

Taking Care of Business: An Empirical Examination of the Top S&P 500 Companies and Their Role as Public Health Regulators During the COVID-19 Pandemic

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Taking Care of Business: An Empirical Examination of the Top S&P 500 Companies and Their Role as Public Health Regulators During the COVID-19 Pandemic

Megan M. O’Malley^{A1}

Data from the top 15 constituents by weight on the S&P 500 is assembled to identify trends among the policies these companies implemented in the United States during the COVID-19 pandemic. Some policies were fairly consistent across the board, especially in regard to remote work opportunities and health and safety measures for essential and/or in-person employees. Other policies, including vaccination requirements and vaccine incentives, varied across and within industries. Some companies that were examined went beyond the relevant federal, state, or local requirements in effect at the time, while other companies pushed back against public health guidance.

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I. INTRODUCTION

The COVID-19 pandemic that emerged in China in December 2019¹ and spread to the United States in early 2020² sent shockwaves through the global economy.³ The spread of the virus disrupted lives, communities, and business operations across the world. Domestic and foreign governments implemented lockdowns and other public health policies in attempts to stop the spread of the virus.⁴ Due to the lockdowns, many American businesses could not keep retail locations, offices, and other

¹ Kathy Katella, *Our Pandemic Year – A COVID-19 Timeline*, YALE MED. (Mar. 9, 2021), <https://www.yalemedicine.org/news/covid-timeline>.

² *Id.*

³ See generally JAMES K. JACKSON, ET AL., CONG. RSCH. SERV., R46270, GLOBAL ECON. EFFECTS OF COVID-19 (2021).

⁴ See Steven Bernard, et al., *Lockdowns Compared: Tracking Governments' Coronavirus Responses*, FINANCIAL TIMES (Jun. 17, 2022), <https://ig.ft.com/coronavirus-lockdowns/>, for visual representations of global lockdown measures using the “Covid-19 government response stringency index” developed by researchers at Oxford University.

facilities open.⁵ Other regulatory action prompted businesses to reevaluate existing practices so that employee safety was ensured.⁶

The pandemic and the policies implemented to help combat it were unprecedented.⁷ The response by American businesses was likewise unprecedented. Almost overnight, companies transitioned to a fully remote workplace.⁸ Industry partners and competitors formed alliances to evaluate how to best protect their workers and their communities and even co-developed tools to help stop community spread.⁹ Businesses developed new health and safety measures in physical workspaces to facilitate social distancing.¹⁰ Companies continue to enforce other policies and mandates to protect workers as the pandemic has evolved.

In addition to understanding an important impact of the pandemic, this Article may be valuable to both large and small businesses, investors, and regulators as the pandemic and the responses to it continue. Experts predict COVID-19 will not be the last global pandemic in our lifetime, let alone the last major disruption to our ways of life.¹¹ Businesses will benefit from

⁵ See *States That Issued Lockdown and Stay-at-Home Orders in Response to the Coronavirus (COVID-19) Pandemic, 2020*, BALLOTPEDIA, https://ballotpedia.org/States_that_issued_lockdown_and_stay-at-home_orders_in_response_to_the_coronavirus_pandemic_2020 (last visited Feb. 19, 2023) [hereinafter Ballotpedia].

⁶ See Jiachuan Wu, et al., *Stay-at-Home Orders Across the Country: What Each State is Doing – or Not Doing – Amid Widespread Coronavirus Lockdowns*, NBC NEWS (Apr. 29, 2020), <https://www.nbcnews.com/health/health-news/here-are-stay-home-orders-across-country-n1168736> (provides a state-by-state breakdown of lockdown and stay-at-home orders). See also OSHA, *Regulations*, DEP'T OF LAB., <https://www.osha.gov/coronavirus/standards> (last accessed Jun. 25, 2022) (list of OSHA standards and directives that apply to worker exposure to COVID-19).

⁷ See generally Ilya Beylin, *The Ignominious Life of the Paycheck Protection Program*, 23 N.Y.U. J. LEGIS. & PUB. POL'Y 587 (2021).

⁸ See Morris A. Davis, Andra C. Ghent & Jesse M. Gregory, *The Work-from-Home Technology Boon and its Consequences* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28461, 2021), https://www.nber.org/system/files/working_papers/w28461/w28461.pdf.

⁹ See Erika Fry, *Saving A City: How Seattle's Corporate Giants Banded Together to Flatten the Curve*, FORTUNE (Apr. 17, 2020), <https://fortune.com/longform/coronavirus-seattle-flatten-curve-amazon-microsoft-starbucks-nordstrom-costco-covid-19-outbreak/>. See also *Apple and Google Partner on COVID-19 Contact Tracing Technology*, APPLE NEWSROOM (Apr. 10, 2020), <https://www.apple.com/newsroom/2020/04/apple-and-google-partner-on-covid-19-contact-tracing-technology/> (Google and Apple partnered to “enable the use of Bluetooth technology to help governments and health agencies reduce the spread of the virus”).

¹⁰ See OSHA, *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace*, DEP'T OF LAB., <https://www.osha.gov/coronavirus/safework> (Jun. 10, 2021) (OSHA provided guidance to aid employers in developing internal policies to protect unvaccinated or at-risk employees).

¹¹ See Eleni Smitham & Amanda Glassman, *The Next Pandemic Could Come Soon and Be Deadlier*, CTR. FOR GLOB. DEV. (Aug. 25, 2021), <https://www.cgdev.org/blog/the-next->

understanding the policies the top companies implemented in order to best prepare themselves for future public health crises, and scholars and policy makers can use this Article as a case-study in bottom-up regulation.

This paper explores the COVID-19 policies implemented by the top constituents of the S&P 500 according to weight as of December 30, 2021. The following policies are highlighted: remote work policies, including the date the company permitted employees to work-from-home (“WFH”); vaccination policies, including mandates and incentive programs; and health and safety measures implemented to protect essential or in-person workers. Other policies of significance are also discussed throughout this Article. This Article is the first legal scholarship to collect this data.

Companies in the same industry tended to implement almost identical policies. Entities with headquarters or other facilities in the same state or county tended to adopt similar policies as well. Tech companies and other constituents with a strong presence on the West Coast of the United States were some of the first businesses to allow employees to WFH and close their offices. Also, companies with manufacturing plants, offices, or other facilities in Asia, particularly in China, were often ahead of the federal, state, and local health and safety ordinances imposed in the United States. Furthermore, safety measures implemented for employees working in person were relatively consistent across the board.

Some policies were less consistent among the companies researched. For instance, about one third of the companies surveyed did not mandate vaccinations. Instead, these companies highly encouraged employees to get vaccinated, either through offering incentive programs to entice employees, or imposing hardships on those who opted out. Two of the companies included in the study either failed to publicize their vaccine requirements or were merely considering implementing a vaccine mandate at some time. Interestingly, some of the companies imposing a vaccine mandate also indicated that the company would increasingly allow and encourage employees to WFH, even after the pandemic ends.

This Article is divided into three parts. The remainder of Part I outlines the parameters of this Article and identifies the companies I examined and the constraints I encountered during my research. Part II examines the surveyed companies’ health and safety policies in the following

pandemic-could-come-soon-and-be-deadlier (“The spread and severity of COVID-19 felt like a surprise to many policymakers . . . [b]ut careful analyses are suggesting that future pandemic risks are significant”); Michaelen Doucleff, *Next Pandemic: Scientists Fear Another Coronavirus Could Jump From Animals to Humans*, NPR GOATS AND SODA (Mar. 19, 2021), <https://www.npr.org/sections/goatsandsoda/2021/03/19/979314118/next-pandemic-scientists-fear-another-coronavirus-could-jump-from-animals-to-hum> (“Coronavirus pandemics are not a once in a hundred year event . . . [t]he next one could come at any time. It could come in 50 years or in 10 years. Or it could be next year.”).

categories: (1) remote work policies; (2) health and safety measures for essential and/or in-person employees; (3) vaccine mandates; and (4) vaccination incentive programs. Part III concludes with reflection and suggestions for future crises.

A. Research Parameters: Companies Examined

I examined the following companies in the course of my research for this Article:

Figure 1

	Company Name
1	Apple Inc. (“Apple”)
2	Microsoft Corporation (“Microsoft”)
3	Amazon.com, Inc. (“Amazon”)
4	Tesla, Inc. (“Tesla”)
5	Alphabet, Inc. (“Alphabet” or “Google”)
6	Meta Platforms, Inc. (“Meta” or “Facebook”)
7	NVIDIA Corporation (“Nvidia”)
8	UnitedHealth Group Inc. (“UnitedHealth Group”)
9	JPMorgan Chase & Co. (“JPMorgan”)
10	Johnson & Johnson (“Johnson & Johnson” or “J&J”)
11	Home Depot, Inc. (“Home Depot”)
12	The Procter & Gamble Company (“Procter & Gamble” or “P&G”)
13	Visa Inc. (“Visa”)

14	Pfizer Inc. (“Pfizer”)
15	Bank of America Corp. (“Bank of America” or “BoA”)

**Figure 1 derived from Slickcharts’ December 30, 2021 list, “S&P 500 Companies by Weight.” I used my own judgment as to which companies from that list to include in this Figure.*

These companies were the top constituents of the S&P 500 according to weight as of December 30, 2021.¹² The S&P 500 Index is comprised of most of the largest publicly traded companies in the United States¹³ and encompasses about eighty percent of the American stock market.¹⁴ I have excluded Berkshire Hathaway from my research even though it would typically be included in the top fifteen constituents. This is because, unlike the other companies examined, Berkshire Hathaway is a holding company that has subsidiaries operating across many industries and would be an extreme outlier in the dataset. There are several industries represented in this list, including: technology (including software development, social media, and electronics); retail and consumer goods; automotive; financial services; and health and pharmaceutical. The diversity among these constituents allows this Article to examine the policies implemented by various economic sectors, but limits analysis of intra-industry variation.

B. Research Constraints/Literature

As expected, the number of materials companies made public regarding their COVID-19 policies varied. Some companies were more transparent than others. Additionally, the pandemic continues. New and updated guidance and policies are released or altered on a rolling basis as the virus evolves.

Some companies that were studied published some or all Covid-related materials in one central location on its website. Microsoft,¹⁵

¹² *S&P 500 Companies by Weight*, SLICKCHARTS (Dec. 30, 2021) (archived at <https://web.archive.org/web/20211230201927/https://www.slickcharts.com/sp500>) (Slickcharts composes its index through a capitalization weighted index methodology).

¹³ *Id.*

¹⁴ *S&P Dow Jones Indices*, S&P GLOBAL 1 (May 31, 2022), <https://www.spglobal.com/spdji/en/indices/equity/sp-500/#data> (“The S&P 500 is widely regarded as the best single gauge of large-cap U.S. equities . . . an estimated USD 13.5 trillion is indexed or benchmarked to the index, with indexed assets comprising approximately USD 5.4 trillion of this total (as of Dec. 31, 2020).”).

¹⁵ *See Responding to COVID-19 Together*, MICROSOFT, <https://news.microsoft.com/covid-19-response/> (last visited Feb. 19, 2023).

