

Morgan Lewis

NAVIGATING THE NEXT.

RETAIL REOPENS GUIDE

October 2020

© 2020 Morgan, Lewis & Bockius LLP



About Our Guide

How does retail recover and reopen?

NOW.

- The global impact of the coronavirus (COVID-19) pandemic has dominated 2020
- Retailers have been hit particularly hard, with many forced to close operations and others operating in an environment that was unthinkable just months ago

NORMAL.

- Emergency regulations and orders have imposed a “new normal” for retailers
- Retailers have looked to survive this phase to get to a reopening phase

NEXT.

- Over the coming weeks and months, these regulations and orders are likely to be eased; first in just some places and then everywhere
- This will bring about the “next normal” addressed in this guide

Keys to Recovery

- **Legal minimum**
 - Comply with state and local regulations and orders
 - Adhere to Centers for Disease Control and Prevention (CDC) and other guidelines
- **Comfort factor to change behavior**
 - Employees and customers have become conditioned to avoid public places, including stores
 - Must convince employees and customers that it is safe and comfortable to return
 - Goes beyond legal minimum, beyond safety, and back to the key in all retail: the customer experience



Covered Topics

1. Calling employees back to work
2. Social distancing in the store for customers and employees
3. Customer PPE: Mandatory? Provided?
4. Customer temperature screening?
5. Cleaning and disinfecting: regular and post-positive COVID-19 test
6. Employee safety: stay home if sick, screening, temperature screening, PPE, sanitation, staggering schedules, contact tracing
7. Enhanced curbside pickup and ship from store options
8. Modifications to customer programs: hours, eliminating self-service, closing gathering places
9. Cash prohibitions, or encouraging payment cards and contactless payments?
10. Communication programs to explain new policies
11. Avoiding price gouging



Calling Employees Back to Work

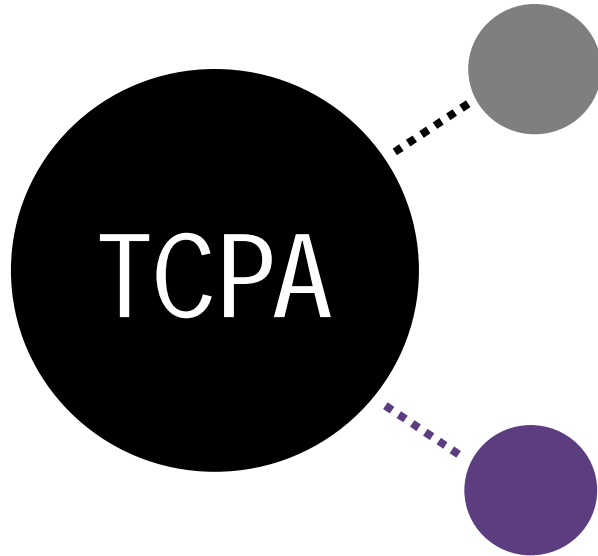
Morgan Lewis

Overview

- Contacting employees who have been furloughed can be a challenge; so can the need to communicate without in-person meetings
- These needs raise a desire to use texting or email for such communications
- Autodialed calls, prerecorded calls, and text messages to employees governed by the Telephone Consumer Protection Act (TCPA)
- No exceptions for employees:
 - Strict consent requirements
 - Private right of action, with \$500-\$1,500 per call; many class actions
- Email subject to requirements of CAN-SPAM Act
 - No consent required, just provide opt-out with “unsubscribe” link and other content limitations
 - No private right of action; enforced by the Federal Trade Commission (FTC)



Calls to current and prospective employees



INFORMATIONAL

- **Most calls or texts to employees**
- **Need at least express consent, which can be oral or based on employee's provision of phone number in context**

PROMOTIONAL

- **Recruiting calls or texts to prospective employees and current employees about additional opportunities**
- **Need prior express written consent**

• PRERECORDED CALLS

- no issues with live voice calls not placed with an autodialer

• AUTODIALED CALLS

- no issues with calls physically "fat finger" dialed by a live person

• TEXT MESSAGES

Prior Express Written Consent

For recruiting and new opportunities, which may be considered “promotional,” must have consent in a written agreement meeting below requirements; because of risks, recommended for all calls to employees.



