TO: Indiana Public Libraries

FROM: Indiana State Library

RE: Library Roles in a Pandemic Outbreak of COVID-19

DATE: March 12, 2020; Updated May 22, 2020

*This memo was originally distributed March 12, 2020, just 6 days after Indiana’s first COVID-19 death and Governor Holcomb’s initial declaration of a public health emergency. This revised version is intended to revisit the questions and expand or update responses to reflect subsequent changes given the evolving public health situation.*

At the time this memo was originally written in early March 2020, the State Library had been getting questions about a library’s obligations to staff and patrons in the event of an outbreak of the Coronavirus (COVID-19) or other pandemic disease. Symptoms of COVID-19 include:

* Fever
* Cough
* Difficulty breathing.

At that time the Indiana State Department of Health (ISDH) advised that the immediate health risk to the general public from COVID-19 was low. By April 10, 2020, the factual basis for an ISDH order included a statement that “COVID-19 seems to be spreading easily and sustainably in the community.”

Subsequent developments of significance have included:

* March 23, 2020 - Governor Holcomb issued [Executive Order 20-08](https://www.in.gov/gov/files/Executive_Order_20-08_Stay_at_Home.pdf) directing Hoosiers to stay at home except for essential activities and instituting social distancing requirements. Factual basis for this order included a statement that “despite significant steps being taken in our State, this virus remains a serious threat to the health, safety, and welfare of all residents of Indiana.”(This order was extended by [EO 20-18](https://www.in.gov/gov/files/Executive%20Order%2020-18%20Cont%20Stay%20at%20Home%20Restaurants%20Govt%20Ops.pdf) and again by [EO 20-22](https://www.in.gov/gov/files/Executive%20Order%2020-22%20Extension%20of%20Stay%20at%20Home.pdf). EO 20-22 was extended by [EO 20-26](https://www.in.gov/gov/files/Executive%20Order%2020-26%20Roadmap%20to%20Reopen%20Indiana.pdf) to last as long as a county remains in Stage 1 of the five stages included in the roadmap to reopen Indiana.)
* April 3, 2020 - [EO 20-17](https://www.in.gov/gov/files/Executive%20Order%2020-17%20Renewal%20of%20Public%20Health%20Emergency%20declaration%20of%20Covid-19.pdf) extended the public health emergency to May 5, 2020. [EO 20-25](https://www.in.gov/gov/files/Executive%20Order%2020-25%20Renewal%20of%20Public%20Health%20Emergency%20declaration%20of%20Covid-19.pdf) extended the declaration of public health emergency again until June 4, 2020.
* May 1, 2020 – [EO 20-26](https://www.in.gov/gov/files/Executive%20Order%2020-26%20Roadmap%20to%20Reopen%20Indiana.pdf) contained a roadmap to reopen Indiana and noted that the virus has spread to every county in Indiana, with a state-wide toll at that time of 18,000 confirmed cases and over 1,000 deaths.

This memo updates ISL’s responses to ongoing legal questions on the subject.

Q. What is the library's responsibility to staff and patrons regarding the coronavirus?

A. All employers have a general requirement to operate a workplace free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Under [Title 22 of the Indiana Code](http://iga.in.gov/legislative/laws/2019/ic/titles/022#22), the Indiana Occupational Safety and Health Agency (IOSHA) has authority to inspect and take steps to ensure businesses are meeting this requirement.

When this memo was originally written, ISL did not find much in the way of specific guidelines in effect with respect to COVID-19 beyond following ISDH’s advice to public facilities to take “every day preventive measures” to help contain the spread of COVID-19. These include:

* Ensuring adequate handwashing facilities and supplies are available.
* Posting signs encouraging proper handwashing and respiratory etiquette.
* Encouraging sick employees to stay home.
* Encouraging patrons not to enter the building if they are sick.
* Performing routine environmental cleaning (cleaning all frequently touched surfaces in the workplace).

ISDH, COVID-19 Information for Public Facilities and Organizations. In April, ISDH added a COVID-19 Cleaning Guidance for Businesses. Both documents above are available from [ISDH’s Public Resources](https://www.coronavirus.in.gov/2400.htm) webpage under Community Organizations.

In addition to the items listed above, the CDC also recommends that employers create an Infectious Disease Outbreak Plan to be ready to implement strategies to protect their workforce from COVID-19 while ensuring continuity of operations. CDC’s [Interim Guidance for Businesses and Employers](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html). This guidance was subsequently updated on March 21, 2020, to add more information about cleaning and disinfecting, best practices for social distancing, and COVID-19 strategies and recommendations to implement now.

