

# Updates on Coronavirus Disease (COVID-19): Identifying and Preparing for COVID-19 Compliance Risks

May 1, 2020

# Policy Update

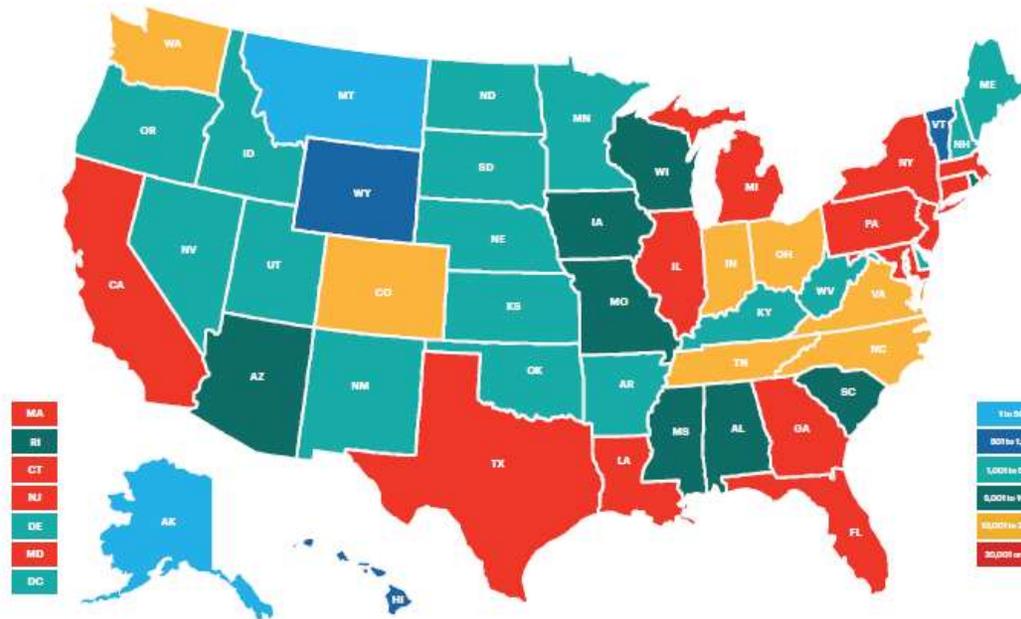
# Speaker

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# Coronavirus disease (COVID-19) in the US



Total cases: 1,043,595  
 Total tests conducted: 6,026,170  
 Total deaths: 61,187  
 Total recovered: 124,294

## States with confirmed and presumptive positive cases of COVID-19:

### 1 to 500

- Alaska
- Montana

### 501 to 1,000

- Hawaii
- Vermont
- Wyoming

### 1,001 to 5,000

- Arkansas

- Delaware
- Idaho
- Kansas
- Kentucky
- Maine
- Minnesota
- Nebraska
- Nevada
- New Hampshire
- New Mexico
- North Dakota

- Oklahoma
- Oregon
- South Dakota
- Utah
- Washington, DC
- West Virginia

### 5,001 or 10,000

- Alabama
- Arizona
- Iowa

- Mississippi
- Missouri
- Rhode Island
- South Carolina
- Wisconsin

### 10,001 to 20,000

- Colorado
- Indiana
- North Carolina
- Ohio

- Tennessee
- Virginia
- Washington

### 20,001 or more

- California
- Connecticut
- Florida
- Georgia
- Illinois
- Louisiana

- Maryland
- Massachusetts
- Michigan
- New Jersey
- New York
- Pennsylvania
- Texas

Date updated: April 30, 2020

Source: Johns Hopkins Coronavirus Resource Center: US Map, <https://coronavirus.jhu.edu/us-map>

# Plans to reopen states

- **Alaska**
  - Reopened: Restaurant dining; Retail stores; Hair salons, barbershops, nail salons etc.
- **Colorado**
  - Reopened: Retail stores open to curbside pickup
- **Georgia**
  - Reopened: Gyms; Bowling alleys; Theaters and private social clubs; Hair salons, barbershops, etc.; Restaurant dining
- **Minnesota**
  - Reopened: Industrial and manufacturing businesses; Offices
- **Mississippi**
  - Reopened: Retail stores
- **Montana**
  - Reopened: Houses of worship; Shopping centers
- **Oklahoma**
  - Reopened: Salons, barbers, pet groomers, etc.; State parks
- **South Carolina**
  - Reopened: Beaches, piers, docks, etc.; Retail stores
- **Tennessee**
  - Reopened: State parks; Restaurant dining in most counties; Retail stores in most counties

**Order lifting or reopening in the next week:** Alabama, Florida, Idaho, Indiana, Iowa, Kansas, Maine, Missouri, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Texas, Washington, Wyoming

