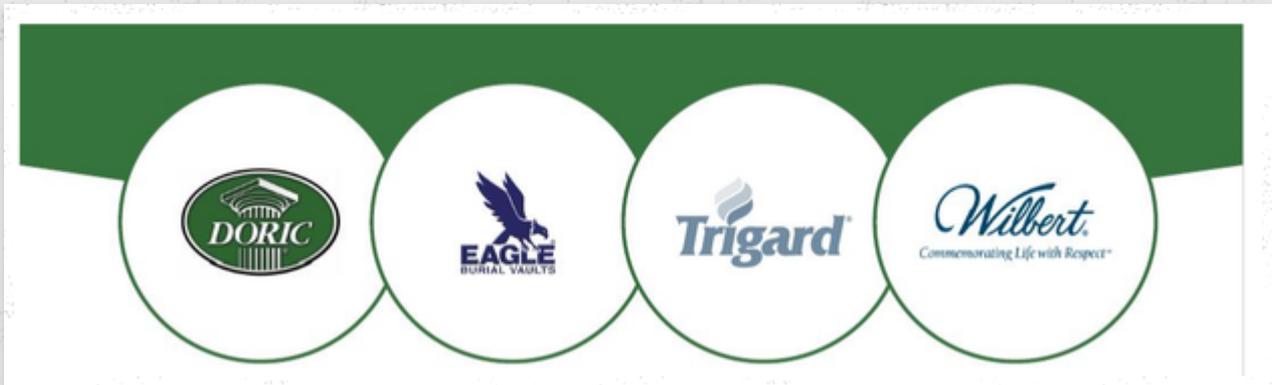


NCBVA

COVID-19: UPDATES TO GRAVESIDE RECOMMENDATIONS & FAQs

May, 27, 2020 - In this newsletter: Updates to graveside recommendations, certifications visits up and running, and COVID-19 FAQs



REVISIONS TO GRAVESIDE RECOMMENDATIONS

As States begin revising their executive orders and slowly lifting restrictions, NCBVA is adjusting their graveside service recommendation. While we recognize each market is different, if you feel your market is not ready to introduce certain graveside equipment, then please refrain from doing so until the time is right for your area. **PLEASE MAKE SURE THAT WHATEVER OPTIONS YOU IMPLEMENT - THAT YOU COMPLY WITH ALL OF YOUR STATE AND LOCAL GUIDELINES.**

On March 19th NCBVA recommended discontinuing the use of lap blankets, water cooler service, chairs and chair covers and tent sidewalls. Many members took it one step further and discontinued setting a tent. NCBVA believes now is the appropriate time to safely reintroduce tents and chairs, assuming you are confident in your supply of disinfectant.

The NCBVA recommends the following best practices:

- Use gloves when setting up and handling equipment – grass, tents, chairs, lowering devices, dollies, etc.
- Properly sanitize and disinfect tent poles.
- Properly sanitize and disinfect chairs.
- Extend the discontinuation of chair covers unless you have a way to disinfect the covers.
- If you utilize [disposable chair covers](#), make sure they are disposed of properly and safely.

- Feel free to space chairs in pods for each family and use safe social distancing of 6' between the pods. For example, a family of four that lives in the same household may be seated together as long as they are 6' away from the next pod of family members.
- Consider an alternate tent/chair set up to allow 360° seating around the vault, if possible, to aid in social distancing.
- The vault crew should refrain from approaching the grave if two or more people are present. Workers should maintain social distancing of 6'.

[Download as a PDF](#)



COVID-19 BUSINESS LIABILITY: RESPONSES TO YOUR QUESTIONS

A Legal Q/A with Poul Lemasters, NCBVA Legal Counsel

The following questions and answers are not meant to address all the issues or concerns that could affect your business; but rather these are some questions that have been posed and we want to answer them. Additionally, the answers are based on the situation as we know it now, and may change as the situation develops. Always remember to check with your local laws and legal counsel.

1. What is the business exposure when you have an employee that believes it is not safe for them to go back to work, but precautions have been taken and you need them to work?

