

DYING TO WORK?

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Sarah Rogers and her family were concerned about the risks Sarah faced on the job during the COVID-19 pandemic. As a food-services employee, Sarah worked in a high-risk contagion setting in Amarillo, Texas. Her employer, Stephens Country Catfish, refused to allow employees to wear facemasks during their shifts. Fearing personal infection, the risks posed to her senior parents who helped care for her child, and the financial risks associated with losing her present employment, Sarah was at an impasse. Her employer, Brian Stephens, worried that turning away maskless customers could ruin his business, and that accommodating the demands of customers who simply did not want to see a mask while dining was important to his survival. What options existed for Sarah? What options and responsibilities existed for her employer?

Introduction

“It is difficult to get a man to understand something when his salary depends upon his not understanding it.” - Upton Sinclair

“Sarah, it’s really a very simple decision. Either you remove the mask and stay at work, or you go home and don’t come back.” Sarah reflected upon the conversation with her manager, Brian, during her last shift at work. With her manager, Brian, glaring at her, Sarah had quietly removed her cloth facemask and went back out to the hostess’ station. She was terrified, but she needed the paycheck. She had whispered a silent prayer to herself and finished her shift. On her way home from work, she burst into tears. Should she go back to work tomorrow? Could she afford not to?

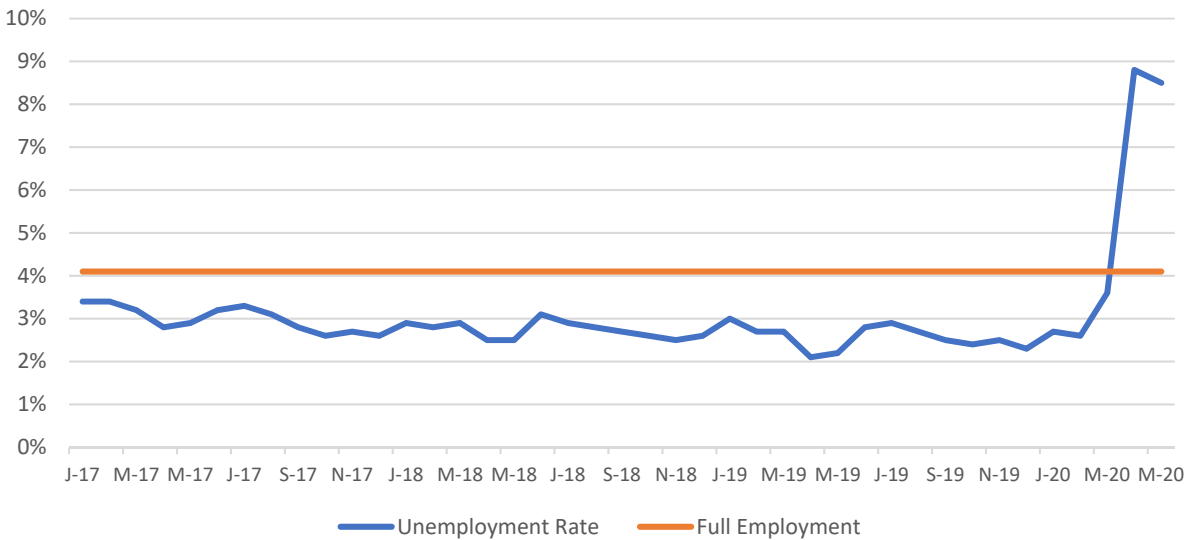
The authors developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the *Journal of Case Research and Inquiry, Vol. 6, 2020*, a publication of the Western Casewriters Association. The authors and the *Journal of Case Research and Inquiry* grant state and nonprofit institutions the right to access and reproduce this manuscript for educational purposes. For all other purposes, all rights are reserved to the authors. Copyright © 2020 by Troy A. Voelker, Jonathan Everhart and Laura Guerrero. Contact: Troy A. Voelker, University of Houston-Clear Lake, 2700 Bay Area Blvd, Houston, TX 77058, voelker@uhcl.edu

Like many Americans, Sarah Rogers lived paycheck to paycheck. Working part time at the restaurant and pulling some overnight shifts as a cleaner, she could usually make ends meet and keep up with the rent on the small apartment she shared with her daughter Sophie. Like most restaurant workers, she carried minimal health insurance and the scant protection provided by her health care would be unsustainable should she lose her job (Goger & Hadden Loh 2020). The minimal aid available under the CARES Act might help a bit if she lost her job, but she doubted she could cover rent and basic needs for long. When times were tough in the past, she had always been able to consider returning to live with her parents. Could she safely move in with her elderly parents during the pandemic? Even if they collectively took the risk, how far would her parents' Social Security check stretch to meet the needs of the extended household if she lost her job?

