

# **Council** Capital

## **COVID-19 Response Guide**

March 16, 2020

## Instructions and Expectations

Council Capital is requesting that all portfolio companies of Council Capital funds (each a Company) form a “COVID-19 Response Team” that will communicate as frequently as necessary (likely daily for the immediate future). The purpose of this COVID-19 Response Team is to ensure that all appropriate safety and business plans are in place. To do so and to hopefully make it easier for you to create as strong plan, Council Capital asks that each Company management team and COVID-19 Response Team complete the following guide, answering each question under the ‘Company Policy’ header. The completed document should then be shared with the Company’s board of directors, and the COVID-19 Response Team will remain in place to follow through on the plan as necessary.

The information that follows outlines key questions each Company should be able to answer. ‘Council Capital Guidance’ is meant to provide resources to guide efficient and effective conversation. It is intended to be a resource that will help the COVID Response Team and the Company plan should it face certain scenarios. This is not to say that every option outlined here is warranted at the current point in time (but could become warranted should the outbreak rapidly spread). Each Company is uniquely positioned, so each COVID-19 Response Team should explore whether a) any items listed below are not applicable to their company, b) any items listed below are applicable but not warranted for their company, and / or c) there are *additional* measures that are warranted due to the specific nature of the Company’s business. Critical team members need to know how to reach each other over the weekends and in the event the usual computer system goes down.

## Disclaimers

This document is a business planning resource and should not be considered legal advice. Where necessary, Council Capital requests that the Company consult legal professionals and/or external experts.

The materials herein were compiled on March 15, 2020. Take note that the situation is changing rapidly, public health guidance is changing rapidly, and government directives are changing rapidly. Consult CDC and legal counsel for the most up-to-date information.

## COVID-19 Response Guide

### COVID-19 Response Team

Who are the members of your COVID-19 Response Team?

#### **Council Capital Guidance**

- Include CEO, board chairperson, Tim Schulte, HR/Talent leader, additional employees deemed critical to the initiative.
- Designate a point person at each facility who is positioned to assist with site-specific actions and communications.

#### **Company Policy**

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### General Business

How will you keep operations running during interruption?

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- Identify what sources of disruption could occur, then quantify the impact. Create mitigation plans. Consider caregivers, corporate employees, locations shut down, suppliers impacted. Stay close to your customers / caregivers / patients.
- Assess your organization's essential functions, your reliance on external suppliers (who may be even more deeply affected by an outbreak than you), and the extent to which customer demand may be affected by a widespread outbreak.
- Identify mission-critical operations, and create a plan for how to maintain those, including changes to your business practices and suspension of some operations and functions as required.

#### **Company Policy**

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Is liquidity sufficient to weather the storm?

#### **Council Capital Guidance**

- Define scenarios tailored to the company and identify critical variables that will affect revenue and cost.
- Create a financial stress test and contingency plans
- Shore up cash positions to insulate from any potential near-term revenue or cash shocks from slow paying customers that could result in a liquidity crunch. Draw down on revolver capacity pro-actively now to protect against extreme and unlikely event that debt markets vibrate and access to liquidity becomes a problem in the near to medium term. Review cash balances, debt, covenant levels, quarterly cash flow.

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What suppliers may be affected, and what contingency plans do we need to put in place?

#### **Council Capital Guidance**

- Identify high-risk suppliers / partners. Define the likely extent, duration, and implications of their exposure.
- Plan now for a shortage of products that can affect your company.

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How many absences can the business handle before business operations are interrupted, and how will the issue of absenteeism be addressed?

#### **Council Capital Guidance**

- Expect and plan for increased absenteeism. Employees may stay home because they are sick, need to care for sick household members, or because schools have been closed and parents need to stay home with their children.
- Task business unit leaders/managers/supervisors with identifying key tasks and projects and personnel "back-ups" for those functions within their groups. Cross-train staff to perform essential functions. Consider what work, if any, can be completed remotely and plan for how employees can do their work remotely.
- Evaluate whether any clinical roles are at a heightened risk of being 'poached' by competitors due to high-demand skills; put in place a retention incentive.

