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# COVID-19 Preparedness for Apartment Firms

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# Table of Contents

Introduction	3
Develop an Incident Response Plan for Possible COVID-19 Exposure at Apartment Communities	4
Monitor and Communicate with Government Officials	4
Employee and Resident Communication is Key in Multifamily Settings	5
Preventing the Spread of COVID-19 in Multifamily Communities	5
A Note on Fitness Centers	6
Establishing Protocol for Employee Leave, Telework and Travel Policies	7
Crafting a Plan for Potential Lapse in Services and Supplies	9
Understanding Legal Liability and Obligations	10
Dealing with the Aftermath	11

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# Introduction

*The information provided herein is general in nature and is not intended to be legal advice. It is designed to assist our members in understanding this issue area, but it is not intended to address specific circumstances or business situations. For specific legal advice, consult your attorney.*

The Center for Disease Control (CDC) is currently monitoring a new outbreak of coronavirus, (COVID-19), which originated in Wuhan, China and is causing respiratory illness in populations across the globe, including in the U.S. and among people with no known connection to the cases in China.

As cases of the novel coronavirus, (COVID-19) spread across the country, apartment firms need to prepare for potential impact to their communities and to address employee and resident concerns of potential exposure at their properties or workplaces. They also need to take measures to help stop the spread of the virus.

To help them do that, NMHC has compiled an overview of suggested apartment owner preparations and considerations. NMHC recognizes that the broad array of company types, sizes and geographic locations that make up the apartment industry discourages a one-size-fits-all approach to planning.

Also note that this overview is not to be construed as legal guidance. Instead, it is meant to be a starting point for your company-specific plan. We encourage firms to seek expert consultation in the development of their plan to ensure comprehensive coverage.

Given the fast nature evolution of this situation, NMHC encourages firms to monitor our “[Coronavirus Resources for Apartment Firms](#)” landing page, which includes links to resources from the Center for Disease Control (CDC), World Health Organization (WHO), Department of Labor (DOL), Environment Protection Agency (EPA) and other organizations. We strongly recommend regularly visiting these sites for the latest news on this outbreak.

We also recommend firms sign up for NMHC’s Emergency Preparedness Listserv to both ask questions and learn from what other firms are sharing. More information is available [here](#).

# Develop an Incident Response Plan for Possible COVID-19 Exposure at Apartment Communities

Firms should start by creating a "Crisis Team" comprised of senior executives charged with developing the plan and carrying it out. This type of plan should be flexible and actionable regardless of whether the apartment firm is facing a potential outbreak like COVID-19 or staring down a catastrophic hurricane.

In this case, since the impacts of the spread of COVID-19 can vary significantly, team members should include personnel from the corporate suite, risk management, human resources, legal, information technology, and operations. And team members should have decision-making and spending authority. For further guidance on how firms should create or enhance their Incident Response Plan, NMHC has provided an overview which can be accessed [here](#).

Firms should also familiarize themselves with state and local public health and disaster management authorities, learn how to access and use their resources and designate individuals to maintain these relationships. These individuals will be responsible for providing your community with the most up-to-date information about a pandemic, the recommended procedures

# Monitor and Communicate with Government Officials

Regardless of the type of disaster or situation that has the potential to impact an apartment community, it is imperative for onsite staff and management to regularly monitor and communicate with public officials and first responders. Often, local, state or federal agencies are coordinating response with the private sector and will have the most up-to-date information on preparation, impact and recovery efforts.

In this instance of the spread of COVID-19, apartment firms that are in affected communities should establish and maintain contact with local and state health departments and disaster management authorities. They should learn how to access and use their resources and designate individuals to maintain these relationships. These individuals will be responsible for providing your community with the most up-to-date information about a pandemic, the recommended procedures and the mandatory activities.

All firms should monitor the websites and social media of the CDC, local and state health departments as well as other public officials to remain current on the latest available information.

# Employee and Resident Communication is Key in Multifamily Settings

Accurate, timely and regular communications with employees, residents, suppliers and even the media are critical. Make sure you have all available contact information for your staff, residents and suppliers (cell, e-mail, etc.), and develop alternative ways to disseminate information (corporate web sites, app-based notifications, text messaging, etc.) in case contact is disrupted.

Staff should be instructed to inform firms if they know they have been exposed to the virus or are exhibiting symptoms of infection. They should also inform employers if they have a household member with a particular vulnerability to the virus, such as a weakened immune system, that may require them to have more protections from infection.

The most common communications will concern prevention practices, changes in office policies (telecommuting policy or sick time) and resident communications. Certain resident policies will need to be adjusted, such as transitioning to an emergency-only maintenance policy.

Some apartment firms have pushed out information on COVID-19 to residents and others may choose to do so in the near future. All firms are encouraged to post CDC resources in public areas to make residents and employees aware of the facts surrounding COVID-19 and ways they can help prevent its spread. Educational resources from the CDC can be found at <https://bit.ly/2VTGBFr>.

