



*Trusted Advisors for Growth*

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**Your Future  
State and Your  
Employees –  
Mitigating Risk**

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# Disclaimer

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**The materials presented in this webinar are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to your particular issue or problem. Participation in this webinar does not create a client relationship between the participant and our presenters. The opinions expressed in this webinar are the opinions of the individual presenters and may not reflect the opinions of the presenter's company or KMS.**

# Webinar Housekeeping

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- **Everyone attending the webinar is muted. To ask a question, type your question in the Q/A text box using your GoToMeeting panel.**
- **If there are questions that we are not able to get to, we will provide the questions and answers for everyone in a follow-up email distributed tomorrow and also list them on our website.**
- **This webinar is being recorded. The link to the recording will be included in the follow-up email tomorrow as well as listed on our website.**
- **A white paper resource has been created for this audience. It will be distributed to you in the follow-up email tomorrow.**
- **Please check our website [www.wearekms.com](http://www.wearekms.com) frequently for resources and updates.**

# Participants

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*Montgomery Ink, LLC*

## **Kyle Russell**

Managing Principal & Attorney at Law

*Jackson Lewis P.C.*

## **Ross Smith**

Operations Manager Loss Prevention & Learning  
Solutions

*Occutec*



# Agenda

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- **Introduction**
- **Optimize Your Future State**
- **OSHA/CDC Guidance and Best Practices for Employee Safety**
- **Employer Risk and Liability Considerations**
- **Q/A**
- **Final Notes**

Stefanie Montgomery

Ross Smith

Kyle Russell

# Kansas Manufacturing Solutions

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## Kansas Manufacturing Solutions (KMS)

KMS' mission is to grow Kansas manufacturing by delivering solutions to small and medium sized manufacturers with value driven results.

As a trusted advisor to the manufacturers of Kansas, KMS provides a suite of services that create growth for manufacturers through increased profits, increased sales, and the creation and retention of jobs.

KMS has published third party quarterly surveys of KMS clients to ensure full accountability and a performance scorecard of certified value for the manufacturing customers we serve.



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## **Optimize your Future State**

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## The Overview & The Role of Strategic Planning

- ❖ These are unprecedented times and the business dynamics for Kansas manufactures and all business are in uncharted waters. The shutdown was immediate, and the economic reverberations are catastrophic. Manufacturing plants/businesses slowed or closed, folks furloughed or laid off, some supply chains ceased to exist, and production evaporated. However, the reopening is occurring and its complex. Are Kansas businesses ready?
- ❖ How can employing strategic planning optimize to the new normal to stair step into business, keep your employees safe, mitigate unnecessary costs, grow revenue and understand supply chains.
- ❖ **Learn, Adjust and Evolve:** As you digest the impact, what have you learned, how are you adjusting and what and how will your business evolve. In other words, what will change ONLY temporarily and what will change permanently and how to make good decisions without full information.

**Remaining slides in the strategic planning presentation are protected intellectual property. For additional discussion about strategic planning, please contact Stefanie Montgomery through KMS at [info@wearekms.com](mailto:info@wearekms.com)**





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## **Best Practices to Protect Your Employees**

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# Employee Protection

Status of workplaces in Kansas and nationally:

- Lyons County KS: COVID outbreak account for over half their cases.
- Nationally: Meat Packing and Mail Order

**Be Prepared!**





# Employee Protection

OSHA's and the CDC has provided a guidance document to help employers operate during situation like COVID.

OSHA has a Covid-19 webpage:

<https://www.osha.gov/SLTC/covid-19/>



# Employee Protection



UNITED STATES  
DEPARTMENT OF LABOR



Occupational Safety and Health Administration

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[OSHA](#) ▾ [STANDARDS](#) ▾ [TOPICS](#) ▾ [HELP AND RESOURCES](#) ▾

[Enforcement Memos](#) / [Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 \(COVID-19\)](#)

April 10, 2020

**FOR:** REGIONAL ADMINISTRATORS  
STATE DESIGNEES

**THROUGH:** AMANDA EDENS  
Deputy Assistant Secretary

**FROM:** LEE ANNE JILLINGS, Acting Director  
Directorate of Technical Support and Emergency Management

PATRICK J. KAPUST, Acting Director  
Directorate of Enforcement Programs

**SUBJECT:** Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)

This memorandum provides interim guidance to Compliance Safety and Health Officers (CSHOs) for enforcing the requirements of 29 CFR Part 1904 with respect to the recording of occupational illnesses, specifically cases of Coronavirus Disease 2019 (COVID-19). This memorandum will take effect immediately and remain in effect until further notice. This guidance is intended to be time-limited to the current public health crisis. Please frequently check OSHA's webpage at [www.osha.gov/coronavirus](http://www.osha.gov/coronavirus) for updates.

Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, if: (1) the case is a confirmed case of COVID-19, as defined by Centers for Disease Control and Prevention (CDC);<sup>[1]</sup> (2) the case is work-related as defined by 29 CFR § 1904.5;<sup>[2]</sup> and (3) the case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.<sup>[3]</sup> On March 11, the World Health Organization (WHO) declared COVID-19 a global pandemic, and the extent of transmission is a rapidly evolving issue.