Amazon,¹⁶ Nvidia,¹⁷ UnitedHealth Group,¹⁸ JPMorgan,¹⁹ Johnson & Johnson,²⁰ Procter & Gamble,²¹ Visa,²² and Bank of America²³ all had a central location where they published COVID-related news. If internal policies were not outlined within a central page, those policies were sometimes disclosed within investor documents, such as Environmental, Social, and Governance (“ESG”) Reports, Form 10-Ks, Annual Reviews or Reports, or Sustainability Reports. For other companies or for particular topics researched, no official company documents were available to examine. In these instances, news outlets (such as CNBC and the Wall Street Journal, among others) or industry-specific news sites often bridged the gap.

It was crucial for businesses to communicate their COVID-19 response plans with investors, stakeholders, employees, customers, and communities.²⁴ Disclosure builds investor confidence.²⁵ Because the pandemic drastically altered the operating environment and sometimes even the business model of firms, it was important for companies to disclose how new risks created by COVID-19 impacted stakeholders.²⁶ For example, how a company responded to material sustainability issues, such as how it tried to mitigate the pandemic’s impact on its employees

¹⁶ See Amazon Staff, *Amazon’s COVID-19 Blog* (last updated Mar. 4, 2022), AMAZON, <https://www.aboutamazon.com/news/company-news/amazons-covid-19-blog-updates-on-how-were-responding-to-the-crisis>; *COVID-19*, AMAZON, <https://www.aboutamazon.com/news/tag/covid-19> (last visited Feb. 19, 2023).

¹⁷ See *Humanity and Innovation: How NVIDIA and Our Employees are Responding to the COVID-19 Crisis*, NVIDIA, <https://www.nvidia.com/en-us/csr/our-response-to-covid-19/> (last visited Feb. 19, 2023).

¹⁸ See *TeamUnited News*, UNITEDHEALTH GROUP, <https://www.unitedhealthgroup.com/teamunited.html> [<https://web.archive.org/web/20210508192937/https://www.unitedhealthgroup.com/teamunited.html>].

¹⁹ See *Our Impact: How We Responded to COVID-19*, JPMORGAN CHASE & CO., <https://www.jpmorganchase.com/impact/covid19> (last visited Feb. 19, 2023).

²⁰ See *Stemming the COVID-19 Pandemic*, JOHNSON & JOHNSON, <https://www.jnj.com/covid-19> (last visited Feb. 19, 2023).

²¹ See *Our COVID-19 Response*, PROCTER & GAMBLE, <https://us.pg.com/covid19/> (last visited Feb. 19, 2023).

²² See *Visa COVID-19 Resources*, VISA, <https://usa.visa.com/global/covid19-support.html> (last visited Feb. 19, 2023).

²³ See *Client Information: We’re Here to Help*, BANK OF AM., <https://about.bankofamerica.com/promo/assistance/latest-updates-from-bank-of-america-coronavirus> (last visited Feb. 19, 2023).

²⁴ See *Disclosure and Transparency During COVID-19: Increasing Resilience and Building Trust During and After the Pandemic*, INT’L FIN. CORP. (2020) 1, https://www.ifc.org/wps/wcm/connect/c8681f36-c07f-42b0-b8fc-80869ecf42a7/Tip+Sheet_CG_Disclosure-and-Transparency_COVID19_Nov2020.pdf?MOD=AJPERES&CVID=nxAAMsh.

²⁵ See *id.*

²⁶ *Id.* at 2.

and the community, is of particular interest to some stakeholders.²⁷ ESG-related matters have become more important to key stakeholders during the pandemic because ESG can potentially “safeguard businesses from future risks.”²⁸ In fact, “companies with the best governance” fared relatively well during the pandemic.²⁹ The pandemic proved to be a test of company resilience.³⁰ Strong governance added significant value to companies for investors; so, for many businesses, it was lucrative to disclose the actions they took in response to the pandemic.³¹

II. SURVEY RESULTS

A. Remote Work Policies

Figure 2

Company Name	State Company is Headquartered In	Ahead of Headquartered State WFH Mandate?
Apple	California	Yes (By at least 13 days)
Microsoft	Washington	Yes (By at least 19 days)
Amazon	Washington	Yes (By at least 19 days)
Tesla	California	No
Google	California	Yes (By at least 13 days)
Meta	California	Yes (By at least 14 days)

²⁷ *Id.* at 3.

²⁸ Aashish Beergi, *Why Is ESG More Important Now Than Ever For Your Business?*, REGASK (Feb. 1, 2022), <https://regask.com/why-is-esg-more-important-now-than-ever-for-your-business/#:~:text='G'%20or%20Governance%20relates%20to,sense%20of%20trust%20amongst%20consumers>.

²⁹ Jennifer Wu & Vincent Juvyns, *COVID-19 Shows ESG Matters More Than Ever*, JPMORGAN ASSET MGMT. (Dec. 5, 2020), <https://am.jpmorgan.com/au/en/asset-management/adv/insights/market-insights/market-updates/on-the-minds-of-investors/covid-19-esg-matters/>.

³⁰ *Id.*

³¹ *Id.*

NVIDIA	California	Undeterminable
UnitedHealth Group	Minnesota	Yes (By at least 7 days)
JPMorgan	New York	No
Johnson & Johnson	New Jersey	Undeterminable
Home Depot	Georgia	Yes (By at least 2 days)
Procter & Gamble	Minnesota	Yes (By at least 11 days)
Visa	California	Undeterminable
Pfizer	New York	No
Bank of America	North Carolina	Undeterminable

*Figure 2 researched and constructed by Megan M. O'Malley.

The SARS-CoV-2 virus (“COVID-19” or “Covid”) originated in Wuhan, China in late 2019.³² Shortly after scientists discovered the illness could be transmitted from human to human, the Chinese government locked down the city to contain the spread of the virus.³³ In January 2020, the first case of COVID-19 in the United States was identified in a Washington state resident who had recently traveled to Wuhan.³⁴ In February 2020, countries began to restrict international travel to contain the virus.³⁵

On March 11, 2020, the World Health Organization (“WHO”) officially designated COVID-19 a pandemic.³⁶ Shortly thereafter, President Donald Trump declared a nationwide emergency on March 13, 2020.³⁷ The former president announced social distancing guidelines on

³² Katella, *supra* note 1.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Dr. Tedros Adhanom Ghebreyesus, Dir.-General, World Health Org., WHO-Director General’s Opening Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020), <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

³⁷ *COVID-19 Timeline*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/museum/timeline/covid19.html> (last visited Feb. 19, 2023).

March 16, 2020, which advised against in-person education, unnecessary travel, and gatherings of more than ten people.³⁸ State governments began to implement orders requiring citizens to remain at home (“stay-at-home orders”) in March 2020.³⁹ California was the first state to issue a mandatory stay-at-home order on March 19, 2020.⁴⁰

The COVID-19 pandemic changed how many Americans could work. Almost overnight, millions of employees quickly transitioned to remote work.⁴¹ All the companies researched were required to have a portion of their employees based out of their headquarters pivot to a remote work model. The companies on this list, especially those with retail locations or branch locations, were also subject to stay-at-home orders issued by local governments.

My research yielded a mix of information regarding remote work dates. Some companies explicitly noted the dates they permitted employees to work from home through public company announcements or through internal notes. Other companies did not note specific dates when employees could work remotely, but instead provided a general statement that they transitioned to remote workspaces in March 2020. A few companies did not provide a date at all. The companies that announced employees could work remotely well in advance of government-mandated stay-at-home orders were of the most significance to my research.

Some companies are closely watched and monitored by news outlets such as CNBC or industry-specific news outlets. For example, CNBC closely monitored and reported on when companies of significance announced office closures and remote work transitions. It is important to consider why prominent news outlets would track when companies announced office closures. Investors would be very interested in this information and would like to try to protect their investments. However, it is doubtful that these closures were only reported for purposes of investment protection purposes. Other businesses also follow these news outlets and were likely curious as to what key industry stakeholders were

³⁸ Case Laudenslager, *President Trump Issues New Recommendations, Including Limiting Gatherings to Less than 10 People*, WCBN NEWS 2 (Mar. 16, 2020), <https://www.counton2.com/health/coronavirus/president-trump-issues-new-recommendations-including-limiting-gatherings-to-less-than-10-people/>.

³⁹ Amanda Moreland et al., *Timing of State and Territorial COVID-19 Stay-at-Home Orders and Changes in Population Movement – United States, March 1–May 31, 2020*, 69 MORBIDITY AND MORTALITY WKLY. REP. 1198, 1198 (2020) (“42 states and territories issued mandatory stay-at-home orders”).

⁴⁰ *Id.* at 1199.

⁴¹ See Juliana Menasce Horowitz, Rachel Minkin & Kim Parker, *How the Coronavirus Outbreak Has – and Hasn’t – Changed the Way Americans Work*, PEW RES. CTR. (Dec. 9, 2020), <https://www.pewresearch.org/social-trends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/>.

doing in light of the developing public health crisis. Business leaders likely based their decisions on what big-name companies were doing at that uncertain time. If huge economic powerhouses such as Apple or Meta were announcing unprecedented policies and actions in light of the pandemic, it would make it easier for other companies to do the same. Additionally, news coverage and public disclosure of office closures facilitated discussion regarding whether these decisions were the “right” choices. Companies were able to look to public forums and see how consumers and others were responding to announcements of closures. Media coverage also likely informed employee expectations and may have led to bottom-up lobbying for firms to adopt safety protocols other employers were reported to have initiated.

1. State Orders

a. California

California’s Executive Order N-33-20 mandated a shelter-in-place effective March 19, 2020.⁴² All Californians were required to stay at home except as needed unless they were deemed to be in one of sixteen “critical infrastructure sectors.”⁴³ The following companies have headquarters in California or had headquarters in California in March 2020: Apple, Google, Meta, Visa, Nvidia, and Tesla.

Meta, Google, and Apple were ahead of the state mandate. In a company Q&A on March 5, Meta Chief Executive Officer (“CEO”) Mark Zuckerberg recommended that employees based in its Bay Area locations work from home if they could.⁴⁴ In a company announcement on March 6, Google’s CEO Sundar Pichai indicated that some offices had already begun to shift to a remote model and that the company had begun testing its ability to work remotely as early as late February.⁴⁵ Apple recommended employees at its Cupertino offices work remotely prior to

⁴² Cal. Exec. Order N-33-20 (Mar. 19, 2020), <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>.

⁴³ *Id.* (“The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof.”).

⁴⁴ Rat King (@MikeIsaac), Twitter (Mar. 5, 2020, 8:21 PM), <https://twitter.com/MikeIsaac/status/1235737220251709440>. *see also* Jay Peters, *Apple, Google, and Others Asked to Avoid Travel and Cancel Big Events*, THE VERGE (Mar. 6, 2020), <https://www.theverge.com/2020/3/5/21167054/santa-clara-county-coronavirus-amazon-apple-google-facebook-microsoft>.

⁴⁵ Sundar Pichai, *Coronavirus: How We’re Helping*, GOOGLE: THE KEYWORD (Mar. 6, 2020), <https://blog.google/inside-google/company-announcements/coronavirus-covid19-response/>.

