



LEGAL ISSUES AND REOPENING: The Saga Continues

July 29, 2020, 1:00 PM EST

Presentation by Stephanie A. Adams
Law Office of Stephanie Adams, PLLC

Who am I and what is the LOSA?

LOSA lead attorney Stephanie Adams combines experience with municipal law, intellectual property, education law, and employment law, to serve the needs of public and private libraries.

Now as part of the LOSA practice, we support libraries as clients and through the Ask the Lawyer service offered by library councils throughout the state.



Question (s):

The drama around face masks. Are we able to akin it to "No shoes, No shirt, No service"?

See ATL:
<https://www.wnylrc.org/ask-the-lawyer/raqs/138>

Posted: Tuesday, May 5, 2020

[Permalink](#)

MEMBER QUESTION

Can a library prevent someone from coming into the library if they refuse to wear a mask? I know that library behavior policies would need to be broadened to include mask-wearing. Are libraries required to provide a mask for the public - and what if a person wears the mask improperly - can they be asked to leave?

WNYLRC ATTORNEY'S RESPONSE

New York has numerous “types” of libraries, serving a diverse array of locations. **All of them are empowered to take the steps needed to serve their communities safely.**

For libraries who want to do just that—knowing it will be a vital part of their community’s response and recovery—here is how to enact and enforce the use of appropriate personal protective equipment (PPE).

Step 1

Assess your library’s status under the current Executive Orders. Does your library regard itself as exempt from the Orders due to status as a governmental entity (like a school)?^[1] Or has your library been operating under compliance with the 100% workforce reduction...and thus, subject to further such restrictions (or them being eased)?

If your library is subject to the Executive Orders, linking your policy to future Orders is a good idea. That’s why you’ll see that as a variable in the template, below. And if your library concluded it didn’t need to follow them, well, that part doesn’t apply to you.

Step 2

Assess what operations your library will resume. Will you resume lending books, but restrict reading rooms? Will you encourage curbside pickup, or perhaps lower your building capacity to ensure social distancing?

This step assumes that the return to full services might be incremental—but with the resumption of services tailored to the needs of your community. It is where the customization kicks in.



Question (s):

What are legal ramifications of turning away patrons who refuse to wear a mask for physical/psychological reasons?

See ATL:

<https://www.wnylrc.org/ask-the-lawyer/raqs/153>

9-ncov/prevent-getting-sick/cloth-face-cover-guidance.html

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Who Should Not Wear a Cloth Face Covering

Cloth face coverings should **not** be worn by:

- Children younger than 2 years old
- Anyone who has trouble breathing
- Anyone who is unconscious, incapacitated, or otherwise unable to remove the cloth face covering without assistance

Feasibility and Adaptations

CDC recognizes that wearing cloth face coverings may not be possible in every situation or for some people. In some situations, wearing a cloth face covering may exacerbate a physical or mental health condition, lead to a medical emergency, or introduce significant safety concerns. Adaptations and alternatives should be considered whenever possible to increase the feasibility of wearing a cloth face covering or to reduce the risk of COVID-19 spreading if it is not possible to wear one.

For example,

- People who are deaf or hard of hearing—or those who care for or interact with a person who is hearing impaired—may be unable to wear cloth face coverings if they rely on lipreading to communicate. In this situation, consider using a clear face covering. If a clear face covering isn't available, consider whether you can use written communication, use closed captioning, or decrease background noise to make communication possible while wearing a cloth face covering that blocks your lips.
- Some people, such as people with intellectual and developmental disabilities, mental health conditions or other sensory sensitivities, may have challenges wearing a cloth face covering. They should consult with their healthcare provider for advice about wearing cloth face coverings.
- Younger children (e.g., preschool or early elementary aged) may be unable to wear a cloth face covering properly, particularly for an extended period of time. Wearing of cloth face coverings may be prioritized at times when it is difficult to maintain a distance of 6 feet from others (e.g., during carpool drop off or pick up, or when standing in line at



Question (s):

What power do we have to enforce a mask mandate? If someone refuses to leave, is it appropriate to call law enforcement?

CDC guidelines on “Cleaning and Disinfecting Your Facility” if someone is suspected or confirmed to have COVID-19 are as follows:

- *Close off areas used by the person suspected or confirmed to have COVID-19 (Responsible Parties do not necessarily need to close operations, if they can close off the affected areas).*
- *Open outside doors and windows to increase air circulation in the area.*
- *Wait 24 hours before you clean or disinfect.*
- *If 24 hours is not feasible, wait as long as possible.*
- *Clean and disinfect all areas used by the person who is suspected or confirmed to have COVID19, such as offices, bathrooms, common areas, and shared equipment.*
- *Once the area has been appropriately disinfected, it can be opened for use.*
- *Employees without close or proximate contact with the person who is suspected or confirmed to have COVID-19 can return to the work area immediately after disinfection. Refer to DOH’s “Interim Guidance for Public and Private Employees Returning to Work Following COVID-19 Infection or Exposure”³ for information on “close or proximate” contacts. ⁴*

¹ This answer does not apply to employees and visitors like contractors, who must be screened.