# Employee Protection

## **Cal/OSHA Aerosol Transmissible Disease Standards**

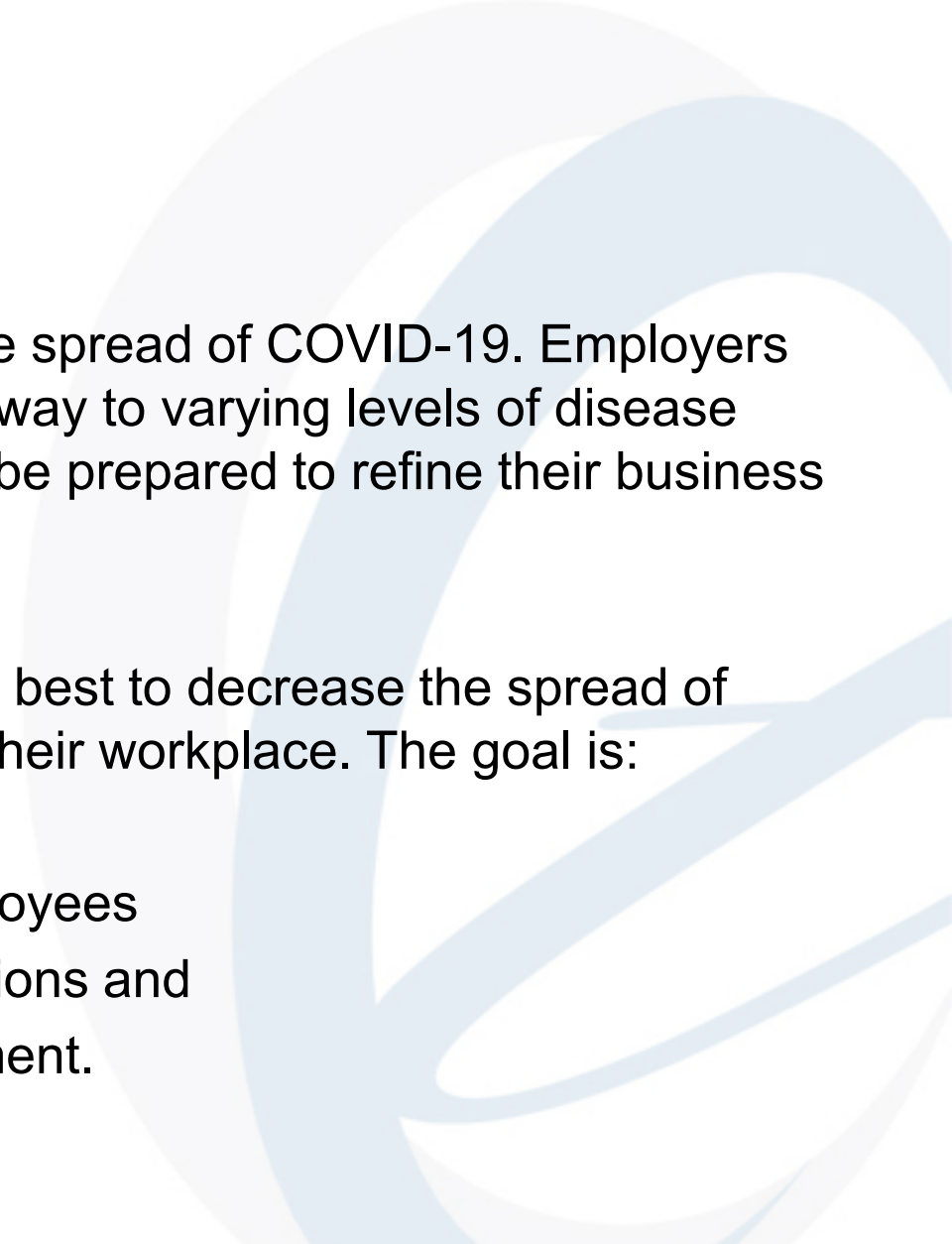
- California passed the first two occupational standards in the nation to prevent worker illness from infectious diseases that can be transmitted by inhaling air that contains viruses, bacteria, or other disease organisms: 1) the Aerosol Transmissible Diseases (ATD) standard, which applies to workplaces at high risk for infectious diseases such as hospitals, clinics, emergency medical services, laboratories, prisons, and homeless shelters.



# Employee Protection

Employers can prevent and slow the spread of COVID-19. Employers should plan to respond in a flexible way to varying levels of disease transmission in the community and be prepared to refine their business response plans as needed.

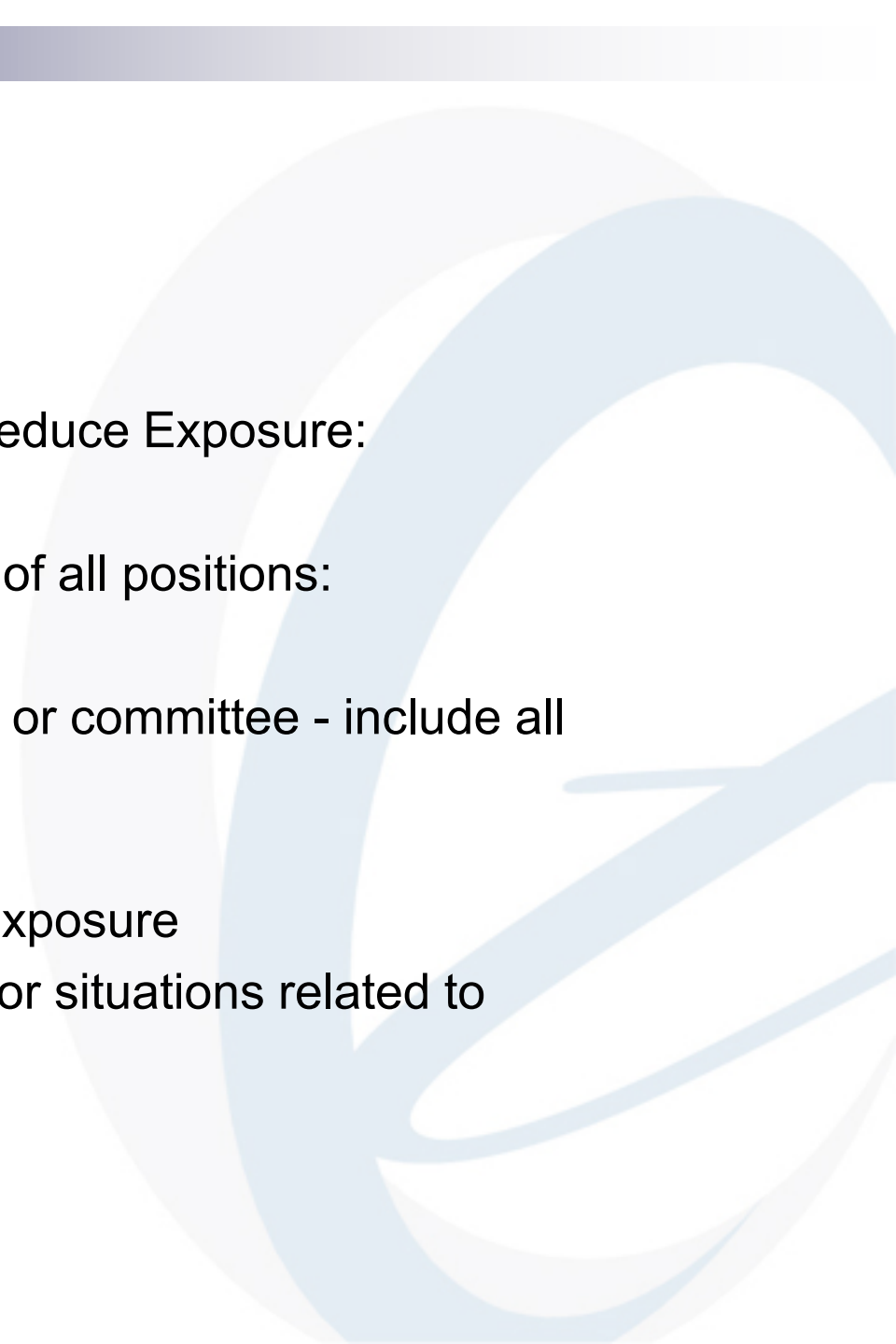
All employers need to consider how best to decrease the spread of COVID-19 and lower the impact in their workplace. The goal is:

