

Welcome to the SIG University Webinar Series

Avoiding Legal Pitfalls: Re-Opening the Workplace

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September 23, 2020



During the webinar if you have any questions please feel free to...

☎ Text Richard: **(443) 250-8606**

💬 Zoom Chat: Enter questions via the **“Chat”** feature in the Zoom meeting

QUESTIONS?

REMINDERS

1. Slides and resources will be emailed after the webinar and are available on **silbs.com/sig-university**
2. Complete our 2-minute post webinar **[SURVEY](#)**** All completed surveys will be entered to win a Yeti tumbler!

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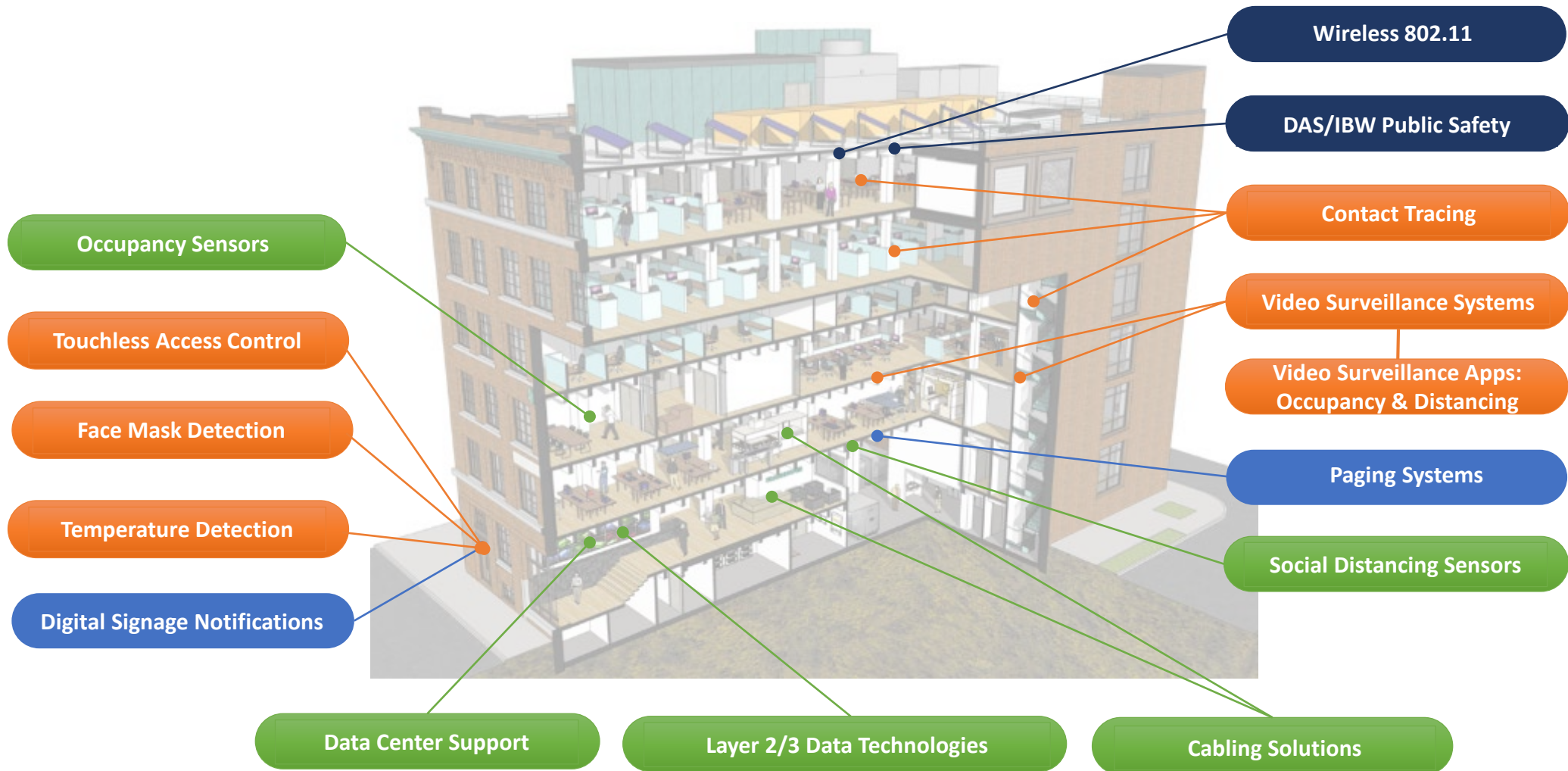