² Found as of July 25th, 2020 at
<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/RetailMasterGuidance.pdf>



businessexpress.ny.gov/app/crw?link_goal_state=ScreenOrder~Main~qs\$CRW_OUTCOMES\$global\$global

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OPERATING WITH RESTRICTIONS

Your business is located in county, which is in Western New York region. Western New York is in Phase 4 of reopening.

Your business is currently **permitted to operate with restrictions**. Restrictions that are applicable to your industry are as follows:

Libraries that are operated by a local government or political subdivision are allowed to operate as business restrictions do not apply to government agencies or entities. Libraries that are operated by a not-for-profit or other non-governmental organization may perform curbside or “in-store” pickup once the region in which they are located reaches Phase 1 and may perform other “in-store” operations once the region in which they are located reaches Phases 2-4. Libraries and archives should follow the office-based work guidance for their employee activities, where appropriate.

In order to operate during the ongoing public health emergency, you must comply with all COVID-19 guidelines specific to your business activities and operations, as well as any additional applicable public health and safety guidance issued by New York State.

Question:

If you are requiring masks and social distancing then testing and tracing should not be necessary, correct?




EEOC Guidance

<https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act

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An official website of the United States government [Here's how you know](#)

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Pandemic Preparedness in the Workplace and the Americans with Disabilities Act

***UPDATED IN RESPONSE TO COVID-19 PANDEMIC – March 21, 2020**

***NOTE ABOUT 2020 UPDATES:** The EEOC is updating this 2009 publication to address its application to coronavirus disease 2019 (COVID-19). Employers and employees should follow guidance from the Centers for Disease Control and Prevention (CDC) as well as state/local public health authorities on how best to slow the spread of this disease and protect workers, customers, clients, and the general public. The ADA and the Rehabilitation Act do not interfere with employers following advice from the CDC and other public health authorities on appropriate steps to take relating to the workplace. This update retains the principles from the 2009 document but incorporates new information to respond to current employer questions. For readers' ease the COVID-19 updates are all in bold and marked by an asterisk.

I. INTRODUCTORY INFORMATION

This guidance document was issued upon approval of the Chair of the U.S. Equal Employment Opportunity Commission.

OLC Control Number: EEOC-NVTA-2009-3

Concise Display Name: Pandemic Preparedness in the Workplace and the Americans with Disabilities Act

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Contact tracing requirements

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/RetailMasterGuidance.pdf>

<https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/offices-interim-guidance.pdf>

- Responsible Parties must designate a central point of contact, which may vary by activity, location, shift or day, responsible for receiving and attesting to having reviewed all questionnaires, with such contact also identified as the party for individuals to inform if they later are experiencing COVID-19-related symptoms, as noted on the questionnaire.
- Responsible Parties must designate a site safety monitor whose responsibilities include continuous compliance with all aspects of the site safety plan.
- To the extent possible, Responsible Parties should maintain a log of employees and visitors who may have close or proximate contact with other individuals at the workplace or area; excluding customers and deliveries that are performed with appropriate PPE or through contactless means. Log should contain contact information, such that all contacts may be identified, traced and notified in the event an employee is diagnosed with COVID-19. Responsible Parties must cooperate with state and local health department contact tracing efforts.
- Responsible Parties cannot mandate that customers complete a health screen or provide contact information but may encourage customers to do so. Responsible Parties may provide an option for customers to provide contact information so they can be logged and contacted for contact tracing, if necessary.

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- To the extent possible, Responsible Parties should maintain a log of every person, including employees and visitors, who may have close or proximate contact with other individuals at the worksite or area; excluding deliveries that are performed with appropriate PPE or through contactless means. The log should contain contact information, such that all contacts may be identified, traced

WEAR A MASK.

GET TESTED.

SAVE LIVES.

10

and notified in the event an employee is diagnosed with COVID-19. Responsible Parties must cooperate with state and local health department contact tracing efforts.