March 6.⁴⁶ In a later memo, CEO Tim Cook encouraged employees at global offices to work remotely if their job permitted it beginning on March 9, 2020.⁴⁷ Shortly thereafter on March 13, all Apple offices and retail locations outside of China pivoted to flexible work arrangements and remote work was strongly encouraged for those who were able to work remotely.⁴⁸ Alphabet quickly followed suit and recommended that all employees work remotely if their roles permitted it on March 16.⁴⁹

Tesla closed its factories in Fremont, California and Buffalo, New York on March 23.⁵⁰ This was after the California order. Tesla, initially arguing that it was an essential business, reluctantly closed its factories only after significant pushback from local government.⁵¹ On March 16, 2020, Tesla CEO Elon Musk emailed employees permitting them to “stay home if they felt ill or uncomfortable,” but then indicated he would still be “at work” in the physical workplace, which could have pressured some employees to come into the office in March 2020 who might otherwise have not.⁵²

An exact closure date was not available for the other Californian companies in this survey. Nvidia did not indicate what date it closed their offices, but the company indicated that it closed all offices globally in “March 2020.”⁵³ Data was not easily available as to when Visa initially closed its headquarter offices in the state or elsewhere. Therefore, this Article cannot conclude whether these businesses closed workplaces ahead of the California stay-at-home order.

⁴⁶ Peters, *supra* note 44.

⁴⁷ Kim Lyons, *Tim Cook Encouraging Remote Work at Apple Global Offices Due to Coronavirus*, THE VERGE (Mar. 8, 2020), <https://www.theverge.com/2020/3/8/21170547/tim-cook-remote-iphone-apple-global-coronavirus>.

⁴⁸ Tim Cook, *Apple’s COVID-19 Response*, APPLE NEWSROOM (Mar. 13, 2020), <https://www.apple.com/newsroom/2020/03/apples-covid-19-response/>.

⁴⁹ *Actions to Reduce the Need for People to Come into Our Offices*, GOOGLE, THE KEYWORD (Mar. 16, 2020), <https://blog.google/inside-google/company-announcements/update-extended-workforce-covid-19/>.

⁵⁰ Emma Foehringer Merchant, *Tesla Closing New York, California Factories in Response to Coronavirus*, GREENTECH MEDIA, (Mar. 20, 2020), <https://www.greentechmedia.com/articles/read/tesla-closing-new-york-california-factories-in-response-to-covid-19>.

⁵¹ See Niraj Chokshi, *After Mounting Criticism, Tesla Will Shut Down California Factory*, N.Y. TIMES (Mar. 19, 2020), <https://www.nytimes.com/2020/03/19/business/tesla-fremont-factory-coronavirus.html>.

⁵² *Id.*

⁵³ NVIDIA, *2021 NVIDIA Corporate Social Responsibility Rep.*, 14 (2021), <https://images.nvidia.com/aem-dam/Solutions/documents/FY2021-NVIDIA-CSR-Social-Responsibility.pdf>.

b. Washington

Washington’s governor Jay Inslee announced the state’s “Stay Home – Stay Healthy” plan on March 23, 2020, and the stay-at-home order went into effect the following day.⁵⁴ Amazon and Microsoft are headquartered in Washington State.

Both Amazon and Microsoft were well ahead of the state order. Microsoft is hailed as one of the first companies in the country to encourage its employees to work remotely.⁵⁵ The company initially enabled Seattle area employees to work from home if they wanted to on March 4,⁵⁶ but then “insisted” Washington State employees WFH the following day.⁵⁷ Amazon also advised employees to work from home if possible on March 4.⁵⁸ On March 12, Amazon instructed all global employees to work remotely if they could.⁵⁹

c. New York

New York State issued its “New York State on Pause” order on March 20, 2020.⁶⁰ It went into effect on March 22.⁶¹ All businesses were required to utilize “any telecommuting or work from home procedures that they

⁵⁴ Wash. Proclamation by the Governor 20-25 (Mar. 23, 2020), <https://www.documentcloud.org/documents/6817957-20-25-Coronavirus-Stay-Safe-Stay-Healthy.html> (Governor Inslee imposed a “Stay Home – Stay Healthy Order throughout Washington State by prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business.”).

⁵⁵ Karen Weise, *Ahead of the Pack, How Microsoft Told Workers to Stay Home*, N.Y. TIMES (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/technology/microsoft-coronavirus-response.html>.

⁵⁶ Annie Palmer, *Amazon Tells Seattle-Area Employees to Work from Home as Coronavirus Spreads*, CNBC (Mar. 5, 2020), <https://www.cnbc.com/2020/03/05/coronavirus-amazon-tells-seattle-area-employees-to-work-from.html> (explaining that on March 4, Amazon asked its Washington State employees to work from home through the end of March 2020 after an employee at its Seattle office tested positive for COVID-19). *See also* Weise, *supra* note 55 (On March 4, Microsoft told “tens of thousands of Microsoft employees in the Seattle area that they could work from home.”).

⁵⁷ Weise, *supra* note 55 (On March 5, 2020, Microsoft “insisted” that employees work from home, “making the software giant one of the first major employers in the United States to do so.”).

⁵⁸ Palmer, *supra* note 56.

⁵⁹ Palmer, *Amazon Tells All Employees to Work from Home If They Can*, CNBC (Mar. 12, 2020), <https://www.cnbc.com/2020/03/12/amazon-tells-all-employees-to-stay-home-amid-coronavirus-fears.html> (Amazon “previously told employees in some of its offices, including Seattle, New York, New Jersey and the Bay Area, to work remotely.”).

⁶⁰ N.Y. Exec. Order No. 202.8 (Mar. 20, 2020), https://www.governor.ny.gov/sites/default/files/atoms/files/EO_202.8.pdf.

⁶¹ *Id.*

[could] safely utilize.”⁶² Both JPMorgan and Pfizer are headquartered in New York City.

Neither Pfizer nor JPMorgan were particularly ahead of the New York State legislation. Pfizer indicated on March 13, 2020, that “all customer-facing employees” in the United States were required to work remotely from that date forward.⁶³ Pfizer then later clarified that only those employees that work in sales were to work from home, not all customer-facing employees.⁶⁴ JPMorgan told all branch employees that they could work remotely, so long as they were not tellers, beginning on March 19.⁶⁵ This measure applied to all branch employees nationwide, not just those in New York City.⁶⁶ No date was provided as to when JPMorgan permitted its employees in New York City corporate offices to work remotely.

d. New Jersey

New Jersey Governor Phil Murphy officially declared a stay-at-home order for his state on March 21, 2020, shortly after New York State announced its New York State on PAUSE order.⁶⁷ Governor Murphy explicitly noted in the executive order that “restricting the physical presence of individuals in office environments and work sites is critical to preventing future spread of COVID-19.”⁶⁸ Johnson & Johnson is headquartered in New Jersey. Research did not indicate when Johnson & Johnson permitted its employees to work from home, therefore this Article cannot conclude whether J&J was ahead of the New Jersey executive order.

e. Minnesota

Minnesota governor Tim Walz issued the state’s stay-at-home order on March 25, 2020.⁶⁹ The order went into effect on March 27.⁷⁰ Governor

⁶² *Id.*

⁶³ Christina Farr, *Pfizer Tells All US Salespeople They Must Work Remotely*, CNBC (Mar. 13, 2020), <https://www.cnbc.com/2020/03/13/pfizer-tells-all-its-salespeople-they-must-work-remotely.html>.

⁶⁴ *Id.*

⁶⁵ Hugh Son, *JPMorgan Chase Says It Will Close 20% of Its Branches Because of the Coronavirus Pandemic*, CNBC (Mar. 18, 2020), <https://www.cnbc.com/2020/03/18/jpmorgan-says-it-will-close-20percent-branches-because-coronavirus-pandemic.html>.

⁶⁶ *Id.*

⁶⁷ N.J. Exec. Order No. 107, (Mar. 21, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>.

⁶⁸ *Id.*

⁶⁹ Minn. Exec. Order 20-20 (Mar. 25, 2020), https://mn.gov/governor/assets/3a.%20EO%2020-20%20FINAL%20SIGNED%20Filed_tcm1055-425020.pdf.

⁷⁰ *Id.*

Walz indicated that “[a]ll workers who can work from home must do so.”⁷¹ Only those who worked in “critical sectors” and who were unable to do their job remotely were exempt from the order.⁷² UnitedHealth Group is the only company surveyed based out of Minnesota.

Initially, on March 16, UnitedHealth Group told employees they were to report to the physical workplace unless they were members of the high-risk community, experiencing any COVID-19 symptoms, or facing other COVID-19 related obstacles (*i.e.*, childcare issues, local closures of public transit).⁷³ As of March 16, UnitedHealth Group indicated that about half of its workforce not involved in patient care was working remotely.⁷⁴ In a March 16 email, UnitedHealth Group’s chief human resources officer wrote that ““while other less essential industries have implemented broad work-from-home policies, we are a health-care company, and our business needs to operate as smoothly as possible during this health crisis to serve others.””⁷⁵ In a separate memo, UHG’s CEO Dave Wichmann told employees,

[A]s you continue to hear about the actions of other companies, please keep in mind that we are not like the other businesses in your communityOur health-care services are essential. We cannot walk away. We cannot close our doors. People are depending on us. They need us . . . each and every one of us . . . fully engaged and doing our very best work.⁷⁶

UnitedHealth Group includes its UnitedHealthcare division, which is the United States’ largest health insurer.⁷⁷ UHG’s Optum division is focused on healthcare services, including clinics, urgent-care facilities, and surgical centers.⁷⁸

Less than four days after its initial email ordering employees to report to the office, UHG executives let more employees work from home.⁷⁹

⁷¹ *Id.*

⁷² *Id.*

⁷³ Jena McGregor, *UnitedHealth Group Tells Employees to Go to Work Unless They are In a High-Risk Group, Have COVID-19 Symptoms or Meet Other Exceptions*, WASH. POST (Mar. 16, 2020), <https://www.washingtonpost.com/business/2020/03/16/unitedhealth-group-tells-employees-go-work-unless-they-are-high-risk-group-have-symptoms-or-meet-other-exceptions/>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *See General Page: Optum*, UNITEDHEALTH GROUP, <https://www.unitedhealthgroup.com/who-we-are/businesses/optum.html> (last visited Feb. 19, 2023); *see also*

Employees that did not serve patients in hospitals or clinics or whose “physical presence [was] not deemed essential to business operations” were permitted to work from home if they wanted to.⁸⁰ With permitting employees to work remotely as of March 20, UnitedHealth Group was ahead of the state’s stay-at-home order that went into effect on March 27.⁸¹

f. Ohio

Amy Action, Director of the Ohio Department of Health, instituted a stay-at-home order which was in effect from March 23 through April 6, 2020.⁸² All nonessential businesses were required to close.⁸³

Proctor & Gamble asked all employees nationwide who were able to work remotely to do so on March 12, 2020.⁸⁴ This included over ten-thousand office workers in P&G’s headquarters in Cincinnati.⁸⁵ P&G operates twenty-four factories in the United States, and it indicated that it took preventative measures to keep essential facilities in operation.⁸⁶ P&G acted well in advance of the Ohio state stay-at-home order.

g. Georgia

Georgia instated its shelter in place order on April 3, 2020.⁸⁷ Georgia’s order only lasted through April 30.⁸⁸ Only those workers who were “engaged in the performance of . . . Minimum Basic Operations for a business . . . not classified as Critical Infrastructure” or those belonging to the Critical Infrastructure workforce were not required to shelter in place.⁸⁹ The only company surveyed that is based out of Georgia is Home Depot.

