

2020 Webinar Series

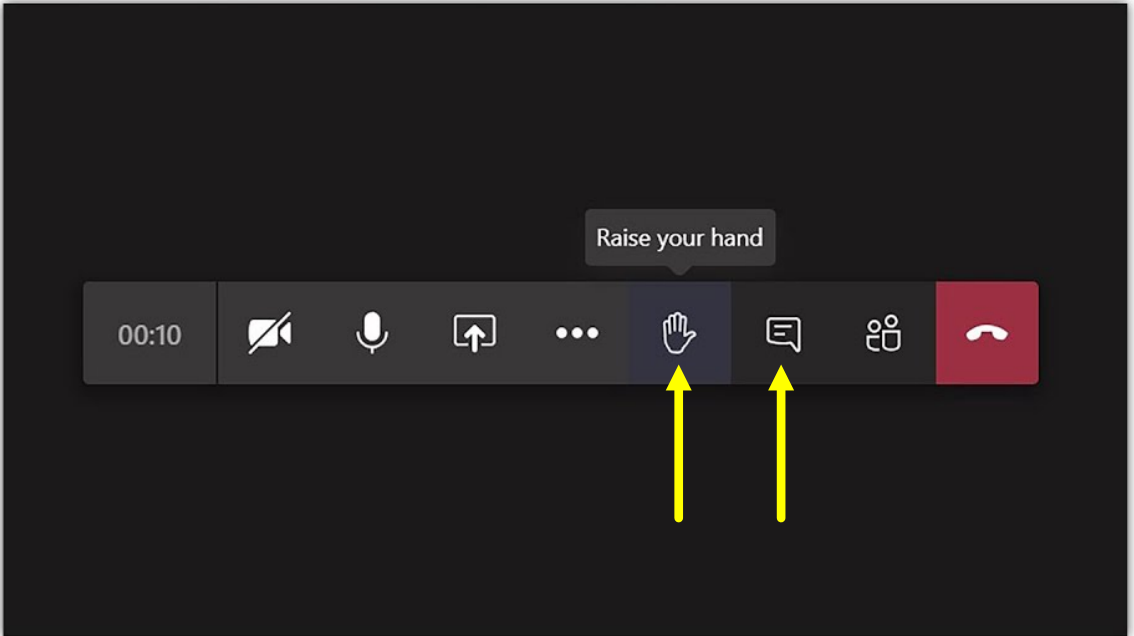


Reopening Municipal Offices

Presented by:

Primex & New Hampshire Municipal Association

Microsoft Teams Toolbar



Our Presenters



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Our Presenters



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Today's Presentation



NHMA

- ▶ Local Health Officer Role
- ▶ Halloween Preview
- ▶ Mask Update & Refresher
- ▶ Elections: Masks & Other Problems
- ▶ Planning and revising Reopening plans
- ▶ Employment Law Update & Refresher

PRIMEX

- ▶ Planning for Reopening
- ▶ Liability Considerations
- ▶ Employee Screening, Travel & Quarantine
- ▶ Control Measures, Engineering & Administrative
- ▶ Good Work Practices
- ▶ Dealing with an Exposure

DRAFT Guidance from the State for Health Officers and Law Enforcement



- ▶ Emphasize: **RSA 281-A:64**
 - ▶ Every employer shall provide employees with safe employment. Safe employment includes but is not limited to **furnishing personal protective equipment**, safety appliances and safeguards; ensuring that such equipment, appliances, and safeguards are used regularly; and adopting work methods and procedures which will protect the life, health, and safety of the employees.

- ▶ **The minimum PPE for both health officers and law enforcement:**
 1. A single pair of disposable examination gloves,
 2. Any NIOSH-approved particulate respirator (i.e., N-95 or higher-level respirator).
Cloth facemasks may an acceptable alternative until the supply chain is restored, and only if others in close contact are also wearing a face covering.
 3. Eye protection (i.e., goggles or disposable face shield that covers the front and sides of the face)
 4. Disposable isolation gown or single-use/disposable coveralls. If unable to wear a disposable gown or coveralls because it limits access to duty belt and gear, ensure duty belt and gear are disinfected after contact with individual.