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- Determine whether it makes sense to expand hiring efforts – both to back up existing labor force and / or to expand services at a time of potentially increased job mobility and labor capacity.

**Company Policy**

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What needs to be considered before deciding to close a location or overall business?

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- Consider government guidance, safety of employees, supply of materials, customer/patient demand, collective bargaining agreements, compensation requirements, etc.
- Temporary shutdowns of a facility may implicate federal and state worker notification statutes, typically referred to as “WARN” laws. Under the federal Worker Adjustment Retraining Notification Act (WARN Act), employers with 100 or more employees are required to provide 60 days’ advance notice of a temporary shutdown (or 60 days’ pay in lieu of notice) if the shutdown will (i) affect 50 or more employees at a single site of employment and (ii) result in at least a 50 percent reduction in hours of work of individual employees during the month of the shutdown. However, 60 days’ notice is not required if the shutdown is a result of a “natural disaster” or “unforeseeable business circumstances.” Although the WARN Act does not specifically address whether a pandemic or potential pandemic qualifies as a natural disaster or unforeseeable business circumstance, the key factor for both is that the event was sudden, dramatic, and not foreseeable within the required notice period. Employers should note that, even if these exceptions apply to the COVID-19 outbreak, the employer is still required to give as much advance notice as is practicable. Employers accordingly should be prepared to communicate a temporary shutdown once a final decision has been made, even if the shutdown will not occur for several days.
- Under federal law, employers are required to pay nonexempt, hourly employees only for hours they actually work. Absent employer policies or contractual agreements (e.g., collective bargaining agreements) to the contrary, these employees are not entitled to be paid during a shutdown of a work location. Of course, nonexempt employees must be paid for all hours worked at a remote location during a shutdown. Also, if the shutdown occurs in the midst of an employee’s shift, employers may be required under certain state laws to pay nonexempt employees for a minimum number of hours for that workday.
- Federal law requires that exempt, salaried employees (and nonexempt, salaried employees who are paid based on the fluctuating workweek method) must be paid their full salaries for any week in which they perform work. These employees accordingly must be paid their full weekly salary if an employer shuts down its location in the middle of the workweek. However, federal law does not require these employees to be paid their salary in any workweek in which they perform no work. Employers accordingly would not be obligated to pay such an employee in weeks in which the facility is closed unless the employee continues to work remotely during this period.
- Employees entitled to nondiscretionary or productivity bonuses who are prevented from making progress toward the bonus during a work shutdown may be eligible for a prorated bonus based on principles of state contract law.
- Employers may require employees affected by a shutdown to utilize paid leave if such action is consistent with applicable company policies, state and local laws, employment contracts or collective bargaining agreements.

**Company Policy**

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How are you communicating with

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employees about the topic of COVID-19?

- Notify employees of risks related to COVID-19; inform them that the company will take any reasonable and necessary steps to ensure a safe and healthy working environment.
- Share the facts of the Corona Virus (CDC, WHO, etc.) by providing links to authoritative sources such as the CDC and your state’s department of public health – not everyone pays attention to the news, and misleading / inaccurate information is plentiful.
- Advise employees of any changes to policies. Provide awareness of sick leave policies immediately and often and remind employees to stay home if they are ill.
- Introduce mandatory COVID-19 training; communicate expectations regularly.
- Ask employees if they have concerns to report them to HR and their leader.
- Train leaders on how to maintain order and respond to concerns with empathy.

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What communication protocols are in place if an employee becomes directly affected by COVID-19?

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- Develop internal communication plan, culminating in informing all personnel when positive COVID-19 cases develop within your organization. *Do not identify COVID-19 positive individuals.*

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## Benefits

How does the current policy handle “excessive” absences related to an employee’s illness? Does this need to be re-evaluated?