You may file a complaint for any of the following reasons:

- You are being forced to work at a business that is not allowed to operate
- You are being forced to work for a business that is allowed to operate, however:
 - Your employer is not taking proper safety and health precautions (see above)
 - You have particular concerns because you or a family member are part of a vulnerable population (i.e. underlying health conditions or over 70)
- Your employer has failed to pay you wages owed for hours worked, earned sick pay or paid time off
- Your employer has threatened or fired you for reasons related to COVID-19
- You qualify for COVID-19 paid sick leave and your employer refuses to pay it
- Your employer is forcing you to work when you are sick

Important: Please review the [guidance from Empire State Development](#) and the [ReOpen NY Website](#) before submitting a complaint.

File a Complaint

Additional Information and Resources

COVID-19 Paid Sick Leave Fact Sheet - Information for Employees:

[English](#) | [Bengali](#) | [Chinese](#) | [Haitian-Creole](#) | [Korean](#) | [Nepali](#) | [Polish](#) | [Russian](#)

COVID-19 Paid Sick Leave Fact Sheet - Information for Employers:

[English](#) | [Bengali](#) | [Chinese](#) | [Haitian-Creole](#) | [Korean](#) | [Nepali](#) | [Polish](#) | [Russian](#)

[Paid Family Leave or Disability Benefits related to COVID-19](#)

[Paid Sick Leave for COVID-19 Impacted New Yorkers](#)

Other Leaves of Absence for Health Conditions: [Family and Medical Leave Act \(FMLA\)](#)

[Families First Coronavirus Response Act: Employee Paid Leave Rights](#)

Frequently Asked Questions about [Wages and Hours](#).

Labor Laws Regarding Fringe Benefit Payments:

[Section 198c of the New York State Labor Law, Benefits or Wage Supplements](#)

[Notice Requirements for Fringe Benefits and Hours](#)

Question:

What rights do employees have in regards to patrons not wearing masks when management is not enforcing the mandate?



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This site allows NYS attorneys and other authorized persons to file legal papers by electronic means. E-filing is authorized for certain case types in certain courts. See our [Authorized Courts and Case Types](#) page.

For information on how to file, view the [NYSCEF Surrogate Court Training for Filers](#).



- E-Filing Now Available in NY County Civil Court - Housing Part**
Effective July 13, 2020 E-Filing is available in the NY County Civil Court -Housing Part
[View Recorded Session](#) for help in navigating the NYSCEF system in Housing Court
- PLEASE REVIEW the information below before sending emails to the NYSCEF Resource Center**
 - The NYSCEF Resource Center is only available to respond to e-mails during regular business hours.
 - The NYSCEF Resource Center is not authorized to provide legal advice.
 - The NYSCEF Resource Center does not have the authority to remove documents from the electronic file or return documents for correction. Such a requests must be made to the specific court or County Clerk where your action or proceeding is pending.
 - To search for court specific contact information go to [NYCOURTS.GOV/COURTS](#)
- FREE REMOTE HOUSING COURT TRAINING**
To assist filers in navigating the NYSCEF system in **Housing Court**, free **ONLINE training session will be offered on Tuesday, August 4th beginning at 2:00 PM** Pre-registration is required by going to [Register for Training](#)
- The Resource Center is UNABLE TO ANSWER PHONES at this time**
Please email all inquires to: nyscef@nycourts.gov and we will respond as soon as possible. Thank you in advance for your patience.

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- [User Manual](#)
- [Filing Requirements](#)
- [Contact Us](#)

Support

- [Follow UCS](#)
- [Request for Public Comment](#)
- [Unrepresented Litigant Fact Sheet](#)
- [E-File Report](#)

Question:

When the Library Board adopts a mask requirement policy, can that policy be challenged in court?

What is the liability of a library if a patron gets COVID-19 from time spent at the library?

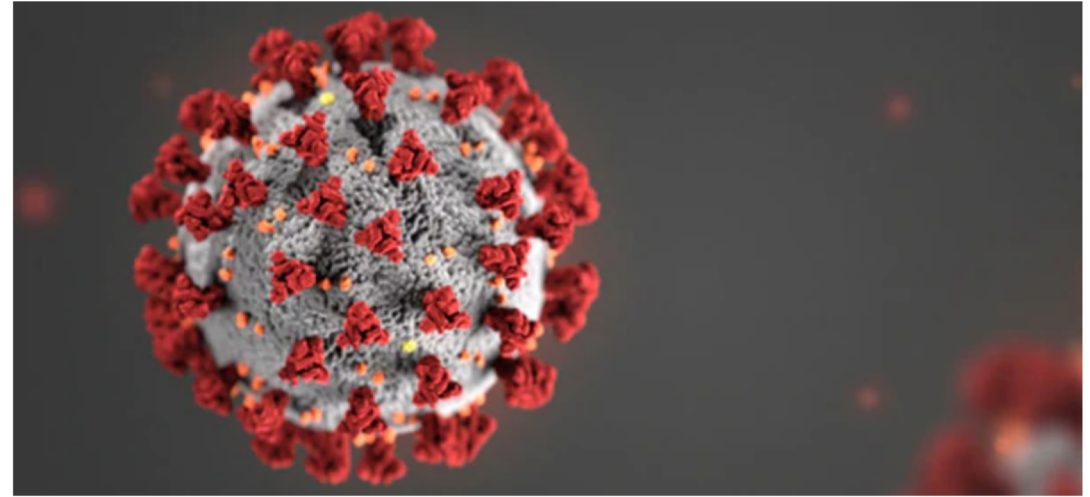


Question:

Where is the line between HIPAA and employee confidentiality (mainly regarding travel, testing...) and what we should and/or need to do for COVID-19 mandates?

What are we required to do with regard to contact tracing information and privacy?

HIPAA and COVID-19



We are empowering medical providers to serve patients wherever they are during this national public health emergency. We are especially concerned about reaching those most at risk, including older persons and persons with disabilities. – Roger Severino, OCR Director.

The HHS Office for Civil Rights (OCR) has provided Bulletins, Notifications of Enforcement Discretion, Guidance, and Resources that help explain how patient health information may be used and disclosed in response to the COVID-19 nationwide public health emergency.



If an employee has family visiting from a "banned" state, should that person be staying home?

governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf?fbclid=IwAR0-ccsUuOmhCm9UIQNtdz8ufxdPtQFXzKUpSiSz9le9vv4

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III. PROCESS

A. Screening. To ensure the business and its employees comply with protective equipment requirements, you agree that you will do the following:

- ☐ Implement mandatory health screening assessment (e.g. questionnaire, temperature check) before employees begin work each day and for essential visitors, asking about (1) COVID-19 [symptoms](#) in past 14 days, (2) positive COVID-19 test in past 14 days, and/or (3) close contact with confirmed or suspected COVID-19 case in past 14 days. Assessment responses must be reviewed every day and such review must be documented.

What type(s) of daily health and screening practices will you implement? Will the screening be done before employee gets to work or on site? Who will be responsible for performing them, and how will those individuals be trained?



← → ↻ coronavirus.health.ny.gov/new-york-state-contact-tracing

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TOP ^ **New York State Contact Tracing**

SECTIONS

- Overview**
- What is Contact Tracing?
- How the Contact Tracing Program Works
- Join the Contact Tracing Team
- Resources
- Translations

Overview

New York State has partnered with Bloomberg Philanthropies, Johns Hopkins Bloomberg School of Public Health and Vital Strategies to create the NYS Contact Tracing Program, a nation-leading initiative to help slow the spread of COVID-19 and make it safer to begin to return to normal again.

Contact Tracers work with people who have tested positive for COVID-19 to identify people they have had contact with and let them know they may have been exposed to the disease.

If you get a call from “NYS Contact Tracing” (518-387-9993), PLEASE answer the phone. Answering the phone will keep your loved ones and community safe.

A contact tracer will:
NEVER ask for your Social Security number
NEVER ask for any private financial information
NEVER ask for credit card information
NEVER send you a link without proper authentication procedures

NEXT SECTION Continue ↓

[What is Contact Tracing?](#)

Question:

How are public libraries handling contact tracing and patron privacy?

See ATL:

<https://www.wnylrc.org/ask-the-lawyer/raqs/149>



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If screening onsite, how much PPE will be required for the responsible parties carrying out the screening practices? How will you supply this PPE?

B. Contact tracing and disinfection of contaminated areas. To ensure the business and its employees comply with contact tracing and disinfection requirements, you agree that you will do the following:

☐ Have a plan for cleaning, disinfection, and contact tracing in the event of a positive case.

In the case of an employee testing positive for COVID-19, how will you clean the applicable contaminated areas? What products identified as effective against COVID-19 will you need and how will you acquire them?

In the case of an employee testing positive for COVID-19, how will you trace close contacts in the workplace? How will you inform close contacts that they may have been exposed to COVID-19?

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Question:

How are public libraries handling contact tracing and patron privacy?

What if a coworker has delayed COVID-19 test results that end up being positive? What are the next steps? And what are the ramifications?