Screening, Protection, and Tracing (SPT) Solutions

- Touchless Access Control
- EST & Mask Detection
- Social Distancing
- Contact Tracing



SPT Solutions



Returning to Work: Manager Education During a Period of Crisis and Unrest

September 23, 2020



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Note that this presentation is intended as a general discussion of the law and is not intended as legal advice for any particular situation.

Maryland Law Update – Effective Oct. 1

- Salary history ban:
 - Cannot request/seek applicant’s pay history or rely on history to screen applicants or set wages.
 - Can request wage history after initial offer, but only to support an increase to the initial offer.
 - And a wage range must be provided upon request to a job applicant.
- Equal pay protection loophole closed:
 - Now prohibits requiring employees to waive right to discuss wages, and does not allow adverse action against an employee inquiring about or disclosing his/her own wages.
- Hairstyles:
 - Expands the definition of “race” for discrimination purposes to include “certain traits associated with race, including hair texture and certain hairstyles.”
- Ban on facial recognition in interview process:
 - Applicant must give written consent prior to employer using facial recognition.
- MHWFA updated “family member” definition:
 - Now expanded to include legal wards of an employee or of an employee’s spouse, and legal guardians of an employee’s spouse.

Employee Rights and Employee Responsibilities

- **Employee Rights:**

- An employer must not discriminate against an employee on the basis of any protected class (e.g., race, color, religion, national origin, sex, sexual orientation, gender identity and expression, age, disability, marital status, etc.).
- Similarly protected from discrimination by vendors, clients, etc.

- **Employee Responsibility:**

- Employees must not discriminate against anyone else in the workplace on the basis of any protected class.

What is Harassment?

- Subset of discrimination, and may include any unwelcome conduct that is based on a protected class.
- Unlawful where: (1) enduring the offensive conduct becomes a condition of continued employment; or (2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- May include:
 - * Offensive jokes
 - * Stereotypes
 - * Slurs
 - * Name calling
 - * Physical assaults
 - * Threats
 - * Intimidation
 - * Ridicule
 - * Mockery
 - * Insults
 - * Put-downs
 - * Offensive objects/pictures
 - * Interference with work performance.

Race Harassment

The “Black Lives Matter” movement raises important questions regarding workplace conduct.

- May employees discuss in the workplace their belief that “Black Lives Matter”?
- May employees say in the workplace that they believe that “All Lives Matter”?
- May employees discuss “White Privilege” in the workplace?
- May employees discuss the impact of race upon recent police shootings?
- May employees state that they believe that race was a factor in the death of George Floyd?
- May employees disagree that race was a factor in the death of George Floyd?
- May an employer provide racial sensitivity training that focuses exclusively on the rights of African Americans in the workplace?

Conduct Outside the Workplace

- Policies regarding anti-harassment, anti-discrimination, etc. apply to conduct outside the workplace, including:
 - Business Trips
 - Office parties
 - Social Media use

Retaliation

- Harassment includes unlawful retaliation for engaging in protected activity (e.g., communicating with a supervisor about employment discrimination, filing a complaint, testifying in an action).

COVID-19 REOPENINGS: OSHA

- The General Duty Clause under the OSH Act applies to virtually every workplace.
 - The Clause requires employers to provide a place of employment “free from recognized hazards that are causing or are likely to cause death or serious physical harm to...employees.”
 - The Clause also requires employers to comply with all occupational safety and health standards.
- The latest OSHA guidance recommends that employers at least encourage and prioritize employees wearing cloth face coverings when within 6 feet of one another.
 - It also recommends evaluating the feasibility of certain employees’ ability to wear a mask and consider alternatives when it is not feasible.
- Employers should be aware of CDC and OSHA Guidance and, even though not mandatory, such Guidance should be treated as a requirement.