First, it is important to understand the employer risk of liability. Historically, there is very little employer liability from an employee who claims a communicable disease as a workplace injury. In these times, there are no guarantees, but a claim that an employer contracted COVID-19 at work would be extremely difficult. However, this could be dependent upon the precautions and safety standards followed by an employer. For example, if your state has issued guidelines for a safe-work place, and the employer does not follow them - then arguably the employee could attempt to show that the lack of safety caused their injury - in this case COVID-19.



If, as an employer, you have deemed it safe to return to work, and are following all guidelines issued by your state; then you can require employees to return to work. If an employee refuses, because they do not feel safe, you have the option of firing them. (If you have a union, then there would be additional hurdles) So long as the employee is not under a contract, or union, it most likely means they are employed at-will. As an at-will employment, the employer can fire an employee for any reason, so long as it is not illegal. In this case, fear of returning

to work, is not in and of itself valid, and the employer could fire the employee. Keep in mind, that currently, fear of contracting COVID-19 is not recognized. But this again is based on precautions the employer has implemented. If you do not have all the safe-guards in place, and the employee says they do not feel safe to return, this could be valid under OSHA, because employers must provide a safe workplace for its employees.

2. What happens when you need an employee to work and they decline because they don't have adequate or safe childcare?



Under the Families First Coronavirus Response Act (FFCRA), all private sector employers with LESS THAN 500 EMPLOYEES, must provide additional emergency leave to employees under certain situations. The situations include: (1) employees who are subject to a government mandated isolation/ quarantine; (2) employees who have been advised by a healthcare provider to self-quarantine; (3) employees who have COVID-19 symptoms and are seeking treatment; (4) employees caring for an individual who is either subject to a government mandated quarantine or were advised by a healthcare provider to self-quarantine; (5) employees caring for their children at home as a result of their child's school closing; and (6) employees experiencing any other substantially similar condition as certified by the Department of Health and Human Services ("HHS").

For situations 1-3, full-time employees are eligible for 80 hours (2 work weeks) of paid sick leave under FFCRA at up to 100% of their normal pay (capped at \$511/day and \$5,110 for the entire 80 hours). For situations 4-6, full-time employees can receive 66% of their normal rate of pay, up to \$200 per day (or \$2,000 for the entire 80 hours). For an employee who is caring for children at home because of lack of childcare, after exhausting the 80 hours of partially paid leave, they may then opt to utilize Emergency Paid FMLA Leave under the FFCRA, for another 10 weeks (or 12 weeks in total).

A few notes on the FFCRA. While employers must initially cover these payments from their own funds, the cost is offset by refundable tax credits. Employers cannot terminate an employee for using any of these rights set out under FFCRA, as this would be deemed retaliatory, and put the employer at risk. If an employer has under 50 employees, they can request to opt out, but this must be formally done, and an employer must demonstrate that complying would place the business in harm. Lastly, there are exemptions to certain businesses deemed essential. Deathcare, funeral homes, cemeteries, and crematories, are not specifically listed, but the DOL, in an unwritten opinion, has suggested that they would fall under the emergency responder exemption. I do not know if this would carry over to concrete and burial vault manufacturers. The FFCRA is scheduled to last until December 31, 2020.

3. Can you deny an employee unemployment compensation?

In regard to denying compensation, it would be based upon the reasoning for the termination. If you are terminating for failure to return to work, despite all safety measures being in place, then as an employer you could challenge unemployment



compensation. However, as stated above, if you are denying because of certain rights under the FFCRA, then your business would be at risk and most likely in violation of the FFCRA regulations.

4. Can we or anyone else be held liable if it is proven that someone contracted the virus at a graveside service with or without a tent set-up at the grave?