Hourly wages for hosts and hostesses at restaurants in Amarillo, Texas typically hovered around \$10.59 an hour (BLS 2020). While that was not a lot of money, it paid the bills, usually. Amarillo had a cost of living well below the national average for housing (-28%), utilities (-10%), groceries (-8%) and transportation (-13%) (Payscale 2020). The past few years had been generally good. While she was not getting ahead financially, it had been a while since Sarah felt any real economic distress. Then the pandemic started.

Even though money was usually tight, Sarah enjoyed her work at Stephens Country Catfish. It was a small, family-owned restaurant, specializing in business lunches and family dinners. Much of the business came from repeat customers. The Stephens family, who owned the restaurant, felt like an extension to her own family. She had watched her manager, Brian, grow up. Despite her present conflict with him, she genuinely enjoyed working for him.

Exhibit 1. Unemployment Rates - Amarillo, Texas
 Source: Bureau of Labor and Statistics



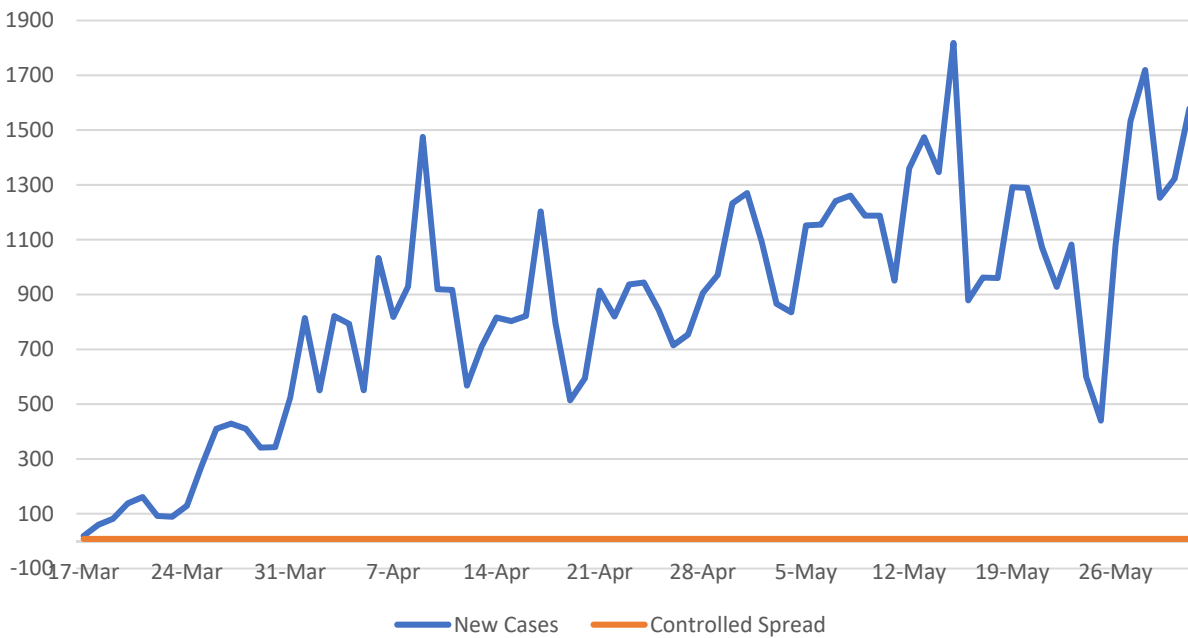
Life in Amarillo, Texas

The U.S. Census Bureau estimated the population of Amarillo at 198,773. The city was slightly younger (average 33.9 years) than the U.S. population (37.9 years), slightly less educated (84.1% completed high school or higher) than the U.S. population (87.7%), and slightly poorer (\$34,928 median female earnings) than the United States (\$41,690) (U.S. Census Bureau 2020). Its local economy depended on employment from food processing (Tyson Foods), military manufacturing (Bell), and higher education (West Texas A&M and the Texas Tech University Health Science Centers) along with a typical array of municipal and retail employers. Employment had been strong in recent years and the city