Clear and conspicuous disclosure that the employee will receive calls, including autodialed, prerecorded, and texts at the designated number

Identification of employer, including affiliates, that will be calling or sending the message

That consent is not a condition of employment, ensuring it is freely given

That the employee can opt out at any time, including an explanation of how to opt out

- Also tell employees that data and usage rates may apply
- To avoid reassigned number issues, require employees to update their numbers if they change

Emails to Current and Prospective Employees

CAN-SPAM doesn't limit informational emails to employees, but DOES apply to commercial email, such as recruiting emails



Accurate Header

The header information (“From,” “To,” and Reply-to”) must be accurate and must identify the entity that sent the message where applicable



Accurate Subject Line

The subject line must accurately reflect the content of the message and not be misleading or deceptive in any way and must identify the message as an ad (if it could be characterized as advertising)



Physical Address

The email must also provide a valid physical address where the business receives mail



Opt Out

Tell recipients how they can opt out from receiving future emails, typically an “unsubscribe” link included in the footer of emails. Comply with any opt-out requests within 10 days

For all emails: Never include sensitive personal information, such as Social Security numbers

Social Distancing

The image is a composite background. At the top, a bright sun or star is on the horizon, casting a glow over a dark, starry space. Below this, a cityscape is visible at night, with lights from buildings and streets. Overlaid on the city is a network of glowing lines and nodes, resembling a digital or social network. The nodes are small, bright circles, and the lines are thin, connecting the nodes in a complex web. The overall color palette is dominated by blues, oranges, and whites.

Morgan Lewis

Social Distancing in Retail Spaces Open to the Public

- **Occupancy rates** at some level lower than normally allowed with a “one in/one out” policy once those levels are reached
- Maintaining a **six-foot plus distance** at checkout or point of sale lines, customer service desks, and where customers would otherwise tend to gather (and outside the store when queuing is necessary to maintain appropriate occupancy rates)
- **Physical barriers** like plexiglass shields where six-foot distancing is not possible (i.e., at cashwrap



Social Distancing in Retail Spaces Open to the Public

- Direct **traffic flow** through the store with arrows on the floor, and check local guidelines for any obligations to mark the floor for places to wait in line to endure distancing
- Limit the **capacity of fitting rooms**
- Open only **every other register**
- **Remove public seating**
- Maintain **single entrance and separate single exit where possible**



Other Customer Social Distancing Issues

- **Curbside delivery**
 - How will customers alert you they are present and ready for delivery?
 - Where is the delivery to be made (i.e., through an automobile side door or in the trunk)?
 - How will payment occur?
 - Sanitization of any payment device between transactions
- **Special shopping hours or opportunities**
 - Early shopping hours, or stylist appointments, for at-risk customers or those seeking to minimize contact with public



Social Distancing for Employees

- **Breaks**
 - Stagger meal and rest breaks to reduce overall congestion in common areas
 - Employees are expected to bring their own food and utensils, and eat away from others (e.g., in a car) to the extent possible
 - Employees should avoid common areas when others are present



Social Distancing for Employees

- **Staggered Shifts**
 - Gap-time between start/end times for shifts to minimize overlap and allow for cleaning of the work environment at regular and appropriate intervals
 - Consider moving from one or two shifts per day to three shifts to spread out work schedules and provide for social distancing
 - Keep workers on shifts with the same people to limit the amount of contacts for workers and to better control a potential outbreak (i.e., if one worker becomes sick then workers on the other shifts are protected)



Implementing Social Distancing Plans

- **Establish a written plan**
 - This is required in some jurisdictions, but a best practice everywhere
 - Safety regulators and local law enforcement have frequently requested to see written plans
- **Enforcement/reporting**
 - Who is designated responsible for implementing the plan?
 - To whom should employees report any issues?



Implementing Social Distancing Plans

- **Training**

- Managers and employees should be trained about the plan and how to implement it

- **Signage/Publication**

- Signage in and around stores/distribution centers to assist in compliance with social distancing from the public and employees
- Distribute social distancing protocol to employees, as required
- Use of public address system for reminder announcements





Customer Personal Protective Equipment (PPE)

Morgan Lewis

Customers Wearing PPE in Stores

- 'Next normal' will see customers wearing PPE in stores
 - PPE includes non-medical-grade facial coverings, masks, and gloves
 - Cloth facial coverings acceptable
- Many states and localities require customers to wear PPE in stores
- Encourage customers to wear PPE to support a healthy and safe store reopening
 - Achieve through signage



Customer PPE: Mandatory or Permissive?

- Some state and local orders **mandate** that customers wear facial coverings while indoors
- As more nonessential retail stores are permitted to reopen, some (**but not all**) jurisdictions have extended customer PPE requirements to those stores
- Several jurisdictions put the burden on the retail business to enforce and ensure compliance with customer PPE requirements



Customer PPE: Mandatory or Permissive?