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-law-enforcement.html>

Local Health Officers Will Take A More Active Role This Fall

- ▶ Emergency Order #65 expanded the role of local enforcement, particularly local health officers, in enforcing provisions of other Emergency Orders
 - ▶ “5. The Division of Public Health (DPH), working through its staff or local health officers, shall take necessary enforcement actions for violations of the Emergency Orders, including imposing civil penalties or immediately closing an event, activity, business, entity, organization, facility, or property.”
- ▶ The State has interpreted EO #65 to mean local health officers should initiate investigations and begin enforcement.

Local Health Officers Cont.

- ▶ Conversations with the State have focused on Retail Establishments (EO #52).
 - ▶ Education/Verbal Warning;
 - ▶ Written Warning;
 - ▶ AG Involvement
 - ▶ https://www.nhmunicipal.org/sites/default/files/uploads/legal/supplemental_enforcement_restaurants_2020-09-20.pdf
- ▶ BUT, the State has also promulgated guidance that Local Health Officers will be doing routine inspections at schools.
 - ▶ Keep in mind that schools in New Hampshire have already had outbreaks, and DHHS has advised that schools will likely continue to have outbreaks.

Halloween

- ▶ Trick-or-Treating
 - ▶ Masks
 - ▶ Minimizing human-to-human contact
 - ▶ Hand sanitizer
- ▶ Other Festivities - Pumpkin Regattas, Jack O'Lantern Lightings, Zombie Runs, etc.
 - ▶ "Fairs and Festivals" guidance for Halloween events
 - ▶ "Road Race" guidance for Halloween-themed runs
- ▶ <https://www.covidguidance.nh.gov/recreational-and-tourism-guidance>

Masks, Masks, & More Masks

- ▶ Emergency Order #63
- ▶ Municipal Property
- ▶ Off-Municipal Property
- ▶ (Elections)

Requiring Masks:

Emergency Order #63

- ▶ “Face coverings shall be required for... scheduled gatherings of 100 or more.”
- ▶ Does not apply to “day-to-day operations of...local government.”
- ▶ “Day-to-day” operations would mean the ordinary operations of government, not “events” or “occurrences” which happen only a few times a year.
 - ▶ E.g. fireworks, parades, etc. are not “day-to-day” but the ordinary operation of town hall, regularly scheduled board meetings, etc. would be “day-to-day,”
- ▶ EO #63 does NOT apply to elections (even though they are once or twice a year).
 - ▶ Separate guidance for elections from SOS/ AG.



Requiring Masks on Municipal Property

- **RSA 41:11-a** – The Select Board “shall have authority to manage all real property owned by the town and to regulate its use” *unless such management and regulation is delegated to other public officers by vote of the town, or is governed by other statutes, including but not limited to RSA 31:112, RSA 35-B, RSA 36-A:4, and RSA 202-A:6.*
- **RSA 47:5** – City Councils “shall have the care and superintendence of the city buildings, all city property and all public squares and streets.”
- **RSA 37:6, VII** – Town manager has charge, control and supervision, subject to direction of the select board, over maintenance of town buildings, parks, commons and playgrounds.



But Exceptions Exist:

RSA 202-A:6 - library trustees shall have the entire custody and management of the public library and of all the property of the town relating thereto.

Library trustees set library mask rules.

Requiring Masks Elsewhere

Cooper v. Sununu; City of Nashua

RSA 47:17, XV: City council powers

Implicit “police power” of
municipal government

Other Statutory Authority

RSA 49-D:3: Town council powers

RSA 147:1: Health officer
regulations

NHMA has been collecting
ordinances

Requiring Masks at the Election

- ▶ Elections “shall be . . . governed by a moderator,” who has a duty to secure the observance of the voting laws. N.H. Const. Part 2, Art. 32; RSA 659:9.
- ▶ AG/SOS: Moderator may require poll workers to wear masks.
- ▶ Cannot prohibit voter from voting for not wearing mask. However, may make alternative arrangements.

