

“Reopening” Churches – Balancing Rewards and Risks

Churches will be making difficult decisions as they decide when and how they will “reopen” for in-person worship and eventually other Church activities and programs. We all want to again worship together, but we also need to keep in mind COVID-19 remains a serious threat and the disease is easily spread among people who are close to each other. Our Churches need to take protective measures to reduce the risk of spreading the disease within our faith communities, primarily for the obvious moral reasons but also to reduce the risk of legal liability.

We recommend Churches carefully consider when they will reopen and what measures they will take to reduce the risk of COVID-19 spreading within their community. Those decisions should be documented in a written (and followed!) COVID-19 Preparedness Plan. At minimum, the plan should include:

- the Church’s planned schedule for reopening different aspects of its worship, ministries and programs while making clear the schedule is subject to change if conditions warrant or additional legal restrictions are imposed,
- outline protective actions the Church will take to reduce the risk of spreading COVID-19 through its activities, and
- make clear the Church cannot guarantee there will be no transmission of COVID-19 among participants in worship and other activities, and those present are assuming that risk.

When preparing the plan, Churches should consider virus prevention recommendations from the CDC and Minnesota Department of Health. Churches should also monitor directives and guidance from those agencies and other local, state, and federal authorities and update their plans as appropriate.

The plan should be communicated to the entire Church “family” by all appropriate means such as email, US mail, posting on the Church’s website, inclusion in any emailed or mailed Church newsletter, and posting at the Church. Notices should also be given as charges are made to the plan.

Church efforts to reduce the risk of COVID-19 spreading through its worship and activities will probably involve maintaining “social distancing,” pre-screening, and good housekeeping, including provision and proper use of cleaning and sanitizing services. Social distancing, of course, is the notion of people staying at least six feet apart. This separation can be enforced in worship by blocking off every-other row in the Sanctuary or auditorium and reminding attendees (and enforcing through ushers, Church leaders and ministers) to leave such distance within a row between families. Churches should also postpone resuming before or after worship programs, childcare, Christian education, fellowship time, and the like until COVID-19 is under much better control and CDC and the Minnesota Department of Health loosen their restrictions on such activities. Limiting attendance to accommodate social distancing may be necessary and can be done through requiring pre-registration to keep attendance low enough to allow proper

social distancing. Keep in mind Churches can continue their “online” presence, so accommodating social distancing does not need to keep people from worship.

Measures like the foregoing will likely affect Church many practices, including for just three illustrative examples, communion (e.g., to allow for more distance between communion takers and not using shared plates or cups, not singing as many (or any) hymns or having choirs sing (since singing tends to spread breath and vapor further than ordinary speaking), and not hugging or shaking hands when greeting others.

Pre-screening in its simplest form means telling people to not come to Church if they are ill, have any symptoms of COVID-19, or have been around others who may have COVID-19 and having designated Church representatives watch for people displaying COVID-19 symptoms and asking them to leave. More assertive forms of pre-screening we have heard Churches consider include asking people on their arrival to confirm they are not ill and have not been exposed to COVID-19, using scanning thermometers to take temperatures, and denying entry to any who appear symptomatic.

Screening people as they come to worship is not as judgmental and awkward as the concept might sound. When announcing resumption of worship or other programs Churches could clearly state anyone who is feeling ill, has any symptoms associated with COVID-19, or has been around someone who has or may have been exposed to COVID-19 should participate in worship only online. While perhaps less obvious, Churches should seriously consider reminding people who are elderly or have medical issues that they presumably are at higher risk and should seriously consider not coming to Church. The same point should be considered in connection with young children, not because we want to exclude our young children from worship but because they may not be able to grasp the need for social distancing and not touching things and people in Church. Younger children can also be impulsive, which could increase the risk of not following the announced protective rules. At minimum, parents should be directed to carefully explain to their children what rules the Church is setting, monitor their young children, and not bring children to Church whose compliance cannot be assured.

“Housekeeping” measures include disinfecting arm rests and the backs of seats or pews, door handles, restrooms, table and counter tops, and other such places, ideally before and after each worship service. Also important is having tissues available and plenty of waste baskets for their collection once used.

Churches should also consider requiring worshipers wear masks and gloves. Masks and gloves should be made available even if their use is not required. Churches should also remind people not to congregate in close proximity either inside or outside of the Church building and not to form groups standing in the street or the Church’s parking lot. Without the typical after worship fellowship there may be a tendency for people to gather in groups, stand too close together, and perhaps be talking instead of watching for cars.

The foregoing risk reduction measures are not a complete list of protective actions that can be considered or taken and does not constitute medical advice. Churches should monitor and adhere to the relevant directives and guidance from local, state, and federal authorities related to

COVID-19. These guidelines may be found in a variety of places, including but is not limited to, the following:

- a. Centers for Disease Control recommendations for Faith-Based Organizations located at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/index.html>;
- b. “Maintaining Healthy Business Operations” for additional guidance located at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>;
- c. Minnesota Department of Labor has a great page with a variety of guidance for specific organizations located at <https://www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-novel-coronavirus-covid-19>; and
- d. OSHA guidance located at <https://www.osha.gov/SLTC/covid-19/>.

Church plans should be updated as these agencies offer new guidance and change their recommendations.

We have been asked about Churches requiring a written waiver and release of liability for its in-person activities, including worship services. There are obvious perception concerns about taking this action, especially since such waivers and releases must clearly and unambiguously identify the involved risks, including potential exposure to COVID-19, and there are practical challenges associated with securing enforceable releases and waivers from or for children.

Churches may be more comfortable with what might be called an “assumption of risk” approach. While not being as protective as an well written and properly used release and waiver of claims, Churches seemingly should make clear that its protective measures are meant to reduce the risk of COVID-19 spreading within the Church, but those measures will not ensure there is no risk of the virus being contracted in and around the Church and the risk of infection still exists no matter how what protective measures are taken. The Church should also clearly state that anyone participating in worship services or any other Church activities assume the risk of COVID-19 infection. These notices should be prominently displayed as people enter the Church and approach the Sanctuary or auditorium, should also be displayed on any screens used in worship, and be included in the worship bulletin or program. Again, any such waivers and releases, and any such assumption of risk notices, must clearly state subject risks, including potential exposure to COVID-19, and make clear participating in worship or other Church program involves risk and participation means that risk is being assumed.

We do not know if Courts will accept liability waivers and releases or apply assumption of risk concepts in our current circumstances. COVID-19 is a new challenge and principles of public policy may override the legal basis for liability waivers and releases and assumption of risk. Nonetheless, these may be useful tools that potentially might help protect Churches against possible future claims of liability.

Please keep in mind the foregoing observations are subject to change, and the practical and legal aspects of COVID-19 will change with time. This article is provided for general information only and does not constitute medical or legal advice, does not create an attorney-client relationship, and should not be relied on by itself and without consultation with a reader's professional advisors. Please keep in mind that these recommendations are subject to change, as this continues to be a changing and evolving area of the law. This article is meant to be general information only and does not create any attorney-client privilege.

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