- Retailers can be fined for lack of compliance with customer PPE requirements
- Consider procuring additional non-medical-grade PPE, where possible, to offer to customers if needed



Signage on Customer Facial Coverings

- Where state or local orders require customers to wear PPE, post signage to put customers on notice that they must wear a facial covering in order to enter the store
 - Even where not required, it is a good idea to post signage at the store entrance encouraging customers to wear a facial covering
- Signage should be clear and conspicuous, and posted on the storefront window or entrance



Exceptions and Enforcement

- Most orders include exceptions to wearing a face covering:
 - Where it would be contrary to a person's health or safety due to a medical condition
 - Anyone under age 2 (this age threshold can vary)
 - An older child if the parent or guardian or person responsible for the child is unable to place the face covering safely on the child's face



Exceptions and Enforcement

- For customers who are not wearing a face covering, store employees and managers should approach the individual and ask them to put one on
- If the customer refuses, and does not assert a medical condition that prohibits them from wearing a face covering, a store employee or manager should politely ask the person to leave and return when they have a mask (while this is arguably a Title III violation, there is a “safety” defense) or use alternative methods such as curbside or delivery, if offered



Customer Temperature Checks



Morgan Lewis

Customer Temperature Checks

- Still not required by law
- But could be a big question as retail reopens more
- Some mall owners, retailers, food service companies, and other sales companies will tend toward conducting checks
- Retailers on the luxury end of the spectrum will tend toward conducting them
- If you do it, be consistent to avoid claims of discrimination
 - All customers in the same jurisdiction should be subject to the same screen



Temperature Screening Options



Outside Vendor

Contract with outside vendors (healthcare personnel) to conduct temperature screens.



Use Your Own Employees

Use EHS or security employees to conduct customer temperature checks. Training is critical



Temperature Screening Stations

Offer temperature screening stations where customers can take their own temperature



Infrared Scanners

Training Temperature Screeners

- Screeners should be trained on safety measures (particularly on maintaining distance from others whenever possible) and should use provided appropriate PPE: face coverings, surgical masks, respirators, eye protection, gloves, disposable gowns, and head coverings
- Provide necessary supplies such as alcohol-based hand wash, biohazard cleanup kits, biohazard disposable bags, daily reporting forms, and a telephone
- Do not allow the screening process to form lines of people closer than six feet from one another; use ground or floor markings to indicate where people should stand if a line is necessary



Fever Thresholds

- CDC publications tend to use 100.4°F as the threshold
- State and local ordinances also vary, for example:
 - Miami, Florida sets fever screens at 99.5°F or more
 - Travis County, Texas sets fever screens at 99.6°F or more
 - San Diego County and Sonoma County, California, as well as Massachusetts, use 100°F or more
 - Still many locations, including, Georgia, Kentucky, Michigan, and New Jersey use 100.4°F or more
- May elect to use a lower number depending on preference and/or jurisdiction
- **Consistency Matters:** To avoid claims of discrimination (for example, based on disability, race, gender, disability, or national origin), all customers in the same jurisdiction should be subject to the same screen

100.4
°F

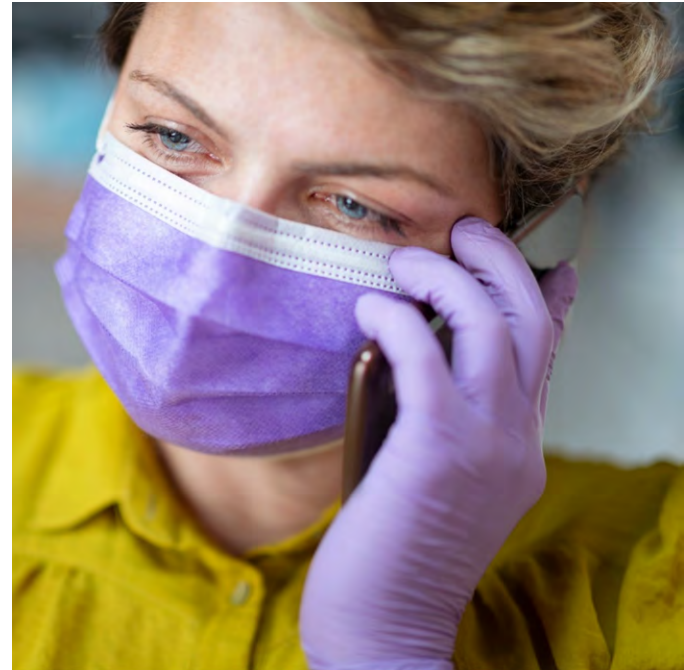
Employee Safety

The background is a composite image. At the top, a starry night sky transitions into a glowing horizon line. Below this, a globe is visible, with a cityscape at night overlaid on its surface. A network of glowing blue and orange lines connects various points across the globe and city, suggesting a global network or data flow. The overall color palette is dominated by deep blues, oranges, and whites.