Non-Masked Voters: Alternative Arrangements

- ▶ Alternative options:
 - ▶ Separate check-in and voting area, inside or outside.
 - ▶ “Curbside voting” under RSA 659:20-a (used for disabled voter who cannot access polling place). HB 1266 authorizes use for COVID-19.
- ▶ AG/SOS has said “curbside voting” cannot be only alternative for non-masked voters.
 - ▶ https://www.nhmunicipal.org/sites/default/files/uploads/documents/partners/attorney_generals_supplemental_guidance_on_2020_election_operations.pdf

Remember that Some Election Laws Have Been Amended, There Maybe Other Changes, and COVID Requires Planning

- ▶ Electioneering Definition Updated:
 - ▶ RSA 652:16-h: “visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates **for or against any** candidate, political party, or measure **being voted.**”
 - ▶ E.g. “Political” shirts would have to display a candidate on the ballot to be considered “electioneering.” A shirt for past-presidents (or presidential candidates) would not be considered “electioneering.”
- ▶ A lawsuit challenging NH’s absentee voting laws has been filed and is scheduled for a hearing Sept. 24.
 - ▶ Expect NHMA and, possibly, AG guidance to be issued after any ruling. Guidance available at: <https://www.nhmunicipal.org/covid-19-resources>
- ▶ Lastly, make sure that your team has a clear plan for what to do if a voter does not abide by precinct rules, e.g. masks.
 - ▶ If questions arise election day, let the person vote and call the AG’s hotline.



Municipal Building & Facilities Reopening - Revising the Plan

- ▶ Convene a meeting of your joint loss management committee along with the Emergency Management Director and department heads to review basic control measures, engineering controls, good work practices and available personal protective equipment supplies.
- ▶ Review and adjust your existing plans –
 - ▶ Did the current plan work as intended?
 - ▶ Were there unintended impacts?
 - ▶ What are DHHS's latest reports for your town?
 - ▶ Some are experiencing outbreaks due to in-person schooling both at the primary and secondary education level.
 - ▶ What is the feeling in your town?
- ▶ Adopt measures as necessary to minimize viral spread.

New Hampshire Workplace Safety Laws



- ▶ Every employer shall provide employees with safe employment. Safe employment includes but is not limited to **furnishing personal protective equipment**, safety appliances and safeguards; ensuring that such equipment, appliances, and safeguards are used regularly; and adopting work methods and procedures which will protect the life, health, and safety of the employees. **RSA 281-A:64, I**

- ▶ All employers with 15 or more employees shall prepare, with the assistance of the commissioner, a current written safety program and file this program with the commissioner. **RSA 281-A:64, II**

New Hampshire Workplace Safety Laws



RSA 281-A:64, III

- ✓ Every employer of 15 or more employees shall establish and administer a joint loss management committee composed of equal numbers of employer and employee representatives. Employee representatives shall be selected by the employees.

NH Admin Code Lab 1403.01 Safety and Health Requirements:

- ✓ Employers shall furnish a place of employment free from recognized hazards causing or are likely to cause death or serious physical harm to its employees.
- ✓ Employees shall comply with all safety rules and regulations.
- ✓ Employer shall instruct each employee in the recognition and avoidance of unsafe conditions and in the rules applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.



New Hampshire Workplace Safety Laws

NH Admin Code Lab 1403.30 Hygiene and Sanitation. The employer shall ensure compliance with the following requirements:

- (a) A supply of potable water shall be provided in all places of employment;
- (b) Potable drinking water containers shall be capable of being tightly closed and be equipped with a tap;
- (c) Every employer shall provide and maintain sanitary and hygienic toilet facilities;



New Hampshire Workplace Safety Laws

NH Admin Code Lab 1403.43 Personal Protective Equipment. The employer shall ensure compliance with the following requirements:

- (a) The employer shall assess the hazards and provide and require the use of appropriate personal protective equipment where indicated based upon that assessment;
- (b) Where employees furnish their own personal protective equipment, the employer shall be responsible to, assure its adequacy and, to ensure that the equipment is properly maintained and in a sanitary condition;

Workplace Discrimination Guidance – EEOC*

- Based on current CDC guidance on COVID-19, an employer can send home an employee with COVID-19 or symptoms associated with it.
- Employers may ask employees who report feeling ill at work, or who call in sick, questions about their symptoms to determine if they have or may have COVID-19.
- During the existence of pandemic circumstances, employers may measure employees' body temperature provided the testing and results are handled to protect confidentiality.
- Employers may inquire whether employees returning from travel during the pandemic have visited locations of concern due to COVID - 19 to those locations.