had high expectations going into 2020. The restaurant industry as a whole had performed exceptionally well in recent years. *“Americans spent more than half of their food budget eating outside of the home ... bars and restaurants played a significant role in the country’s recovery from the Great Recession”* (Goger & Hadden Loh 2020).

In May 2020, the days of making ends meet relatively easily seemed like a long-forgotten dream. The COVID-19 virus had wreaked havoc on the health and economic well-being of Amarillo, Texas. In the early months of the pandemic, Amarillo suffered heavily for a city its size. The U.S. Centers for Disease Control and Prevention (CDC) used several metrics to estimate the extent to which the spread of the contagion was under control. One of the most important metrics was the number of new cases per day, which the CDC recommended, for a “controlled rate”, to be 4 or fewer per 100,000 persons; that meant fewer than 8 per day for Amarillo. Amarillo had exceeded a controlled state in early March and reached daily rates 200-times higher than the controlled rate.

Exhibit 2. COVID-19 New Cases by day - Amarillo, Texas

Source: New York Times



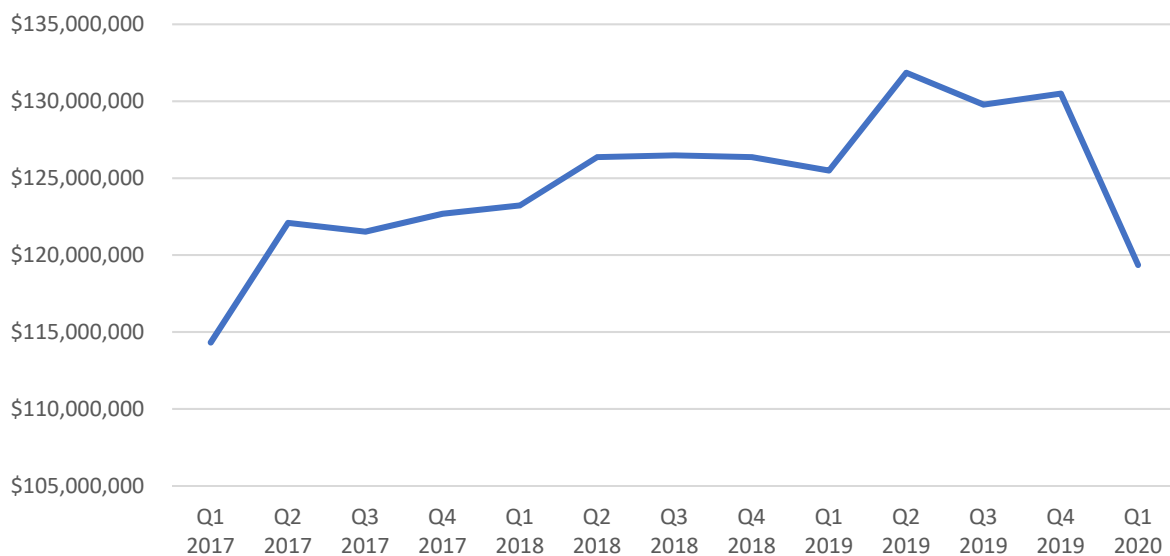
Recognizing the health risks of COVID-19, Texas began a lockdown in March 2020 requiring all but the most essential businesses shut down. Unfortunately, the state of Texas and its local governments were not well situated for a long-duration economic crisis. Texas was a balanced budget state, requiring the state to equalized expenditures and revenues. In a situation where expenditures exceeded tax revenues, the state had the option to either decrease expenditures

or to dip into its surplus, the so-called “rainy day fund,” which was reasonably well stocked going into 2020 (Walczak 2020).