See ATL:
<https://www.wnylrc.org/ask-the-lawyer/raqs/149>

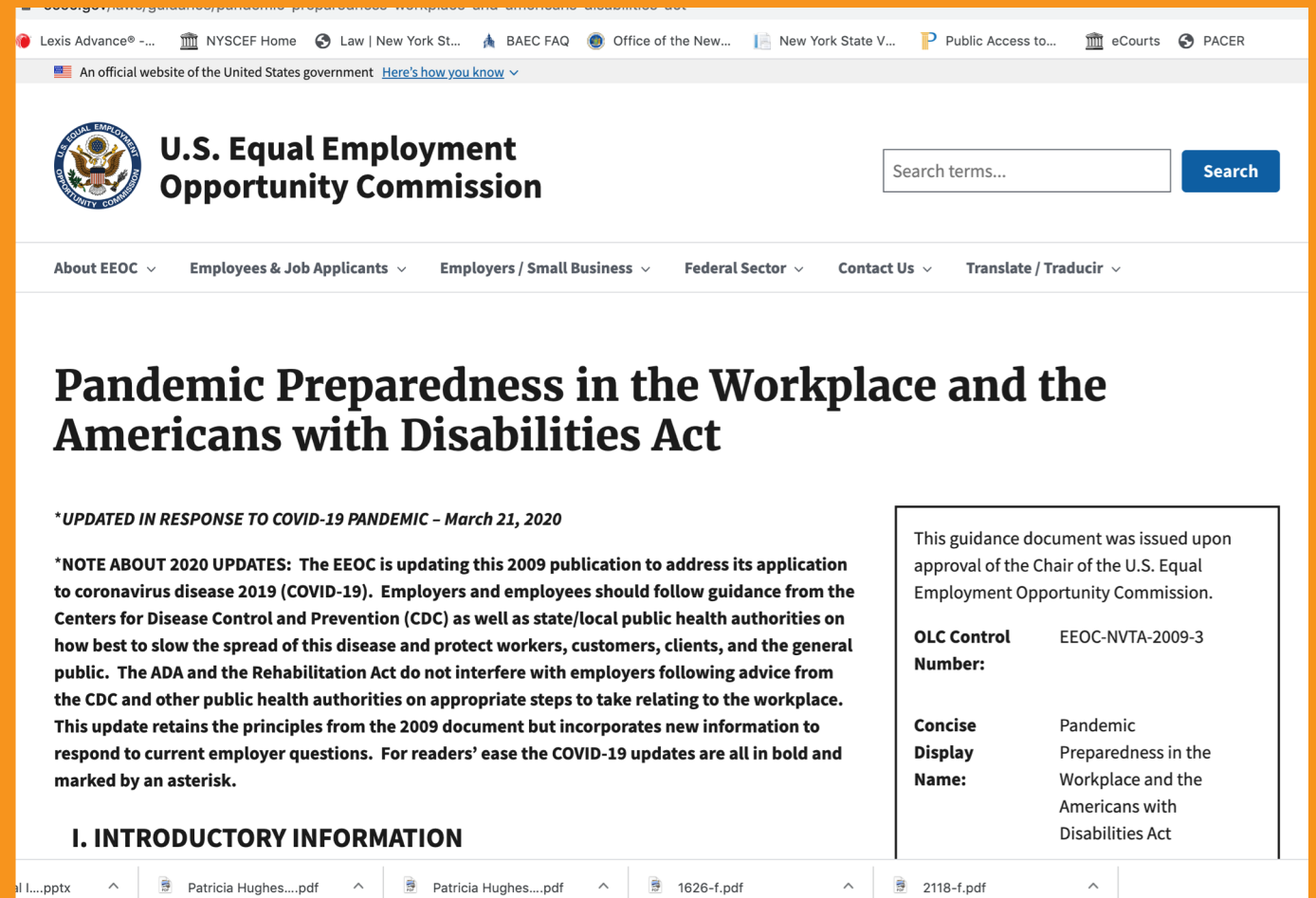


Question:

Can I require an employee to work on site if they are 65+ or have medical issue if their work can't be done remotely?

See ATL:

<https://www.wnylrc.org/ask-the-lawyer/raqs/144>



The screenshot shows the EEOC website with the title "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act". It includes a search bar, navigation links, and a detailed update notice regarding COVID-19. A sidebar on the right provides document control information.

U.S. Equal Employment Opportunity Commission

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OLC Control Number:	EEOC-NVTA-2009-3
Concise Display Name:	Pandemic Preparedness in the Workplace and the Americans with Disabilities Act

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This site allows NYS attorneys and other authorized persons to file legal papers by electronic means. E-filing is authorized for certain case types in certain courts. See our [Authorized Courts and Case Types](#) page.

For information on how to file, view the [NYSCEF Surrogate Court Training for Filers](#).