Update to FFCRA Regulations

- Effective September 16, the DOL issued updated guidance on the FFCRA in response to the decision of a US District Court in New York to invalidate certain provisions of the Act, including the broad definition of “health care provider” for exemption purposes, and an employer’s ability to require documentation prior to taking leave.
- The revised regulations:
 - Reaffirmed that FFCRA leave can only be taken if work is otherwise **available and scheduled**.
 - If the employer has no work, or the employee is not scheduled to work, the employee cannot use FFCRA leave. (This applies to workplace closures and furloughs.)
 - Reaffirmed that intermittent leave can only be taken with **employer approval**.
 - Note: Where school is open on an “alternating schedule,” leave is not “intermittent” if the employee takes leave in full-day increments.
 - Eased notice requirements so that employees are not required to provide documentation/notice prior to taking leave if the need for leave is not foreseeable.

FMLA/ADA Updates

- Refresher on ADA:
 - EEOC recommends that employers balance reporting COVID-19 cases and symptoms with protecting employee confidentiality.
 - If all employees work from home, is there a need to report COVID-19 cases to the staff?
 - Employers should also make every effort to limit the number of people who get to know the name of the employee who tests positive.
 - Only supervisors who need to know for employment and accommodation purposes.
 - And even if coworkers can figure out who the coworker is who tested positive, employers are still prohibited from confirming that individual (without his/her permission).
 - It is not an ADA confidentiality violation for an employee to inform his/her supervisor about a coworker's COVID-19 symptoms.
 - After learning about this situation, the supervisor should contact appropriate management officials to report this information and discuss next steps.

FMLA/ADA Updates

- Testing:
 - Employers may require employees to take COVID-19 tests, to determine if the employee's presence poses a "direct threat" to the office – these tests may be periodic.
 - However, right now, employers may not require employees to take anti-body tests to determine if they have previously been exposed to COVID-19.
- Questioning Employees:
 - Employers may continue to ask employees if they have COVID-19 symptoms or have been tested for COVID-19.
 - However, employers may not ask if **family members** have COVID-19 or COVID-19 symptoms.
 - Employers may ask if the employee has been exposed to "anyone" with a known case or symptoms, but asking specifically about family members is prohibited.
 - Employers may also ask if the employee has recently traveled (as it is not a medical inquiry).
 - If asking a particular employee if he/she has COVID-19, the employer needs a reasonable belief based on objective evidence for doing so.

FMLA/ADA Updates (cont.)

- Test Accuracy:
 - Some tests, such as rapid tests, are not as accurate as others.
 - And a negative test does not mean the employee will not contract COVID-19 later.
- Barring Employees from Entry:
 - Employers *may* bar an employee from the office if he/she refuses to undergo screening, such as temperature checks or questionnaires.
 - However, the EEOC recommends that an employer asks the employee why he/she is refusing, to give the employer an opportunity to reassure the employee, or address his/her concerns.
- Accommodations are Unique:
 - Employees are entitled to accommodations whether working in the office or at home, however, the accommodation an employee received while working in the office might not be reasonable if the employee is now working remotely (e.g., arriving to work late), and the accommodation can differ based on location of work.
 - And, even if an employee works remotely now, it does not necessarily mean it will be a reasonable accommodation once the pandemic is better controlled.

CDC Guidance

- The CDC guidance on testing and transmission has rapidly changed during the past few weeks.
 - Previous guidance stating that those who have been exposed to COVID-19 do not need to be tested unless they were symptomatic has since been updated.
 - Now, the CDC has reverted back to its previous guidance and is urging all those who have been possibly exposed to be tested.
 - And the CDC briefly issued, then backtracked on, guidance that stated that COVID-19 transmission could be effectuated through long lasting air particles.
 - Such airborne transmission is best countered by adequate air circulation and mask use, as the now repealed guidance stated that infected particles can linger in the air in common spaces for prolonged periods of time.
- Current CDC guidance recommends that employees are tested if they are symptomatic, have been exposed to COVID-19, or are asymptomatic and a special circumstance exists (such as inability to socially distance, or where the employee is in a critical infrastructure sector).