Christopher Snowbeck, *Minnesota Medical Groups Have Fits and Starts with Working from Home*, STAR TRIB. (Mar. 19, 2020), <https://www.startribune.com/unitedhealth-group-shifts-to-work-from-home/568926592/?refresh=true>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Jackie Borchardt & Jennie Key, *Coronavirus: Ohio Gov. DeWine Orders Ohioans to Stay at Home*, THE CINCINNATI ENQUIRER (Mar. 22, 2020), <https://www.cincinnati.com/story/news/politics/2020/03/22/coronavirus-ohio-gov-mike-dewine-sunday-update-states-response/2894473001/>.

⁸³ *Id.*

⁸⁴ Alexander Coolidge, *P&G to Office Workers: Work from Home for Rest of March*, THE CINCINNATI ENQUIRER (Mar. 12, 2020), <https://www.cincinnati.com/story/money/2020/03/12/p-g-office-workers-work-home-rest-march/5032820002/>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Ga. Exec. Order No 04.02.20.01 (2020), <https://t.co/ueMxtsJTKm?amp=1>.

⁸⁸ *Id.* See also BALLOTPEDIA, *supra* note 5.

⁸⁹ Ga. Exec. Order, *supra* note 87.

Home Depot was considered an essential business and indicated its “commit[ment] to providing the essential needs required to maintain homes and business.”⁹⁰ Home Depot expanded benefits for employees who were in-person.⁹¹ In a corporate announcement made on April 1, 2020, Home Depot reported that it had “asked all associates in store support functions who [could] work from home to do so.”⁹²

h. North Carolina

North Carolina Governor Roy Cooper issued the state’s stay-at-home order on March 27, 2020.⁹³ Executive Order No. 121 went into effect on March 30, 2020.⁹⁴ Only essential businesses that successfully facilitated proper social distancing were permitted to remain open when the stay-at-home order was in effect.⁹⁵

My research did not yield a specific date Bank of America permitted employees to work from home. On March 10, 2020, Bank of America noted in an internal memo that the bank had not yet moved to a remote work model and had instead “executed [its] business continuity plans.”⁹⁶ Essentially, the bank was testing out its remote work capabilities at that time.⁹⁷ The New York Times indicated that the bank told trading-floor employees they could work remotely beginning in late March.⁹⁸

Senior executives at Bank of America were also notoriously “slower to embrace remote work” and in fact initially urged workers to continue to come into the office during the early days of the pandemic.⁹⁹ Former employees say the culture was so toxic that a senior executive allegedly monitored profits and losses of employees in the office and employees working remotely and reduced his findings to a “productivity

⁹⁰ *The Home Depot Announces Business Updates in Response to COVID-19*, THE HOME DEPOT (Apr. 1, 2020), <https://corporate.homedepot.com/newsroom/home-depot-announces-business-updates-response-covid-19>. See also *COVID-19: How We Are Responding*, THE HOME DEPOT PRO, https://www.nari.org/NARI/media/Documents/Covid_Update-03-30-20-CorporatePro.pdf (last visited Feb. 19, 2023).

⁹¹ *Id.*

⁹² *Id.*

⁹³ See N.C. Exec. Order No. 121 (Mar. 27, 2020), <https://www.ncdhhs.gov/media/12477/download?attachment>.

⁹⁴ *Id.*

⁹⁵ See *id.*

⁹⁶ 2020 Annual Report, BANK OF AM. (2020), 48 https://about.bankofamerica.com/annualmeeting/static/media/BAC_2020_AnnualReport.9130a6d8.pdf.

⁹⁷ See *id.*

⁹⁸ Kate Kelly, *A “Friend of Tom” or “Can’t Be Bothered”: One Man’s Rules at Bank of America*, N.Y. TIMES (May 14, 2021), <https://www.nytimes.com/2021/05/14/business/bank-of-america-tom-montag.html>.

⁹⁹ *Id.*

spreadsheet.”¹⁰⁰ Many employees resigned from Bank of America in light of the bank’s disinterest toward remote work.¹⁰¹ Additionally, over one-hundred employees opted to take layoff packages.¹⁰²

2. Trends Among Surveyed Companies

China was the first country to feel the consequences of the pandemic and experience government lock downs.¹⁰³ Of the companies surveyed, the overwhelming majority of them conduct business in China or manufacture products within Chinese borders.¹⁰⁴ Meta was one outlier in

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See Katella, *supra* note 1.

¹⁰⁴ Apple, Microsoft, Amazon, Alphabet, Tesla, Nvidia, JPMorgan, Johnson & Johnson, Procter & Gamble, Pfizer, and Bank of America all either have offices or manufacture in China or have China account for a sizable portion of their global revenue. Apple, Microsoft, Google, and Tesla all conduct manufacturing in China. See GlobalData Thematic Research, *Apple Diversifies Supply Chain but Keeps China at the Center*, VERDICT (Jun. 17, 2022), [https://www.verdict.co.uk/apple-supply-chain-china/#:~:text=Out%20of%20the%2030%20countries,%2C%20and%20Vietnam%20\(42%20of%20Apple%20devices%20manufactured%20in%20China\);Cheng%20Ting-Fang%20&%20Lau%20Li,%20Google,%20Microsoft%20Shift%20Production%20from%20China%20Faster%20Due%20to%20Virus](https://www.verdict.co.uk/apple-supply-chain-china/#:~:text=Out%20of%20the%2030%20countries,%2C%20and%20Vietnam%20(42%20of%20Apple%20devices%20manufactured%20in%20China);Cheng%20Ting-Fang%20&%20Lau%20Li,%20Google,%20Microsoft%20Shift%20Production%20from%20China%20Faster%20Due%20to%20Virus); Cheng Ting-Fang & Lau Li, *Google, Microsoft Shift Production from China Faster Due to Virus*, NIKKEI ASIA (Feb. 26, 2020), [https://asia.nikkei.com/Spotlight/Coronavirus/Google-Microsoft-shift-production-from-China-faster-due-to-virus#:~:text=Until%20now%2C%20most%20if%20not,overreliance%20on%20China%20for%20manufacturing%20\(“most%20if%20not%20all%20Google%20smartphones%20and%20Microsoft-built%20computers%20have%20been%20made%20in%20China”\);Bloomberg,%20How%20Elon%20Musk%20Built%20a%20Tesla%20Factory%20in%20China%20in%20Less%20Than%20a%20Year](https://asia.nikkei.com/Spotlight/Coronavirus/Google-Microsoft-shift-production-from-China-faster-due-to-virus#:~:text=Until%20now%2C%20most%20if%20not,overreliance%20on%20China%20for%20manufacturing%20(“most%20if%20not%20all%20Google%20smartphones%20and%20Microsoft-built%20computers%20have%20been%20made%20in%20China”);Bloomberg,%20How%20Elon%20Musk%20Built%20a%20Tesla%20Factory%20in%20China%20in%20Less%20Than%20a%20Year), FORTUNE (Jan. 7, 2020), <https://fortune.com/2020/01/07/elon-musk-tesla-gigafactory-shanghai-china-ceremony/> (stating that Tesla manufactures electric vehicles in China). Additionally, almost half of the top sellers on Amazon are based in China. See Juozas Kazukenas, *Chinese Sellers Outnumber US Sellers on Amazon.com*, MARKETPLACE PULSE (Jan. 23, 2020), <https://www.marketplacepulse.com/articles/chinese-sellers-outnumber-us-sellers-on-amazoncom/> (“49% of the top Amazon.com sellers are based in China.”). See also Vaishali Ladha, *NVIDIA’s Revenue Breakdown by Region*, BUS. QUANT, <https://businessquant.com/nvidia-revenue-by-region-bill-to-location> (last visited Feb. 19, 2023) (stating that China accounts for about 22% of Nvidia’s revenue globally). See also *JPMorgan in China*, JPMORGAN, <https://www.jpmorganchina.com.cn/en/about-us#:~:text=Today%2C%20we%20serve%20Chinese%20and,17%20markets%20in%20the%20region> (last visited Feb. 19, 2023). See also Rebecca Kanthor, *The Head of Johnson & Johnson China Looks Back on What We’ve Learned From the Pandemic—and How It Can Help Shape the Future*, JOHNSON & JOHNSON (Mar. 11, 2021), <https://www.jnj.com/innovation/head-johnson-johnson-china-on-lessons-learned-from-covid-19-pandemic> (“Because China was the first into the pandemic, first out of the pandemic and the first to recover, company leaders are reviewing our business recovery models and pandemic control efforts so they can apply them to other markets.”). See also Rebecca Stewart, *P&G’s Marc Pritchard: ‘If You Want to See the Future of Marketing, Look to China’*, THE DRUM (Mar. 26, 2021), <https://www.thedrum.com/news/2021/03/26/pg-s-marc-pritchard-if-you-want-see-the-future-marketing-look-china> (“China is P&G’s second largest market globally.”). See also *Pfizer in China*, PFIZER,

the data set. Meta and its subsidiaries (including Facebook, Instagram, and WhatsApp) have been banned in China since 2009, so Meta's presence in the country is limited compared to other companies surveyed.¹⁰⁵ Despite this, Meta was on the earlier side of implementing Covid-related policies, likely due to its presence on the West Coast. Due to these surveyed companies' ties to China, many of them were able to anticipate what public health and safety measures federal, state, and local governments would eventually implement as the pandemic spread to the United States.¹⁰⁶ This is especially true of almost all¹⁰⁷ of the tech companies on the list that were surveyed (Apple, Microsoft, Google, Meta¹⁰⁸), as well as Tesla.¹⁰⁹ The tech companies were some of the first businesses to not only restrict travel to China, but also to strongly advise against all nonessential travel.¹¹⁰ Tesla even noted in its 2020 Impact Report that the health and safety measures implemented in its Gigafactory in Shanghai eventually became the blueprint for company actions in the United States.¹¹¹ Tesla also claimed

https://www.pfizer.com.cn/pfizer-china/pfizer_s_manufacturing_facilities_in_china_en.aspx (last visited Feb. 19, 2023) (Pfizer has four manufacturing plants in China). *See also China*, BANK OF AM., <https://www.bofaml.cn/#:~:text=Our%20China%20platform%20offers%20you,rate%20and%20foreign%20exchange%20derivatives> (last visited Feb. 19, 2023).

¹⁰⁵ See Eloise Barry, *These Are the Countries Where Twitter, Facebook and TikTok Are Banned*, TIME (Jan. 18, 2022), <https://time.com/6139988/countries-where-twitter-facebook-tiktok-banned/#:~:text=China,the%20Great%20Firewall%20of%20China>.

¹⁰⁶ See Michelle Gao, *Tech Was Ahead of Covid Curve at Every Stage, But It Couldn't Bring the Rest of Us Along*, CNBC (Dec. 25, 2020), <https://www.cnbc.com/2020/12/25/tech-ahead-of-covid-curve-at-every-stage.html?&qsearchterm>. *See also* Shirin Ghaffary, *'No Handshakes, Please': The Tech Industry is Terrified of the Coronavirus*, VOX (Feb. 13, 2020), <https://www.vox.com/recode/2020/2/13/21128209/coronavirus-fears-contagion-how-infection-spreads>.

¹⁰⁷ The date Nvidia allowed employees to work from home is not publicly available and thus not included in this list.

¹⁰⁸ Despite Meta's limited presence in China, my research indicated that Meta was consistent with the larger tech industry in its health and safety actions and protocols, including in the early stages of the pandemic's spread to the United States. *See* Rat King (@Mikelsaac), *supra* note 44. *See also* Peters, *supra* note 44.

