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## Question of the Day: Effective Documentation of Safety Precautions

**Legal Update**

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By Brian T. Benkstein and Erin M. Edgerton

**Question****What COVID-19 precautions should your business document?****Answer**

As businesses across the country look to reopen, many new safety precautions will be established in the workplace. In Minnesota, for example, non-critical sector businesses are required to create and train employees on a COVID-19 Preparedness Plan prior to reopening. For each safety step an employer takes, there is a question: what about this process should we document?

As a general rule, contemporaneous documentation creates a huge advantage if a business is forced to defend itself in litigation. It is not a silver bullet, but this type of documentation is heavily relied upon by both courts and juries at trial. Unfortunately, the COVID-19 crisis is likely to give rise to various forms of litigation, and documentation may play a key role in determining whether an employer met its duties to employees and customers. However, documentation is a double-edge sword: if it is missing where it should be found, those gaps can actually contribute to a finding of liability.

So what should you do? Document. Thoroughly and diligently. For example, if your plan for reopening states that you will sanitize work stations every four hours, you should have workers create a log of the times at which each workstation was sanitized. If you have committed to cleaning and disinfecting areas your customers frequent, document those efforts. If you are conducting employee daily health screenings orally, create a checklist of employee names and check off when they have completed each screening for the day.

It is not enough to simply create a plan making your business safe to reopen – you must actually follow the plan(s). Effective documentation will help you take “credit” for what the business is doing and will enable you to prove your actions are reasonable. If you practice what you preach – and create comprehensive documentation of these

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practices – your business will be better prepared for whatever lies ahead.

If you have questions regarding your COVID-19 Preparedness Plan or effective documentation, contact your Fredrikson & Byron Employment & Labor attorney.

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