Question #1 – Reopening Guidance

What steps should an employer take to ensure a safe reopening environment?

- Before reopening, employers should:
 - Consider all local guidance and requirements to ensure compliance;
 - Identify areas at most risk of contamination;
 - Create a plan that will reduce the risk of contamination and promote safety;
 - **Communicate all new requirements with employees;**
 - Ensure that ventilation systems are *fully operational* (such as HVAC systems); and
 - Consider whether to conduct employee training on the risks of being back in the workplace.
- Rearranging workspaces and schedules – the CDC recommends:
 - Spacing seats and workstations further apart;
 - Installing shields/other barriers if rearranging is not feasible;
 - Posting signs, visual cues (such as tape on the floor) and other notices reminding employees of social distancing guidelines;
 - Placing employees in better-ventilated workplaces; and
 - Staggering work schedules (one employee group works mornings; the other group works nights).

Question #1 – Reopening Guidance (cont.)

What steps should an employer take to ensure a safe reopening environment?

- The CDC recommends to increase air quality by:
 - Increasing the frequency of air supply (use the “fan” feature on the HVAC unit);
 - Opening windows;
 - Using fans to redirect airflow between offices and air filtration systems;
 - Operating exhaust fans in restrooms at full capacity; and
 - Using ultraviolet germicidal irradiation to kill the virus.
- Promote healthy conduct in the workplace:
 - Consider screening employees daily;
 - Take proper sanitary steps, and encourage employees to do the same;
 - Limit occupancy in the office and common areas;
 - Require **masks** when moving in the workplace;
 - Encourage masks while employees are at their workstation;
 - Prohibit any and all handshaking, hugs, etc.;
 - Prohibit sharing materials/supplies unless necessary and sanitary steps have been taken;
 - Remind employees to properly wash their hands frequently;
 - Encourage employees to eat/meet outside;
 - Incentivize employees to not use public transportation; and
 - Remind all employees that if they are symptomatic or feeling ill, they should remain home and self-isolate until a healthcare provider deems them safe to return to work.

Question #2 – Testing Employees

Is an employer able to test employees for high temperatures/symptoms?

- Employers are permitted to conduct temperature/symptom checks of employees.
- If an employer decides to test employees, it should ensure safety measures are taken to prevent the possible spread of the virus, including:
 - Maintaining a distance of 6 feet among employees being tested;
 - Installing barriers to protect the screener's face from the employee being tested; and
 - Ensuring proper personal protective equipment is used at all times.
- Methods of testing:
 - Employers can ask employees to conduct their own temperature checks upon arrival (employers can give employees their own thermometer to lessen contact with others);
 - Perform employer-administered temperature checks (which should include using a new set of disposable gloves for each employee being screened);
 - Conduct a visual inspection of the employee for symptoms in addition to temperature checks (including looking for flushed cheeks or fatigue).
- Employers can refuse entry to an employee who objects to temperature screenings/questions.

Question #3 – Testing Positive

What must an employer do if an employee tests positive, or reports that he/she has tested positive for COVID-19?

- **Immediate steps to take:**
 - Separate positive employee from all others, provide a face mask, and send the employee home.
 - Request positive employees to identify all recent contacts in the workplace, and which common areas they used.
 - Alert the office staff that an *anonymous* employee has recently tested positive for COVID-19.
 - Conduct a thorough disinfection of workplace and remind employees of proper safety procedures.
- **Employers are now required to determine whether a positive employee contracted the virus while at work:**
 - This means conducting an investigation into whether the employee's infection is related to work.
 - A reasonable investigation includes:
 - Asking the employee limited questions about how he/she believes COVID-19 was contracted;
 - Asking about the employee's work and nonwork activities and possible exposure; and
 - Examining the work environment to determine if and how exposure was possible.
 - Beware of boundaries of an employee's personal life.
- **OSHA Steps:**
 - If an employer is covered by OSHA, and an employee's infection is work related, and the infection results in (1) the employee's death, (2) time away from work, (3) restricted work/transfer, (4) medical treatment, or (5) the loss of consciousness, the employer must record the COVID-19 case on the OSHA 300 log.
- **If employees is only symptomatic:**
 - If an employee only shows COVID symptoms, but no positive test, the employee is likely still considered a "known danger" to others, and should be sent home.
 - The ADA's guidance has stated that being COVID-19 positive, or even showing symptoms of it, poses significant risk of substantial harm to the workplace.