There are fears among businesses that they could be liable, or at least face potential liability, from consumers if they ultimately contract coronavirus. Unfortunately, we do not know how this will ultimately play out once the crisis ends. There are government officials asking for regulations that would prohibit lawsuits based on where / how coronavirus may have been contracted. Historically, lawsuits based on communicable disease, such as coronavirus, are very difficult to prove. The issue of proving exactly where you contracted the disease is almost impossible to prove. However, as stated above in question 1, if a business violates guidelines that are mandated, or possibly even recommended, it could open itself to more potential liability.

As a business, it is important to handle this risk as you would any other risk. Follow all guidelines that would relate to your business. Do not intentionally create a higher risk, by ignoring precautions that are being adopted by others. **Also, make sure you have LIABILITY INSURANCE for your company**, and that a claim like this, however distant the likelihood may be, would be covered under your policy. This pandemic is unprecedented, and we do not know what we will see after it all settles.

==> [Download Poul Lemaster's responses](#) to these 4 questions.

==> Have another COVID-19 question for Poul? [Ask now.](#)

A VIDEO INTERVIEW WITH PATRICK LEWANDOWSKI, NCBVA CONCRETE SPECIALIST

Patrick Lewandowski, is one of the 3 NCBVA Concrete Specialists. He has over 31 years of industry experience and education in civil engineering and construction materials. He has worked directly in the cement, ready-mix, mining, tunneling, precast, and macro synthetic fiber industries as well as the government sector. For the last 16 years he has served as the North American Director of Barchip, Inc. Patrick is **ready to restart the plant visits - all travel, no restrictions** (if your plant is allowing access to third parties into your plant).

In a 7-minutes interview Karen Topinka, the NCBVA resource who coordinates efforts of the certification program and specialists, asked Patrick about NCBVA site visits and certification process.

- What are some things that vault plants should be doing around their plant right now?
- How can a plant get more information on the inspection process or get on the schedule?
- What are the top 3 ways you can help plants when doing an on-site certification visit?

NCBVA Concrete Specialist Interview



READY FOR A VISIT?

- NCBVA certification is currently renewable every 5 years. The schedule for certification is based on certification date and geographic location. All certifications will be conducted by a Concrete Specialist.
- Areas observed during a certification visit include maintenance and cleanliness, [production](#), employee safety, and concrete load testing (performed by third-party testing facility).
- In order to be added to the certification schedule, plant must be an active member of the NCBVA (up to date with dues).
- **Plant certifications are \$1500 per site.** For non-Doric plants, fees to be paid by site (not dealer). For Doric plants, fees are direct billed to Doric. As always, each plant is responsible for their cylinder testing fee of \$125.



==> [Let us know](#) if you are interested in becoming an NCBVA Certified Plant or renewing your certification.

==> View the list of manufacturing plants that have [recently been through the certification process.](#)

==> See the full [member directory](#) along with their certification status

MEET NCBVA 3 CONCRETE EXPERTS



Craig Anderson



Patrick Lewandowski



Mike Barry

WELCOMING MIKE BARRY TO THE NCBVA TEAM OF CONCRETE SPECIALISTS!

Mike Barry just joined the team of NCBVA Concrete Specialists! A Navy veteran, Mike served as a Hospital Corpsman with the Marines. He graduated from Eastern CT State University with a degree in Environmental Earth Science and Geology. He has worked in the concrete industry since 1978, serving in QC and Operations Manager Positions. He recently retired after 14 years with Sika Corporation as a Senior Sales Representative.

For the past 30 years he taught ACI Certification Classes for Concrete Field Technician, Flatwork Finisher, and Pervious Concrete Installation Technician. He holds certifications in each of these as well as Compressive Strength Testing, Windsor Probe Testing, and Nuclear Density Testing.

Since his retirement in January he has kept busy doing concrete mix designs for some local concrete producers, and has been testing fine and coarse aggregates for gradation, absorption, and specific gravity at his home materials lab for some area quarries and sand and gravel operations.

TELL US WHAT YOU THINK. HOW ARE WE DOING?

FORWARD TO A FRIEND

Feel free to **forward this newsletter to a colleague**. They can join NCBVA or sign up for upcoming communication on the [NCBVA website](#).

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