- reduce transmission among employees
  - maintain healthy business operations and
  - maintain a healthy work environment.
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# Employee Protection

Steps All Employers Can Take to Reduce Exposure:

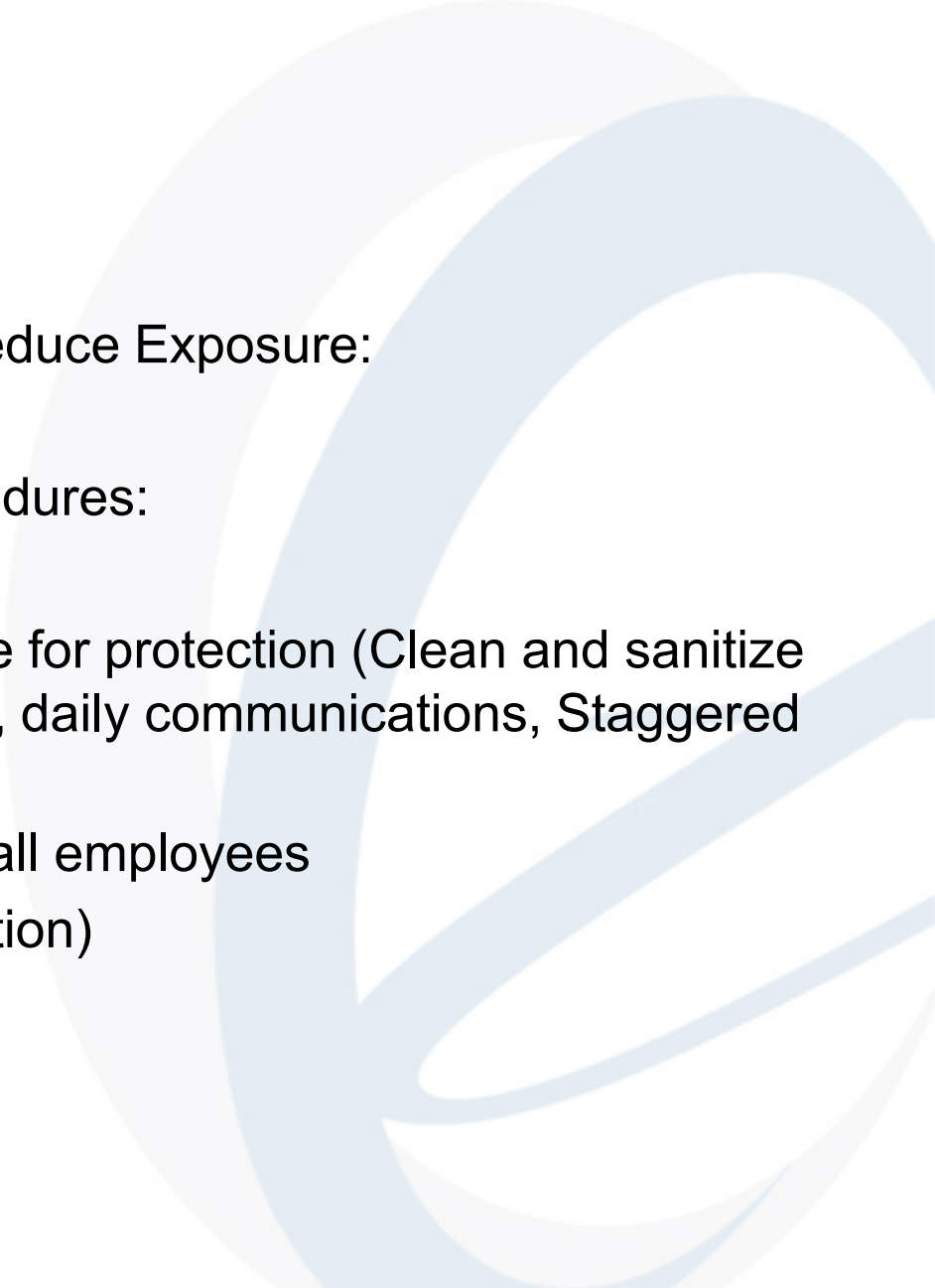
1. Conduct a Hazard Assessment of all positions:
    - Develop internal focus team or committee - include all levels of employee
    - Start with critical positions
    - Classification of employee exposure
    - Provide specific guidelines for situations related to exposures
- 



# Employee Protection

Steps All Employers Can Take to Reduce Exposure:

## 2. Develop a Written Plan and Procedures:

- Provides consistent guidance for protection (Clean and sanitize process, Information posters, daily communications, Staggered shifts and breaks,)
  - Accessible as a resource to all employees
  - Keep it current (new information)
- 