Question #4 – Symptom Tracking

How can employers track an employee's COVID-19 symptoms while the employee is out on leave?

- Supplying ill employees with a self-certification and medical tracking chart is a good way to help employees track their symptoms to determine when they will be permitted to return to work.
 - NOTE: The CDC has changed its guidelines for returning to work from 7 days after the onset of symptoms to 10 days. Additionally, those with a severe case of the illness are advised to stay home for at least 20 days.
- The self-certification should include an employee attestation that:
 - The employee has not had a fever for at least three days without taking medications to reduce fever (while requesting the date of last fever of 100.4 degrees or higher); the employee's respiratory symptoms have improved for at least three days; and at least ten days have passed since the employee's symptoms first started.
- The medical tracking chart should include:
 - A spreadsheet that allows an employee to document his/her temperature, respiratory symptoms, and other symptoms; and
 - A disclaimer that the medical tracking chart is for the employee's use only and should not be provided to the employer.

Question #5 – Asymptomatic Employees

May an employer ask asymptomatic employees to disclose whether they have a medical condition that could make them especially vulnerable to COVID-19 complications?

- Generally, asking an employee about underlying medical conditions is a disability-related inquiry, which is highly restricted by the ADA.
- Because COVID-19 is a pandemic and is considered severe by health officials, employers have sufficient objective information to reasonably conclude that employees will face a direct threat if they contract COVID-19.
 - As such, an employer may make a disability-related inquiry of asymptomatic employees in order to identify those at higher risk of COVID-19 complications.
- Those who are at higher risk for severe illness from COVID-19, according to the CDC, are people with cancer, chronic kidney disease, COPD, immunocompromised immune systems, obesity, serious heart conditions, sickle cell disease, and type 2 diabetes.
- Those who might be at higher risk for severe illness are people with asthma, cerebrovascular disease, cystic fibrosis, hypertension, certain immunocompromised immune system, neurologic conditions, liver disease, pregnancy, pulmonary fibrosis, smoking habits, thalassemia, and type 1 diabetes.

Question #6 – Fear of Infection at Work

Is an employee able to take FFCRA leave due to a general fear of the risk of being infected by COVID-19?

- The employee is not missing work due to an FFCRA-approved reason, thus, he/she would not generally be entitled to paid sick leave under the Act.
 - Unless a quarantine, isolation order, or shelter-in-place order applies specifically to the employee (such as “all people older than 65 may not leave their house”), the employee would not be permitted to FFCRA leave simply out of fear of coming to work.
- There are a few limited circumstances where leave to avoid contracting COVID-19 might be covered under FMLA:
 - For example, if an employee has an underlying mental health condition (severe anxiety) which triggers an incapacitating fear of COVID-19, it could be considered a serious health condition as defined by the FMLA. (This would also trigger an ADA interactive dialogue.)
- Additionally, if the employee has an underlying chronic condition (diabetes, lung disease, asthma), and a health care provider advises the employee to stay home to avoid triggering the condition, the employee would likely qualify for FFCRA leave.
- Otherwise, staying at home simply to avoid getting sick, even for employees with underlying chronic conditions, does not qualify for leave, or as a serious medical condition under the FMLA.

Question #7 – Intermittent Leave

Are employees required to use the sick leave in 8 hour increments or can they use them as needed?

