



# Coronavirus:

## Preparing for a Potential Pandemic – Legal and Workplace Implications

**Mark A. Lies II**  
Partner, Seyfarth Shaw LLP

**Amber Clayton**  
Director, Knowledge Center  
Society for Human Resource Management

Opening Remarks:

**Johnny C. Taylor, Jr.**  
President and CEO  
Society for Human Resource Management



## **Johnny C. Taylor, Jr., SHRM-SCP**

President and Chief Executive Officer  
Society for Human Resource Management



**Mark A. Lies II**

Labor and Employment  
Partner

(312) 460-5877

[mlies@seyfarth.com](mailto:mlies@seyfarth.com)

Mark's practice focuses on Occupational Safety and Health Law and related employment law and personal injury litigation. He graduated from the University of Notre Dame in 1968 and DePaul University School of Law in 1974. He was a Commissioned Officer in the U.S. Navy and is a Vietnam Veteran.

**Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).  
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



**Amber Clayton,  
SHRM-SCP**

Knowledge Center Director  
800.283.7476 option 5  
[www.shrm.org/hrhelp](http://www.shrm.org/hrhelp)

Amber oversees the SHRM Knowledge Center, which includes SHRM's Express Requests as well as the Ask an Advisor service, one of SHRM's most popular member benefits. She has been in various HR roles for over 20 years, primarily in the retail and healthcare industry, before joining SHRM in 2011.



## Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

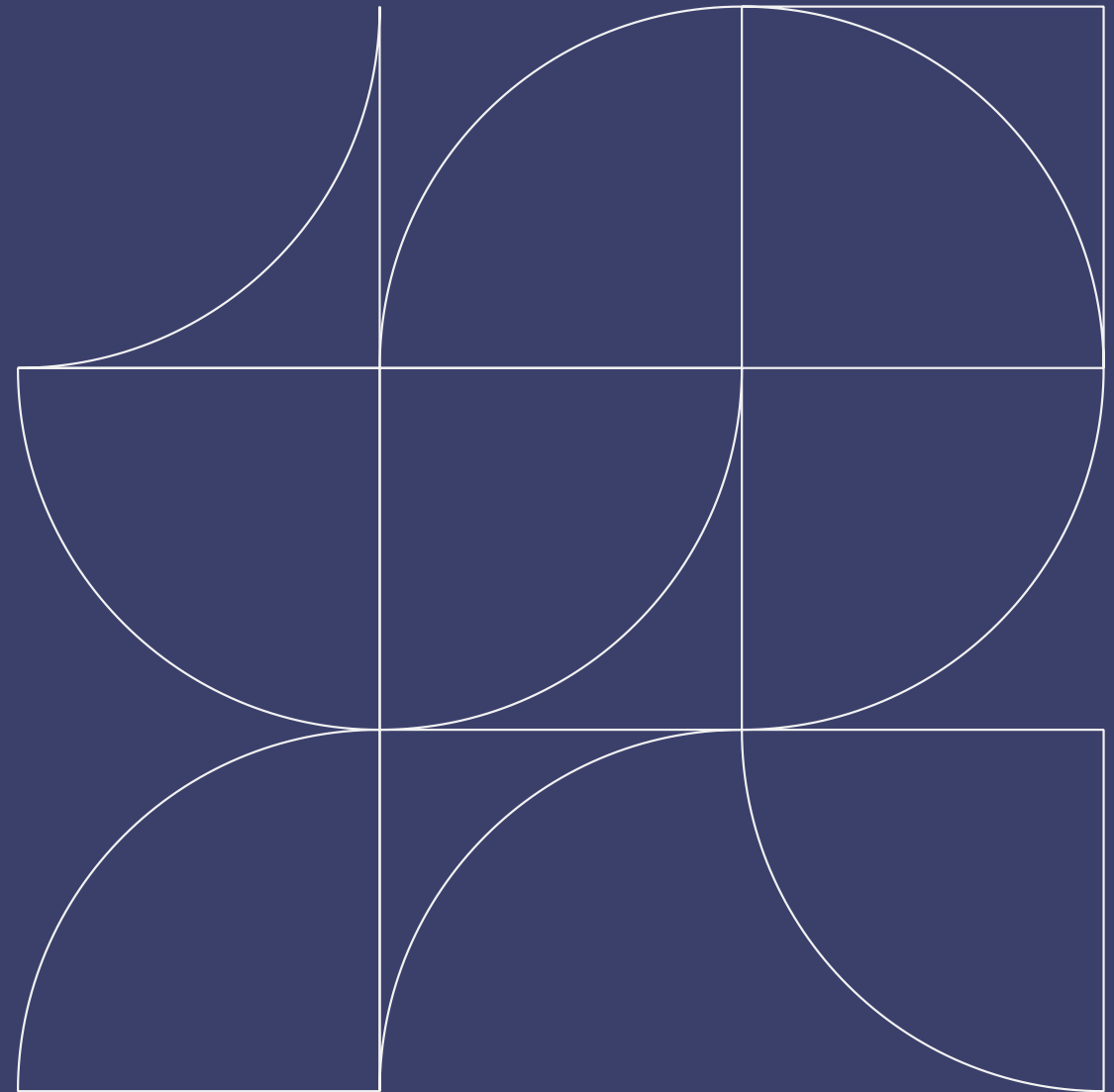
### Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).  
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