¹⁰⁹ 2020 Impact Rep., TESLA at 56 (2020), https://www.tesla.com/ns_videos/2020-tesla-impact-report.pdf.

¹¹⁰ *Tech Was Ahead of Covid Curve*, *supra* note 106. *See also* Peters, *supra* note 44 (explaining Amazon employees were told to avoid all non-essential travel, Apple and Meta restricted employees from traveling to COVID hotspots, Google banned all international travel, Microsoft told employees to avoid travel to hotspots as well as to the Bay Area and Seattle).

¹¹¹ *See* TESLA, *supra* note 109, at 56 ("Because Tesla had proactively worked early on with our Gigafactory Shanghai operations on how the local government and businesses responded to COVID19, we were better prepared on the ground in our other global locations before the impact was felt in the rest of the world.").

that it began preparing for COVID's spread in December 2019, "well before it became a major theme in the U.S."¹¹²

Although not a tech company, P&G also applied lessons learned from China to its response in the United States. P&G reported that, "based on [its] experience in China," the company invested in its remote work capabilities so that their employees could familiarize themselves with its remote technology prior to a lockdown.¹¹³

Comparatively, the tech industry was one of the first industries to shift to remote work.¹¹⁴ The tech companies surveyed closed offices and encouraged remote work prior to President Trump's national emergency declaration or any state or local mandates.¹¹⁵ The fact that tech companies were the first to pivot to a remote work format is likely entirely attributable to the fact that these companies are extremely well-versed in the use of technology (including software facilitating remote collaboration) and involve a production process that is largely independent of major tangible assets that require joint collaboration (such as factories, laboratories, and retail locations). Additionally, Meta, Google, Nvidia, and Microsoft pivoted their annual conferences to a virtual format by early March 2020, before any federal, state, or local law mandated the discontinuation of such in-person gatherings.¹¹⁶

The surveyed companies' location in the United States could have also influenced their actions in the pandemic's early stages. The following surveyed companies are headquartered on the West Coast of the United States: Meta (Menlo Park, California);¹¹⁷ Apple (Cupertino, California);¹¹⁸ Alphabet (Mountain View, California);¹¹⁹ Amazon (Seattle, Washington);¹²⁰ Microsoft (Redmond, Washington);¹²¹ Nvidia (Santa

¹¹² *Id.* at 82.

¹¹³ *See Tapping Into Technology to Care for Customers & Each Other*, P&G (Apr. 7, 2020), <https://us.pg.com/blogs/tapping-into-technology/>.

¹¹⁴ *Tech Was Ahead of Covid Curve*, *supra* note 106.

¹¹⁵ *See id.* (explaining Microsoft, Meta, and Google encouraged portions of their workforce to work remotely in early March 2020, prior to the Bay Area's shelter in place order on March 16 and New York's order on March 22).

¹¹⁶ *Id.* *See also* Salvador Rodriguez, *Facebook, Google, Microsoft, Adobe Pull Out of More Conferences as Coronavirus Spreads*, CNBC (Mar. 2, 2020), <https://www.cnbc.com/2020/03/02/facebook-google-microsoft-and-adobe-pull-out-of-conferences-as-coronavirus-spreads.html>; Peters, *supra* note 44.

¹¹⁷ *See Our Offices*, META, <https://about.facebook.com/company-info/> (last accessed Feb. 19, 2023).

¹¹⁸ *See* Apple Inc., Annual Rep. (Form 10-K) (Oct. 29, 2021).

¹¹⁹ *See* Alphabet Inc., Annual Rep. (Form 10-K) (Feb. 2, 2021).

¹²⁰ *See* Amazon.com, Inc., Annual Rep. (Form 10-K) (Feb. 4, 2022).

¹²¹ *See* Microsoft Corp., Annual Rep. (Form 10-K) (Jul. 29, 2021).

Clara, California);¹²² and Visa (San Francisco, California).¹²³ The first COVID case in the United States was recorded outside of Seattle on January 21, 2020.¹²⁴ In early March 2020, California had the most confirmed COVID cases out of any state.¹²⁵ The first recorded Covid death in the United States occurred on February 29, 2020, in Kirkland, Washington—mere miles away from Microsoft’s and Amazon’s headquarters.¹²⁶ Soon thereafter, two Microsoft employees and one Amazon employee in the Seattle area tested positive for the virus.¹²⁷ Both Microsoft and Amazon told employees to work from home shortly after the Kirkland death—days before the state took action and a week before President Trump’s emergency declaration.¹²⁸ On March 4, 2020, Microsoft told employees in Seattle to work from home.¹²⁹ Microsoft President Brad Smith told the New York Times that the company thought that if they made the decision to close offices quickly, it would ““give air cover to other employers who [were] trying to make a similar decision.””¹³⁰ Alphabet and its Google subsidiary noted in a March 6, 2020 email to employees that it had established a task force that met daily to make decisions regarding office closures in light of WHO, CDC, and local health guidance.¹³¹ In the same email, Google and Alphabet CEO Sundar Pichai indicated that some offices already pivoted to a remote work model by that point.¹³² On March 8, Apple CEO Tim Cook urged all Apple employees to work from home if their role was compatible with remote work.¹³³ The proximity of some surveyed companies to the early spread of

¹²² See NVIDIA Corp., Annual Rep. (Form 10-K) (Mar. 18, 2022).

¹²³ See Visa Inc., Annual Rep. (Form 10-K) (Nov. 18, 2021). *But see* Lora Kolodny, *Tesla Moves Headquarters from California to Texas*, CNBC (Oct. 7, 2021), <https://www.cnbc.com/2021/10/07/tesla-moves-its-headquarters-from-california-to-texas.html> (discussing Tesla’s headquarters move from California to Texas).

¹²⁴ See David J. Sencer CDC Museum: In Ass’n with the Smithsonian Inst., *COVID-19 Timeline*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/museum/timeline/covid19.html> (last visited Feb. 19, 2023).

¹²⁵ Will Feuer, *California Announces First Coronavirus Death, Bringing US Fatalities to at Least 11*, CNBC (Mar. 4, 2020), <https://www.cnbc.com/2020/03/04/california-confirms-first-coronavirus-death-bringing-us-fatalities-to-at-least-11.html>.

¹²⁶ Hallie Golden, *‘The Earlier You Act, The More Impact’: How the Seattle Tech Industry Led on Covid*, THE GUARDIAN (Mar. 27, 2021), <https://www.theguardian.com/us-news/2021/mar/27/seattle-tech-industry-covid-coronavirus-response>.

¹²⁷ Weise, *supra* note 55.

¹²⁸ Golden, *supra* note 126.

¹²⁹ Weise, *supra* note 55.

¹³⁰ *Id.*

¹³¹ Pichai, *supra* note 45.

¹³² *Id.*

¹³³ Lyons, *supra* note 47.

Covid in the United States was a driving force behind the quick action taken by private companies in late February and early March 2020.

B. *In-Person Employee Safety Measures*

All of the surveyed companies had to have some portion of employees come into offices, retail locations, or other workplaces in some capacity. This section outlines in-person safety measures the surveyed companies implemented for employees in the physical workplace.

1. OSHA Guidelines and CDC Guidelines

a. OSHA Guidelines

The Occupational Safety and Health Administration (“OSHA”) covers most private employers and workers in the United States, either through Federal OSHA or through an OSHA-approved state plan.¹³⁴ Section 5(a)(1) (the “General Duty Clause”) of the Occupational Safety and Health (“OSH”) Act of 1970 requires employers to provide each worker with “a place of employment . . . free from recognized hazards that are causing or are likely to cause death or serious physical harm.”¹³⁵

OSHA released guidance about COVID-19 in March 2020.¹³⁶ The guidance was not legally binding and only provided recommendations for employers.¹³⁷ The guidance was conservative to the extent that some recommended safety practices, such as surface disinfection, were later found not to help with COVID-19 prevention.¹³⁸

OSHA advised employers to emphasize basic infection prevention measures to their workforce.¹³⁹ This included instruction on proper hand washing, supplying hand sanitizer, encouragement of symptomatic employees to stay home, instruction on proper “respiratory etiquette, including covering coughs and sneezes,” discouragement of sharing

¹³⁴ *All About OSHA*, OCCUPATIONAL SAFETY AND HEALTH ADMIN., U.S. DEPT. OF LAB. (2020), https://www.osha.gov/sites/default/files/publications/all_about_OSHA.pdf.

¹³⁵ OSH Act of 1970, Pub. L. No. 91-596, § 5, 84 Stat. 1590 (1970), <https://www.osha.gov/laws-regs/oshact/completeoshact>.

¹³⁶ *Guidance on Preparing Workplaces for COVID-19*, OCCUPATIONAL SAFETY AND HEALTH ADMIN., U.S. DEPT. OF LAB. (Mar. 2020), <https://www.osha.gov/sites/default/files/publications/OSHA3990.pdf>.

¹³⁷ *See id.*

¹³⁸ *See* Virginia Langmaid, *Disinfecting Surfaces to Prevent Covid Often All for Show, CDC Advises*, CNN (Apr. 20, 2021), <https://www.cnn.com/2021/04/19/health/cdc-covid-guidelines-cleaning/index.html> (“The CDC determined that the risk of surface transmission is low, and secondary to the primary routes of virus transmission through direct contact droplets and aerosols.”).

¹³⁹ OCCUPATIONAL SAFETY AND HEALTH ADMIN., U.S. DEPT. OF LAB., *supra* note 136, at 8.

surfaces and equipment, and implementing regular cleaning and disinfecting practices.¹⁴⁰ The guidance also suggested that employers begin to develop procedures for the identification and isolation of symptomatic workers, and to develop and communicate workplace flexibilities and protections for employees who do become sick.¹⁴¹ OSHA advised employers to take certain engineering-related actions, administrative controls, safe work practices, and personal protective equipment (“PPE”) related policies to mitigate the spread of the virus in the workplace.¹⁴² Engineering-related actions included installing high-efficiency air filters, increasing ventilation, and installing physical barriers.¹⁴³ Administrative controls included encouraging sick workers to stay at home, replacing in-person meetings with virtual ones, adjusting shifts to reduce the number of employees in the workspace and to facilitate social distancing, discontinuing nonessential travel, and providing training on COVID-19, including how to mitigate the spread of the virus and how to properly use PPE.¹⁴⁴ Safe work practices included administrative controls that implemented “procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to a hazard.”¹⁴⁵ At the time the guidance was released, OSHA believed “PPE may also be needed to prevent certain exposures,” and indicated that employers were obligated to provide PPE if deemed necessary.¹⁴⁶ OSHA noted that gloves, face shields, face masks, and other PPE might be appropriate in some situations.¹⁴⁷

On April 8, 2020, OSHA reminded employers of the illegality of retaliating against workers who report unsafe working conditions related to COVID-19.¹⁴⁸ An employer cannot terminate or demote a whistleblower, deny overtime or promotion to a whistleblower, or reduce pay or hours to a whistleblower.¹⁴⁹

¹⁴⁰ *Id.* at 8-9.

¹⁴¹ *Id.* at 9-10.

¹⁴² *Id.* at 12.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 13.

¹⁴⁵ OCCUPATIONAL SAFETY AND HEALTH ADMIN., U.S. DEPT. OF LAB., *supra* note 136, at 14 (including providing resources to promote personal hygiene practices, requiring regular hand washing or disinfecting, and appropriate signage regarding hand washing).