Texas depended on sales taxes, “the largest source of state funding for the state budget, accounting for 59 percent of all tax collections” (Texas Comptroller 2020). Given the anticipated long duration for the pandemic, the state budget implications of a closed economy, and the livelihood implications of business owners and their employees in a prolonged lockdown, Texas Governor Gregg Abbot felt pressured to reopen the Texas economy before COVID-19 was contained. Reflecting on the economic damage from the pandemic, the Governor’s office announced a phased back-to-work plan in early May, 2020, which returned operating permission to most businesses. Over the subsequent weeks, restrictions on operations were phased out. State residents who had been stuck in their homes for nearly two months eagerly returned to some of their favorite venues, leading to the crisis Sarah faced.

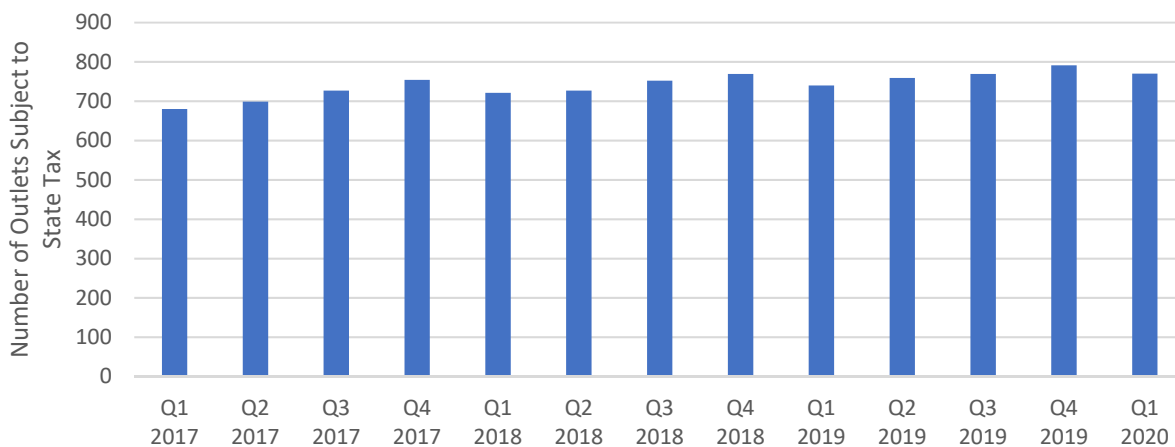
Exhibit 3. Gross Sales Food and Lodging - Amarillo, Texas

Source: Comptroller of Public Accounts



The federal government provided a one-time short-term economic stimulus early in the pandemic, passing the Coronavirus Aid, Relief, and Economic Security (CARES) Act that was signed into law on March 27, 2020 (U.S. Treasury Department 2020). The CARES Act included extended unemployment coverage with weekly payments, a moratorium on evictions, and the payment protection program to provide employment continuance. Most of these benefits were scheduled to phase out over the summer. For many employers and employees, this meant that a return to work in the second quarter of 2020 was the only reliable safety net.

The Texas Comptroller's office reported a contraction of 8.5% in first quarter sales by the food and lodging businesses in Amarillo. Going into March 2020, the food and lodging sector in Amarillo was doing well, generally posting increasing sales for several consecutive years. All of that seemed to have disappeared in a flash. For the Stephens family, the reopening of business had arrived in the nick of time. The Country Catfish was not the only restaurant the Stephens family owned. Stephens L.L.C. (holding company) owned several restaurants in the north Texas area, all of which had performed well prior to March. Most of the restaurants in the portfolio were casual dining, and those were the ones most precipitously affected by the pandemic. While the Payment Protection Program had offered some stability, there was no way the company could sustain a full quarter contraction at the level it had experienced in March and April. Operating at limited seating capacity greatly reduced the sales of restaurants, as the mid-scale casual dining menu did not lend itself to curbside pickup or delivery. For Country Catfish and other restaurants in the family portfolio, the quarter could very well be their last.