# Preventing the Spread of COVID-19 in Multifamily Communities

Clearly the most important and ongoing component of any plan is preventing the spread within your community to begin with. Everyone is now familiar with the “common sense” approach to infection control—practicing proper cough etiquette, washing your hands frequently and staying home if you are sick. Yet, apartment operators should adopt enterprise wide practices to protect their communities as much as possible.

A strong focus by staff should be placed on sanitizing work areas, public places and commonly touched elements (door handles, elevator buttons, etc.) and placing hand sanitizers in common areas and fitness centers.

The U.S. Environmental Protection Agency (EPA) released a list of EPA-registered disinfectant products that have qualified for use against SARS-CoV-2, the novel coronavirus that causes COVID-19. Products appearing on EPA’s list registered disinfectant products have qualified for use against COVID-19 through the agency’s Emerging Viral Pathogen program.

This program allows product manufacturers to provide EPA with data, even in advance of an outbreak, that shows their products are effective against harder-to-kill viruses than SARS-CoV-2. It also allows additional communications intended to inform the public about the utility of these products against the emerging pathogen in the most expeditious manner. To view the list of EPA-registered disinfectant products, please visit the [EPA website](#).

## A Note on Fitness Centers

The inquiries we get the most focus are focused on fitness centers, given their potential to transmit viruses. Keeping a clean gym is one of the most important things you can do to prevent an outbreak of the cold/flu/COVID-19 through your community.

### **Guidance to Wash Your Hands**

Consider putting up signs at the entrance of the gym and in the locker rooms/bathrooms if you have them asking residents to wash their hands before and after their workout sessions.

### **Wipe Down Equipment**

Provide ample spray bottles, paper towels or disinfectant wipes to allow residents to wipe down equipment before and after their workout. Put up signs encouraging them to do so.

### **Signage Matters**

Simply posting signs about basic hygiene will make your residents more likely to wash their hands and wipe down their equipment if they hadn’t been reminded.

### **Ask Resident to Check Themselves First**

Ask residents to not use the gym if they have fever, nausea, runny nose, chest congestion or the chills. Encourage them to get some rest and spare their fellow residents the likelihood of also getting sick

### **Don’t Rule Out Closing the Facility**

This may eventually be necessary depending on the level of outbreak or the risk of outbreak at the property or the market.

# Establishing Protocol for Employee Leave, Telework and Travel Policies

A severe outbreak could cause transportation, education or other service disruptions which could lead to employee absenteeism at apartment communities, due to infection, fear of infection or the need to care for affected family members.

Apartment firms should develop an employee leave policy that includes telecommuting, staggered schedules and liberal leave. Firms should establish protocol for employee/supervisor communication, cross-train staff in case of long-term absences and test telecommuting plans to ensure they work.

In the end, apartment operators should remain flexible and encourage employees to stay home when they are sick or need to care for a family member that may be affected by the outbreak.

It is also best to consult with counsel on any federal, state or local legal requirements or regulations about mandating employees work during an outbreak or take leave without pay.

Employees of multifamily firms often travel to fulfill their responsibilities of their jobs. These can range from industry conferences, site visits, regional planning meetings to development or investment meetings. Firms should carefully review existing travel obligations and consider reducing, restricting or modifying employee travel commitments to protect their workforce. To aid in this, firms should continue to monitor the CDC's travel restrictions and guidance.

## Flu-Specific Elements of Continuity Plans and Site Controls

The Centers for Disease Control and Prevention recommends that corporate emergency preparedness plans include specific provisions addressing the impact of a pandemic flu on their employees. The agency suggests:

- increasing the frequency and thoroughness of cleaning in common areas and of frequently touched items like elevator buttons, door handles, and intercom panels. Accordingly, excess supplies should be purchased ahead of a pandemic to ensure that proper cleaning and maintenance can continue; despite shortages or disruptions in the supply chain.

- forecasting and allowing employee absences during a pandemic due to illness or family member illness, community containment measures and quarantines, school and/or business closures and public transportation closures;
- implementing guidelines to modify the frequency and type of face-to-face contact among employees;
- encouraging and monitoring annual employee flu vaccinations;
- evaluating and improving employee access to healthcare;
- identifying employees with special needs and incorporating those considerations into preparedness plans;
- ensuring that any disclosures about the health of staff or residents are made in accordance with privacy laws; and
- carefully analyzing any decision to use personal protective equipment (PPE), such as gloves and masks. While the use of such equipment may seem helpful to prevent disease transmission, the CDC is not recommending the use of masks in non-health-care settings. Rather, it is promoting the primary utilization of the hygiene-based infection control strategies. Before deciding to use or make PPE available, be sure to review firm policies for compliance with Occupational Safety and Health Administration.

The following points can help keep businesses running and apartment properties safe in the event of any emergency situation, including pandemic flu. This list is not intended to be exhaustive but provide a starting point for developing a plan.