# Objectives

- 01** Understand the nature and scope of the hazard
- 02** Identify potential legal liabilities
- 03** Develop employer action plans

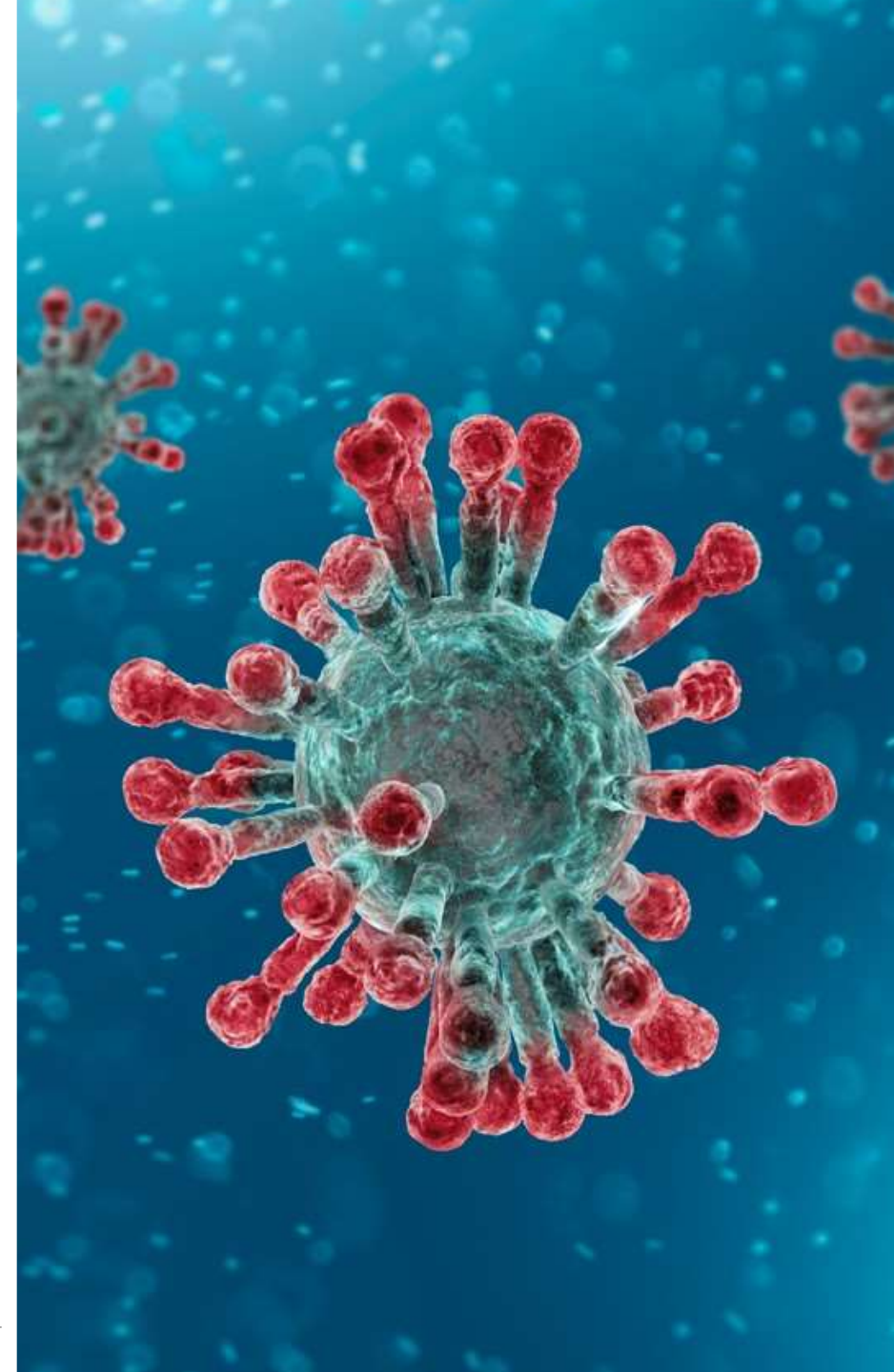
**Understand the  
nature and scope of  
the hazard**