**Council Capital Guidance**

- For employees who have exhausted their allotment of sick days or other forms of paid time off, consider allowing them to borrow against next year or instituting a program allowing employees to donate PTO to each other. Take note that these programs have some legal complexities, under both federal and state law. A company should consult legal counsel to implement one of these programs and should not just do it ad hoc. If time is to be unpaid, relax rules so that these days off are penalty-free.

**Company Policy**

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How does the current policy accommodate family illness?

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- Various federal, state, and local laws provide protections for employees who are unable to work due to illness, the illness of a family member, or a workplace shutdown. See state specific FMLA laws.

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How will the company apply its paid time off / leave policy in the event of a childcare / school closing or mass transit disruptions?

**Council Capital Guidance**

- Federal law does not include a requirement that employers provide leave for employees caring for healthy dependents who are unable to attend school. Thus, under federal law, employers have no obligation to provide employees with leave (whether paid or unpaid) to remain home with children during an extended school closure, except to the extent provided for in the employer’s leave or paid time off policies. Of course, nonexempt employees who perform remote work during this period must be paid for their working hours, and exempt employees must be paid for workweeks in which they work.
- Employers should not base eligibility for a liberal leave program on protected characteristics such as age or disability status, as doing so may violate federal and state employment discrimination laws.
- State laws may impose different requirements.

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In the midst of an epidemic, will the company still require the same level of leave substantiation (i.e. doctors' notes) that it normally requires?

**Council Capital Guidance**

- Generally, consider waiving a doctor's note for employees reporting off with COVID-19 or other respiratory illness (like the flu).
- If an employee voluntarily discloses a medical condition when seeking exceptionally liberal leave as a reasonable accommodation, then the employer may request certain medical documentation to determine whether the requested accommodation is reasonable and whether alternative reasonable accommodations are available. Under federal and state disability laws, such documentation should be limited to information necessary to evaluate the employee's accommodation request.

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## Compensation

At what point does an employee stop getting paid when they are not performing work?

**Council Capital Guidance**

- This issue can be addressed mainly through paid time off programs, sick leave policies, FMLA policies and disability insurance.
- See detailed guidance at: <https://www.millercanfield.com/resources-coronavirus-flsa.html>
- Resolution of compensation issues will require legal examination of federal, state and local law.

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Does the company have payroll protocols that can be handled remotely in the event the business is temporarily shut down?

**Council Capital Guidance**

- Ensure that such protocols are in place and verify that remote access of payroll systems is secure.

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## Building Safety & Cleanliness

Does the company have regularly scheduled janitorial services to clean and disinfect work areas including door handles?

**Council Capital Guidance**

- Consider arranging for your cleaning personnel to increase the frequency of cleaning and disinfecting of regularly touched surfaces such as doorknobs, countertops, and keypads. Make available to employees extra cleaning and disinfecting supplies so that they may clean high-touch surfaces at their own workstations or common areas as needed.

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How does the company communicate basic hygiene and safety tips?

**Council Capital Guidance**

- To stay as healthy as possible, remind employees to take the basic protective measures recommended by CDC.
- When coughing or sneezing: cover your mouth with a tissue, then throw the tissue in the trash; or cough/sneeze into your bent elbow.
- Wash your hands with soap and water throughout the day, for at least 20 seconds. Or clean your hands regularly with an alcohol-based hand sanitizer.
- Avoid touching your eyes, nose, and mouth. Hands touch many surfaces and can pick up viruses. If you must touch your eyes, nose, and mouth, wash/sanitize your hands before and promptly after doing so.
- Place additional tissues and hand sanitizers in common areas throughout your facility.
- Encourage employees to practice social distancing, allowing 6 feet of space between people and avoiding direct contact, such as shaking hands.

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- Hang posters reminding of these good habits; these can be downloaded at <https://www.cdc.gov/coronavirus/2019-ncov/communication/factsheets.html>.

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## Work Policies

Is it appropriate to take steps to limit the number of people in the office at a given time?

