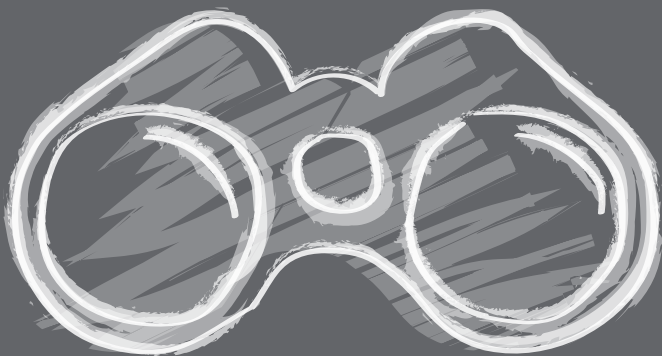
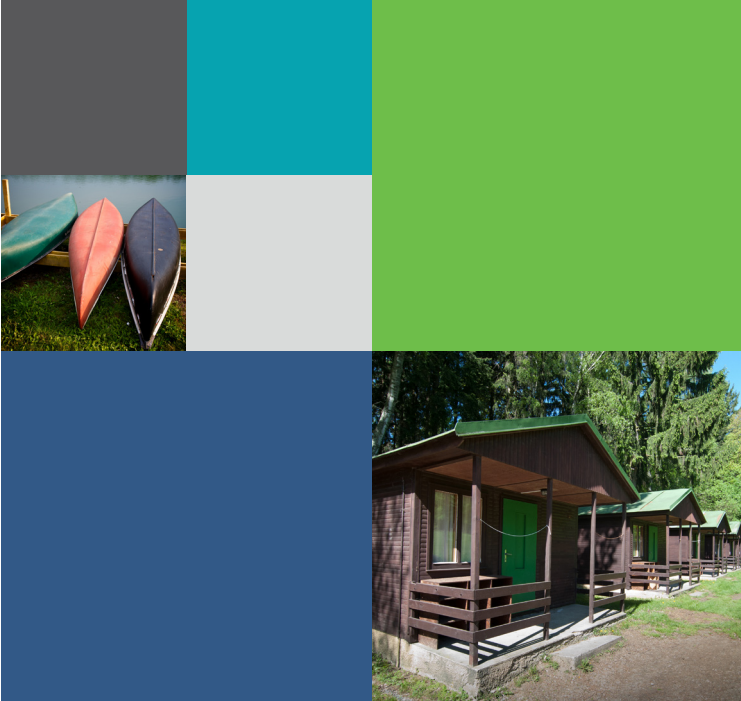




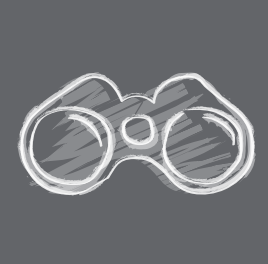
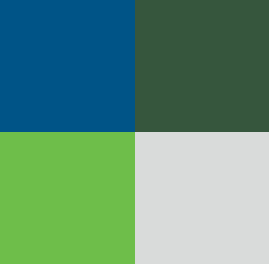
Want to know more about the Coronavirus?

As a life-long camper, Rachel Fendell Satinsky, our very own Camp Counselor (at law), has a unique insight and the understating necessary to represent and provide guidance to camps of all kinds.

[Read more for an April update on the Coronavirus for camps.](#)



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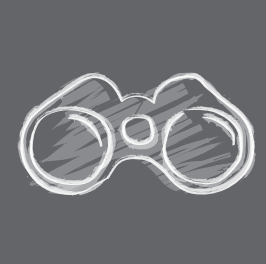
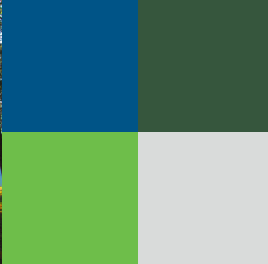
The Impact of COVID-19: Considerations for Camp Directors and Staff For Summer 2020

The impact of the coronavirus (COVID-19) has been pervasive, and has affected all of us, personally and professionally. Mandatory “shelter in place” has worked to ameliorate the spread of COVID-19, and states are now considering lifting some of the restrictions and establishing task forces to develop protocols required as we phase in to the new normal. The camping industry is anxiously waiting for directives that will influence whether camps are open or closed during the summer. Regardless of that decision, camps must be prepared to operate in an environment that has changed, and in which now and for the foreseeable future COVID-19 will dominate. The following are some considerations camp directors and staff must review as we await decisions about camp openings:

- 1. Onboarding Furloughed and Laid-Off Staff—Reinstating and Rehiring:** If you are a camp that has furloughed or laid off staff, the key question is whether a temporary layoff or furlough actually was a separation of employment. That answer may be different depending on your location and the circumstances surrounding the layoff or furlough. If employees (i) remained on benefits, (ii) received at least some pay during the furlough, and (iii) the furlough was of a short duration, it is less likely to be considered a separation. These camps, therefore, will be less likely to have to go through an entire rehiring process when reinstating employees. If, however, (i) the furlough was unpaid, (ii) employees had no eligibility or payment for benefits, and (iii) the furlough’s duration was six months or more, it is more likely that the furlough will be deemed a legal separation of employment. Camps falling into this latter category will need to proceed through the entire rehiring process (obtaining a Form I-9 and Form W-2 for each employee, for example) for their furloughed employees. It is critical to review applicable state law to review what will be required upon employees’ return.
- 2. Comply With All Employment Discrimination Laws:** Don’t make assumptions about staff. All employers, including camps, must comply with federal, state, and local anti-discrimination laws in all aspects of employment, including hiring and firing. As a result, do not make determinations of risk (or hiring decisions) based on a staff member’s race, country of origin, or medical background.
- 3. Establish an Infectious/Communicable Illness Policy:** If you do not already have a communicable illness policy, it is imperative to create a written one prior to the camp season. If you have a policy (great news!), walk through your policy to ensure that it addresses all communicable illnesses and not just one that disproportionately affects a particular protected group of individuals. This should include how you will treat a staff member who displays symptoms of COVID-19 or tests positive for COVID-19.
- 4. Know What You Will Do With an Ill Staff Member:** If a staff member displays symptoms of COVID-19 or tests positive for COVID-19, camps must inform staff members (among others) about a possible exposure to COVID-19, but maintain the confidentiality of the exposed staff member’s identity and medical history. The global hysteria over COVID-19 presents a real “defamation trap.” All it takes is one staff member posting to social media: “we sent home Allen today because he was coughing, may be coronavirus!” to give rise to a very real claim for defamation. Therefore, instructing staff members to maintain the confidentiality of health information is critical.



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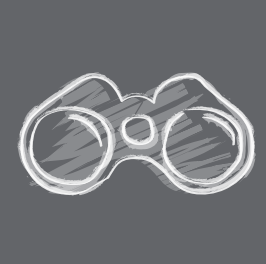
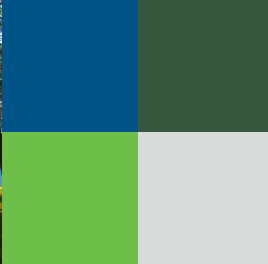
You also may need to inform your local public health officials and the Occupational Safety Health Administration (OSHA) if a staff member tests positive for COVID-19. It is debatable whether an incident of COVID-19 is considered a reportable incident under the Occupational Safety Health Act. Guidance on whether an incident is reportable is available at <https://www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>.

From a liability standpoint, generally, any illness or injury arising out of or in the course of employment is an industrial injury. That includes any contagious disease contracted at work. The problem with COVID-19 and other contagious diseases is whether anyone can know for sure where the employee contracted the illness. Many states have statutory provisions that indicate that when in doubt, disputes should be resolved in favor of providing benefits. So, where it may be impossible to know for sure when or where a staff member contracted the illness, the staff member may prevail.

5. **Establish Additional Cleaning Measures:** As long as your camp routinely is cleaning high-touch areas, there is no need to perform special cleaning upon learning that an asymptomatic employee has tested positive for COVID-19. However, if a symptomatic employee was present at camp within 48 hours of testing positive, it is important to follow the CDC's cleaning measures (<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>). Cleaning staff should clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by the ill person(s) focusing especially on frequently touched surfaces. Camps also may want to consider identifying specialty third-party cleaning services in the event of a COVID-19 incident.
6. **Determining Staff Members' Health Before They Arrive:**
 - **All Staff Members:** Prior to and upon arrival, camps may ask staff members if they are experiencing COVID-19 symptoms such as fever, tiredness, cough, and shortness of breath. Camps must treat all such information as confidential and maintain a separate medical file for each staff member. Also, the EEOC recently has issued guidance permitting employers to test employees for COVID-19 prior to their arrival at work. Depending upon your camp atmosphere, this may be another option to adopt.
 - **Staff members who have tested positive for COVID-19 or who have been in close proximity with someone who tested positive for COVID-19:** Camps may ask these staff members to obtain a certification from a health professional indicating that the staff member does not pose a risk of transmission by being at camp.
 - **Staff members with underlying health conditions:** As a reminder, as part of the application process, you cannot ask staff members about underlying health conditions. You may question a staff member only about whether they can complete the essential functions of their job. If a staff member raises an underlying health condition with you, either during the application process or after, as an employer, every camp has an affirmative duty to engage in the "interactive process." The "interactive process" is the legal requirement to engage in communications with the staff member about their needs and how the camp can accommodate their medical needs. If the camp cannot accommodate a staff member's medical needs, consult with counsel on next steps, which may include seeking additional information from the staff member's medical provider or a third-party medical provider.