Morgan Lewis

Employee Face Coverings

- CDC recommends everyone wear face coverings in public settings where social distancing measures are difficult to maintain, including retail environments
- Jurisdictions vary on whether employees/members of the public are required to wear face coverings
 - Many states and/or local jurisdictions require employees to wear face coverings at work, particularly if they interact with the public
- Employees do not typically need a surgical or N-95 mask
 - Face coverings and masks can be made of cloth or fabric and can be used with filters.
- Medical PPE should be encouraged only when available in sufficient quantity for health care



Employee Face Coverings

- Jurisdictions also differ on whether employers and/or customers are required to wear face coverings, and whether employers must provide face coverings to employees or whether employees can be required to provide their own
- Businesses should establish a face covering policy that satisfies applicable requirements:
 - Helps keep employees healthy and safe by providing face coverings when they are not otherwise available
 - Instructs on proper usage of face coverings (cleaning, removal)



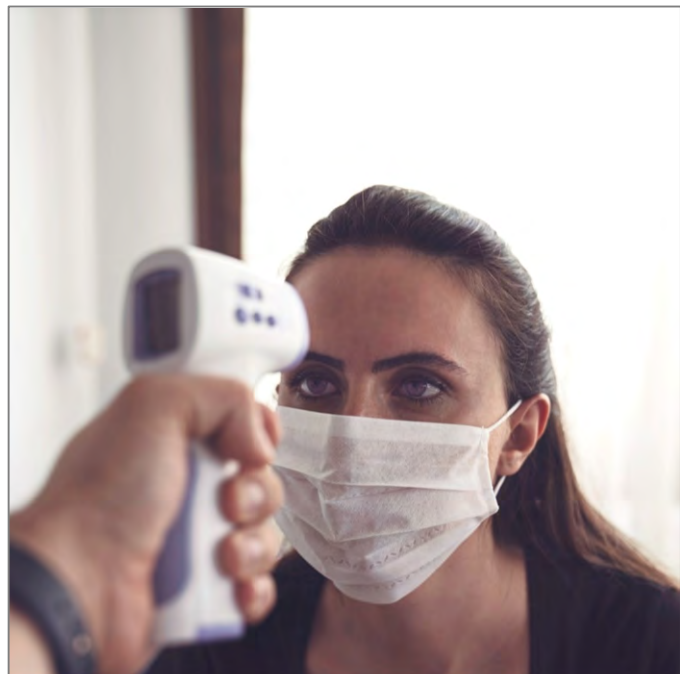
Screening and Temperature Checks

- Employees should be sent home or required to stay home when they are sick or have been in close contact with someone diagnosed with COVID-19
- Many jurisdictions require employees to be screened for illness prior to entering a worksite, but widely vary in what screenings must include.



Screening and Temperature Checks

- Considerations in establishing a screening protocol include:
 - State and local requirements
 - Use of temperature checks, including contracting outside vendors vs. training internal screeners
 - Training on safety measures for both screeners and employees
 - Compensability of time spent in screening lines (may be required in some states)
 - Establishing a criteria for returning to work after illness or COVID-19 exposure
 - Notification to employees of screening protocols, including to follow relevant privacy laws
 - If you record results, treat that as a medical record under applicable privacy laws
 - Whether to screen customers, in addition to employees



Contract Tracing Following a Positive Test



Contact Tracing

Why?

- Limit the spread of infection
- Identify and notify employees who may have been exposed at the workplace

Who Conducts?

- Onsite medical staff
- Trained HR personnel

When?

- ASAP after employee reports positive diagnosis or is presumed positive

How?

- Create script to follow for each interview
- Collect information on all individuals' places and contacts within 48 hours of onset of symptoms (or within 48 hours of positive test for asymptomatic cases)

What to Disclose?

- Only potential exposure, not the ID of the positive individual
- Consider providing CDC or other relevant public health guidance and resources regarding self-quarantine and self-monitoring

What to Avoid?

- Don't ask about preexisting conditions, personal life
- Don't provide identifying information
- Don't rely on tracing to replace safety measures
- Don't limit notice just to confirmed contacts

Hand Washing/Sanitizing

- Employers should provide adequate breaks for employees to wash their hands at least every 30 minutes, or as needed
- Employees should be directed to wash their hands with soap and water for at least 20 seconds, especially after blowing their nose, coughing, sneezing, eating, or using the toilet
- If soap and water are not available, employees can use a hand sanitizer that contains at least 60% alcohol
- Employees should avoid touching their eyes, nose, and mouth
- Gloves can be provided for tasks such as cleaning and money handling, but should be disposed of after each use



Cleaning and Disinfecting

The image is a composite background. At the top, a bright sun or star is on the horizon, casting a glow over a dark, starry space. Below this, a cityscape is visible at night, with lights from buildings and streets. A network of glowing lines, resembling a globe or a data network, is overlaid on the cityscape. The lines are connected at various points, creating a grid-like pattern. The overall color palette is dominated by blues, oranges, and whites.