¹⁴⁶ *Id.* at 14-15.

¹⁴⁷ *Id.*

¹⁴⁸ *U.S. Department of Labor Reminds Employers That They Cannot Retaliate Against Workers Reporting Unsafe Conditions During Coronavirus Pandemic*, U.S. DEPT. OF LAB. (Apr. 8, 2020), <https://www.osha.gov/news/newsreleases/national/04082020>.

¹⁴⁹ *Id.*

b. CDC Guidelines

The Centers for Disease Control (“CDC”) issued Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19) in late February 2020.¹⁵⁰ The CDC recommended that employers actively encourage sick employees to stay home; emphasize proper respiratory etiquette and hygiene, including hand washing or sanitizing; and perform routine environmental cleaning, including sanitizing frequently touched surfaces and providing disposable wipes to employees.¹⁵¹ Additionally, the CDC advised employers to create an infectious disease outbreak response plan that was tailored to its workplace.¹⁵²

As the pandemic progressed, the CDC provided guidance for employers on its website.¹⁵³ The CDC encouraged employers to develop flexible, non-punitive paid sick leave to prevent and reduce community transmission of the virus among employees.¹⁵⁴ Additionally, the CDC suggested that employers should conduct daily health checks of employees before they enter the workplace.¹⁵⁵ These screenings could include virtual or in person symptom screenings and in-person temperature screenings.¹⁵⁶ Along with daily health checks, the CDC also recommended that employers consider incorporating COVID-19 testing.¹⁵⁷ Moreover, the CDC advised that, in line with OSHA standards, employers conduct an assessment to identify any workplace hazards and to determine what controls or PPE are needed.¹⁵⁸ Like the OSHA guidance, the CDC suggested that employers educate employees on its COVID-19 policies and how they can reduce their risk of infection.¹⁵⁹ Public transportation was deemed unideal, and the CDC noted that employers should suggest that employees avoid public transit if at all possible.¹⁶⁰ Finally, the CDC emphasized that employers should establish policies and practices to

¹⁵⁰ See *Interim Guidance for Businesses and Employers to Plan and Respond to 2019 Coronavirus Disease 2019 (COVID-19), February 2020*, CTR. FOR DISEASE CONTROL AND PREVENTION (Feb. 26, 2020), <https://stacks.cdc.gov/view/cdc/85488>.

¹⁵¹ *Id.* at 2.

¹⁵² *Id.* at 4.

¹⁵³ See *Guidance for Businesses & Employers: Plan, Prepare and Respond to Coronavirus Disease 2019*, CTR. FOR DISEASE CONTROL AND PREVENTION (updated Mar. 8, 2021), https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html#anchor_1609682970029.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ CTR. FOR DISEASE CONTROL AND PREVENTION, *supra* note 153.

¹⁶⁰ *Id.*

facilitate social distancing, including: instituting flexible work hours/staggered shifts; modifying the workspace to increase the physical distance between employees; using visual cues to indicate where to stand; postponing of in-person meetings; limiting access to common areas; and adjusting business practices to facilitate limited contact with customers.¹⁶¹

2. Companies Surveyed That Were Consistent with OSHA/CDC Guidelines

Apple was consistent with OSHA/CDC guidance. Team members required to be on site, even as early as March 2020, were instructed to follow agency guidance and maximize social distancing.¹⁶² “Extensive, deep cleaning” was already being performed at all sites that remained open, and those offices also began to utilize health screenings and temperature checks.¹⁶³ In its SEC 2021 Form 10-K, Apple outlined additional actions the company had taken to protect employees.¹⁶⁴ The company required employees to undergo general COVID training and provided information and resources to employees working in person.¹⁶⁵ Apple also facilitated testing for in-person employees and provided them with face masks and other PPE.¹⁶⁶ Apple actually manufactured its own masks to avoid placing a strain on the supply chain.¹⁶⁷ Additionally, Apple provided “special sick leave” for employees with COVID symptoms.¹⁶⁸ In stores, Apple conducted deep cleaning regularly and required all employees to wear face masks, social distance, and undergo temperature checks.¹⁶⁹ In factories, the company altered floor plans to maximize social distancing between employees.¹⁷⁰ Managers also implemented flexible working hours and staggered shifts to reduce the amount of people in a workspace at any given time.¹⁷¹

¹⁶¹ *Id.*

¹⁶² Cook, *supra* note 48.

¹⁶³ *Id.*

¹⁶⁴ See Apple Inc., Annual Rep., *supra* note 118, at 4.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Envtl. Soc. Governance Rep.*, APPLE, 21 (2021), https://s2.q4cdn.com/470004039/files/doc_downloads/2021/08/2021_Apple_ESG_Report.pdf.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Supplier Responsibility: 2020 Progress Report*, APPLE, 3 (2021), https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2020_Progress_Report.pdf.

¹⁷¹ *Id.*

Similarly, Microsoft complied with OSHA/CDC guidance as it emphasized a hybrid workplace for employees.¹⁷² Employees who came into the office were required to practice social distancing, don face coverings, submit to daily health screenings, and report attendance.¹⁷³ Microsoft provided all employees with masks and disinfectant to use on site.¹⁷⁴ To further support social distancing between employees, Microsoft limited capacity in common areas like conference rooms and in its private transportation services and installed signage throughout all buildings regarding proper social distancing practices.¹⁷⁵

My research yielded limited data as to what safety measures Facebook rolled out in its offices for employees returning to work. For employees who wished to return to the office on a limited basis, social distancing was required, and employees were required to wear a mask at all times.¹⁷⁶ At some office sites, employees were required to submit to weekly testing.¹⁷⁷ Additionally, traditional perks offered in the Facebook offices were temporarily suspended as workers returned to campus.¹⁷⁸

Google outlined its safety protocol for in-office employees in a company blog post.¹⁷⁹ A “limited proportion” of Google employees, temporary staff, and vendors worked in person during the early days of the pandemic.¹⁸⁰ To accommodate these employees, Google adjusted shifts to better facilitate social distancing.¹⁸¹ Google changed the amount of time in between shifts as well as the number of people on a given shift.¹⁸² Additionally, Google enhanced cleaning and sanitation actions at offices.¹⁸³ Temperature checks were implemented in some locations.¹⁸⁴

¹⁷² Kurt DelBene, *The Philosophy and Practice of Our Hybrid Workplace*, OFFICIAL MICROSOFT BLOG (Mar. 22, 2021), <https://blogs.microsoft.com/blog/2021/03/22/the-philosophy-and-practice-of-our-hybrid-workplace/>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Annie Palmer, *Facebook to Reopen its Bay Area Offices for Some Employees in May*, CNBC (Mar. 26, 2021), <https://www.cnbc.com/2021/03/26/facebook-to-reopen-its-bay-area-offices-for-some-employees-in-may.html>. See also Allison Levitsky, *Facebook to Reopen Offices to 10% of Bay Area Employees Starting in May*, BIZWOMEN (Mar. 29, 2021), <https://www.bizjournals.com/bizwomen/news/latest-news/2021/03/facebook-re-opening-office-plan-bay-area-may.html?page=all>.

¹⁷⁷ *Id.*

¹⁷⁸ Levitsky, *supra* note 176.

¹⁷⁹ *Actions to Reduce the Need for People to Come into Our Offices*, *supra* note 49.

¹⁸⁰ *Id.* (finding those employees were engaged in critical support work for the company).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

Nvidia disclosed that for the labs and offices that were required to remain open during the pandemic, several health and safety protocols were adopted.¹⁸⁵ Workspaces were frequently disinfected.¹⁸⁶ Employees also submitted to temperature checks and were required to follow social distancing guidelines.¹⁸⁷ Nvidia emphasized the labs and offices that were open implemented strict access control.¹⁸⁸ Only essential workers could enter Nvidia facilities.¹⁸⁹

Frontline workers were included in UnitedHealth Groups' workforce.¹⁹⁰ UnitedHealth Group employs over 120 thousand doctors, nurses, medical assistants, social workers, pharmacists, and other health care workers.¹⁹¹ Understanding that many of its employees were at higher risk of contracting COVID-19, UHG provided paid time off for all COVID-related illnesses.¹⁹² Employees were paid the same rate or salary for their regularly scheduled hours.¹⁹³

JPMorgan employees who were required to continue working onsite received an opportunity to cash in on a special payment of up to one-thousand dollars to help meet challenges related to issues like childcare and transportation.¹⁹⁴ Furthermore, the bank provided extended leave for employees considered high-risk.¹⁹⁵ JPMorgan also staggered employee shifts and altered seating arrangements in order to better facilitate social distancing guidelines.¹⁹⁶ Nightly and daily cleaning enhancements were enacted, too.¹⁹⁷ In its 2021 Annual Report, JPMorgan indicated that it would transition to a more "open seating arrangement," where digital tools will assist in social distancing and seating arrangements in offices.¹⁹⁸

¹⁸⁵ 2021 NVIDIA Corporate Soc. Responsibility Rep., *supra* note 53, at 14.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 36.

¹⁸⁹ *Id.*

¹⁹⁰ *UnitedHealth Group's Diverse Team Responds to COVID-19*, UNITEDHEALTH GROUP (Jul. 15, 2020), <https://www.unitedhealthgroup.com/newsroom/posts/2020-7-15-uhg-diverse-team-response-covid-19.html>.

¹⁹¹ *Id.*

¹⁹² *TeamUnited News*, *supra* note 18.

¹⁹³ *Id.*

¹⁹⁴ *How We're Supporting Our Employees*, JPMORGAN CHASE & CO., <https://www.jpmorganchase.com/impact/covid19/employees> (last visited Feb. 19, 2023) (applying only to employees who make less than \$60 thousand a year).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ 2021 Annual Report, JPMORGAN CHASE & CO. (2021), 43 <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/annualreport-2021.pdf>.

Bank of America disclosed the public health policies it implemented in a factsheet.¹⁹⁹ The bank shared that it conducted “enhanced cleanings,” ensured that employees are properly socially distancing at all times, provided masks, gloves, and hand sanitizer, and installed barriers and dividers to protect in-person employees.²⁰⁰ Bank of America explicitly noted that its actions were aligned with CDC guidance.²⁰¹ The bank centralized employee resources on a dedicated page on its internal company intranet.²⁰²

Johnson & Johnson instituted “a variety of workplace enhancements for one-third of [its] global 136,000+ employees who, as essential workers, continued to work at Johnson & Johnson sites and facilities . . . throughout the pandemic.”²⁰³ One of J&J’s key priorities was keeping its employees informed.²⁰⁴ It established communication channels so that employees could not only stay up to date about the COVID-19 situation in their communities, but also so that they could ask questions and receive responses quickly.²⁰⁵ J&J also established a 24/7 COVID-19 hotline for employees.²⁰⁶ For employees working onsite, the following safety measures were instated: social distancing of workspaces; enhanced cleaning practices; mandatory masking; visitor restrictions; physical barriers; and temperature screenings and health questionnaires.²⁰⁷ J&J also manufactured hand sanitizer for essential employees.²⁰⁸ In regards to testing, employees received home diagnostic tests at no charge.²⁰⁹ For employees unable to work remotely, J&J provided nine weeks of base salary and benefits.²¹⁰ For on-site employees, tens of thousands of onsite employees received a one-time “Onsite Superhero award,” which consisted of a \$1,000 bonus and one additional working week of PTO.²¹¹

Home Depot was an essential business and remained open during the pandemic. Home Depot outlined its in-person health and safety protocols

¹⁹⁹ See *Coronavirus Factsheet*, BANK OF AM., https://www.bankofamerica.com/content/documents/employees/Coronavirus_Factsheet.pdf (last visited Feb. 19, 2023).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *2020 Health for Humanity Report: Protecting Employees*, JOHNSON & JOHNSON, <https://healthforhumanityreport.jnj.com/2020-health-for-humanity-report-pdf> (last visited Feb. 19, 2023).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ JOHNSON & JOHNSON, *supra* note 203 at 26.