# COVID-19 50-State Tracker



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## COVID-19 • 50-State Tracker

State	City / County							
Alabama	Birmingham	Montgomery	Mobile	Jefferson County	Mobile County			
Alaska	Anchorage	Juneau	Fairbanks	Fairbanks				
Arizona	Phoenix	Tucson	Mariocopa County	North Star Borough	Pima County			
Arkansas	Little Rock	Pulaski County						
California	Los Angeles	San Diego	San Francisco	Los Angeles County	San Diego County			
Colorado	Denver	Colorado Springs	Boulder	Arapahoe County	El Paso County			
Connecticut	New Haven	Hartford	Stamford					
DC	District of Columbia							
Delaware	Dover	Wilmington	Newark	New Castle County	Kent County			
Florida	Orlando/Orange County	Tampa/Hillsborough County	West Palm Beach /Palm Beach County	Miami	Miami-Dade County	Broward County		
Georgia	Atlanta	Augusta	Columbus	Fulton County	Gwinnett County	Cobb County	DeKalb County	
Hawaii	Oahu	Hauai	Big Island	Kaui				
Idaho	Boise	Meridian	Nampa	Ada County	Canyon County			
Illinois	Chicago	Aurora	Springfield	Cook County	DuPage County			
Indiana	Indianapolis/ Marion County							
Iowa	Des Moines	Cedar Rapids	Davenport	Polk County	Linn County			
Kansas	Wichita	Overland Park	The Unified Government of Kansas City and Wyandotte County	Sedgwick County	Johnson County			
Kentucky	Louisville	Lexington	Bowling Green					
Louisiana	New Orleans	Baton Rouge	Shreveport	East Baton Rouge County	Jefferson County			
Maine	Bangor	Portland	Augusta	Aroostook County	Piscataquis County			
Maryland	Baltimore	Annapolis	Montgomery County					
Massachusetts	Boston							
Michigan	Detroit	Grand Rapids	Lansing	Wayne County	Kent County			
Minnesota	Minneapolis	St. Paul	Rochester	Hennepin County	Ramsay County			
Mississippi	Jackson	Gulfport	Southaven	Hinds County	Harrison County			
Missouri	Kansas City	St. Louis	Columbia	Jackson County	St. Louis County			
Montana	Billings	Missoula	Great Falls	Bozeman	Yellowstone County	Missoula County	Gallatin County	
Nebraska	Omaha	Lincoln	Douglas County	Lancaster County				
Nevada	Las Vegas	Henderson	Reno	Clark County	Washoe County			
New Hampshire	Manchester	Nashua	Hillsborough County					
New Jersey	Newark	Camden	Trenton	Bergen	Hudson			
New Mexico	Albuquerque	Bernalillo County						
New York	Manhattan	Brooklyn	New Rochelle	Albany	Syracuse	Buffalo	Westchester County	Nassau County
North Carolina	Charlotte	Raleigh	Greensboro	Mecklenburg County	Wake County			
North Dakota	Brismarok	Fargo	Grand Forks	Burleigh County	Cass County	Ward County		
Ohio	Columbus	Cleveland	Cincinnati	Franklin County	Cuyahoga County			
Oklahoma	Oklahoma City	Tulsa	Norman	Oklahoma County	Tulsa County			
Oregon	Portland	Salem	Eugene	Multnomah County	Washington County			
Pennsylvania	Philadelphia	Pittsburgh	Harrisburg	Philadelphia County	Allegheny County			
Rhode Island	Providence County (City of Providence)	Bristol County	Kent County (City of Warwick)	Newport County (City of Newport)	Washington County (City of South Kingstown)			

## 50-State Tracker includes:

- reviews of US state and local governmental orders;
- directives and financial assistance;
- official links;
- public restrictions;
- health and business directives;
- school closures;
- updates on courts and legislative sessions.

[Click here](#) to download the COVID-19 50-State Tracker

## US\$484 billion coronavirus rescue package

- US\$321 billion infusion for the Paycheck Protection Program, the small business rescue fund that ran out of money last week
- US\$60 billion in economic disaster loans for small businesses
- US\$75 billion in emergency relief for hospitals
- US\$25 billion to ramp up coronavirus testing

# Identifying and Preparing for COVID-19 Compliance Risks

# Businesses should prepare for enforcement investigations

## CARES Act

- \$2.2 Trillion
- Created Special Inspector General for Pandemic Recovery
  - \$25 million CARES Act funds allocated
- Created Pandemic Response Accountability Committee
  - \$80 million CARES Act funds allocated

# Businesses should prepare for enforcement investigations

## TARP Enforcement Model

- 2008 – 2020: 12 years of investigations and prosecutions
  - 300 Convictions
  - \$11 Billion recovered
- Congress anticipated similar fraud involving the \$2.2 trillion in CARES Act financial assistance
- Department of Justice and other federal and state agencies are gearing up for COVID-related investigations and prosecutions

# Panelists



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## Background

- CARES Act, Interim Final Rule and FAQs
- “Necessity” undefined
  - “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
- Additional guidance
  - April 23: “Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”
  - April 28: Applies to both public and private companies.