Morgan Lewis

Cleaning and Disinfecting

- Follow [CDC recommendations](#)
- After a suspected/confirmed person with COVID-19
 - Close off areas visited by the ill person, which **may require closing the store or parts of it**
 - Wait 24 hours, or as long as possible, before cleaning (to protect folks engaged in cleaning)
 - Open doors and windows
 - Disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment
 - Clean touch screens, keyboards, tablets, and work surfaces
 - Focus on frequently touched surfaces like tables, doors, light switches
 - Do not vacuum a space that has people in it



Cleaning and Disinfecting

- **How to clean hard (non-porous) surfaces**
 - Clean with detergent or soap and water prior to disinfection
 - Disinfect with EPA-registered household disinfectant
 - Diluted household bleach solutions can be used
- **Soft (porous) surfaces**
 - Remove visible contamination
 - Clean with cleaners indicated for use on the surfaces
 - Launder items that can be laundered in warmest possible water
 - Dry completely



Cleaning and Disinfecting

- **Electronics**
 - Follow manufacturer instructions
 - Consider use of wipeable covers
 - Consider use of alcohol-based wipes or sprays containing at least 70% alcohol
- **Linens, Clothing, Laundry Items**
 - Do not shake
 - Launder using warmest possible water
 - Dry completely
 - Clean and disinfect carts/hampers used to collect and transport items
 - Laundry from a person who is sick can be washed with other people's items



Cleaning and Disinfecting Incoming Shipments

- Studies are divided on how long the virus can live on cardboard, but cleaning incoming shipments is a good idea regardless of whether they come in cardboard or not
- Employees receiving incoming shipments should wear gloves and should dispose of those gloves and wash their hands once they finish processing the incoming shipment
- Shipments should be sprayed or wiped with disinfectant on the EPA registered list





Enhanced Curbside/ Outside Pickup and Ship From Store Options

Morgan Lewis

Overview

- While many retail stores have now reopened for in-person transactions as permitted by state and/or local law, jurisdictions are still encouraging curbside/outside pickup, delivery, and shipping to minimize in-person contact
- In some jurisdictions where COVID-19 transmission rates are still high, certain stores in indoor shopping malls may not yet reopen for in-person transactions



Enhanced Curbside/Outside Pickup

- Some jurisdictions have detailed requirements and/or guidance for curbside/outside pickups
- Even where a jurisdiction does not enumerate curbside/outside pickup requirements, retailers should follow best practices, including:
 - Ensuring that customers are **physically distanced** at least 6 feet from one another and from staff when waiting in line (i.e., use tape markings to delineate 6 foot intervals for customers), and have a staff member ensure compliance with these measures
 - Ensuring that staff remain **six feet apart** from one another
 - Ensuring all customers over age 2 are wearing **face coverings**



Enhanced Curbside/Outside Pickup

- Even where a jurisdiction does not enumerate curbside/outside pickup requirements, retailers should follow best practices, including:
 - Ensuring staff are wearing **face coverings and gloves**
 - Using **bins** to transfer ordered merchandise to customers or have staff **place items directly** in a customer's car
 - Attaching **receipts** to **purchased packages or bags**



Enhanced Curbside/Outside Pickup

- Retail stores in indoor shopping malls that are not yet allowed to reopen for in-person transactions may have additional requirements, such as:
 - **Set pickup times** for customers so that employees can bring pre-ordered items to customers at a designated site outside the mall
 - **Clearly mark** outside pickup sites
 - Encourage customers to **prepay for their orders**, if possible
 - Have customers **remain in their car** while waiting to pick up the item
 - Have an employee wearing a face covering and gloves bring the customer's order to the pickup site in a receptacle (i.e., bin or shopping cart)



Delivery and Other Ship From Store Options

- While many retail stores are now open, some may still opt to provide delivery and other ship from store options to minimize in-person contact
- **Best practices include:**
 - Following the **jurisdiction's requirements** for social distancing, face masks, frequent hand washing, and sanitizing within the workplace
 - For deliveries, avoid contact with customers; inform customers that **packages will be left at the door**



Modifications to Customer Programs



Morgan Lewis

Store Hours

Reduce store hours

generally to give more time for cleaning and employee rest. Very few retailers will operate on the same hours they did before the pandemic. Even stores previously open 24 hours should consider closing briefly

Consider establishing special hours

for vulnerable populations in the community. Typically early in the morning after a full overnight cleaning

Be sure to communicate changes

to store hours on the company website, in other places you advertise hours, and through information sources like Google

Must close



Self-Service Unpackaged Food

Executive orders in a declining number of jurisdictions require retailers to close any place where customers have direct access to unpackaged food. This includes salad bars, coffee self-service stations, bulk candy displays, and similar arrangements



Dining Areas

Any area designed for customers to sit and eat must comply with the local regulations on indoor dining. This includes bars in coffee shops and seating areas in food stores

Local restrictions on indoor dining may regulate occupancy levels, distancing requirements, face coverings, ventilation, gathering information from diners for contact tracing, and hygiene/cleanliness



Lounge Areas

Any places where customers might normally sit to relax or socialize should be rearranged to keep six feet or more between seats. This includes seats in or outside of changing areas, mall conversation areas, or other places customers might congregate

Cash Prohibitions

The image is a composite background. At the top, a bright sun or star is on the horizon, casting a glow over a dark, starry space. Below this, a cityscape is visible at night, with lights from buildings and streets. Overlaid on the city is a network of glowing lines and nodes, resembling a digital or financial network. The nodes are small, bright circles, and the lines are thin, connecting the nodes in a complex web. The overall color palette is dominated by blues, oranges, and whites.