- **Example:** an employee is in self isolation, and he/she wants to work 4 hours in the morning, can they record his/her morning time as working, and then his/her afternoon time as COVID-19 related leave?
- Employees may ***not*** take intermittent paid sick leave if the employee is still working at the typical worksite (meaning, not teleworking).
 - Instead, the employee must take paid sick leave in full-day increments, ***unless*** (1) the paid sick leave is being taken for care of a child whose school or place of care has closed due to COVID-19 reasons, ***and*** (2) the employer agrees to such intermittent use.
 - Otherwise, once an employee begins taking paid sick leave, the employee must continue taking paid sick leave in full-day increments until (1) the full available amount of paid sick leave is exhausted; (2) the employee no longer has a qualifying reason for paid sick leave. Any unused sick leave may be saved and used later, until December 31, 2020.
- If teleworking, and the employer permits it, an employee may take intermittent leave for any reason.
 - The increment of leave must be agreed to be employer/employee.
- For child care leave, where a school or place of care is unavailable only on certain days, leave is not intermittent and it is, instead, considered a separate leave event for each day used
 - Example: where a school is open only on Monday, Wednesday, and Friday, the employee's need of leave on Tuesdays and Thursdays will not be considered "intermittent."

Thank You for Attending

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Check your email for your HRCI/SHRM Certificates.

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APPENDIX





WEBINARS

RECORDING

[Compliance and Security Standards](#)

Presenter: Matt Jones, *World Synergy*

UPCOMING

[Pharmacy Benefit Management in the Post-COVID Era](#)

SEPTEMBER 30TH, 10 AM – 11 AM EST

Presenter: Cory Easton, *Confido*

[An Update from Capitol Hill: Pre-Election Insights](#)

OCTOBER 7TH, 1 PM – 2 PM EST

Presenter: Glen Chambers, *US Senate Professional*

**Survey Closes
Friday, October 23rd**

**2020 MID-ATLANTIC
BENCHMARKING
SURVEY**

You are invited to participate! 2020 Mid-Atlantic Benchmarking Survey

This survey represents 2.4 million employees, \$28.5 billion healthcare dollars spent and over 22,000 companies that will participate nationwide.

The results will give you data so you can start goal planning your benefits in these areas;

- Medical Plans
- Dental, Life, and Disability Benefits
- Innovative Benefits & Strategies
- Wellness & Vision
- Other Specialty Benefits

silbs.com/benchmarking

AMERICAN HEART ASSOCIATION HEART WALK

- SIG is teaming up with [American Heart Association - Maryland](#) and Heartwalking to improve the health of Baltimore and citizens nationwide!
- We kindly ask for support in our efforts to make Baltimore a healthier place for us all by helping us reach our fundraising goal of \$10,000. Donate to our cause [here!](#)



Vision Technologies

**Technology solutions to return to work safely
and securely in the “new normal”**



Why Consider SPT?

- Protect employees, visitors, & the broader community
- Compliance:
 - Several states and local municipalities have implemented orders or issued guidance urging or requiring that temperature checks be implemented before employees are permitted to reported to work
- Policy enforcement
 - Masks
 - Occupancy
 - Social Distancing
- Contact tracing & containment



SPT Considerations

- **Essential business/critical infrastructure**
 - Is your operation critical or mandatory?
- **Point of Entry**
 - Do you need to monitor Elevated Skin Temperature (EST) or mask policies at the point of entry?
- **Multi-target processing capabilities**
 - Do you need to monitor and pinpoint EST in groups and crowds?
- **Can automate your existing social distancing guidelines/processes?**
 - Distance monitoring via wearable technologies
 - Video analytics/object detection to monitor distance
- **Network/IP functionality & compatibility**
 - Do you need to integrate multiple SPT security systems (i.e. touchless access control, visitor management, video surveillance, contact tracing, occupancy sensors)?
 - Can you add thermography to your existing IP and Security network infrastructure?
- **Do you need to perform any level of contact tracing?**
- **Are you concerned about cybersecurity, NDAA, or TAA compliance?**