# Coronavirus (COVID-19)

- Infection through close contact through coughing and sneezing, as well as possibly through touching surfaces that has the virus on it
- Believed that it is most contagious when individuals are most symptomatic, although reports that it may spread when people do not show symptoms
- Disease and death in humans
  - Fever;
  - Cough;
  - Shortness of breath; and
  - Death
    - Fatality rate less than 2% as of 2/29/2020
    - Majority of deaths in China
- 2 to 14 day incubation period
- No vaccination to prevent COVID-19







## **Prevention tips for your workforce**

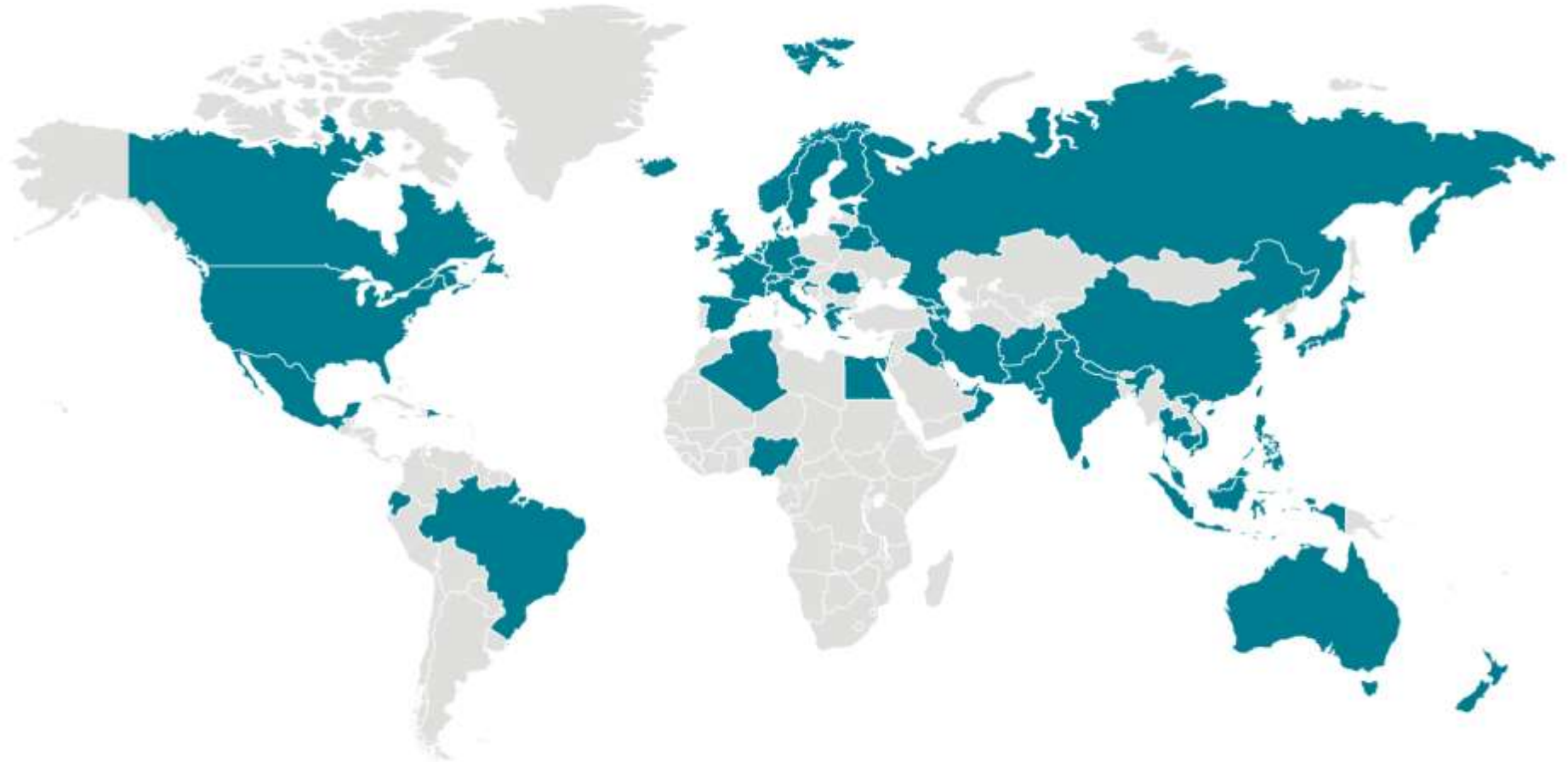
- Practice good hygiene (cover coughs, avoid close contact with those who are sick, avoid touching your eyes, nose, and mouth, wash hands with soap and water)
- Frequently clean and disinfect surfaces with household cleaning spray or wipe
- Facemasks
  - CDC does not recommend that people who are well wear a facemask
  - Facemasks should be used by people who show symptoms to help stop the spread of the virus
  - Facemasks are crucial for health workers and people taking care of someone in close settings (home / health care facility)

# Locations with Confirmed COVID-19 Cases – Global Map

More than 87,000 confirmed cases, with nearly 3,000 deaths (as of 3/1/2020)

Up from 24,000 confirmed cases and 492 deaths since our last presentation (2/6/2020)

Virus has spread to six of seven continents  
China, Iran, Italy, South Korea, and Japan significantly impacted



Source: Centers for Disease Control (<https://www.cdc.gov/coronavirus/2019-ncov/locations-confirmed-cases.html>) As of 3/2/2020

# Coronavirus Spread in the U.S.

- First confirmed American infection on January 21, 2020
- 100+ confirmed cases (as of 3/3/2020)
- Nine fatalities (as of 3/3/2020)



Confirmed or presumptive positive cases:

- Arizona
- California
- Florida
- Illinois
- Massachusetts
- New York
- Oregon
- Rhode Island
- Washington
- Wisconsin

State of emergency declared in San Francisco and Washington state; California monitoring over 8,000 individuals