Morgan Lewis

Cash Prohibitions

- To minimize contact between employees and customers, some retailers have started requiring customers to swipe payment on their own
- Other retailers are discouraging or prohibiting customers from using cash in some jurisdictions
- Cash prohibitions are not allowed in many jurisdictions and may also attract media scrutiny even where technically allowed



Cashless Retail Legislation

- Some state and local jurisdictions require retailers to accept cash, such as:
 - Massachusetts
 - New Jersey
 - Philadelphia
 - San Francisco
 - Berkeley, California
 - Rhode Island
 - New York City
(effective November 2020)
- A number of other jurisdictions have proposed similar legislation



Best Practices

- Where a jurisdiction requires retailers to accept cash:
 - Do not prohibit cash payments by customers
 - Avoid placing any restrictions on cash-paying customers that do not apply to customers paying by credit or noncash methods (i.e., higher prices, charging a fee, placing a condition on acceptance of cash)
 - Instead, express that credit or noncash payments are preferred to minimize customer/employee contact
 - Violations may result in fines, and some jurisdictions also allow for private rights of action
- Even where a jurisdiction does not expressly prohibit cash bans, consider whether a cash ban will attract unwanted media attention



Effective Customer Communication

The background is a composite image. At the top, a starry space background transitions into a glowing horizon of a globe. Below the globe, a night cityscape is visible, with buildings and streets illuminated. Overlaid on the city and globe is a network of blue lines connecting various nodes, representing a global communication network.

Morgan Lewis

Effective Customer Communication

- Assures customers that you are employing safety and sanitary practices
- Provides guidance to customers about the practices that must be followed when inside the store Ensures customers are adhering to required practices
- Is accessible to all customers, including the disabled (web messages should be in HTML format)



Achieving Effective Customer Communication

BRINGING CUSTOMERS BACK

ENSURING SAFETY IN THE STORE



Bringing Customers Back

CHANNELS OF COMMUNICATION

- Website updates
- Social media posts
- Email communication

COMMUNICATION CONTENT

- Provide detailed information about the safety and sanitary practices put in place at your business
- Be transparent about the practices you require employees and customers to follow
- Also include information about:
 - Which locations are currently open or closed and store hours
 - Products and services being offered (or limitations)
 - Your contact information
 - Links to helpful content on your website
 - Links to official government and health websites
 - New customer benefit policies (refunds, discounts, promotions) your business has adopted

Ensuring Safety in the Store

CHANNELS OF COMMUNICATION

- Signage at entrances and inside the store
- Verbal instructions from employees
- In-store audio messaging

COMMUNICATION CONTENT

- Signage at entrances, within the store, and audio messaging should identify specific requirements to enter and remain in the store, for example, wearing masks and gloves and maintaining the required social distance
- Affix labels on the flooring to ensure sufficient social distancing between customers, for example, lines indicating a 6-foot distance at cashiers and arrows indicating one-way traffic down aisles
- Have employees at the entrances and throughout the store ensuring that customers are adhering to your safety and sanitary practices
- Post signage that asks customers to not touch items they do not intend to purchase and reminds customers to wash their hands regularly, wear face masks, and practice social distancing, particularly when waiting in checkout lines.
- Post signage which acknowledges your company's appreciation for the customer's cooperation with the store's policies and procedures to maintain a safe and healthy environment.
- Post signage that describes the cleaning being performed at the store to maintain a safe and healthy environment

Tips to Achieving Effective Communication

- Be clear and concise about the policies and practices to be followed in the store
- Offer communication in multiple languages
- Provide more than one method of communication
- Communication should be compassionate and express your company's support to customers and employees
- Regularly update your communications to capture changes in policies and store details
- Include graphics on signage to show how customers should properly wear a mask, wash your hands, and practice social distancing.



Price Gouging

The image is a composite background. At the top, a bright sun or star is on the horizon, casting a glow over a dark, starry space. Below this, a cityscape is visible at night, with lights from buildings and streets. A network of glowing lines, resembling a globe or a data network, is overlaid on the cityscape. The lines are connected at various points, creating a grid-like pattern. The overall color palette is dominated by blues, oranges, and whites.

Morgan Lewis

What Is Price Gouging?

