Game On: Reopening sports and recreation during COVID-19

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Getting back to sports amidst an ongoing global pandemic is not an easy task. As the economy moves through the re-opening phase, there are a number of best practices that sports and recreation organizations, clubs, leagues and facilities should consider to limit their exposure to lawsuits, whether they are for-profit or not for-profit. Below are top risk management considerations for sports organizations.

1. Know the current state of the law and follow it: There is guidance from all levels of government for individuals and businesses alike. Be aware there may be different (and sometimes conflicting) orders from the federal, provincial, regional and municipal levels of government. It is important to know current public health orders and occupancy limits. Make sure you consult any governing or oversight bodies for your particular sport or industry for guidance on how to run your activity safely. Following all guidance, regulations and public health recommendations with due diligence may be your best defence to a potential lawsuit.

2. Implement workplace policies and training: All organizations and employers should consider establishing clear policies or "best practices" to limit the spread of COVID-19, protect the safety of the public and their members, as well as to minimize occupiers' liability as applicable. Training (and if necessary, pre-screening) for employees, coaches, administrators, volunteers, athletes, customers, guests, etc. must occur *before* reopening can take place. Below are some examples of actions to protect employees and customers:

- Appropriately trained and equipped employees, volunteers and/or contracting parties;
- Proper use of personal protective equipment (PPE) as necessary;
- Strategic use of flyers and posters to advise employees, staff and others entering the workplace of any risks of within company premises; and
- Proper handwashing and physical distancing techniques.

3. Document your efforts: Documentation of cleaning and hygiene protocols will be critical to ensure compliance with public health orders and will help to mitigate potential future claims. If your organization, club or business is going to use or revise waivers or

indemnity agreements in the face of COVID-19 make sure to document who signed, how and when. Read our earlier article for more information on this.

4. Enforcement of COVID-19 policies and best practices: Consider how you are going to enforce COVID-19 policies or best practices within your organization or business. Prepare and implement an enforcement protocol, providing of PPE, testing, *etc*. Are you going to require all employees, athletes and guests to wear PPE? If so, how will you provide it and pay for it? Will you conduct pre-screening of employees and/or customers? Are you going to hire security officers? Will you hand out trespass notices to individuals who are not complying with your policies and protocols? Have employees been made aware of the risks they face before they return to work? Are employees aware of their options and the protocols in place if they become ill or exposed to someone who is ill?

5. Funding and programming: Be aware of all forms of funding and subsidies available to your club or organization. These can be critical financial considerations for reopening in the 2020 season. Also consider whether your 2020 season needs to look a little different to comply with public health orders (*i.e.* is it safe to play your sport? Can training facilities be altered to make physical distancing possible? Should you consider alternate forms of programming or activities during this season? How will a shortened season affect your athletes? Will you offer online/digital programming?)

6. Be aware of privacy issues: Your business or organization should consider (and implement) guidance issued by government agencies, regulators and self-regulatory bodies to help manage COVID-19-related cybersecurity risks. Be aware of privacy concerns for employees, athletes and guests, particularly regarding COVID-19 testing and screening measures (*e.g.* health questionnaires, temperature testing, *etc.*).

7. Waiver/notices: Consider whether your organization, club or business is going to use or revise waivers or indemnity agreements in the face of COVID-19. Consider the use of additional warning signage as well as cleaning and hygiene protocols and information. Since transmission and contraction of COVID-19 is a novel area for liability, there is uncertainty as to how a court will treat a waiver in relation to liability for transmission of COVID-19. Keep in mind that waivers will apply differently to employees, contractors, customers and volunteers.

8. Rentals/indemnities: Review all rental agreements and permits for your club, organization or business and consider who will bear responsibility for defending any COVID-19 related claims. If you are renting space to other individuals or organizations, consider whether your future rental agreements require revisions to account for COVID-19 related transmission risks.

9. Insurance: Be aware of what kinds of claims and activities your liability insurance will and will not cover. Speak to your broker.

10. Hire a professional and use available resources: Don’t try to do everything yourself—consider hiring an occupational medicine or occupational health and safety specialist to assist you with the reopening process. Ensure your COVID-19 employment policies are drafted appropriately and in accordance with the applicable provincial legislation and public health guidance. Make sure to reach out to other online and local resources to ensure that you are reopening in compliance with the current state of

affairs and to promote the safest possible environment for your athletes, volunteers, employees, guests and customers.

Most of all, be flexible and be aware that there will always be some level of risk. We are living in a dynamic environment with infection rates and testing abilities changing daily. Your club, organization or business needs to be ready to adapt to a rapidly changing world in the hopes that we can all get safely back to sports and play.

BLG's Sports Law team has extensive experience providing practical and strategic advice to a wide range of sports organizations. For further information, please contact any of the authors below.

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