As the virus has spread, multiple executive orders and CDC guidance documents have generated additional expected actions for a business or public entity to take. In particular see [EO 20-26](https://www.in.gov/gov/files/Executive%20Order%2020-26%20Roadmap%20to%20Reopen.pdf), paragraph 4 (Requirements for All Businesses and Entities in Indiana), paragraph 5 (Guidance for All Businesses/Employers), and paragraph 6 (Social Distancing and Other Requirements) on pages 4-5. See also OSHA Guidance on [Preparing Workplaces for COVID-19](https://www.osha.gov/Publications/OSHA3990.pdf).

The U.S. Department of Labor (DOL) recommends employers review leave policies and consider providing increased flexibility to employees and families. DOL also cautions that under federal law flexible leave policies must be administered in a manner that does not discriminate against employees because of race, color, sex, national origin, religion, age (40 and over), disability, or veteran status. DOL, [Pandemic Flu and the Family and Medical Leave Act: Questions and Answers](https://www.dol.gov/whd/healthcare/flu_FMLA.htm).

Before the shutdown Indiana libraries had already begun to:

1. Increase frequency of sanitizing public computer keyboards.
2. Clean public contact surfaces twice per day.
3. Make hand sanitizer available in numerous locations (public computers, circulation desk, and staff area) with signs encouraging use and encourage patrons to use hand sanitizer both before and after using the computer.
4. Encourage staff to wash hands frequently and thoroughly.

In addition to the measures described above, in areas that had seen significant numbers of COVID-19 cases, libraries had also tried:

1. Canceling programs (either some or all for a temporary period);
2. Removing toys or other touch-heavy objects from children’s areas;
3. Adjusting outreach with either increases or decreases in service to at-risk populations, such as retirement communities; and
4. Temporarily suspending the requirement of a doctor’s note for an extended staff absence.

Libraries also started holding virtual board meetings. Electronic board meetings are allowed only because Governor Holcomb’s Continuity of Operations order ([EO 20-09](https://www.in.gov/gov/files/Executive_Order_20-09_Continuity_of_Government_Operations.pdf)) temporarily suspended certain Open Door Law requirements. As a result governing boards may meet by videoconference or telephone conference “for the duration of this public health emergency” provided a quorum of members participate and the meeting is available to members of the public and media. Under [EO 20-25,](https://www.in.gov/gov/files/Executive%20Order%2020-25%20Renewal%20of%20Public%20Health%20Emergency%20declaration%20of%20Covid-19.pdf) the governor’s declaration of a public health emergency expires June 4, 2020, unless it is renewed again. Whether it expires in June or later, once the declaration of a public health emergency expires library boards must resume pre-emergency board meeting practices in compliance with the Open Door Law.

Additional social distancing ideas are discussed in this [ISL blog post](https://blog.library.in.gov/considerations-for-reopening-if-the-library-board-or-staff-still-have-concerns/) from April 14, 2020.

Q. Would libraries be expected to remain open during a quarantine situation?

A. Absent a federal, state, or local health department directive this remains a local decision for the library board. Consultation with your state or local department of health may provide information to help support the board’s decision either way. Most Indiana libraries decided to close or provide very limited services under the governor’s stay at home order. Libraries have been addressed in the plan to get Indiana back on track and are allowed to start reopening as their policies permit.

Q. Our Emergency Closings policy doesn’t address forced closures by the federal or state government due to a pandemic. Is it up to each library to determine how and if staff gets paid?

A. It is important to follow board approved library policies regarding whether staff should be paid during emergency closures.

ISL’s original guidance addressed the standards of the Family and Medical Leave Act as it existed at the time. Since then, however, the Families First Coronavirus Response Act (FFCRA) has been adopted creating a new Emergency Paid Sick Leave Act and a new Emergency FMLA Expansion Act. These new acts went into effect on April 1, 2020. Both Emergency Paid Sick Leave and Expanded FMLA apply to public libraries regardless of size. Please see PowerPoint Slides from ISL’s Regional Meetings, [FFCRA Basic Facts.](https://www.in.gov/library/files/Harris.pdf)

Several federal agencies now encourage employers to adopt flexible, non-punitive leave policies in the event of a pandemic emergency. ISL encourages library boards, in consultation with the library’s attorney, to review and adopt policy language to address leave policies and procedures regarding pandemics, emergency closures due to widespread illness, and reopening after an emergency closure. ISL also advised library directors to be aware that federal law requires flexible leave policies to be administered in a way that does not discriminate on the basis of race, color, sex, national origin, religion, age (40 and over), disability, or veteran status.

Q. If an employee is coughing and sneezing, are we permitted to send them home against their wishes? What if it's a patron?

