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Fredericks Peebles & Patterson LLP Offers Pandemic Preparedness Guidance for Tribal Casinos & Businesses

Feb. 12, 2020 — According to recent news reports, the spread of the coronavirus across eastern China is forcing gaming operators in Macau to consider temporarily closing their casinos, and travel and casino stocks are taking a major hit. It is not farfetched to imagine such pandemic threats occurring in tribal casinos, many of which are the primary venue for tourism in Indian country.

At press time, there are 11 confirmed cases of the coronavirus in the United States, while hundreds of Americans evacuated from China remain in quarantine. It's likely that the coronavirus may not present itself at tribal gaming establishments; however, natural disasters such as floods, fires, hurricanes, and tornadoes are realistic dangers that could have a catastrophic impact on tribal businesses.

Even the seasonal flu can have a broad impact on the continuity of business operations. For that reason, it's imperative for tribes to establish strong protocols for a pandemic level-outbreak; at the very least, those protocols will prepare tribal workplaces for less hazardous events.

If hit with a pandemic, the tribal workplace will likely experience employee absenteeism, changes in commerce patterns, and even interrupted supply and delivery. Tribal gaming operators must be aware of their legal responsibilities in the face of such events and consider requirements for doctors' visits, health screenings, and even if employees should remain at home.

“Across the United States, tribal casinos often are one of the largest employers in their respective regions, and they host a constant influx of patrons from a wide variety of cities, counties, states, and even countries,” said Patrick Bergin, attorney and partner with Fredericks Peebles & Patterson LLP. “Moreover, tribal governments must affirmatively exercise authority over labor and employment relations in Indian Country to protect tribal self-determination. For this reason, in their complicated roles as employers, hosts, and sovereign nations, many Indian tribes are developing a set of best practices by enacting a robust tribal statutory framework.”

For example, tribal governments could consider adopting the following tribal laws and policies:

(1) Amendments to Existing Policies and Procedures. Many Indian tribes should first consider whether amendments to current policies and procedures will provide the coverage or

flexibility that employers and employees might need in the event of a significant outbreak. This could include simple revisions such as a personnel policy that encourages or even requires employees to stay home who have influenza-related symptoms;

(2) A Pandemic Preparedness Ordinance to establish a protocol for preparedness, prescribe a plan for responding to such emergencies or hazards, and require periodic evaluations and drills for employees;

(3) A Food Safety Ordinance to ensure the safety and security of the tribal food supply;

(4) Entering into Memorandum of Agreements (MOAs) with local governments, state or federal government, or local non-governmental organizations (such as health clinics or evacuation centers) to ensure a protocol is in place in the case of an emergency;

(5) A Global Disaster Prevention and Response Ordinance/Protocol or Emergency Declaration Ordinance; and

(6) Water Quality and Casino Sanitation Ordinance.

Any tribal government or casino management considering new laws and policies needs to tailor its plan to the specific needs of the governing tribe and its circumstances. For instance, issues to consider include the land base, population size, and special jurisdictional issues such as unique ownership interests on reservation land.

“These preparedness tips also apply to an Indian tribe’s non-casino properties,” said Anna Hohag, associate attorney with Fredericks Peebles & Patterson. “Having protocols in place not only will allow an Indian tribe to work toward preparing for a disaster, but also will allow that tribe to quickly and effectively respond if something does occur.”

Because most of these epidemics are viral infections, meaning they are contagious and easy to spread, it might necessary for the tribe to implement heightened cleanliness standards. A casino floor, along with the myriad restaurants and restrooms, offers many potential ways to spread an infection.

Heightened standards might include increasing the cleaning of gaming devices, use of masks by employees and patrons, and ensuring that hand sanitizer or gloves are readily available at the facility. Casino management also may need to consider screening employees and patrons for symptoms of respiratory illness, such as fever and cough, in order to avoid the transmission and further spread of such an infectious virus.

The World Health Organization (WHO) recommends hand and respiratory hygiene and safe food practices to prevent further transmission. In addition, the [Center for Disease Control](#) (CDC) or [Occupational Safety and Health Administration](#) (OSHA) have released planning checklists and other guidance resources on their websites for business tips on what employers can do to be prepared for an epidemic and how they can protect their employees.

“According to the CDC, employers play a key role in protecting employees’ health and safety in a flu pandemic and being prepared can help limit any negative impact on the economy and society as well,” Hohag said. “While no one can predict when an emergency epidemic may occur or hit a tribal casino, these recommended steps for preparedness may be what ensures the survival of the tribal business if a crisis does hit.”

Fredericks Peebles & Patterson has offices in Sacramento, California; Louisville, Colorado; Rapid City, South Dakota; and Washington, D.C. To learn more, visit www.ndnlaw.com.

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