* <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Workplace Discrimination Guidance – EEOC*



- ▶ The ADA permits employers to make disability-related inquiries and conduct medical exams if job-related and consistent with business necessity. Inquiries and reliable medical exams meet this standard if it is necessary to exclude employees with a medical condition that would pose a direct threat to health or safety. An employer can require its employees to adopt infection control practices, such as regular hand washing at the workplace and wearing a face mask.
- ▶ Employers cannot compel employees to take an influenza vaccine for COVID-19 once it becomes available. Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it.

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

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COVID-19 and Your Workplace

How to Re-Open and Stay Safe

Risk Management Best Practices



Bow Brook Place
46 Donovan Street
Concord, NH 03301-2624
(800) 698-2364
(603) 225-2841

Guidance

- ▶ Centers for Disease Control (CD



- ▶ Occupational Safety & Health Administration (OSHA)



- ▶ State of NH Division of Public Health



Times Continue to Change

- ▶ Reoccupying Spaces
- ▶ Increasing Occupancy (Staff Census)
- ▶ Increasing Programs and Services to the Public
- ▶ Meeting Public Needs & Expectations

All of this amid ever changing guidance!

Coordinate Your Plans

- ▶ Continue to involve local Emergency Managers (EMD's)
 - ▶ Local issues, case counts, hot spots

- ▶ Continue to involve other stakeholders
 - ▶ Elected Officials, Local Business Leaders, NHHSEM, etc.

- ▶ Be aware of local conditions
 - ▶ Just because a neighboring community is rolling out a service one way it may not work for yours.

Am I covered if I get sued in association with COVID-19?

- ▶ It depends, claims are evaluated on their own individual merit.
- ▶ Assessment
 - ▶ Coverage Agreement – Generally outlines what we cover/pay for or not.
 - ▶ COVID-19 fits within the Primex³ Coverage Agreement.
 - ▶ Exclusions – Special form coverage – generally covered unless excluded.
 - ▶ COVID-19 is not an excluded cause of loss.

So, am I covered?

We can generally conclude that Primex3 Members would be covered against third party claims for damages, as long as their actions are in good faith and undertaken in the scope and course of their duties.

* All terms, conditions, exclusions and monetary limitations set forth by the Primex³ coverage documents and declarations apply.



What's not covered?

- ▶ Injunctive Relief/Non-Monetary Claims
- ▶ Intentional violation of existing local, state or federal laws

* All terms, conditions, exclusions and monetary limitations set forth by the Primex³ coverage documents and declarations apply.

What about immunities?



- ▶ RSA 507-B:4 Limit of Liability
 - ▶ Liability of a governmental unit for personal or bodily injury or property damage – limit \$325,000

- ▶ Case Law, Discretionary Function Immunity
 - ▶ Restores the government's immunity in situations where its employees are carrying out regulatory duties.
 - ▶ Those decisions made in good conscious related to the pandemic.

Employee Screening

- ▶ Fever, respiratory symptoms, flu-like symptoms, fatigue, runny nose, muscle aches, sore throat, cough or changes in taste and smell.
- ▶ If they become sick at work, immediately separate from others, send them home and sanitize.
- ▶ Encourage a workplace culture that encourages proactive and socially responsible behaviors.

Screen Employees for Symptoms

- ▶ Develop a system
 - ▶ Checklist Questionnaire
 - ▶ Smart Phone App
 - ▶ Protect the Screener (PPE)
- ▶ Taking Employee Temperatures
 - ▶ Over 100° F – Do not allow entry



What about Travel and Employee Quarantine?

I have traveled outside of NH, ME, MA, CT, RI, or VT, within the last 14 days or, I have returned from international travel or travel on a cruise ship during that period.

- ▶ At Home?
- ▶ At Work?
- ▶ Paid Leave or Unpaid Leave?