Exhibit 4. Number of Food and Lodging entities - Amarillo, Texas*Source: Texas Comptroller of Public Accounts*

Restaurants had been one of the hardest hit sectors in the COVID-19 pandemic. The Texas Comptroller's office showed a modest decrease in the number of Amarillo based food and lodging entities paying sales taxes in the first quarter. Yelp's economic activity reports suggested that restaurant closures as a result of the pandemic were higher than closures in any other sector; the June 2020 Yelp economic activity report identified 23,981 closed restaurants that had been open on March 1. 60% of the closed restaurants were permanent closures, with Texas faring particularly poorly (Yelp 2020). These findings were corroborated by the State of Small Business Report issued by Facebook in May 2020. A survey found that among 86,000 persons who owned, managed, or worked at a small or medium-sized business (SMB), 31% reported no-longer operating, most reported problems with negative cash-flow and a lack of demand, and many (93% for food and lodging employees) of their employees reported a lack of paid sick leave or paid time off to manage personal needs exacerbated by the pandemic (Facebook 2020).

Reopening

At first, it was a joy to get back to work, even with the fear of infection. The Stephens family initially decided that facemasks were optional for employees. The restaurant posted signs

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encouraging social distancing, but these signs were merely recommendations and not enforced policies. Restaurant employees were permitted to remind customers politely to adhere to social distance, but an employee could not request that customers remain at a distance. Many customers and most of her co-workers wore masks, at least at first, and most people remained a respectful and safe distance apart.

Some did not, and those who did not seemed to undermine safe separation intentionally. Customers who did not wear masks loudly complained about employees and customers who did wear masks, sometimes coming much closer than would have been expected prior to COVID-19 *“just to prove a point.”* This phenomenon was not unique to restaurants, nor was it confined to Amarillo. As national news provided more examples of customers around the country negatively reacting to masks and social distancing, Sarah’s manager Brian changed the restaurant policy.

In the restaurant, masks had been optional, but they were now banned. All employees, regardless of their situation, could not wear masks anywhere in the restaurant. An employee could wear a mask in the back areas outside of the kitchen while on break, but if a customer could see the employee, the employee had to be mask-free. Brian pointed to national headlines where customers had physically assaulted employees over mask and social distancing policies, sometimes leading to serious injuries. In one extreme national incident, an angry customer had shot the employees of a store who had attempted to enforce mask policies. Brian needed the restaurant to succeed and he desperately wanted everyone to get along and everything to get back to normal. He did not want the Country Catfish to be the next small business featured negatively on the local news.

Sarah wanted things to return to normal too, but she was terrified. While her concerns about her risk early in the pandemic seemed to be little more than supposition, those worries were later supported by evidence as the pandemic advanced. Analysis of cell-phone network data for 98 million persons from the earliest months of the pandemic suggested that a high

percentage of so-called “*super spreader*” events occurred in places where large numbers of persons congregated socially and indoors, primarily restaurants, bars, coffee shops, and religious establishments (Chang *et al.* 2020). Infection rates were highest among economically disadvantaged groups, many who held service-industry jobs in high-risk environments. A CDC analysis published in July 2020 demonstrated that individuals who had been inside of a business that provided on-site eating and drinking (*e.g.*, restaurants, bars, diners, and coffee shops) were twice as likely to have become infected with COVID-19 than were those who had avoided such establishments (CDC July 2020a). The CDC study further confirmed the risk to service sector employees, many of whom also lacked paid sick leave or vacation leave.

Sarah worried about her health, and knew that if she became ill, the financial cost of not working would be devastating, even if she made it through the illness with minimal health complications. She also knew that her infection might lead to her daughter’s infection and, while the complications for her daughter seemed minor, percentages lose meaning when the risk is to one’s own child! On top of that, her parents often took care of her daughter; passing an illness to her parents could result in loss of life. Her father wanted her to file a complaint with OSHA or to sue the store to demand a return to the mask-allowed policy. Her friends recommended that she quit and sue for the dangers she was being forced to face.

COVID-19 and Facemasks

Neither the federal nor the state government initially provided clear rules and policies on how businesses should function. Instead, general guidelines were offered by varying government entities. Some guidelines, such as screening for sick employees, were common to multiple government entity recommendations, while others varied from one entity to another. At times, federal, state, and local governments provided conflicting standards. In some cases, such as with masks, there were conflict or confusing statements from the World Health Organization (WHO) and the CDC. While these conflicts may have resulted from well-meaning, differing interpretations at different stages of the crisis, the lack of clear national guidelines ultimately

contributed to very confusing back-to-work processes. In turn, these processes were often administered *ad hoc* and haphazardly by some businesses.