- Consider non-punitive, “liberal leave” policies which require sick individuals to stay home and accommodate situations where healthy employees are absent due to events like mandatory isolation, critical infrastructure failures and public transportation closures.
- Policies should also provide clear guidance for identifying and dealing with abuse of absence policy.
- Cross-train employees to perform multiple job functions in anticipation of increased employee/contractor absenteeism. Ensure that operating instructions/manuals/records for equipment and building systems are accessible onsite in the event individuals with primary responsibility for those tasks are unavailable.
- Clearly identify the trigger points for initiating and discontinuing various elements of preparedness and response plans. Internal plans should be tied to changes in pandemic alert phases as identified by the WHO and local health authorities.
- Establish protocols for staff to stay in touch with their supervisors.
- Ensure that policies address limited Information Technology capacities and the loss of telecommunications due to a surge in use, utility outages, etc. Create tiered access to the firm’s virtual private network (VPN), so critical personnel are able to access the network.



- Give staff with less critical functions lower priority access.
- Consider seeking expert advice. There are various crisis management consultants, service providers, and attorneys who specialize in disaster preparation and response.
- Public health officials caution against employing restrictive or disruptive mitigation or safety policies of unproven effectiveness. Any disaster planning and response activity should balance the mitigation benefits against the psychological impacts, economic concerns, social disruption, etc. Organizations should look to their public health authorities and other experts for guidance.
- Finally, apartment communities should avoid any activities that are counter-productive to greater mitigation efforts. For instance, if local authorities close schools, it would be “unwise” to create onsite childcare arrangements that mimic the classroom setting.

## Crafting a Plan for Potential Lapse in Services and Supplies

With the potential loss of staff and on-site personnel, most apartment communities will need to scale back or curtail services. It may be necessary to implement online-only leasing and prioritize online rent payment. Firms should remind residents there generally are no fees to pay by bank transfer in case they have read something to the contrary and therefore might be hesitant to take advantage of online payments. Where fees are involved, firms are encouraged to limit or waive them. As is typical for the industry, apartment operators should work with residents who may fall behind on rental payments because of a loss of income or a lack of access to their financial accounts during a widespread COVID-19 outbreak.

Service calls, trash collection, security, maintenance and move-in/move-out will require another look in a severe outbreak. Fitness centers, pools and community rooms may need to be closed.

Anticipate high absenteeism at your suppliers and service providers that might create disruptions in trash removal, utility service, transportation or supply delivery. Seek alternative service providers and outsource options for IT.

Supply chain issues could grow causing shortages of critical cleaning materials such as disinfectants or gloves. Consider placing supply orders well in advance of running low to ensure you are prepared or taking advantage of windows that present themselves when shortages have been replenished.

# Understanding Legal Liability and Obligations

The spread of COVID-19 could raise a host of legal issues that must be analyzed in advance to reduce company liability. Consider liability sources such as resident illness, employee exposure to sick residents, evictions and employee leave scenarios.

Apartment firms should consult with counsel and review applicable local, state and federal laws and regulations on what is required of your firm during an outbreak and to ensure you're in full compliance.

Firms should clearly articulate and distribute any changes to leave or disability benefit policies in advance to ensure uniform application. Give special attention to describing what types of leave may be used in situations where an employee is caring for sick family, when in voluntary isolation after being in close contact with an ill individual, or where it is difficult to get to work due to such things such as public transportation closures.

Firms can also look to [guidance](#) put out by the Occupational Safety and Health Administration (OSHA) on worker's rights and employer responsibilities. They should also anticipate that new worksite conditions may subject their business to certain OSHA and other safety or environmental regulations.

They can also review informal [guidance](#) put out by the Society for Human Resource Management (SHRM) that covers a wide range of employment law considerations. SHRM's guidance includes a wide range of topics including the application of the Family Medical Leave Act, the applicability of workers' compensation and the Americans with Disabilities Act and Occupational Safety and Health Administration (OSHA) requirements.

Firms should also be mindful of new and changing legal requirements enacted by governments to address an emerging pandemic. Additional resources are available on NMHC's web site [here](#).

Companies should also be aware that according to a 2005 American Bar Association (ABA) article, *force majeure* provisions in contracts may not protect businesses against liability for failure to perform contractual duties during a pandemic. Legal precedent suggests that "once an event is no longer unforeseen, *force majeure* law suggests that one or both parties to the contract should bear the risk." Legal experts advise businesses to examine risk allocation in time of emergencies during contract negotiations.

Finally, the same ABA article suggests that a failure to plan ahead for a potential pandemic could expose businesses to novel charges like "negligent failure to prepare." Such legal claims were advanced after the 2003 SARS (Severe Acute Respiratory Syndrome) outbreak.

# Dealing with the Aftermath

Planning for this outbreak, or any type of disaster, also means considering what happens after the event. The human and financial impact on a company, its residents and its property operations can be devastating if the recovery process is not included in your overall plan.

In the days following an incident or disaster, experts recommend companies evaluate their insurance coverage if there were revenue losses or damage incurred, check in with affected residents, revisit human resources policies regarding back-to-work issues, identify any need for Employee Assistance Programs or counseling, and evaluate re-opening common areas and services. Pay special attention to the availability of government aid.

Finally, evaluate the effectiveness of your firm's Incident Response Plan, identify pitfalls or failures and look to modify the plan and practice regularly.