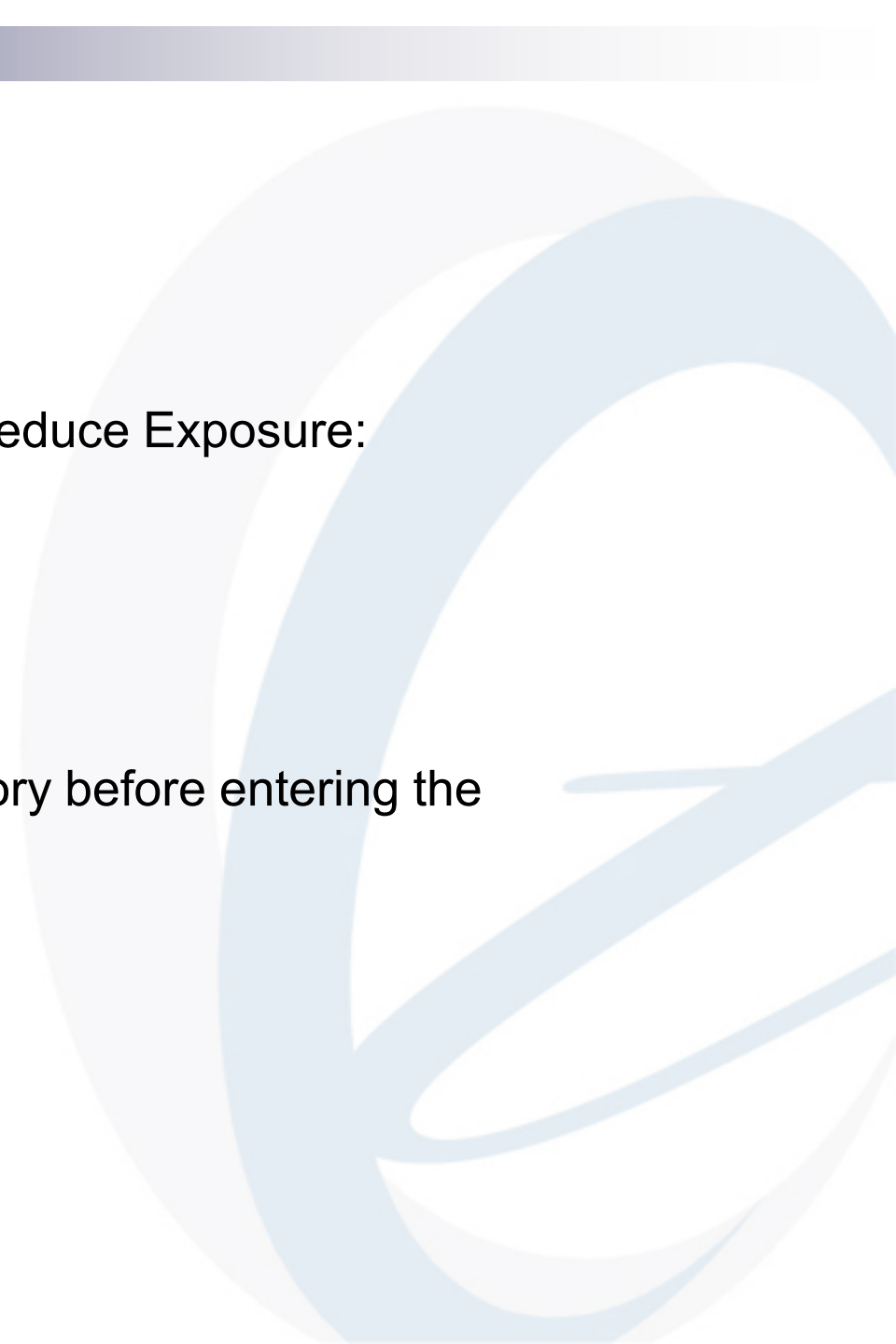




# Employee Protection

Steps All Employers Can Take to Reduce Exposure:

3. Train employees:

- Coordinate training material
  - Require training be mandatory before entering the work environment
- 



# Employee Protection

Steps All Employers Can Take to Reduce Exposure:

## 4. Protocol for infected Employees :

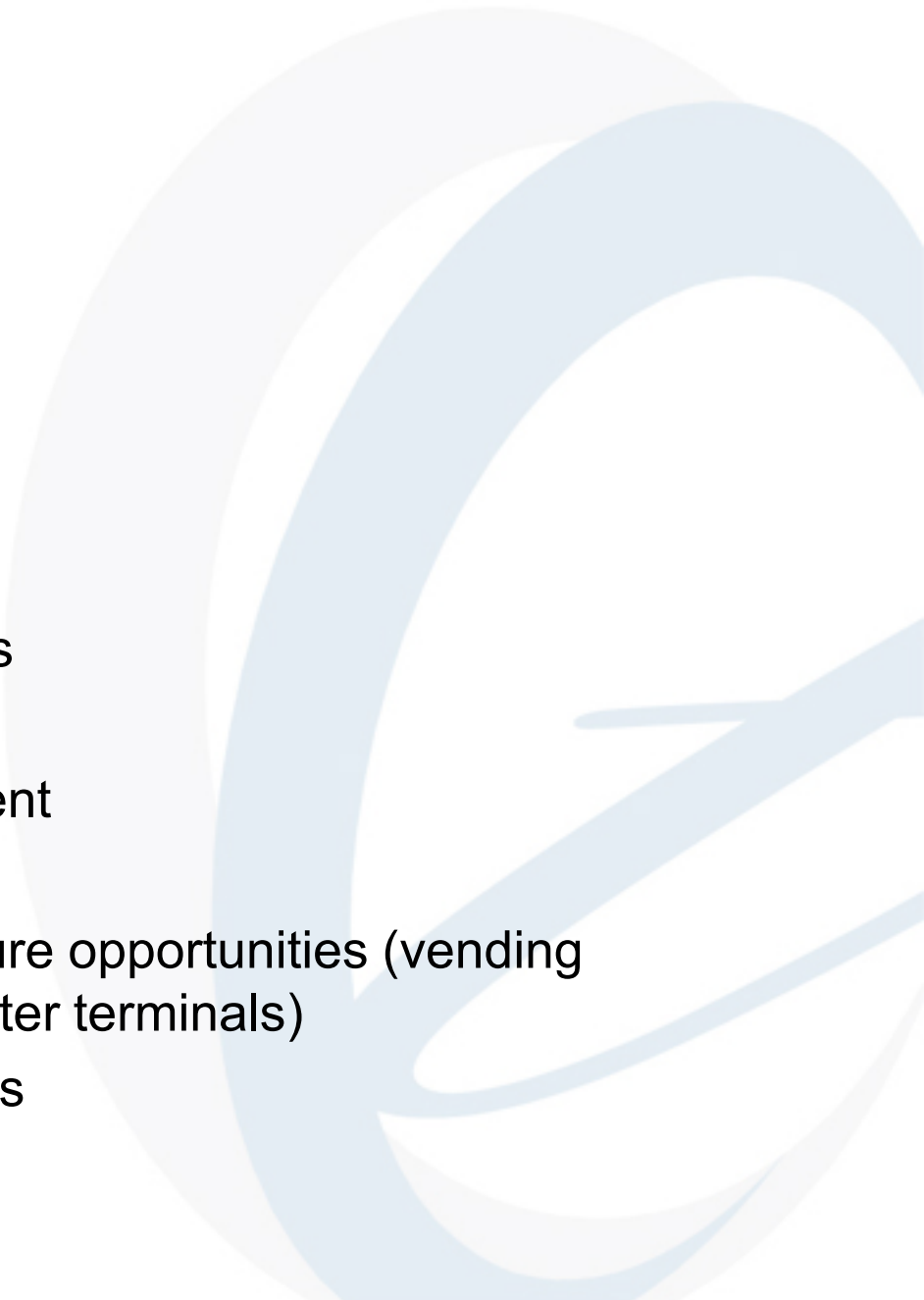
- Stay at home
  - Isolate work area prevent further exposure
- 