Importantly, stay alert for new information from the CDC, which will issue ongoing guidance on this issue.

7. **Create a Process for Managing Temperature Checks:** To the extent your camp will require temperate checks (whether your camp has decided to implement them or they are required by local or state law), create a written protocol: (1) detail how checks will be conducted; (2) determine how the temperature information will be stored (ideally in a private location and kept by individual staff member); (3) decide your temperature cutoff (CDC guidelines currently have this at 100.4 degrees Fahrenheit); and, (4) establish how you will manage a staff member with a high temperature. Your protocol should be consistent, applied to everyone on your premises—staff members, campers, visitors, guests, etc.—and occur before anyone enters camp premises (for example, at a camp gate or prior to boarding transportation to camp). Whoever is conducting the checks should have proper training. Remember that, typically, outside of this pandemic, temperature checks are highly discouraged, and in some circumstances, illegal because they are considered invasive medical examinations under the Americans with Disabilities Act.



Note for California camps: California law requires employers to provide not only prior notice to individuals before scanning their temperatures, but also requires that the notice meets the requirements of a Notice of Collection under the California Consumer Protection Act. Specifically, the Notice must explain that camp will collect the employees' body temperature and describe each purpose for which camp will use that information.

- 8. Take Precautions to Prevent the Spread of Germs:** A temperature check is only one element of a comprehensive program, including employee education about COVID-19 symptoms, employee and visitor screening questionnaires, emphasis on good hygiene (e.g., handwashing), and social distancing. OSHA offers a free, downloadable poster that addresses many of these points: <https://www.osha.gov/Publications/OSHA3994.pdf>. The CDC also offers print resources on its website.

Preventing the spread of germs requires other major considerations with respect to staff members.¹ Will you allow your staff members off camp premises for days/nights off? Will you allow visitors and guests at camp? How will you handle obtaining specialty items for staff (food, medication, equipment, etc.)? Will you allow alcohol on premises? Most of these decisions are discretionary for each camp to determine; however, each camp will need to consider its own state and local laws.

- 9. Be Vigilant About Morale:** This has been a difficult time for everyone. During the pandemic, your staff members may have lost family and friends, and may be in mourning. Others may have endured financial difficulty. And, certainly, as a business, you too have faced unprecedented times. Acknowledge that times are different and allow camp to be an escape. Openly discuss morale with camp personnel and discuss specific initiatives camp can undertake as "morale boosters."
- 10. Discrimination and Harassment:** Do not tolerate discrimination or harassment based upon COVID-19. Unfortunately, some in the media and public have referred to COVID-19 as the "Chinese virus" and other terms that may be perceived as targeting certain races and national origins. Be clear with your staff that such references are considered harassment, and will not be tolerated by your camp under any circumstances. Camps also must take steps to prevent discrimination and harassment against individuals who are disabled or perceived as disabled because they are exhibiting symptoms suggestive of having contracted COVID-19.
- 11. Be Alert:** The COVID-19 situation is dynamic and ever-changing. Moving forward, it is important to consult the FAQs and guidance issued by the CDC, Equal Employment Opportunity Commission (EEOC), OSHA, the Department of Labor (DOL), and other local, state, and federal government agencies. Additionally, consultations with counsel are encouraged to ensure adherence to not only newly issued federal, state, and local laws and regulations, but also currently existing laws and regulations.

Please note that the ideas presented above are for the most part general, and each camp must establish their own protocol based on and consistent with federal, state, and local laws and regulations and guidelines, which change on a frequent basis.

¹ Will you allow your staff members off camp premises for days/nights off? This is a popular question with a somewhat complex answer. Generally, if your camp is exempt from minimum wage and overtime requirements under both federal and your state's laws, requiring staff to remain on-premises is a term of employment and acceptable. If your camp is not exempt from minimum wage and overtime requirements either under federal or state law, whether you will need to pay staff for time that otherwise would be considered "off" will be a very fact-specific inquiry. Some of the considerations that will go into this analysis include what is your staff allowed to do while on their days/nights off, where in camp can they go, are "non-camp" resources/programs brought in for them to enjoy on their days/nights off, etc., and can they order in food, activities, supplies, etc.