Comprehensive SPT Solution Set

- **Touchless Access Control**
- **Elevated Skin Temperature Detection**
- **Mask Detection**
- **Contact Tracing**
- **Self-Deployable Systems to Fully Integrated Solutions**
- **Density & Social Distancing Policy Enforcement**
- **Access Control System Integration**
- **Video Management System Integration**
- **Visitor Management System Integration**
- **NDAA & TAA Compliant Solutions Available**



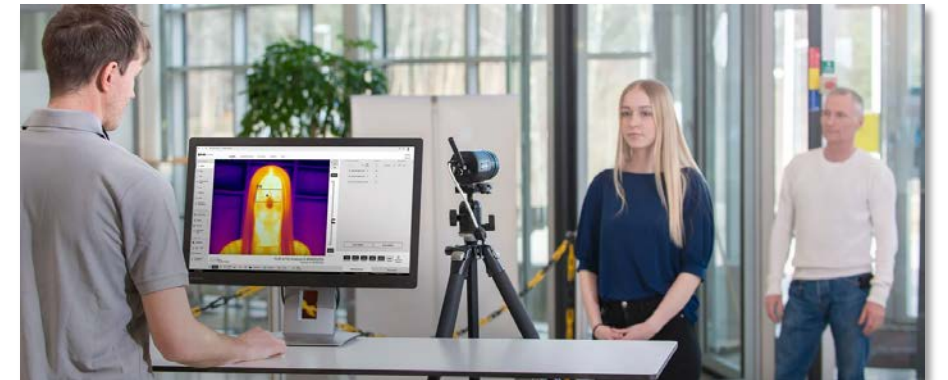
Touchless Access Control

- Facial & palm recognition
- 100% hands-free hygienic user authentication
- Applications:
 - Access Control
 - Visitor Management
 - Time & Attendance
 - Event Management



Elevated Skin Temperature & Mask Detection

- Compliance with state & local orders or guidance
- Fast & accurate EST measurement
- Detect if a protective mask is being worn
- Monitor & enforce EST & protective mask policies
 - Alert security or HR personnel
 - Deny door access