The use of masks as a physical protection equipment (PPE) had a contentious history within the pandemic itself. During early periods of the virus, CDC guidelines suggested masks were not necessary for healthy individuals (Achenbaugh *et al.* 2020). It remained unclear to what extent this early guidance was oriented towards containment of the virus itself, or towards the very pressing concern about lack of PPE available to healthcare professionals (CDC 2020b; WHO 2020a). However, by April 2020, healthcare guidance had shifted unequivocally towards the importance of facemasks in public (CDC 2020c). Facemasks as a necessity for reopening had been built into recommendations even from conservative leaning think tanks (Gottlieb 2020).

The necessity for facemasks in public lied in the asymptomatic transmission of the virus. COVID-19 was often expressed in a non-threatening manner; a significant percentage of those infected experienced no, or very minor symptoms of infection. However, unlike many other infectious diseases, COVID-19 remained highly contagious even in individuals with few or no symptoms (Furukawa *et al.* 2020). The use of facemasks in areas of public interaction was deemed essential to helping an infectious (but possibly asymptomatic or pre-symptomatic) person avoid infecting others.

Resistance to wearing masks in public was broad as states began reopening. The common refrain in the news was that some people felt that they should be able to choose the amount of risk they exposed themselves to, and that masks violated freedom of speech and expression. These expressions suggested that people perceived their wearing of a mask as protecting them personally. That was, however, a misunderstanding of the value of a mask in disease spread. Research suggested that both the wearer and others were more protected when masks were worn than when they were not; in fact, masks were primarily recommended to protect others (CDC 2020d).

Regardless of the reasons for public resistance, physical protection equipment such as masks represented a necessary part of a virus containment strategy for public activity during the COVID-19 outbreak. Countries such as Germany, Iceland, and South Korea that had put in place public responsibilities for virus containment (social distancing, masks, systematic testing and contact tracing) were able to contain the virus faster and with less infection than were countries with limited testing and limited personal risk containment responsiveness. These countries were also able to operate economically at levels much closer to their pre-virus norms than were other countries. In the United States, the states that had adopted stringent public policies were better able to contain outbreaks and control the spread of the virus than were states with less stringent policies (Leatherby & Harris 2020).

COVID-19 and Employment Law

While it received less public discussion, the applicability of employment law to address workplace safety was strained and applied inconsistently across the states. Employers of all sizes were faced with the challenge of balancing employee safety and their business needs. Numerous employment law issues arose because of the COVID-19 pandemic, including employee safety, unemployment payments and leave options, and privacy concerns (State Bar of Texas Journal 2020). Employment regulations and best practices changed periodically as the understanding of the coronavirus improved and the risk assessment in each geographic location changed. Because of this fluidity, businesses had to adapt to the ever-changing COVID-19 employment law guidance as published at local, state, and federal levels.

As businesses faced new categories of employment law issues arising from the pandemic, prudence suggested that they should ensure managerial awareness of certain issues, such as reasonable accommodations. Guidance from the U.S. Equal Employment Opportunity Commission (EEOC) addressed employment law issues likely to occur regarding an employer's obligation to provide reasonable accommodations to their employees during the COVID-19 pandemic. Many employees would not feel safe returning to work, regardless of the safety

protocols that their employers had implemented. For some of these employees, the safety concern was related to an issue already protected under federal, state, and/or local employment laws. These issues included mental and physical health, pregnancy, caregiver status, and/or age (Patterson *et al.* 2020b).