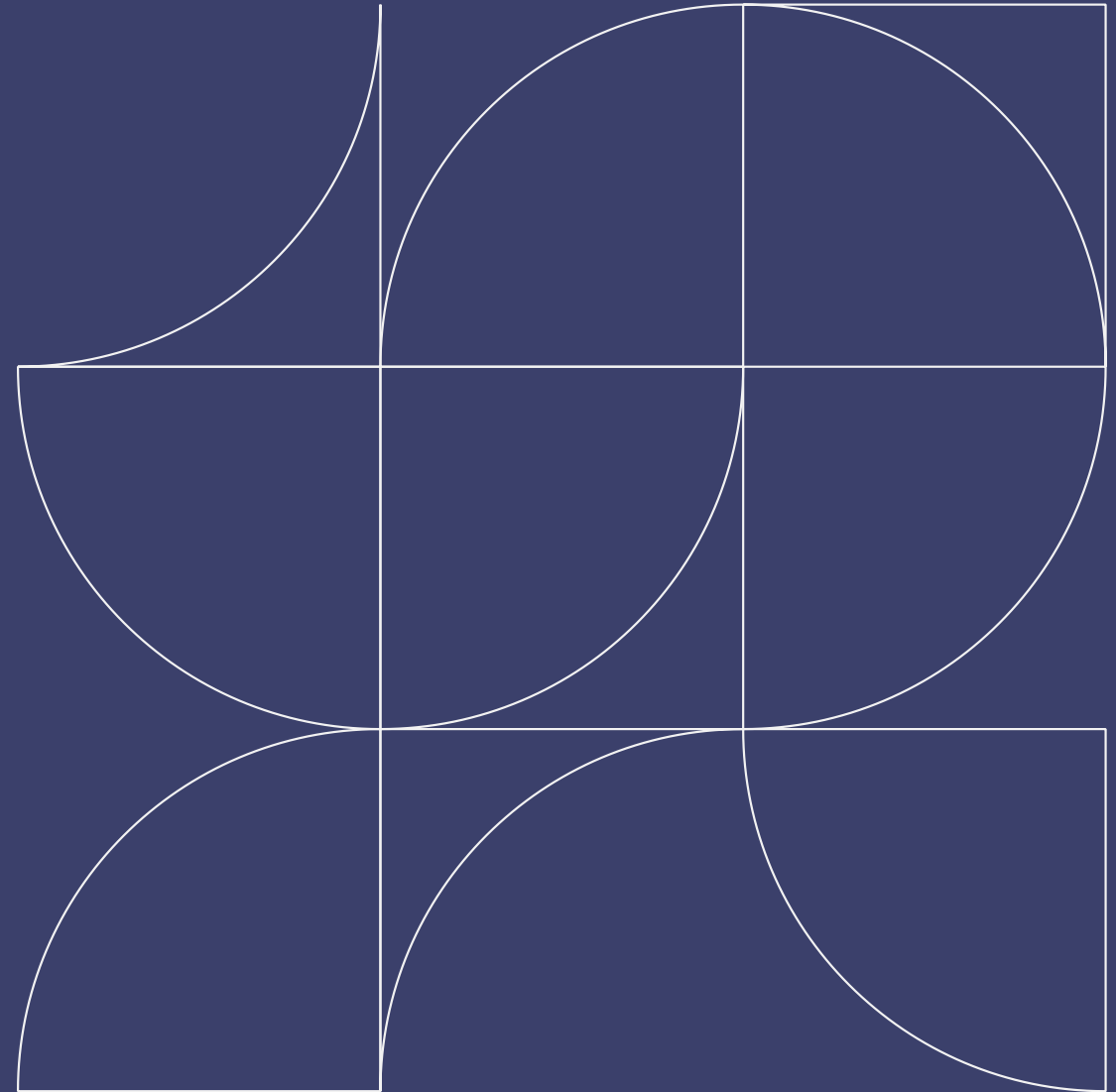
# White House Proclamation

- **“Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus”**
  - Issued January 31, 2020
- Suspends entry into the United States of **people who were physically present within the People’s Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, during the 14-day period preceding their attempted entry into the United States**
  - Does not apply to:
    - US citizens; permanent residents; some parents, legal guardians, siblings, children of US citizens or permanent residents; air or sea crew; persons transiting under specific types of government visas.
    - Any person whose entry would *not* pose a significant risk of introducing, transmitting, or spreading the virus, as determined by the CDC Director or his designee.