²¹⁰ *Id.*

²¹¹ *Id.*

thoroughly. Stores were closed early to allow for deep sanitation and restocking.²¹² Home Depot even noted that it followed “guidance from the Centers for Disease Control and Prevention” in increasing the “frequency of cleaning and general hygiene maintenance in . . . stores.”²¹³ The number of customers allowed in retail locations at a given time was limited to facilitate social distancing.²¹⁴ Plexiglass shields were installed at checkout kiosks.²¹⁵ Employees were required to submit to a health check at the start of each shift.²¹⁶ Signage displaying proper handwashing techniques and other health information was posted in stores.²¹⁷ The company also provided all associates, contractors, and vendors with masks and required them to wear them in stores, distribution centers, offices, and customer homes and businesses, regardless of vaccination status.²¹⁸ To support essential, frontline associates, the home improvement store introduced “permanent compensation enhancements,” provided paid time off for associates infected with COVID-19, relaxed its attendance policies, and even connected employees to a medical professional who was able to answer vaccination-related questions.²¹⁹

P&G implemented a number of health protocols to protect team members working in person and noted that it “endeavored to follow actions recommended by governments and health authorities to protect . . . employees.”²²⁰ In a blog post, the company indicated that it rolled out deep cleaning of work areas, temperature scans, and shift rotations.²²¹ Furthermore, the company required employees to wear masks and maintain proper social distancing from one another.²²² P&G also amended a number of employee benefit programs to support both in-person and remote workers.²²³ The company offered paid time off to employees who were quarantined or infected with COVID-19.²²⁴ For those infected, P&G covered the costs of virtual medical appointments and for COVID-19

²¹² *COVID-19 Update: How Home Depot Is Responding*, THE HOME DEPOT (Aug. 6, 2021), <https://corporate.homedepot.com/newsroom/covid-19-update-how-home-depot-preparing-and-responding>.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ THE HOME DEPOT, *supra* note 212.

²¹⁹ *Id.*

²²⁰ The Proctor & Gamble Co., Annual Rep. (Form 10-K/A) (Aug. 7, 2020).

²²¹ *Stepping Up for Our People During COVID-19*, PROCTOR & GAMBLE (May 12, 2020), <https://us.pg.com/blogs/stepping-up-during-covid19/>.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

testing and treatment.²²⁵ For employees who were unable to work due to Covid, the company offered pay continuity.²²⁶

3. Potential Compliance Issues with OSHA/CDC Guidelines

Not only did Amazon maintain proper compliance with suggested guidance from the CDC and OSHA, but it also implemented advanced technology to protect its employees.

Amazon made more than 150 major changes to its policies to ensure worker safety in light of COVID-19.²²⁷ It enhanced its cleaning regimen and used disinfectant spray that was commonly used by hospitals and airlines.²²⁸ Amazon required employees to clean high-touch surfaces at least eight times per shift.²²⁹ It implemented staggered shift times, restructured work stations and common areas, and installed floor tape and distance markers to be more conducive to social distancing.²³⁰ Plexiglass pods were developed so that employees could have private conversations with Human Resources.²³¹ Amazon provided over 100 million face masks and 34 million pairs of gloves to fulfillment centers and operations sites.²³² Temperature checks and thermal screenings were conducted on every employee before they entered the workplace.²³³ By April 2020, temperature checks were implemented in every Amazon site.²³⁴ New hires received education on internal COVID-19 protocols with the “Working at Amazon During COVID-19” virtual orientation segment.²³⁵ Amazon sent out many health and hygiene reminders to employees on a variety of platforms, including through texts, newsletters, app notifications,

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Heather MacDougall, *Every Day Is Day One for Health and Safety Training*, AMAZON (Aug. 26, 2020), <https://www.aboutamazon.com/news/operations/every-day-is-day-one-for-health-and-safety-training>.

²²⁸ *How We're Taking Care of Employees During Covid-19*, AMAZON, <https://www.aboutamazon.com/news/company-news/how-were-taking-care-of-employees-during-covid-19> (last updated Jul. 16, 2020).

²²⁹ MacDougall, *supra* note 227.

²³⁰ *Id.*

²³¹ Ofori Agboka, *Amazon HR Leader Gives a Look Inside a Detroit-area Fulfillment Center*, AMAZON (Sept. 21, 2020), <https://www.aboutamazon.com/news/operations/amazon-hr-leader-gives-a-look-inside-a-detroit-area-fulfillment-center>.

²³² MacDougall, *supra* note 227; *Amazon Invested \$11.5 Billion in 2020 to Keep Employees Safe and Get Products to Customers*, AMAZON (May 19, 2020), <https://www.aboutamazon.com/news/operations/amazon-will-invest-4-billion-to-keep-employees-safe-and-get-people-what-they-need>.

²³³ MacDougall, *supra* note 227.

²³⁴ *How We're Taking Care of Employees During COVID-19*, *supra* note 230.

²³⁵ MacDougall, *supra* note 227.

workstation alerts, e-learning, and physical posters.²³⁶ Employees were also encouraged to adopt good hygiene practices and were allowed to log out to wash their hands at any time without it impacting their performance goals.²³⁷

In terms of paid and unpaid time off, Amazon initially only provided up to two weeks of pay to employees who were diagnosed with COVID-19 or who were in quarantine.²³⁸ Shortly thereafter, Amazon relaxed its policy and allowed unlimited unpaid time off for all hourly associates.²³⁹

Amazon went beyond what the CDC and OSHA suggested employers implement to protect employees. For instance, Amazon developed a lab to process its employee's tests.²⁴⁰ By October 2020, the company was testing more than seven-hundred employees each hour.²⁴¹ Amazon also developed "Distance Assistance" technology, where monitors show red or green circles around employees on the floor indicating whether those employees complying with social distancing rules.²⁴² "Social Distancing Ambassadors" who monitored social distancing compliance were employed as well.²⁴³

Although Amazon officially publicized the policies and protocols outlined above, some employees were dissatisfied with the conditions in the workplace. In March and April 2020, Amazon warehouse workers in New York went on strike.²⁴⁴ They asked for increased PPE and hazard pay and demanded deep cleaning after multiple employees tested positive for COVID-19.²⁴⁵ The lead organizer of the strike was terminated.²⁴⁶ Amazon claimed that he had violated physical distancing guidelines and had been repeatedly asked to quarantine after being in close contact with someone infected with COVID-19.²⁴⁷ Amazon also indicated that they had implemented a six-foot distancing policy in its warehouse, which was even

²³⁶ *Id.*

²³⁷ *Id.*; Amazon Staff, *How We're Taking Care of Employees During COVID-19*, AMAZON (Jul. 16, 2020), <https://www.aboutamazon.com/news/company-news/how-were-taking-care-of-employees-during-covid-19>.

²³⁸ Palmer, *supra* note 56.

²³⁹ Annie Palmer, *Amazon Won't Dock Warehouse Workers for Missing Shifts During Coronavirus Crisis*, CNBC (Mar. 8, 2020), <https://www.cnbc.com/2020/03/09/amazon-adjusts-attendance-policy-for-warehouse-workers-amid-coronavirus-outbreak.html>.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² MacDougall, *supra* note 227.

²⁴³ *Id.*

²⁴⁴ Kenya Evelyn, *Amazon Workers Walk Out Over Lack of Protective Gear Amid Coronavirus*, THE GUARDIAN (Mar. 30, 2020, 9:47 PM), <https://www.theguardian.com/technology/2020/mar/30/amazon-workers-strike-coronavirus>.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

more protective than the CDC's suggested three feet.²⁴⁸ Later, Amazon released a letter to the public in light of the strike.²⁴⁹ Amazon claimed the protests were isolated and only represented the feelings of a small portion of its employees.²⁵⁰

Tesla was another company that appeared to have not only complied with OSHA and CDC guidelines, but also surpassed the guidance. Tesla claims that it had begun to develop its COVID response plan in December 2019.²⁵¹ The company created a pandemic management team at the leadership level, which in turn developed a "Tesla Playbook."²⁵² This Tesla Playbook outlined a six-step Return/Resume Operations Plan, which included: (1) prepare the building; (2) prepare the workforce; (3) control access; (4) create social distancing plans; (5) reduce touchpoints and increase cleaning; and (6) verify.²⁵³

Tesla's CEO Elon Musk initially kept manufacturing factories open in March 2020, but then city and county officials intervened and forced the company to wind down to "minimum basic operations."²⁵⁴ In April 2020, Musk publicly expressed displeasure with the stay-at-home orders.²⁵⁵ In May 2020, Musk defiantly reopened its California manufacturing factory in violation of local ordinances.²⁵⁶ The county allowed Tesla to fully reopen later that same month.²⁵⁷

When Tesla reopened its facilities in May 2020, the company had implemented a number of safety protocols for employees.²⁵⁸ Prior to returning to the factory, all employees were required to complete a virtual training session.²⁵⁹ Each employee had a "responsibility" to maintain safe working conditions in the facility by following health and safety rules and practices and reporting unsafe practices or conditions.²⁶⁰ Tesla increased

²⁴⁸ *Id.*

²⁴⁹ Later, Amazon released a letter to the public in light of the strike. Amazon Staff, *Response to Recent Events*, AMAZON (Apr. 2, 2020), <https://www.aboutamazon.com/news/company-news/response-to-recent-events>.

²⁵⁰ *Id.*

²⁵¹ TESLA, *supra* note 109, at 56.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ Faiz Siddiqui, *Tesla Gave Workers Permission to Stay Home Rather than Risk Getting COVID-19, Then It Sent Termination Notices*, WASH. POST (Jun. 25, 2020), <https://www.washingtonpost.com/technology/2020/06/25/tesla-plant-firings/>.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*; The Tesla Team, *Getting Back to Work*, TESLA (May 9, 2020), <https://www.tesla.com/blog/getting-back-work>.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Return to Work Playbook*, TESLA 3 (2020), https://www.tesla.com/sites/default/files/blog_attachments/Tesla-Return-to-Work-Playbook.pdf.

the frequency of cleaning of workspaces, common areas, buses and vans, and also provided disinfectant for employees to use themselves at their work areas.²⁶¹ The company added barriers and floor markings where needed in the workspaces and in common areas to facilitate social distancing.²⁶² Shifts and meal breaks were staggered in order to limit the amount of workers in one space at a given time.²⁶³ Temperature checks and thermal scans were utilized, and all employees were required to complete a self-health assessment before each shift.²⁶⁴ Employees were told to limit public transit use if they were able to.²⁶⁵ Tesla facilities were outfitted with “maximum protection” air filters and increased “fresh air intake.”²⁶⁶

Tesla indicated in its 2020 Impact Report that it had “fewer than 40 workplace transmission cases of COVID-19 and [its] employee positivity rate was less than half the community rate.”²⁶⁷ Tesla also claimed that its track-and-trace system was “99.9% effective” at stopping the spread of the virus.²⁶⁸ However, county-level data indicated otherwise.²⁶⁹ The county data indicated that between May and December 2020, there were about 450 total reported cases among workers at the California production plant.²⁷⁰ Employees also spoke to the Washington Post and expressed their concerns that Tesla was failing to enforce social distancing guidelines, proper mask wearing, and sanitize machinery.²⁷¹ The employees expressed concern that the leadership did not disclose infections within the company to employees.²⁷² Shortly thereafter, Tesla released a blog post after termination rumors began to circulate.²⁷³ In it, the company indicated that the reports that two employees were terminated

²⁶¹ *Id.* at 7.