Isolation and Quarantine Summary

	Household Contact (highest risk) to someone suspected or confirmed to have COVID-19 in past 14 days	Non-Household Close Contact with someone suspected or confirmed to have COVID-19 in past 14 days	Traveled outside NH, VT, ME, MA, CT, RI or by cruise ship ■ ■ ■ ■	Traveled within NH, VT, MA, CT, RI or ME or No Travel ■
New or unexplained symptom of COVID-19	Isolate, Get Tested, If negative Self-Quarantine for 14 days from last day of exposure (no exceptions)	Isolate, Get Tested, If negative Self-Quarantine for 14 days from last day of exposure (unless essential employee as outlined above)	Isolate, Get Tested, If negative Self-Quarantine for 14 days from last day of travel (unless essential travel – see definition below)	Isolate, Get Tested, If negative then person can return to normal activities once without fever for at least 24 hours (off fever reducing medications) and other symptoms improving
Asymptomatic	Self-Quarantine for 14 days from last day of exposure (no exceptions), Get tested	Self-Quarantine for 14 days from last day of exposure (unless essential employee as outlined above), Get tested	Self-Quarantine for 14 days from last day of travel (unless essential travel – see definition below)	No restrictions
Positive Test for COVID-19	Self-Isolate	Self-Isolate	Self-Isolate	Self-Isolate

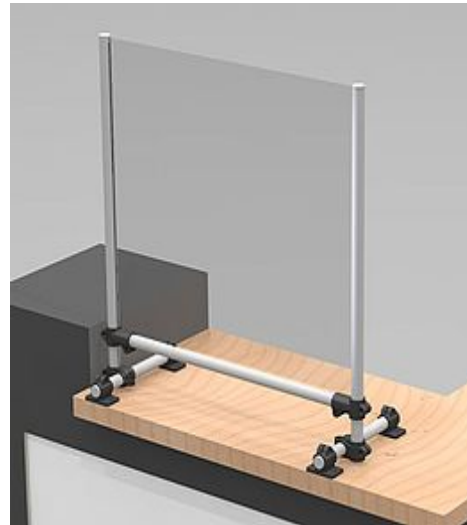
Essential Travel: Essential travel includes personal safety, medical care, care of others, parental shared custody, for food, beverage or medication or for work. Employees who travel outside of the New England states for personal or leisure reasons cannot rely on this exemption.

Basic Control Measures

- ▶ Remain Socially distant
 - ▶ 6-Feet or More
- ▶ Promote Frequent Hand Washing
 - ▶ Posters and Signs
- ▶ Provide Waterless Hand Sanitizer
 - ▶ 60%+ Alcohol
- ▶ Discourage Handshaking
- ▶ Elevators
 - ▶ Only one person at a time

Engineering Controls

- ▶ Install Barriers like Plexiglas Shields
- ▶ Use Drive-Thru and Curbside Options
- ▶ Increase HVAC Fresh Air Exchange Rates
- ▶ Change/Upgrade Air Filters



Administrative Controls

- ▶ Flexible Work Schedules
 - ▶ Continue to use telework options
 - ▶ Flexible work hours, staggered shifts
- ▶ Deliver Services Remotely/Virtually
 - ▶ Phone, Video, Web
- ▶ Employee PPE – Mask Mandates or Not?

Good Work Practices

- ▶ Routine Cleaning and Disinfection
- ▶ Do Not Share Phones, Desk, Etc.
- ▶ Provide Disposable Disinfection Wipes
- ▶ Develop Meeting Room Occupancy

What if you have an Exposure?

- ▶ Quarantine employee
 - ▶ Remove from workplace 14 days or until tested
- ▶ Test employee
 - ▶ Between 3-7 days of exposure – healthcare guidance
- ▶ Notify those affected
 - ▶ Co-workers, others
- ▶ Document
 - ▶ Internal processes, workers' compensation FROI

ADDITIONAL RESOURCES

State of NH Universal Guidelines for All New Hampshire Employers and Employees

<https://www.governor.nh.gov/news-media/stay-at-home/documents/20200501-universal.pdf>

Covid-19 - Symptoms and When to Seek Medical Assistance:

<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

CDC Guidance for Communities:

<https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>

CDC Guidance for Schools:

<https://www.nh.gov/covid19/resources-guidance/schools.html>

CDC Resources for Employers:

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

CDC Printable Posters (Hand Washing, Stop the Spread of Germs):

<https://www.cdc.gov/coronavirus/2019-ncov/communication/print-resources.html>

CDC Cleaning and Disinfecting Guidance:

<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

<https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>

OSHA Guidance on Preparing Workplaces for Covid-19:

<https://www.osha.gov/Publications/OSHA3990.pdf>



THANK
YOU

*for attending
our webinar today!*



NHMA'S MISSION

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.



NHMA Legal Advisory Services

Tel: (603) 224-7447

Email: legalinquiries@nhmunicipal.org