Also addresses DHS medical screening and quarantine of all other persons who enter the United States and who may have been exposed to coronavirus, including directing air carriers to regulate the boarding of such passengers on flights to the United States



**Identify potential  
legal liabilities**



# Occupational Safety and Health Act (OSHA)

- Potential use of “General Duty” clause for a “recognized hazard” to employee safety and health
- Reliance upon CDC, NIOSH as authority
- Potential liability for citations and monetary penalties



# Occupational Safety and Health Act (OSHA)

- Conduct “hazard assessment” for potential exposures (e.g., occupational activities involving potential exposures – e.g., travel, healthcare transportation)
- Develop an action plan:
  - hazard identification
  - hazard prevention procedures
  - employee training
  - medical monitoring surveillance
  - recordkeeping (OSHA 300 Log, etc.)

# Worker's Compensation

- Worker's compensation if “arising out of and in course of employment”
- Reasonable and necessary medical care
- Temporary total disability benefits
- Permanent disability, if any
- Engage competent medical professional (infectious disease) to advise



# Disability Benefits

---



If provided by  
contract



Review limits of  
coverage



Competent medical  
assistance to  
administer program

# Family and Medical Leave Act (FMLA)

- 50 or more employees within a 75 mile radius
- 12 weeks unpaid leave in 12 month period (for qualifying reasons)
- Serious health condition of employee or covered family member is a qualifying reason under the FMLA
- FMLA runs concurrent with WC
- Job reinstatement rights
- Quarantine issues if infected
- State law may provide additional leave and time off benefits and rights
  - Unpaid State FML Laws
  - Paid State FML Laws
  - State and Local Paid Sick Leave Laws

# Americans with Disabilities (ADA)

- Qualified individual with a disability protected from discrimination
- Employee may develop a disability from Coronavirus or aggravate a pre-existing disability
- Employee may be entitled to a reasonable accommodation, provided it does not cause an undue hardship or direct threat to health and safety
  - Possible accommodations
    - Work from home or telecommute
    - Leave
    - Reduced Schedule upon return to work
    - No travel

See also EEOC Guidance

[https://www.eeoc.gov/facts/pandemic\\_flu.html](https://www.eeoc.gov/facts/pandemic_flu.html)

# Return to Work

- Medical Documentation
- Fitness for Duty
- On-going follow-up
- Inquiries from co-workers