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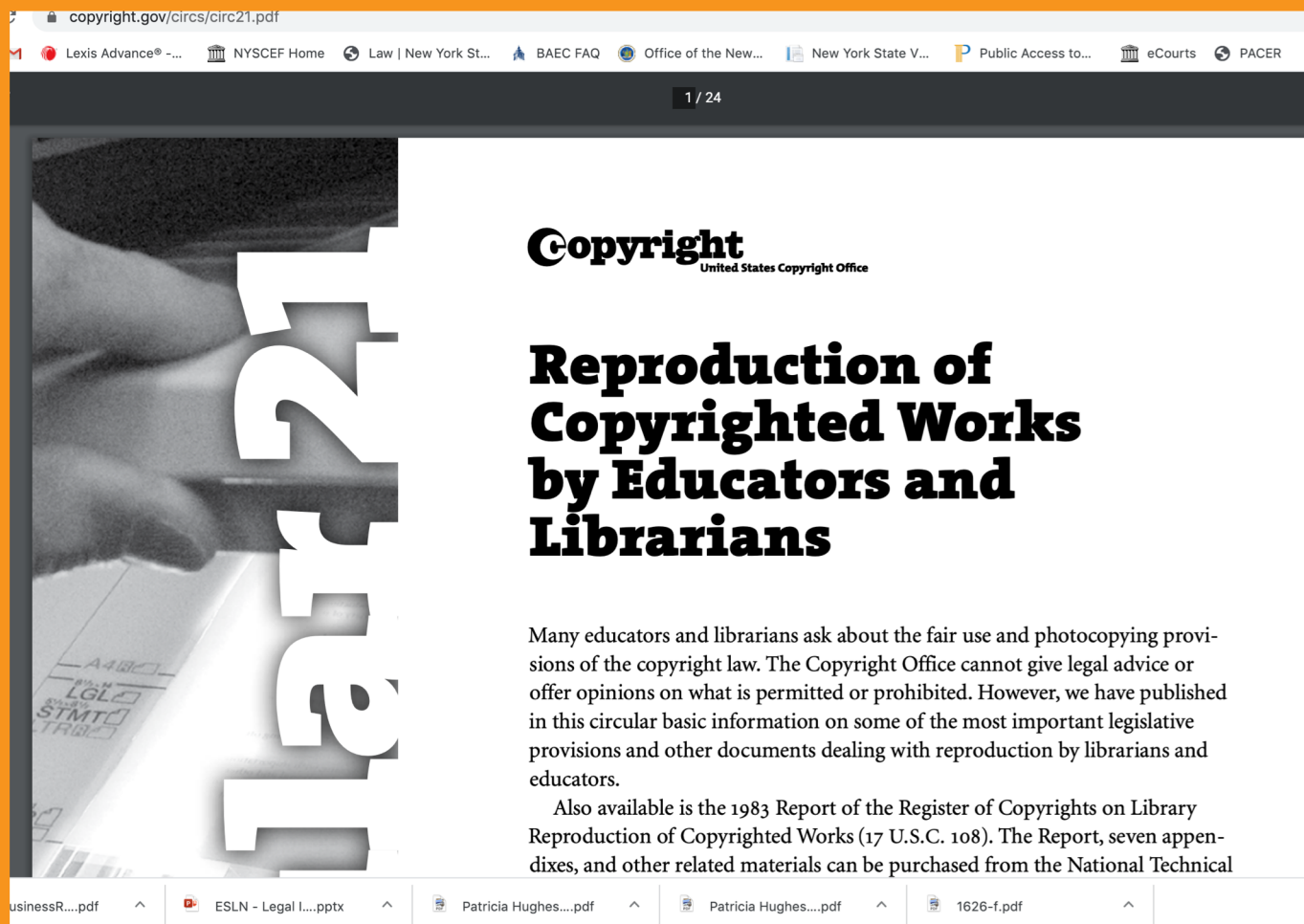
Question:

Can our parent organizations be sued for negligence if proper precautions are not in place?

See ATL:

<https://www.wnylrc.org/ask-the-lawyer/raqs/151>





Question:

Can you discuss limits on photocopying of library reserves and possible penalties?

See ATL:

<https://www.wnylrc.org/ask-the-lawyer/raqs/155>



Question:

What will happen if the executive order allowing virtual meetings doesn't get extended?

See:

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.48.pdf



Question:

What capacity restrictions should libraries observe in programming indoors and outdoors if there are any?

governor.ny.gov/sites/governor.ny.gov/files/atoms/files/NYS_BusinessReopeningSafetyPlanTemplate.pdf?fbclid=IwAR0-ccsUuOmhCm9UIQNtdz8ufxdPtQFXzKUPSiSzf9le9vv4h...

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Contact Information:

Owner/Manager of Business:

Human Resources Representative and Contact Information, if applicable:

I. PEOPLE

A. Physical Distancing. To ensure employees comply with physical distancing requirements, you agree that you will do the following:

- ☐ Ensure 6 ft. distance between personnel, unless safety or core function of the work activity requires a shorter distance. Any time personnel are less than 6 ft. apart from one another, personnel must wear acceptable face coverings.
- ☐ Tightly confined spaces will be occupied by only one individual at a time, unless all occupants are wearing face coverings. If occupied by more than one person, will keep occupancy under 50% of maximum capacity.