**Council Capital Guidance**

- Consider encouraging or mandating policies that limit the number of people in the office at the same time. These could include work from home policies, staggered shifts, mandated virtual meetings, cancelling large-scale gatherings, and/or alternative work schedules. Be mindful of guidance and requests from your local government officials.

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Is the company discouraging non-essential travel, attendance at conferences, trade shows, etc.?

**Council Capital Guidance**

- Monitor travel alerts issued by U.S. State Dept. and CDC.
- Restrict non-essential business travel to high-risk areas.
- Limit non-essential business travel to low/medium-risk areas; consider each trip on a case-by-case basis.
- In accordance with CDC guidance, ask employees returning from high-risk areas to work remotely.
- As to personal travel by employees, state or local laws may impose restrictions on an employer's ability to control what employees do during their off-duty time. However, employers may require an employee to inform the employer if they are traveling to an area with a known outbreak. Employers let employees know that, upon their return, they may be prohibited from coming to work for a period of time until the incubation period for COVID-19 has passed.

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How will the company handle a situation in which an employee does not want to travel at all because of fear of contracting COVID-19?

**Council Capital Guidance**

- Although an employer may have the right to direct employees to travel in situations in which the risk of exposure to COVID-19 would appear low, the current circumstances make fully informed judgments difficult. Information on the extent of the spread of COVID-19 is changing rapidly, and the limited availability of testing means that employers will be making determinations of risk based on incomplete and potentially faulty information. Given the unique nature of this contagion, there is little to be gained by requiring employees to take low-value business trips that could be rescheduled or handled via videoconference.

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How will the company handle an employee who refuses to work with colleagues of a certain demographic out of fear that these colleagues may be more likely to carry the virus?

**Council Capital Guidance**

- Employers have an obligation to protect an employee from discrimination or harassment based on their race, national origin, religion or any other characteristic protected by law. The reported prevalence of COVID-19 in particular countries or among certain religious groups does not justify disparate treatment of an employee based solely on their race, national origin, or religion, even if a coworker associates the risk of exposure with these legally protected characteristics. Rather, the employer should focus on objective factors that may heighten exposure risk, such as travel to affected areas or known exposure to persons infected with COVID-19. An employer also must take affirmative steps to stop any hostile or harassing behavior toward an employee assumed to have a higher COVID-19 risk profile because of a protected characteristic.
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What is the company doing if an employee shows symptoms of COVID-19?

**Council Capital Guidance**

- Visibly ill employees can be instructed to stay away from the workplace and/or work remotely. If an employee appears to have symptoms of COVID-19 (fever, cough, shortness of breath) during the workday, send the employee home and tell them to seek medical attention. Provide transportation home if necessary.
- Sick leave laws and company policies may require employees to be paid for time out of the office. Many employers are paying during self-quarantine, regardless of requirements. If the employer decides to go above and beyond usual requirements/benefits, it is prudent to document in writing (such as in an email) that these accommodations are being made because of the extraordinary circumstances presented by the COVID-19 outbreak, in order to avoid setting a precedent.
- Tell employees who have symptoms of acute respiratory illness to stay home and not come to work until they are free of fever 100.4 or greater, signs of a fever, and any other symptoms for at least 48 hours, without the use of fever-reducing or other symptom-altering medicines (e.g., cough suppressants). Have them notify their supervisor and stay home if they are sick.
- Consult counsel before requiring employees to submit to illness-related inquiries or screening.

**Company Policy**

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What plan is in place for employees who have an infected person at home?

**Council Capital Guidance**

- Employees may themselves be well but have someone in their household who is sick. Employees should be instructed to notify their supervisor or HR, who should then consult CDC guidance on determining the risk level posed by their possible exposure, including compliance with CDC-recommended precautions for home care <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-home-care.html>.

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How will the company handle any healthy employees who refuse to come to work due to concerns with unsafe working conditions?