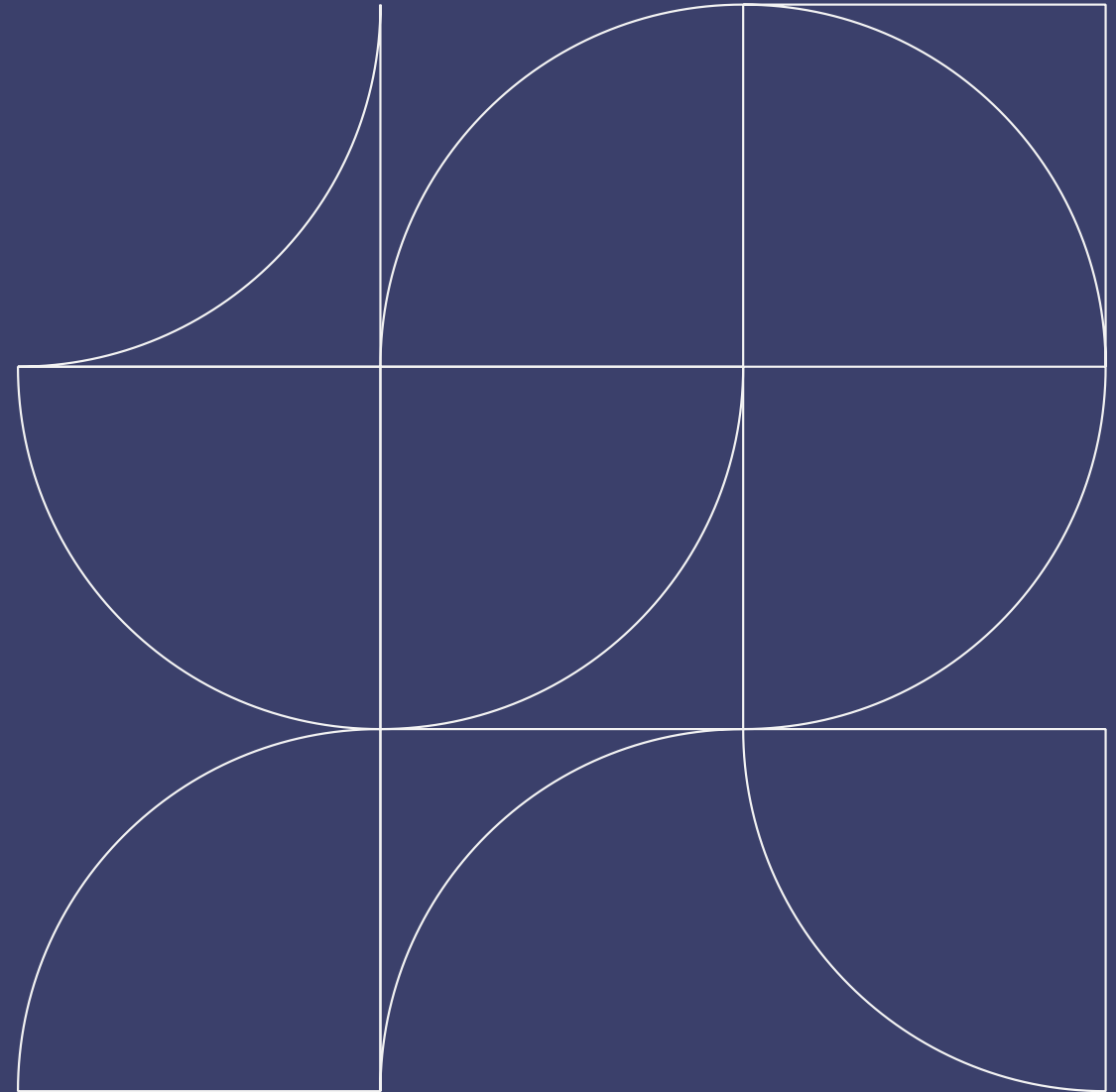


## Premises Liability

- Landowner/employer duty to protect visitors to premises from hazards which are not “open and obvious”
- Potential health hazard in building, e.g., ventilation system, washroom facilities, cafeteria, etc.
- May require notice to tenants, visitors of known infection events
- Review leases and related agreements (e.g., sanitation, building maintenance)



**Develop employer  
action plans**





# Employer Action Plan

- Sanitation
- Communication
- Recordkeeping
- Pre-Planning
- Information Monitoring

thank  
you

## CONTACT INFORMATION

For more information please contact:

**Mark A. Lies II:** [mlies@seyfath.com](mailto:mlies@seyfath.com) | (312) 460-5877

From the SHRM Knowledge Center:

Coronavirus and Other Communicable Diseases

[shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx](https://shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx)



# SHRM Advocacy@Work | March 15-17 in Washington, D.C.

SHRM 2020  
**ADVOCACY  
@WORK**

Make an Impact

Thought Leadership

Meaningful Connections

Career Advancement

**SHRM**  
BETTER WORKPLACES  
BETTER WORLD™

**Register at [shrm.co/advocacy](https://shrm.co/advocacy)**



# SHRM Live 2020

Virtual Event | March 17, 2 – 3:30pm ET

Join SHRM for an in-depth look at the complex political and policy landscape that impacts workplaces. Pressing topics like coronavirus will be covered!

Visit [SHRM.org/SHRMLive20](https://www.shrm.org/SHRMLive20) to register.

Free for members.