# Employee Protection

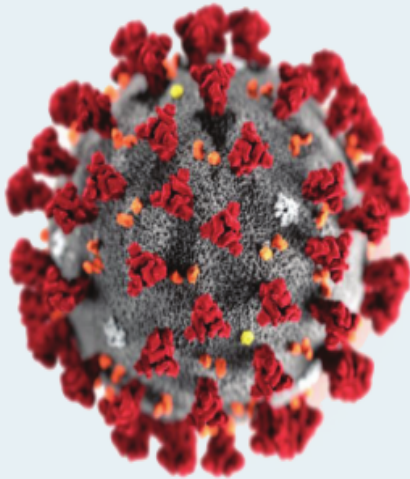
Workers' Risk of Exposure

Following the rules is critical:

- Washing hands requirements
  - Temperature reading
  - Personal Protective Equipment
  - Reduce meetings
  - Reduce unnecessary exposure opportunities (vending machines, communal computer terminals)
  - Zone work areas- limit access
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# Employee Protection

## Classifying employee exposure to COVID



This illustration, created at the Centers for Disease Control and Prevention (CDC), reveals ultrastructural morphology exhibited by the 2019 Novel Coronavirus (2019-nCoV). Note the spikes that adorn the outer surface of the virus, which impart the look of a corona surrounding the virion, when viewed electron microscopically. This virus was identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China.

*Photo: CDC / Alissa Eckert & Dan Higgins*



# Employee Protection

Jobs Classified at High Exposure Risk:

Employees that are all over the facility and have a high interaction with equipment, people, and product:

- Product Delivery personal
  - Quality Control Inspectors
  - Janitorial
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# Employee Protection

Jobs Classified at Medium Exposure Risk:

Employees that can perform work tasks without having a frequent interaction with equipment, people, and product out of their immediate work position:

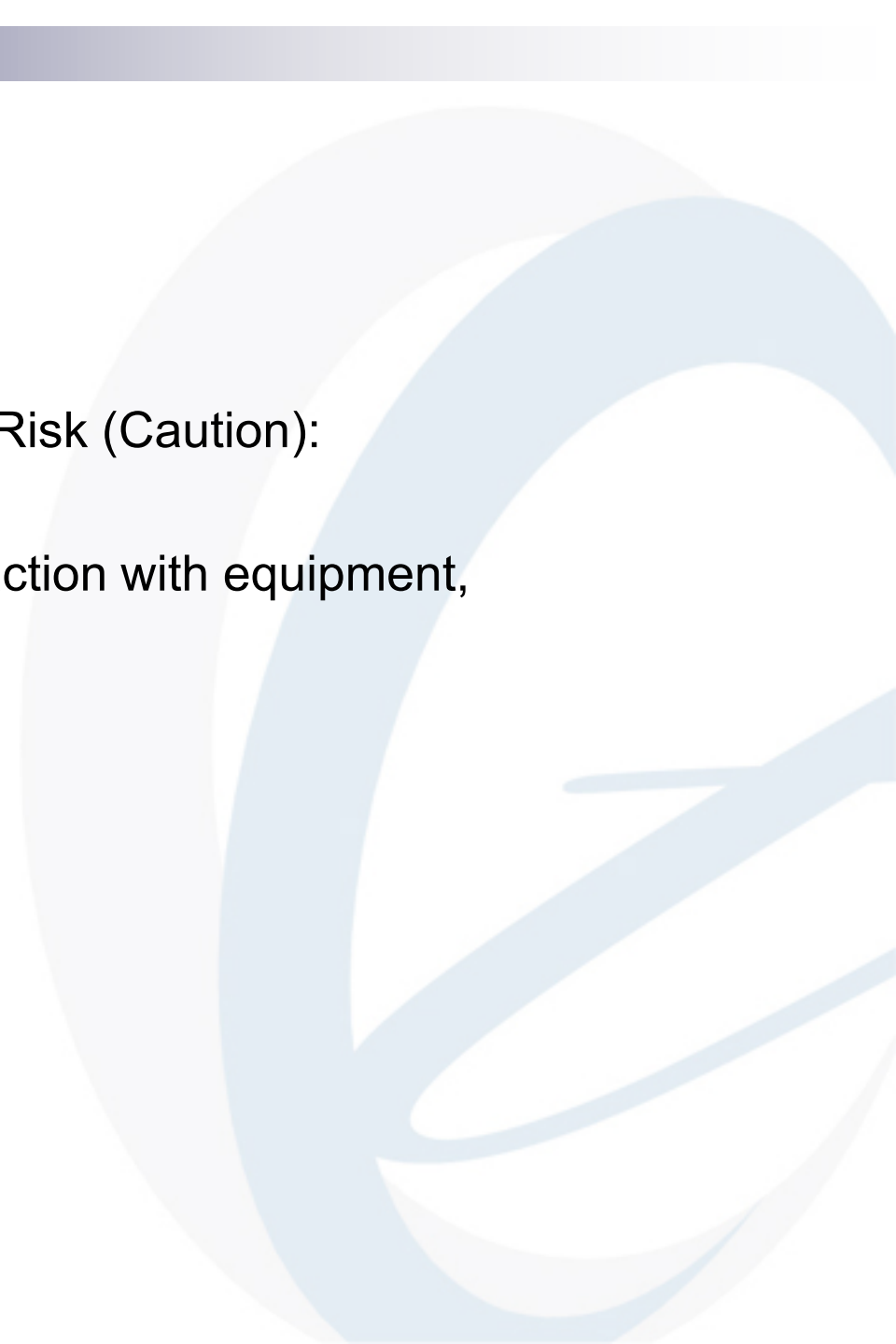
- Line Operators (conditional based on distance to other employees.)
  - Supervisors
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# Employee Protection