## Options

- Withdraw application
- Return all or part of the funds
- Keep funds and apply as permitted

## Recommendations

- Re-evaluate eligibility and necessity
- Document analysis to show rigorous board process
- (Re-)forecasting of projections / budget
- If funds kept, segregate & document use of funds meticulously

# SEC risks to publicly-traded companies

## **Risk:** Failing to provide adequate financial & other risk-based disclosures

- **Remedy:** Work closely with internal and external auditors, accountants, lawyers, and potentially outside experts, to ensure thorough analysis and appropriate communication of assessments and uncertainties about COVID-19
- **Remedy:** Begin the disclosure process early - the SEC has extended the date of certain filing requirements, and waived certain signature and notarization requirements
- **Remedy:** Ensure the CFO, CCO, and GC (and teams) have an appropriate succession plan to cover staff illnesses, and avoid furloughs from these teams, if possible
- **Remedy:** Consider asking key executives to delay retirement

# SEC risks to publicly-traded companies

**Risk:** Insider trading - buying/selling securities based on material non-public information

- **Remedy:** Refresh insider trading policies and trainings
- **Remedy:** Revisit who is designated an “insider,” and consider expanding the list to include individuals responsible for managing COVID-19-related issues
- **Remedy:** Tighten information disclosure policies so that material bits of information are not selectively leaked
- **Remedy:** Be wary of requests to change or create new 10b5-1 trading plans

**Risk:** Failing to provide appropriate financial and other disclosures to lenders and investors, and becoming subject to the SEC's anti-fraud prohibitions

- **Remedy:** Retain experienced external legal counsel, accountants, and/or auditors in connection with the preparation of investment, loan, and sales documents
- **Remedy:** Hire outside counsel to conduct select internal investigations prior to making key disclosures to potential lenders or buyers, especially those involving financial irregularities, problems with senior management, bribery and corruption-related payments, or other areas where in-house counsel may not feel able to conduct an independent investigation or provide independent advice to the company

## Risks of producing and distributing defective products

- Urgent need for medical supplies, equipment (PPE), vaccines, treatment medications
- Pressure on speed
  - Emergency Use Authorizations (EUA) by FDA
  - Suspension of routine internal quality control
  - Shortening of trials for drugs
- These pressures create a heightened risk of errors that could result in defective or ineffective products, and the resulting risk of harm or death to users, including both health care providers and patients
  - Does PREP Act immunity protect your business?
  - Does it protect against civil False Claims Act liability?
  - Does it protect against criminal fraud allegations?

## Compliance recommendations

- Insist on accuracy in representations about products
- Document facts relied upon in developing representations
- Require compliance with Policies & Procedures and Code of Conduct
- Specialized training of employees on compliance risks
- Disclosure to consumers of risks
  - Suspension of testing
  - Limited quality control
  - Conversion of manufacturing plant to produce medical supplies and equipment

# Price gouging and hoarding initiatives

## Federal actions:

- Executive Order invoking Defense Production Act
  - Protection of certain health and medical resources
- DOJ formation of nationwide “Hoarding and Price Gouging Task Force”
- Partnerships with State Attorneys General

## State actions:

- Enforcement of state price gouging laws
- Executive Orders prohibiting price gouging

## Legislative actions:

- Recently proposed federal price gouging legislation
- Expansions of pre-existing state laws and regulations

# Proactive measures to consider

- Identify applicable state laws
  - Educate and train
- Check for updated designations of federally protected resources
- Implement protocols for price increases
- Avoid unnecessary price increases and stockpiling
- Document rationale for significant price increases
- Monitor and document competitor pricing
- Consult with counsel if uncertain about compliance

- Maintain and strengthen Compliance Departments
- Identify COVID-19 risk areas and develop specific compliance components to address them
  - Need to reflect the changed world in your compliance program
- Train employees in new ways
- Enforce compliance

**After crisis, it will be time to stabilize, recover and reform.**

**We can help you all along the way.**

**We can help**

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Attorneys at Dentons have a broad range of experience and expertise in assisting clients in identifying risks posed by the COVID-19 pandemic and developing ways to protect our clients.

Contact us if we can help.

# Questions?



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**Thank you**

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Stay up-to-date with all of our insights and guidance by visiting our US COVID-19 hub at [www.dentons.com](http://www.dentons.com)

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