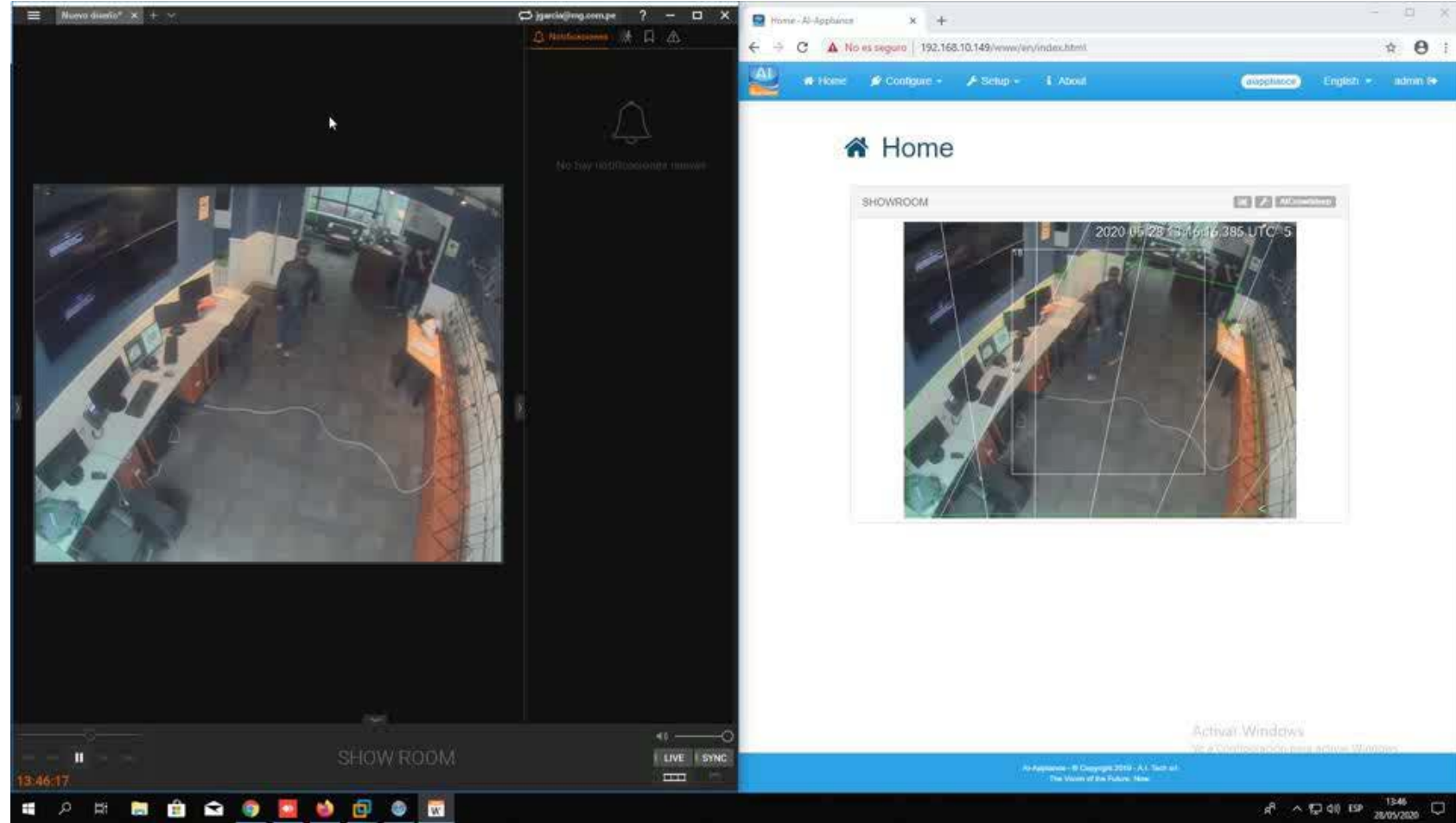


Occupancy Monitoring



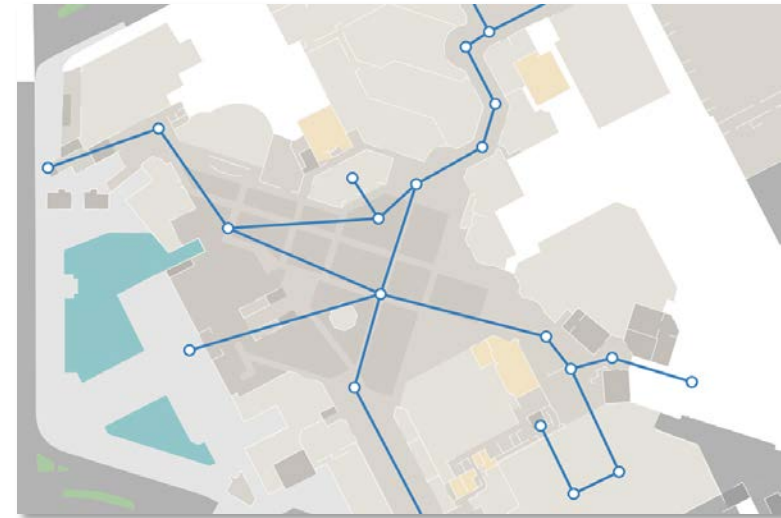
Monitoring Social Distancing

- **Social Distancing policy enforcement/violation notification**
- **Using fixed cameras with onboard analytics**
- **Can be used with most existing VMS platforms**



Contact Tracing

- **Integrated access control reporting & forensic analysis tools**
 - Find all people who went through a door in close proximity to someone thought to be contagious
 - Correlate access events by time window to identify people who are at increased risk of being in contact with contaminants or contagious individuals
- **Integrated thermal video surveillance for wider scale EST & tracing**
- **Wireless infrastructure**
 - RTLS solutions that integrate with employee directories and visitor management systems to enable in-building wireless contact tracing
- **IoT sensor technology**
 - Occupancy sensor arrays designed to minimize contact by helping to enforce density & social distancing policies



Questions ?

You can also find us on

- www.visiontech.biz
- LinkedIn
- Facebook
- Twitter
- YouTube



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