Jobs Classified at Lower Exposure Risk (Caution):

Employees that have minimal interaction with equipment, people, and product:

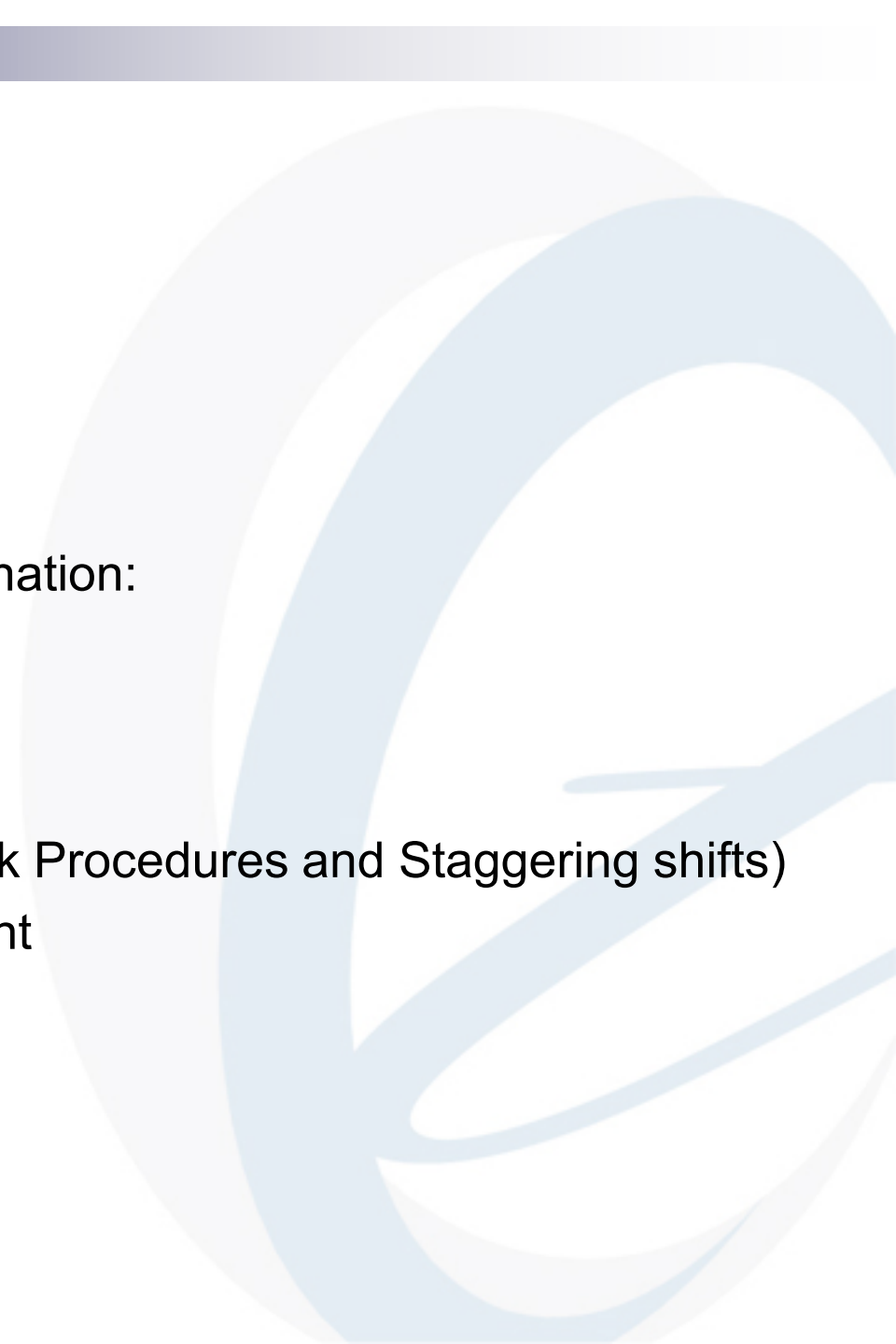
- Mobile equipment operators
  - Office employees
  - Laboratory Employees
- 



# Employee Protection

What to Do to Protect Workers.