The CDC published information about pre-existing health conditions that put certain individuals at a higher risk of developing serious complications from COVID-19 (CDC 2020c). Business operators were supposed to refer to these CDC guidelines when assessing accommodation requests to protect employees within different risk categories (CDC 2020c). The CED recommended implementing protocols to handle the increased number of accommodation requests and training managers on the new COVID-19 safety procedures (CDC 2020c). To comply with the law, it was important for businesses to mandate that accommodation request procedures be centralized to manage the process of granting or denying requests consistently. Businesses were advised not to preemptively require or ban certain classes of employees from returning to the workplace. Instead, it was recommended that employees be provided with the opportunity to self-identify as belonging to a high-risk group as defined by the CDC (Patterson *et al.* 2020b). Some employers chose to initiate an accommodation request discussion with employees already known to be in a high-risk group. Furthermore, businesses needed to remain aware of local and state guidance related to reasonable accommodations and other issues. One common complication was that employment law, usually written to address the needs of employee at work, did not consider the living arrangements of that employee. Therefore, if a child, spouse or roommate of the employee had a condition that made him or her vulnerable, the law would not require the employer to make accommodations.

Both the CDC and the Occupational Safety and Health Administration (OSHA) had created resource centers to provide businesses with safety guidance in response to COVID-19. The CDC resource center included a series of decision trees to help determine whether a business was prepared to reopen and specific guidance to protect high-risk employees from COVID-19 (CDC 2020e). Overall, the guidance recommended that a combination of monitoring and testing

employees, worksite and schedule modifications, and operational policy changes were necessary to create a safer workplace environment (CDC 2020e). In adhering to CDC and OSHA guidelines, businesses were advised to make specific modifications to the workplace environment. Businesses were also advised to modify employee work schedules to ensure that safe distances between employees were maintained.

Patterson *et al.* (2020) organized the various business guidance for restaurants and other workplaces. Their advice broadly covered three-topics: change of workflow, change or physical workspace, and adoption of personal protection signage and practices. A summary of each topic follows:

- **Change of workflow** – Modification of the workspace to minimize incidental personal contact. This included additions of one-way travel routes, limits to the number of persons in closed spaces like elevators, reduction of capacity to add additional space between workers and customers, and elimination of shared workstations.
- **Change of physical workspace** – Modification of the workspace to include physical protection barriers where possible and particularly in areas where physical distancing was difficult. Business were advised to improve ventilation and filtering.
- **Adoption of signage and protection practices** – Workplaces should contain signage reminding both workers and patrons of proper safety procedures, all occupants of a workplace should wear physical protection equipment (masks in all cases, masks and visors in others). Those unable to wear face coverings should be moved to remote work posts to minimize the risk of exposure from them to others.

Patterson, Belknap, Webb and Taylor (2020) also discussed how employers should approach a reopening in the event of a mandatory government lockdown. Their guidelines were also useful for organizations facing a COVID-19 interruption: staged reopening, staggered shifts, and employee cohorts.

- **Stage reopening** – Workplaces were advised to not return all employees to work immediately. In general, the return to the workplace should be driven by the business necessity of the position. Additionally, return to work requirements should consider the risk factors associated with each employee's health.

- **Staggered shifts** – Employers were advised to extend the working day and to spread workers out across a longer operating day. This allowed workplaces to minimize the number of workers present at any time, as well as allowing for cleaning between shifts.
- **Employee cohorts** – Finally, businesses were advised that employees should be cohorted, meaning that the workers on site at any given time and day should typically remain working together with no schedule mingling between cohorts. While rotating employees between shifts and work groups might be operationally better outside a global pandemic, during a pandemic compartmentalization of workgroups helped to minimize the likelihood that a single infected employee could spread infection through the entire workforce.

The Dilemma

Sarah had a lot to think about when she left work to go home. What were her options? What should she do to protect herself (her health and her finances) and her family?

Brian was able to read the tension in Sarah when she left work that evening. He knew she was deeply uncomfortable with the “no mask” rule and he worried that she was not going to let this go. While she was not the only employee with reservations about the rule, she was the one most likely to act on her concerns. He was not certain how he would approach it if she refused to work without a mask tomorrow. Should he remove her from the schedule for the duration of the pandemic, or even fire her, if she again refused? While he did not enjoy the thought of firing Sarah, he doubted that the restaurant would succeed if he did not listen to his customers.



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Journal of Case Research and Inquiry

Peer-Reviewed Cases, Notes and Articles

A publication of the Western Casewriters Association

Vol. 6
December 2020

ISSN 2377-7389