**Council Capital Guidance**

- Occupational safety and health laws prohibit employers from terminating an employee who refuses, in good faith, to expose themselves to a dangerous job condition and who has no reasonable alternative but to avoid the workplace. However, the condition causing the employee's fear must be objectively reasonable—not simply the potential of unsafe working conditions. The Employee may also be protected from discharge under Section 7 of the National Labor Relations Act if their refusal is part of a concerted protest against unsafe working conditions.
- As a general rule, there is no requirement that an employer allow all employees to telecommute. In cases where the option is given to a subset of high-risk employees, employers should ensure that federal and state laws mandate that flexible workplace policies are administered in a way that does not discriminate against an employee because of the employee's race, color, sex, national origin, religion, age, disability, sexual orientation, gender identity, veteran status and other characteristics. An employer thus should be prepared to offer a legitimate, nondiscriminatory explanation for why it may choose to allow some employees to work from home and not others, and ensure that they consistently apply this reasoning uniformly to all employees. The general rule can be superseded if there is a state of emergency declared by the government. Remember that, at this time, most people cannot be tested for the COVID-19 virus because there are not many tests available.

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How will the company determine if it is appropriate to require an employee be tested for COVID-19 before returning to work?

**Council Capital Guidance**

- Employers may seek to have an employee tested for COVID-19, subject to the availability of tests, if there is good cause to believe that the employee may pose a direct threat to the health and safety of others, such as if the employee became sick after traveling to high-risk areas or show symptoms of infection with COVID-19.
- A medical examination is permitted under disability discrimination laws if a) it is necessary to ensure that the workplace is free from direct threats to the health and safety of the employee or others and b) objective criteria such as identifiable symptoms, recent travel to high-risk locations, and/or an inability to work remotely.
- Under the current circumstances, where an employer can demonstrate that an employee has symptoms of COVID-19 or has other risk factors of exposure to the virus, an employer may be justified in requiring a medical examination before the employee returns to work. If a medical examination is required, it should be limited to whether the employee may return to work without posing a direct threat to the health and safety of themselves or others. If the employer requires that the employee be examined by a health care professional of the employer's choosing, then the employer must bear the cost of an exam. Employees may be entitled to compensation for time spent being tested at the employer's direction, particularly if the employee is required to leave work to be tested or is tested during normal working hours.

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**Legal & Reporting**

What liability might the company hold for employees spreading COVID-19?

**Council Capital Guidance**

- According to the 'Declaration under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19,' HHS Secretary Alex Azar extended liability protection to a wide range of healthcare providers, suppliers, drugmakers and other entities while they help address the COVID-19 pandemic. These professionals are immune from any claim related to "the manufacture, distribution, administration, or use of medical countermeasures ... except for claims involving 'willful misconduct.'" Additional information about this order can be found at:

<https://www.federalregister.gov/documents/2020/03/17/2020-05484/declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical-countermeasures>

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Is the company appropriately handling all employment laws implicated by COVID-19?

**Council Capital Guidance**

- Anti-discrimination laws – Assess risks among employees based on objective non-discriminatory factors such as recent travel.
  - Disability Accommodations – Medical testing and inquiries implicate the Americans with Disabilities Act (ADA) and analogous state and local laws. Consider reasonable accommodations for disabilities.
  - OSHA – The Occupational Safety and Health Act (OSHA) requires employers to provide a safe working environment, including protections against "recognized hazards." There may be OSHA standards that must be followed to reopen a facility or remain open, such as cleaning the site or a release from the agency to continue operations. Seek legal guidance.
  - Sick Leave Laws and FMLA – Various federal, state, and local laws provide protections for employees who are unable to work due to illness, the illness of a family member, or a workplace shutdown.
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- Wage and Hour Laws – Employee absences due to illness, quarantine, or temporary shutdowns may implicate federal, state, and local wage and hour laws relating to permissible salary deductions and reporting pay.
  - Seek counsel and consider state-specific laws and regulations.

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Does the company understand any regulatory reporting requirements if an employee were to be infected with the COVID-19?

**Council Capital Guidance**

- Some diseases may be reportable under federal, state or local regulations such as OSHA or to the local health department. Know in advance who you should contact.
- It is not required in some instances that the name of the individuals infected be reported. Before providing this medical information, you should consult with legal counsel to determine if the name must be provided and consult with the employee for permission to release his or her name to the agency.