Utilize the hierarchy of hazard elimination:

1. Elimination
  2. Engineering Controls
  3. Administrative Controls ( Work Procedures and Staggering shifts)
  4. Personal Protective Equipment
- 



# Employee Protection

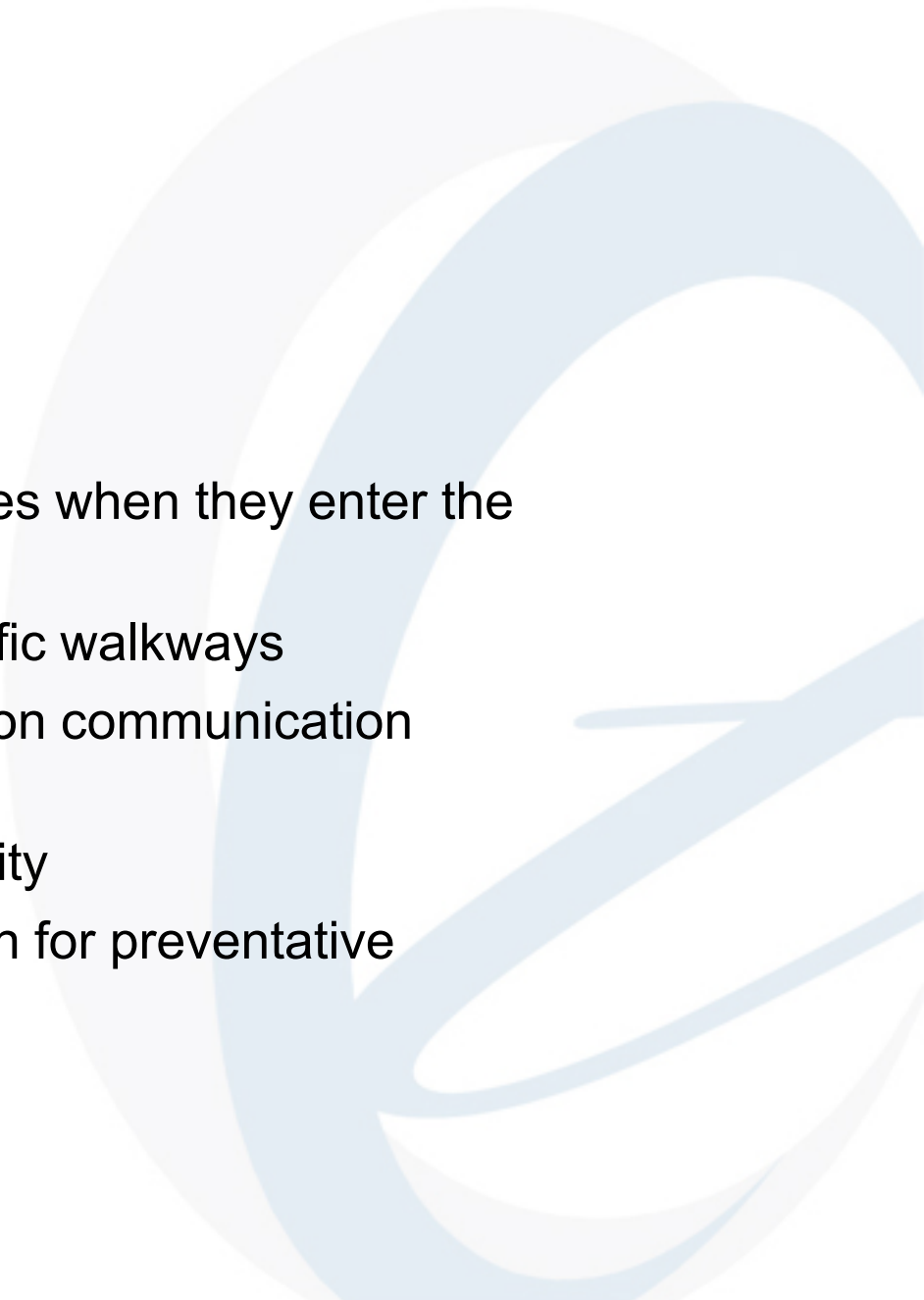
Consider work procedures:

- Investigate and determine an **event of an exposure incident**
- Evaluate each exposure incident, to **determine the cause, and to revise existing procedures to prevent future incidents.**
- Communicate the suspected or confirmed infectious disease status of persons to whom employees are exposed in the course of their duties.
- Communicate exposure incidents, including procedures for providing or receiving notification to and from health care providers about the disease status of referred or transferred patients.
- **Ensure there is an adequate supply of personal protective equipment** and other exposure prevention equipment and materials
- Obtaining the active involvement of employees in **reviewing and updating the exposure control plan** with respect to the procedures performed in their respective work areas. Employee input.



# Employee Protection

## Best Practices:

- Medical screening for all employees when they enter the facility and after lunch break.
  - Remove internal doors in high traffic walkways
  - Constant awareness and prevention communication regarding facility and community
  - Direct pedestrian traffic in the facility
  - Recommendations and information for preventative measures at home
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# Employee Protection

## COVID-19 Surface Cleaning & Sampling Support

When introduction new cleaning chemicals for process and protocols ensure employees are aware of chemical hazards and use the correct PPE.

