building) and the act of taking a person's temperature violates the 6 ft. social distancing guidelines. The CDC states that a temperature of 100.4 is considered elevated. Mr. Mittman advises employers to hire 3<sup>rd</sup> party medical personnel to manage any health-related testing.

3. *Can an employer require antibody testing?*

No, an employer cannot require antibody testing of an employee. There is no current CDC guidance on this issue. The main issue for consideration is its reliability. The FDA has only tested and approved a select number of antibody tests. There are liability issues with requiring or performing these types of tests.

4. *Can an employer ask employees to complete a health questionnaire?*

Yes, an employer may implement the use of a checklist to assess an employee's health status. The CDC has developed such a checklist with an extended list of symptoms that can be assessed to determine risk. **Note – If an employee demonstrates any symptoms, the employer should advise the employee to remain at home.**

Mr. Mittman recommended that employers present hygiene training to employees. Training should provide hand-washing instructions and social distancing guidelines. Companies should post signage throughout the workplace to direct and remind employees of key, protective measures.

**Confidentiality is imperative.**

Communicate clearly and succinctly with employees as to the policies and procedures and measures that have been put in place for their safety. A lack of policies and procedures or poor communication of these set an employer up for gross negligence claims.

As to personal protection equipment or PPE, employers must maintain ample supplies of disinfectant. Surfaces must be sanitized often. Give special consideration to areas and objects that are open to all employees and visitors such as the water cooler and the coffee machine. Look to the CDC and/or OSHA for published guidelines that your company can follow.

***Question #1: Is it the responsibility of the employer to keep employees safe? Can an employer require an employee to sign a waiver or release of sorts?***

**Answer/Discussion**

Ms. Ross replied that an employer cannot present an employee with a release-style document for signature. Employers may produce a document that outlines the company's policies and procedures and distribute to employees. It may contain language such as, "Do so at your own risk..." or "If you fail to do this..." Employers have a duty to provide a safe workplace.

***Question #2: What is one employee complains about another, re: risky activity?***

**Answer/Discussion**

Employees should be encouraged to bring any concerns to a designated staff member. If a “renegade” employee is acting in a way that puts others at risk, the employer needs to address it directly. The employee may need to be disciplined; return to virtual work may be a consideration. There is a concern that this may give rise to accuse someone unjustly. This is another reason why having established policies and procedures, and the communication thereof are so very important.

***Question #3: What if a technician goes to a customer’s home without PPE? How do you communicate your policies and procedures for technicians to your customers?***

**Answer/Discussion**

In addition to educating employees about your policies and procedures, consider communicating to customers how your business has adjusted to stop the spread of COVID-19 to customers. If a “renegade” employee is acting in a way that puts others at risk, the employer needs to address it directly.

***Question #4: What is an employee complains that another doesn’t wash their hands before leaving the restroom?***

**Answer/Discussion**

Speakers advised that the employee who is suspected of not washing his/her hands be asked if this is true. The company representatives should then explain the company’s policies and procedures. If there is proof of this action, the employer can opt for discipline action or termination.

**Make certain employees know that policies and procedures are not merely suggestions, but rather mandates for their behavior in the workplace.**

**Other key recommendations:**

1. **Greetings** – Discourage contact greetings by employees, vendors, and visitors. Handshaking is not appropriate. Other greetings to consider include touching of elbows, foot bump, or peace sign.
2. **Equipment sharing** – Prohibit sharing of office equipment, i.e. keyboards, mouse, phones/headsets. If employees work in shifts and rely on the same equipment, the equipment must be thoroughly sanitized between shifts.
3. **Food** – There should be no sharing of food in the workplace. No communal serving. Employees should be directed to bring only food in individual containers; Employers providing food should provide only pre-packed food items.
4. **Mental Health** – Employers should consistently assess their employees’ mental health. Companies may want to consider contracting Employee Assistant Programs (EAP) to supplement and support internal competencies.
5. **PPE** – In an office setting, employees do not need to wear masks nor gloves. **Note: If you require employees to wear masks and gloves, your place of employment will now fall under**

**OSHA directives**, which calls for burdensome tracking, education, and documentation. There may also be city or state requirements for masks.

Mr. Franz addressed social distancing policies in the workplace. Follow group gathering guidelines established in your local area. Communicate directives with signage. He recommended:

1. Meetings be postponed or scheduled on a virtual platform.
2. Only employees deemed essential to the meeting should attend. (The meeting area would need to be sanitized after use. Consider removing chairs from the conference rooms.)
3. Staggering employee breaks so to avoid too many gathering in common areas such as a break room or kitchen area.
4. Evaluate physical workspaces.
5. Discourage equipment sharing (previously noted).
6. Place physical barriers.
7. Designate hallways/pathways as “one-way”.
8. Limit interpersonal interactions.

***Question #5: What will happen when UL doesn't allow for virtual work?***

**Answer/Discussion**

Mr. Schmit asked to defer his response until he has more information. The UL task force is working to determine how to move forward. Long-term directives/standards will unfold for businesses, as the government makes decisions.

President Young commented that TMA has also established a task force to address these issues and will be working in collaboration with UL. He remarked that there are a lot of nuances to explore such as technology. What is practical? What is sustainable?

Ms. Ross commented that the work of UL and TMA may be useful and applicable to other business verticals.

**Closing Statements:**

- Our guests will return on May 11<sup>th</sup> to complete their presentation on legal issues and to answer attendee questions.
- Please share any requests for topics or speakers for future Virtual Town Hall meetings (cbesore@tma.us).
- Share relevant information with TMA and peers.

**Next Steps:**

- TMA will host its next Virtual Town Hall meeting on Monday, May 11<sup>th</sup> at 11:00AM [ET] **via GoToWebinar** to discuss challenges and best practices for addressing COVID-19.