**Company Policy**

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What other types of reporting may be required?

**Council Capital Guidance**

- The workers' compensation carrier of anyone wishing to file a claim related to the communicable disease and exposure may be required. Read your policy for details.

**Company Policy**

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## Technology

Is the company equipped to shift work that can be done remotely to remote settings?

**Council Capital Guidance**

- Prioritize security, access, documentation / backups, and usability. IT systems can vary dramatically company-by-company. Engage your head of IT early and deeply to develop a tailored plan.
- Conduct a 'work from home dry-run' to identify any limitations that might result from the additional strain on infrastructure (e.g., spike in VPN utilization). Work with IT leadership to determine what protocols are appropriate for large-scale working from home (e.g., log on/off the VPN only when you need to access or upload files, rather than staying logged on throughout the entire day).

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How will the business handle employees who do not have work-issued laptops, phones, etc.?

**Council Capital Guidance**

- Identify employees who do not have work-issued equipment such as laptops, VPN access, etc. but would need this equipment in order to work remotely.
  - Understand that, within the population of employees without work-issued devices, there will be, a) employees who don't own a personal computer, b) employees who must share a personal computer with a working spouse and/or children home from school who are all expected to have computer access, c) employees who have computers but lack sufficient Internet bandwidth to complete their work efficiently, and d) other limitations or inhibitors.
  - Work with your IT department / service provider to understand security and network access implications of taking a BYOD (bring your own device) approach. Focus on potential security and access concerns.
  - Make sure that you understand the structure of your phone system (e.g., VOIP vs. landline, call routing system). There could be limitations to routing / forwarding calls to personally-owned mobile numbers rather than company-owned phones, if that becomes necessary.
  - Before instituting such a policy, consult counsel to understand whether there are implications of asking employees to use personal devices and/or data plans for business purposes. Consider a phone / data reimbursement plan, and / or remind
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employees that working from home is a privilege and that they are responsible for incurring any additional costs should they choose to take advantage of this privilege.

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Is your IT support team prepared for a potential in-flux of support tickets that could occur?

**Council Capital Guidance**

- An increase in people logging on from outside the company network could result in issues related to device / network log-ins, password resets while not on the company network, call forwarding, etc. In an effort to preemptively limit calls to customer support, disseminate 'self-serve' information for common issues, and equip team managers with the information they need to serve as the 'first line of defense.'

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Are your employees equipped to maximize their productivity while working remotely?

**Council Capital Guidance**

- Share best practices for effective remote communication that mesh with the working culture of your business.
- Consider the need to rapidly deploy collaboration tools such as web conference and screen sharing (e.g., Zoom), real-time messaging (e.g., Slack), project management collaboration (e.g., Asana) and others. If effectively used, tools like these could provide significant value to the organization when 'business as usual' is resumed so invest in the deployment and training (e.g., written instructions, pushed updates, training webinars). We encourage you to source options from your IT department / service provider.
- Investment in tools and processes that enable communication, collaboration, and culture are lasting. Keeping the company's culture strong and the team emotionally invested in the business is more important now than ever, and technology can be used to support this objective.

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What implications might this have on your ability to deliver products / services to customers / patients?

**Council Capital Guidance**

- Consider critical meetings (e.g., daily huddles or shift-change hand-offs) that will be inhibited by the need for 'social distancing.' Introduce alternative formats, likely using collaboration tools described above.
- Determine the likelihood that patients will be able to reach you, and, if possible, identify those at the highest risk. Explore where telemedicine or remote services is feasible versus where there are limitations such as billing requirements that necessitate in-person interaction, customers' / patients' lack of access to a high-speed Internet, etc. Reach out to patients to determine a mutually-agreed upon approach, should in-person interaction be limited.
- Evaluate a plan for the impact of foregoing individual interactions or appointments as well as the potential impact of falling off a prescribed care plan.

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