A. A library may take the following steps providing the actions are authorized by library policy and described in the employee handbook:

* Send a staff member home if the person appears to pose a health or safety threat.
* Require the staff member to use emergency paid sick leave if the staff member qualifies, or allow the staff member choose whether to use accrued sick leave, personal leave, or authorized leave without pay.
* Potentially require a doctor note clearing the person to come back to work depending on the circumstances. (Although the CDC recommends that instead of requiring a doctor note it is more practical in the event of an actual pandemic to require that staff members not return to work until they are symptom free for 72 hours *without* the assistance of prescribed or over-the-counter medicine.) Either way, the policy must be applied uniformly to similarly situated people.

During the pandemic, an employer may ask an employee whether the employee has COVID-19, is experiencing symptoms of COVID-19, or has been tested for COVID-19. When screening for symptoms of COVID-19 look to reputable medical sources (such as ISDH or CDC) to determine what symptoms are currently associated with COVID-19, keeping in mind that the symptoms may change a little over time. Taking an employee’s temperature is usually considered a medical exam, however, during a pandemic, this measure is allowed. Employers should be aware, however, that some people with COVID-19 do not have a fever. EEOC, [What You Should Know About the ADA, the Rehabilitation Act, and Other EEO Laws](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws).

 An employer may exclude employees who have COVID-19 or symptoms associated with COVID-19 from the workplace, because the EEOC has recognized that the presence of an employee with COVID-19 or with COVID-19 symptoms poses a direct threat to the health or safety of others. When making decisions to exclude employees from the workplace, remember that you cannot discriminate on the basis of race, sex, age (40 and over), color, religion, national origin, disability, union membership, or veteran status. Remember to keep all health information confidential and in a separate file from the employee’s employment record.

In the case of an employee with disabilities, ISL initially advised that additional protections extended by the ADA required additional steps before an employer could exclude an employee with a disability from the workplace. However, on March 21, 2020, the EEOC provided guidance stating that the during the current pandemic the ADA doesn’t prevent employers from following advice from the CDC and other public health authorities on how to best slow the spread of COVID-19 and protect employees and the public. The EEOC also stated that the current COVID-19 pandemic meets the direct threat standard and manifestly supports a finding that a significant risk of substantial harm is posed by having someone with COVID-19 or symptoms of COVID-19 present in the workplace. This finding is anticipated to continue until such time as the CDC and public health authorities revise their assessment of the spread and severity of COVID-19. EEOC, [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act)

The issue is a little different when it comes to patrons. Considerations will include:

* Do you have board approved and publicized policy language stating that patrons who appear to pose health or safety hazards to the library or other patrons may be asked to leave?
* Who determines how much coughing and sneezing is too much or warrants asking a patron to leave? Unlike with a staff member, with a patron you will be less likely to know whether excessive coughing and sneezing is caused by allergies, emphysema, or virus.
* Because courts have found a constitutional right to have access to public information, a policy asking patrons to leave if they appear to pose a health or safety hazard to the library or other patrons must meet the following legal standard: the policy must serve a significant government interest (in a full-on pandemic this should not be difficult to meet), be narrowly tailored, and allow ample alternative channels to receive information. So be aware that your policy may be subject to attack if it is found to be too vague or arbitrarily enforced. Ideally your policy will identify alternate means for individuals who are asked to leave the library to obtain information. This could potentially involve home delivery of materials or limited hours during which material reserved online or by phone may be picked up in the lobby.
* Another option is to post a warning on the door identifying symptoms and asking sick patrons not to come in and endanger the health of others.

As always, we strongly advise that you consult your library’s attorney before proposing changes or additions to your library’s policies.

For more suggestions and information you may wish to consult the following resources:

* The **Every Library** page [Resources for Libraries on Coronavirus](https://www.everylibrary.org/resources_for_libraries_on_coronavirus) includes a list of **What Libraries Can Do** that addresses things like reaching out to local department of health, and evaluating information for accuracy and accessibility to the general public.
* The **Library Journal** page [What Public Libraries Need to Know about the Coronavirus](https://www.libraryjournal.com/?detailStory=what-public-libraries-need-to-know-about-the-coronavirus) suggests it is important for libraries to work to reduce public health anxiety and curb discrimination against Chinese and Chinese American community members by providing authoritative information on this virus, and on infectious diseases in general.
* The **National Libraries of Medicine** page [Coronavirus: Library and Business Operations Planning](https://content.govdelivery.com/accounts/USNLMDIMRC/bulletins/27de9a1) includes a free course that you can take during which you develop a one-page plan for continuity of operations.
* **OSHA** lists prevention strategiesas [steps employers can take](https://www.osha.gov/Publications/influenza_pandemic.html#steps_employers_can_take) to protect employees. One example “expand internet, phone-based, drive-through window, or home delivery customer service strategies to minimize face-to-face contact.”
* The **ALA** page [Pandemic Preparedness](http://www.ala.org/tools/atoz/pandemic-preparedness) has expanded in scope but still includes "Topics to include in an individual library policy."