STAY HOME. STOP THE SPREAD. SAVE LIVES.



Question:

We are a special district library - do trustee candidates still need to collect signatures? Any other changes?

See:

<https://www.governor.ny.gov/news/no-20251-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

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TOP ▲ **No. 202.51: Continuing Temporary Suspension and...**

Real Property Tax Law Section 925-a is no longer in effect.

IN ADDITION, I hereby temporarily suspend or modify for the period from the date of this Executive Order through August 12, 2020, the following:

- Subdivision 1 of section 259 of the Education Law to the extent necessary to reduce the required number of signatures on registered public or free association library funding petitions to three and three tenths percentum of the total number of votes cast for governor at the last gubernatorial election in such municipality, excluding blank and void votes. Such petitions shall be submitted no less than 30 days prior to the scheduled election.
- Any state law, rule or regulation governing the gathering of nominating petitions for any public library district or special library district election to the extent necessary to provide that the minimum threshold requirement of signatures on nominating petitions for library trustee elections to be held on September 15, 2020 or on a subsequent date after September 15 through December 31, 2020, shall be a number equal to seventy percentum of the minimum number provided for by Education Law or the governing statutory provisions of such library. Such petitions shall be submitted no less than 30 days prior to the scheduled election.

GIVEN under my hand and the Great Seal of the State in the City of Albany this thirteenth day of July.



Question:

How would you recommend documenting and organizing COVID-19 updates and guidelines on site?



The screenshot shows the homepage of the NYLA COVID-19 Library Reopening Plan Database. The header features the NYLA logo and the text "NEW YORK LIBRARY ASSOCIATION Voice of the Library Community". A navigation menu includes links for Home, About, Membership, News and Events, Advocacy, Career Resources, and a partially visible "Ver" link. A dark blue bar contains "Login" and "Search" buttons. The main heading is "COVID-19 Library Reopening Plan Database". The body text explains that the database was created by Urban Librarians Unite and NYLA to help libraries with reopening plans, and it is sortable by library type, geographic area, and service population size. A blue link at the bottom encourages sharing plans.

NYLA
NEW YORK LIBRARY ASSOCIATION
Voice of the Library Community

Home About Membership News and Events Advocacy Career Resources Ver

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COVID-19 Library Reopening Plan Database

Coming up with a safe reopening plan can be complicated and there is a lot of information out there to sift through. Urban Librarians Unite and NYLA have partnered to provide a shared database of NYS library reopening plans. If you have a reopening plan you are using, [please share it here](#), and if you need resources to build your own plan this database is sortable by library type, geographic area, and service population size.

[Let's work together to keep our library workers and patrons as safe as possible.](#)



This is a deep array of questions, requiring a deep array of answers.

But let's start with the basics.

There are 64 SUNY campuses, some with more than one library.

What's cool about these libraries? They aren't just collections of books on a campus, but distinct entities within their institutions, governed by the body of laws that apply to all libraries in New York, as well as the law that is SUNY-library specific.

The "SUNY-library specific" law is Education Law 249-a, which states:

The state university trustees and the board of higher education of the city of New York are hereby authorized to establish such rules and regulations as may be necessary and appropriate to make provision for access and use by the residents of the state of the libraries and library facilities of the public institutions of higher education under their respective jurisdictions.

In other words: SUNY and CUNY have libraries, and the boards of SUNY and CUNY can set those libraries' rules, including the rules governing access.

SUNY's^[1] board has established "such rules" by, among other things, adopting a policy on "Public Access to SUNY Libraries"^[2] which states:

It is the policy of the State University of New York (University) that the public is given access to University libraries insofar as possible. Since implementation of this policy has fiscal and administrative implications, campuses may extend the facilities of their libraries to the public whenever it can be done and in a manner that is both fiscally sound and consistent with their primary educational mission.

What does this mean for public access to those libraries?

State law gives SUNY broad authority "to establish such rules...for access and use by the residents of the state." SUNY then uses that authority to develop a policy requiring "that the public is given access to University libraries insofar as possible." BUT, after asserting that broad goal, SUNY allows individual campuses to tailor that access based on the "fiscal" and "administrative" considerations of individual institutions. So while access to the public is the stated goal, the conditions for access are really up to the individual libraries (and the academic leadership they report to)

Question:

SUNY campus libraries are required by law to allow some public access. Does the current situation (state declaration of emergency) mean we can restrict access on campus?