- Price-gouging statutes and some emergency orders limit retailers' ability to raise prices
- Laws vary by state and locality, but generally:
 - Are triggered by an emergency declaration and most states have extended repeatedly
 - Apply to goods and services deemed necessary to health and welfare, e.g., food, medicine, cleaning products, etc.
 - Analyze whether prices are excessive or unconscionable
- Exception for increased supply or overhead cost available in some, but not all, jurisdictions



Examples of Price Gouging Laws

- **New York:**
Civil statute prohibits sale of certain goods and services at an “unconscionably excessive price” during a state of emergency; this means a gross disparity between current price and price charged immediately prior to the emergency; violators face fines of up to \$25,000
- **California:**
Criminal law prohibits charging a price more than 10% above the prices charged immediately prior to the emergency declaration, unless supply or overhead costs increase; fines of up to \$10,000 per violation and/or one year in jail

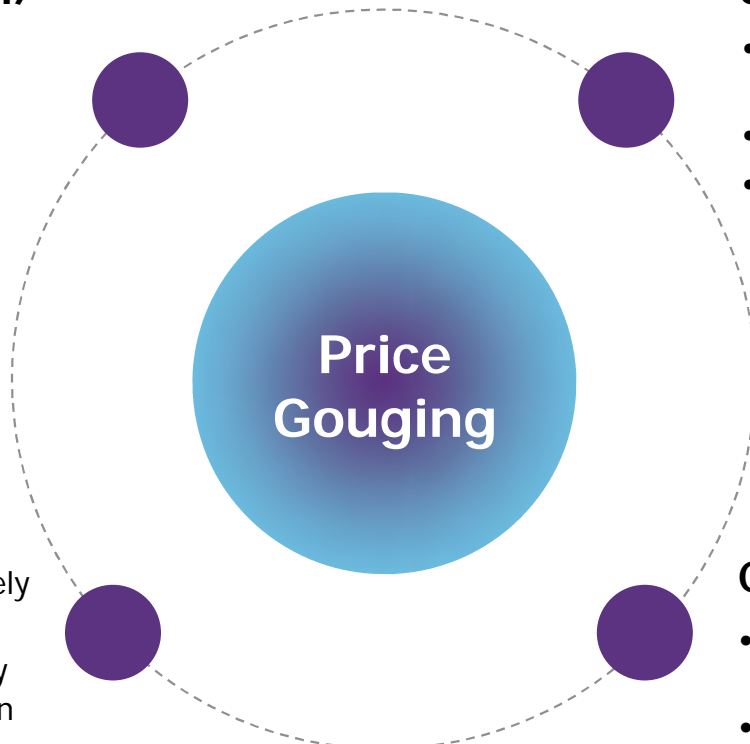


State Attorneys General/ District Attorneys

- Inquiries and subpoenas
- Formal investigations
- Civil and criminal penalties

Customer Complaints

- Consumers watching prices closely
- Over 45,000 complaints were filed with Pennsylvania's attorney general by June 2020; resulted in 466 cease-and-desist letters and 200 targets for further investigation



US Attorneys Offices

- Specific instruction from Attorney General William Barr
- CIDs and subpoenas
- Civil and criminal penalties

Class Actions

- Typically follow government investigation
- Ease to investigate and track online
- UDAP statutes

Price Gouging Checklist

- ✓ Maintain historical price data
- ✓ Implement strategy and process to stop or limit price increases on covered items
- ✓ For dynamic pricing systems and algorithms, include system checks and rules to flag all or certain price increases for human review
- ✓ Document justifications for price increases, critical to defending any claims
- ✓ Review and document increases imposed by suppliers
- ✓ Analyze and document increases in cost of labor, materials, etc.
- ✓ Investigate new products or third-party partners that may be ripe for abuse



Contributor Bios



Morgan Lewis

Biography



Anne Marie Estevez

Miami, Florida

+1.305.415.3330

annemarie.Estevez@morganlewis.com

Anne Marie Estevez serves as co-chair of Morgan Lewis's retail & ecommerce industry team. She defends clients in complex, class, and collective action employment, Americans with Disabilities Act (ADA), public accessibility, and consumer class action cases in US federal and state court. Fluent in Spanish, she represents a broad range of US and international clients in employment and labor-based cases nationally, including wage and hour, per diem, discrimination, and trade secrets litigation. Anne Marie also counsels employers nationally in these areas, negotiates high-level executive contracts and terminations, and handles due diligence for complex employment and accessibility matters.

Biography



Gregory Parks

Philadelphia, PA

+1.215.963.5170

[gregory.parks](mailto:gregory.parks@morganlewis.com)

[@morganlewis.com](mailto:gregory.parks@morganlewis.com)

Co-leader of the firm's privacy and cybersecurity practice and retail & ecommerce sector, Greg Parks counsels and defends consumer-facing clients in matters related to privacy and cybersecurity, class actions, attorney general investigations and enforcement actions, the California Consumer Privacy Act, consumer protection laws, loyalty and gift card programs, retail operations, payment mechanisms, product liability, retail waste, shoplifting prevention, compliance, antitrust, commercial disputes, and a wide variety of other matters for retail, ecommerce, and other consumer-facing companies. Greg also handles data security incident response crisis management and any resulting litigation, and manages all phases of litigation, trial, and appeal work arising from these and other areas.