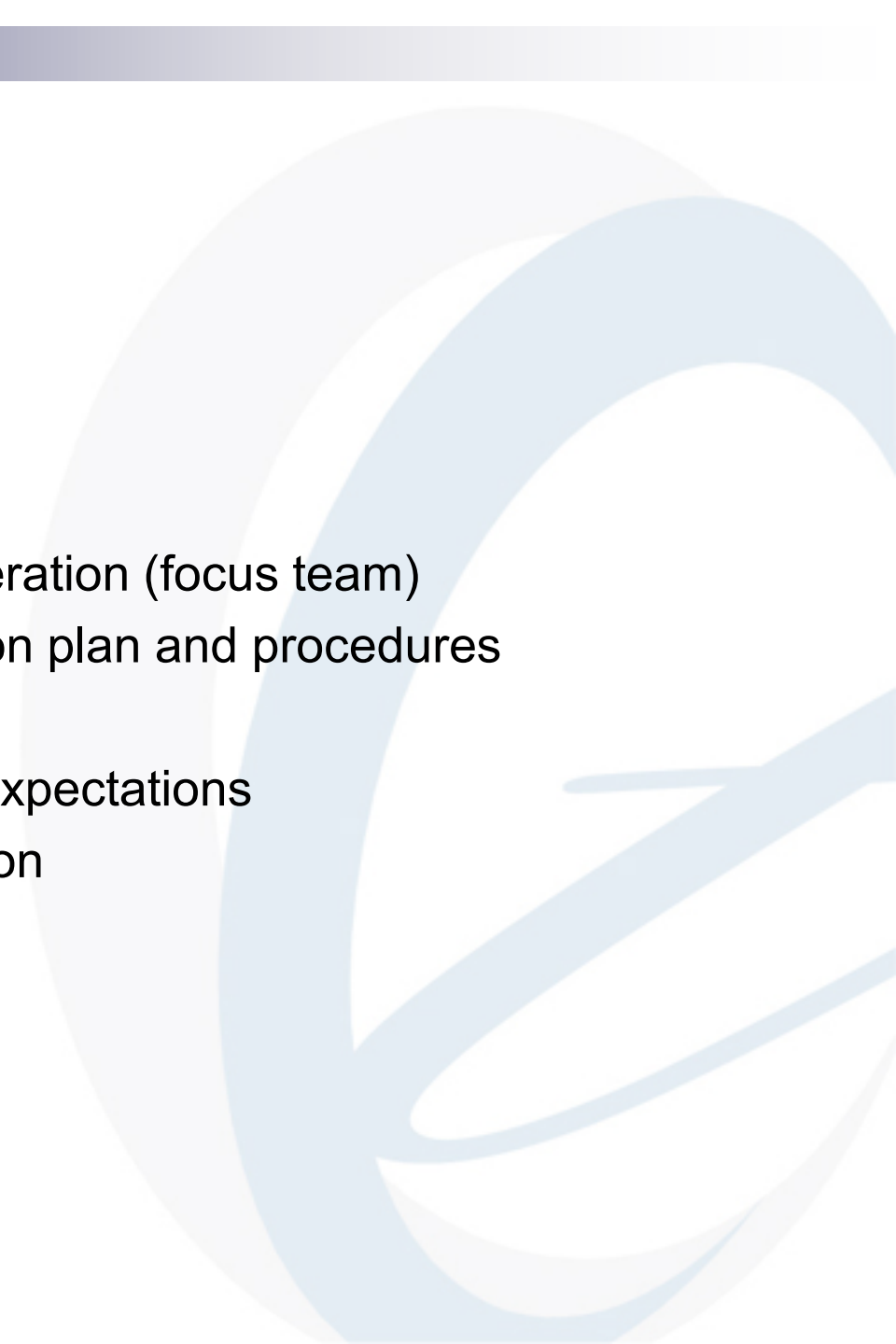
Verification of cleaning process





# Employee Protection

## Summary

- Conduct an assessment your operation (focus team)
  - Develop and implement prevention plan and procedures
  - Train employees
  - Be diligent with procedures and expectations
  - Keep current with latest information
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**Legal  
Considerations for  
Protecting Your  
Employees and  
Business**

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# Bringing Employees Back to Work

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- If some workers will remain off/furloughed, use objective criteria to determine which ones to bring back:
  - Seniority
  - Performance
  - Job title/classifications
- Determine which employees can/should continue to work remotely
- Don't assume employees can't or shouldn't return to work because of:
  - Child care responsibilities
  - Caregiving responsibilities
  - Their membership in a "vulnerable population" (age, disability, pregnancy)

# Bringing Employees Back to Work

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- Communicate clearly with employees who you are asking to return:
  - Return date/schedule
  - Any changes to pay, benefits, PTO, etc.
  - At-will employment disclaimer
- If there is a CBA, consider the need to involve Union
- For those resuming work or continuing to work remotely, consider work comp, wage/hour issues, data privacy
- For employees who were previously terminated (as opposed to furloughed) you may need to “re-onboard”
  - Non-competes, arbitration agreements, other programs/agreements?

# Permanent Employee Reduction

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- If you decide to permanently reduce the number of employees, including if furloughs become permanent layoffs:
  - Decisions must be made for legitimate, non-discriminatory reasons
  - Consider “adverse impact” on protected classes
  - Consider WARN Act implications



# Testing Employees

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- Should employers screen/test employees?
  - EEOC says it is OK to screen/test employees during the pandemic
  - Should be done in private, outside presence of other employees
  - Results – like any medical information – should be segregated

# Employee Safety

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- Do not require employees to report to work when they are sick; implore them to stay home if they have symptoms.
- Prepare to address accommodation/leave requests from employees who don't want to return, or who want to continue to work remotely:
  - ADA
  - FMLA
  - FFCRA (create proper documentation)
- Employee safety should be paramount:
  - NO enforceable OSHA guidance regarding COVID-19 so far
  - BUT, be familiar with subregulatory OSHA guidance – following it can only help you
  - OSHA says it will consider intervening in lawsuits filed against employers who follow guidance

# Safety Considerations

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- Safety considerations:
  - Changes to office/plant layout
  - Staggered scheduling
  - Cleaning/disinfecting protocols
  - Voluntary/mandatory use of PPE (could be required by government orders)
  - Limiting the number and size of in-person meetings
  - Closing break rooms/common areas
  - Limits on business (and non-business?) travel

# Status Changes

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- Consider impact of any status change on benefits plans/eligibility:
  - Reinstatement to benefits
  - Full-time status under the ACA
  - Waiting period and potential waiver?
  - Right to enroll upon return to work for people who previously declined coverage?

# Potential Scenarios

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- Employee seems ill or has engaged in high-risk behavior; other employees are concerned
- Employee wants to stay home and continue to draw unemployment rather than returning to work
- Employee asks to continue working from home despite being asked to return to office/plant
- Employees share rumors or concerns about other employees' medical condition
- Employees request information about other employees' medical condition
- Employees complain or take other action to protest working conditions

# Q&A and Final Notes

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- **We are a resource. You can send additional questions to [info@wearekms.com](mailto:info@wearekms.com). We will try to get you an answer.**
- **Webinar follow-up/playback information and a whitepaper resource will be distributed to you tomorrow via email and also be posted on our website.**

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