<https://www.wnylrc.org/ask-the-lawyer/raqs/157>

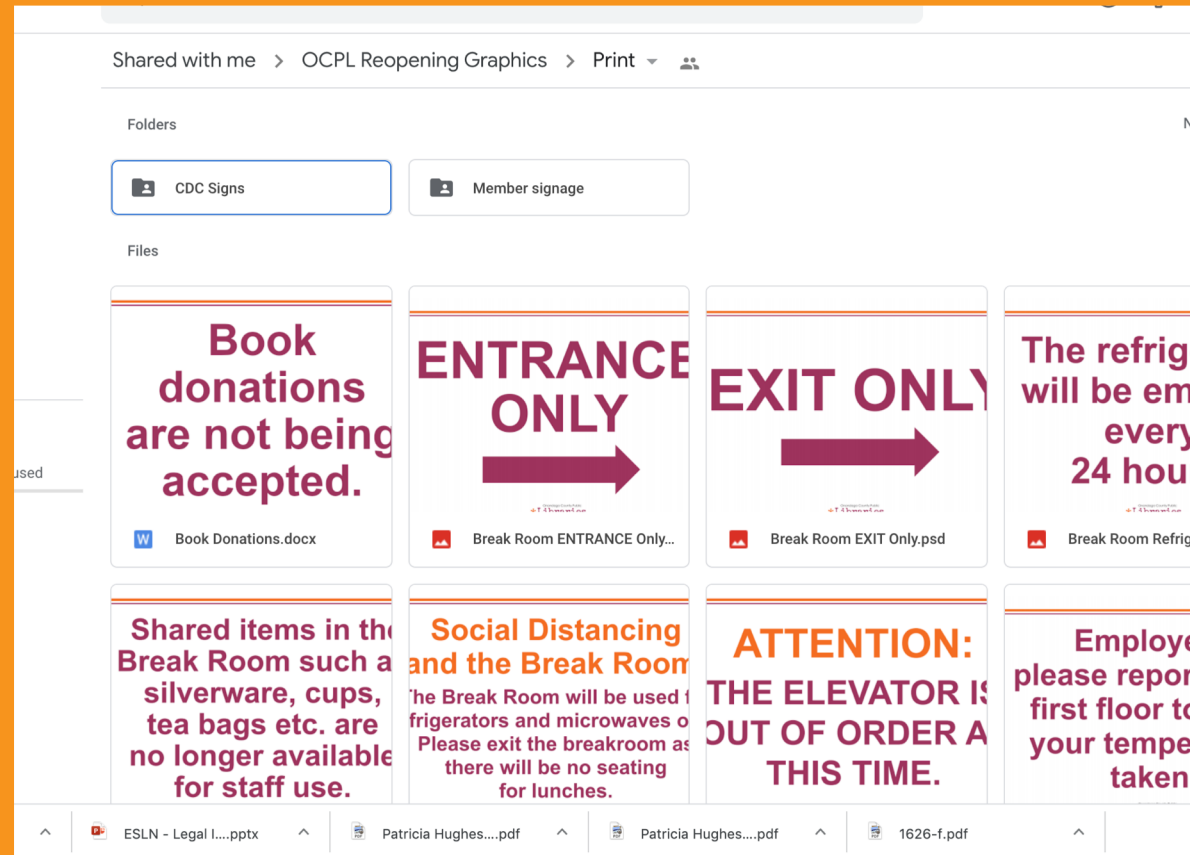


And finally, a scenario:

Can we pose the questions shown below in italics to patrons through notifications and signage before they enter our building and still meet the spirit of free and open access:

"Before you come to the Library we ask that you consider the following 4 questions and if you answer 'YES' to any of them you reschedule your visit or use our contactless pick-up option. The questions are:

- 1. In the past 14 days have you had COVID-19 symptoms of fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea?*
- 2. In the past 14 days have you tested positive for COVID-19?*
- 3. In the past 14 days have you had close contact, less than 6 feet for more than 15 minutes, with someone who has a confirmed or suspected case of COVID-19?*
- 4. In the past 14 days have you traveled outside the US or to any of the states currently listed on New York State's quarantine list?"*



Further questions or concerns? The LOSA team is here to help.

LOSA's library team has a variety of work and personal experiences that help inform the work we do for libraries and library councils across the state.

Joanna's experience as children's librarian, library branch manager, and college librarian before joining LOSA help her serve many types of libraries. joanna@losapllc.com

Jill's work as hospital librarian and college librarian prepared her to offer expert services to the libraries LOSA works with. jill@losapllc.com

Brian's experience as an accountant prepared him to for the detail oriented work LOSA does for library clients. brian@losapllc.com





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