Biography



Christina Melendi

New York, NY

+1.212.309.6949

[christina.melendi](mailto:christina.melendi@morganlewis.com)

[@morganlewis.com](mailto:christina.melendi@morganlewis.com)

Christina Melendi's currently serves as co-leader of the firm's retail and ecommerce industry team. Her corporate and securities practice focuses on representing public and private corporations and private equity sponsors and their portfolio companies in mergers and acquisitions, asset purchases, joint ventures, private and public equity and debt financings, securities offerings, and other general corporate matters. Christina also assists companies to raise capital in the public markets, including initial public offerings and secondary offerings. Christina counsels clients on SEC reporting and securities law disclosure, annual meeting and proxy related issues, corporate governance matters, and stock exchange listing requirements.

Biography



Carrie Gonell

Orange County, CA

+1.949.399.7160

carrie.gonell

[@morganlewis.com](mailto:carrie.gonell@morganlewis.com)

Carrie A. Gonell focuses her practice on complex employment litigation and counseling, regularly representing employers in the retail, financial services, and technology industries. She has experience litigating Fair Labor Standards Act (FLSA) and state wage claims, including individual claims and collective, representative, and class actions, in California, New York, and jurisdictions around the country. Carrie has successfully compelled arbitration, defeated class certification, and helped negotiate many favorable settlements of wage and hour actions.

Biography



Ezra D. Church counsels and defends companies in privacy, cybersecurity, and other consumer protection matters. He helps clients manage data security and other crisis incidents and represents them in high-profile privacy and other class actions. Focused particularly on retail, ecommerce, and other consumer-facing firms, his practice is at the forefront of issues such as biometrics, artificial intelligence, location tracking, ad tech, and blockchain. Ezra is a Certified Information Privacy Professional (CIPP) and co-chair of the firm's Class Action Working Group.

Ezra Church

Philadelphia, PA

+1.215.963.5710

[ezra.church](mailto:ezra.church@morganlewis.com)

[@morganlewis.com](mailto:ezra.church@morganlewis.com)

Biography



Barbara Miller

Orange County, CA

+1.949.399.7107

[barbara.miller](mailto:barbara.miller@morganlewis.com)

[@morganlewis.com](mailto:barbara.miller@morganlewis.com)

Barbara J. Miller handles complex employment litigation for a range of clients, particularly in the retail, technology, financial services, and energy industries. She defends wage and hour class actions as well as a broad range of other employment disputes, from those involving employee proprietary information to harassment, discrimination, retaliation, and whistleblowing. Barbara also provides counsel and internal training on a range of workplace issues including wage and hour compliance, leaves of absence, workforce change, and tailoring incentive plans to meet both business needs and California's technical wage laws.

Biography



Kristin M. Hadgis counsels and defends retail and other consumer-facing companies in matters relating to class actions, consumer protection laws, retail operations, loyalty and gift card programs, privacy and cybersecurity, compliance, and commercial disputes. Kristin also focuses her practice on privacy and data security matters, and regularly advises and represents clients in connection with these issues.

Kristin Hadgis

Philadelphia, PA

+1.215.963.5563

[kristin.hadgis](mailto:kristin.hadgis@morganlewis.com)

[@morganlewis.com](mailto:kristin.hadgis@morganlewis.com)

Biography



Stephanie Faraci advises institutional lenders, real estate developers, property owners and operators, and investors in all aspects of commercial real estate transactions. She counsels clients in connection with the acquisition, disposition, financing, development, and leasing of office, retail, mixed-use, industrial and multi-family properties. Stephanie has experience preparing and negotiating loan documents, purchase and sale agreements, leases, easements, development agreements, and related documents.

Stephanie Faraci

Boston, MA

+1.617.341.7817

[stephanie.faraci](mailto:stephanie.faraci@morganlewis.com)

[@morganlewis.com](mailto:stephanie.faraci@morganlewis.com)

Biography



**Regina
Schaffer-Goldman**

New York, NY

+1.212.309.6689

[regina.schaffer-goldman](mailto:regina.schaffer-goldman@morganlewis.com)

[@morganlewis.com](mailto:regina.schaffer-goldman@morganlewis.com)

Regina Schaffer-Goldman defends and counsels retail, ecommerce, media, and other consumer-facing companies in matters relating to class actions, consumer protection laws, retail operations, loss prevention, intellectual property matters, and commercial disputes. Regina has in-depth experience regarding the wide-ranging issues affecting retail, ecommerce, and other consumer-facing companies. Her litigation and counseling experience for clients in this space includes a variety of legal, regulatory, and operational issues such as online contracting and website terms, marketing and advertising, price comparison, product-related litigation, loss prevention litigation, and intellectual property.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Beijing
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong
Houston
London
Los Angeles
Miami
Moscow
New York
Nur-Sultan
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Shanghai
Silicon Valley
Singapore
Tokyo
Washington, DC
Wilmington



Morgan Lewis

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

THANK YOU

© 2020 Morgan, Lewis & Bockius LLP
© 2020 Morgan Lewis Stamford LLC
© 2020 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.