²⁶² *Id.* at 14.

²⁶³ *Id.*

²⁶⁴ *Id.* at 13.

²⁶⁵ *Id.* at 7.

²⁶⁶ TESLA, *supra* note 260, at 9.

²⁶⁷ TESLA INC., *supra* note 109, at 86.

²⁶⁸ *Id.* at 56.

²⁶⁹ See Faiz Siddiqui, *Hundreds of Covid Cases Reported at Tesla Plant Following Musk's Defiant Reopening, County Data Shows*, WASH. POST (Mar. 12, 2021), <https://www.washingtonpost.com/technology/2021/03/12/hundreds-covid-cases-reported-tesla-plant-following-musks-defiant-reopening-county-data-shows/>.

²⁷⁰ *Id.*

²⁷¹ Siddiqui, *supra* note 254.

²⁷² *Id.*

²⁷³ The Tesla Team, *Health and Safety at Tesla*, TESLA (Jul. 2, 2020), <https://www.tesla.com/blog/health-and-safety-tesla>.

for their disagreement with company health practices were “fundamentally untrue.”²⁷⁴

My research did not yield much information regarding Visa’s and Pfizer’s health and safety measures for in-person employees. Therefore, this Article cannot make any conclusions regarding either company’s compliance with CDC and/or OSHA guidance.

C. *Vaccination Requirements and Incentives*

Figure 3

Company Name	Vaccine Mandate?	Vaccine Incentive Program?
Apple	No	No
Microsoft	Yes	No
Amazon	No	Yes
Tesla	No	Yes
Google	No*	No
Meta	Yes	No
NVIDIA	Unclear	No
UnitedHealth Group	Yes	No
JPMorgan	No*	No
Johnson & Johnson	Yes	No
Home Depot	No	No

²⁷⁴ *Id.* Tesla provides 14-day COVID sick leave pay for quarantined or infected employees. Those who live with at-risk family members received an additional two weeks of paid leave. *Id.* (“Tesla’s protective measures meet and exceed county, state and federal guidelines, and we are working diligently to enforce them.”).

Procter & Gamble	No*	No
Visa	Unclear	No
Pfizer	Yes	No
Bank of America	No	Yes

*At one point mandated vaccination, but has since rolled back the requirement

On the federal level, only Medicare and Medicaid-certified facility staff must receive a COVID-19 vaccination.²⁷⁵ The following states are requiring certain healthcare-related employees receive the COVID-19 vaccination: California, New Jersey, New York, Washington.²⁷⁶ California, New Jersey, and New York mandate “up to date vaccine status” for healthcare workers.²⁷⁷

In terms of private employers, none of the states surveyed have imposed a vaccine mandate on private employers.²⁷⁸ Georgia has banned vaccine mandates for state employees, but the ban does not include private sector employers.²⁷⁹ Only New York City has imposed a vaccination requirement on private sector employers.²⁸⁰

²⁷⁵ *State Efforts to Ban or Enforce COVID-19 Mandates and Passports*, THE NAT’L ACAD. FOR ST. HEALTH POL’Y (updated Apr. 4, 2022), <https://www.nashp.org/state-lawmakers-submit-bills-to-ban-employer-vaccine-mandates/>. See also *Center for Clinical Standards and Quality/Quality, Safety & Oversight Group*, CTR. FOR MEDICARE & MEDICAID SERVS. (Dec. 28, 2021). The Supreme Court upheld the vaccine requirement for Medicare and Medicaid facility staff to stand on January 13, 2022. See *CMS Releases Guidance on COVID-19 Vaccinations for Health Care Workers*, THE NAT’L ACAD. FOR ST. HEALTH POL’Y, <https://www.nashp.org/cms-releases-guidance-on-covid-19-vaccinations-for-health-care-workers/> (last visited Feb. 19, 2023).

²⁷⁶ *Vaccine Mandates*, FISHER PHILLIPS, <https://www.fisherphillips.com/innovations-center/COVID-19-Private-Employer-Maps-Vaccine-Mandates.html> (last visited Feb. 19, 2023).

²⁷⁷ See Eram Abbasi & Dee Pekruhn, *Vaccine Mandates by State: Who Is, Who Isn’t, and How?*, LeadingAge (updated Feb. 9, 2022), <https://leadingage.org/workforce/vaccine-mandates-state-who-who-isnt-and-how/> (“Up to date” vaccination status means that employees must receive boosters).

²⁷⁸ *State Efforts to Ban or Enforce COVID-19 Mandates and Passports*, *supra* note 278.

²⁷⁹ *Id.* See also Ga. Exec. Order “Prohibition of COVID-19 Vaccine Passports” (May 25, 2021).

²⁸⁰ *Order of the Commissioner of Health and Mental Hygiene to Require COVID-19 Vaccination in the Workplace*, NYC HEALTH (Dec. 13, 2021), <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-workplace-requirement.pdf>. See also *New York City to Impose Covid Vaccine Mandate on Private Sector Employers*, BUS. STANDARD (Dec. 7, 2021), <https://www.business-standard.com/article/international/new->

Initially, OSHA had issued a vaccination and testing emergency temporary standard (“ETS”) on November 5, 2021.²⁸¹ This standard would have required companies of over one-hundred employees to mandate vaccinations for employees or have the unvaccinated submit to regular COVID-19 testing and wear a mask in the workplace.²⁸² The Supreme Court blocked the ETS while appeals are pending in lower courts,²⁸³ and, as a result, OSHA withdrew its ETS in January 2022.²⁸⁴ Despite the withdrawal, OSHA indicated that the ETS will still exist, just in the form of a proposed rule,²⁸⁵ and that it is editing its ETS and will finalize a Vaccination and Testing rule.²⁸⁶

The CDC provides resources for employers regarding vaccination programs and requirements for employees.²⁸⁷ It encouraged employers to consider facilitating on-site vaccination programs.²⁸⁸ Furthermore, the CDC recommends that employers “build confidence in COVID-19 vaccines” by communicating transparently to all employees, developing a communication plan that shares the benefits of vaccination and regular updates regarding the vaccines, hosting expert-led Q&A sessions, and celebrating the decision to get vaccinated.²⁸⁹ The CDC also suggested that gift incentives might improve vaccination rates within the workplace.²⁹⁰

york-city-to-impose-covid-vaccine-mandate-on-private-sector-employers-121120700020_1.html.

²⁸¹ COVID-19 Vaccination and Testing; Emergency Temporary Standard 86 Fed. Reg. 61402, 61402 (Nov. 5, 2021), <https://www.osha.gov/sites/default/files/laws-regs/federal-register/2021-11-05.pdf>.

²⁸² *Id.*

²⁸³ *See* Nat’l Fed’n of Indep. Bus. v. DOL, OSHA, 142 S. Ct. 661 (2022).

²⁸⁴ *COVID-19 Vaccination and Testing; Emergency Temporary Standard*, DEPT. OF LAB., <https://public-inspection.federalregister.gov/2022-01532.pdf> (last visited Feb. 19, 2023).

²⁸⁵ *See* Tara Bannow, *OSHA Withdraws COVID Vaccine Mandate for Employers*, MODERN HEALTHCARE (Jan. 25, 2022), <https://www.modernhealthcare.com/policy/osha-withdraws-covid-vaccine-mandate-employers#:~:text=The%20Occupational%20Safety%20and%20Health,6%2D3%20decision%20on%20Jan.>

²⁸⁶ *Id.*

²⁸⁷ *See Workplace Vaccination Program*, CTR. FOR DISEASE CONTROL AND PREVENTION (updated Nov. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html#:~:text=The%20Occupational%20Safety%20and%20Health,before%20coming%20to%20work.>

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.* (Suggested incentives include cash bonuses, vacation days, gift cards, and free products. “Incentives can also be used to reinforce the message that high vaccine uptake is a collective effort, not just an individual one. Consideration could be given to offering incentives to all employees once the workplace vaccination rate exceeds a specific goal (e.g., 90%).”).

1. Companies that Require Proof of Vaccination

The following surveyed companies require proof of vaccination for its employees: Microsoft;²⁹¹ Meta;²⁹² UnitedHealth Group;²⁹³ Johnson & Johnson,²⁹⁴ and Pfizer.²⁹⁵ Meta is also requiring booster shots for in-person employees.²⁹⁶

Apple is not necessarily requiring vaccines, but it does require unvaccinated employees to submit to regular testing.²⁹⁷ Apple notably adjusted its definition of “fully vaccinated” to include an additional

²⁹¹ Paul Roberts, *Microsoft Reverses Course, Will Require Vaccines for Employees Who Want to Return to the Office*, THE SEATTLE TIMES (Aug. 4, 2021), <https://www.seattletimes.com/business/microsoft/microsoft-reverses-course-will-require-vaccines-for-employees-who-want-to-return-to-the-office/> (explaining all Microsoft employees, vendors, and guests must be fully vaccinated in order to enter company offices and worksites beginning in September 2021).

²⁹² Lauren Feiner, *Facebook Requiring U.S. Employees to be Vaccinated to Return to Work*, CNBC (Jul. 28, 2021, 5:00 PM), <https://www.cnbc.com/2021/07/28/facebook-requiring-us-employees-to-be-vaccinated-to-return-to-work.html> (“As our offices reopen, we will be requiring anyone coming to work at any of our US campuses to be vaccinated.”).

²⁹³ *Keeping Our Team, and Those We Serve, Safe*, UNITEDHEALTH GROUP (Oct. 5, 2021), <https://www.unitedhealthgroup.com/newsroom/posts/2021/2021-10-05-keeping-our-team-safe.html> (UHG requires the vaccine for a “significant portion” of its US-based employees. The mandate applied to employees involved in patient care, those who meet in person with customers or members, and anyone who enters UHG facilities). Those who did not comply with the mandate would be placed on unpaid leave and may be terminated. See Alan Condon, *UnitedHealth Group Staff Required to Get COVID Vaccine*, BECKER’S ASC REV. (Oct. 6, 2021), <https://www.beckersasc.com/asc-news/unitedhealth-group-asc-staff-required-to-get-covid-vaccine.html>.

²⁹⁴ Fraiser Kansteiner & Noah Higgins-Dunn, *UPDATED: Pfizer, Eli Lilly and J&J Roll Out COVID-19 Vaccination Rules as Delta Makes Case for Mandates*, FIERCE PHARMA (Aug. 16, 2021), <https://www.fiercepharma.com/pharma/novartis-pfizer-and-gilead-roll-out-covid-19-vaccination-rules-as-delta-makes-case-for> (J&J required all of its US-based employees to be fully vaccinated by Oct. 4).

²⁹⁵ Andrew Feather, *Pfizer Employees Face Overtime Cuts and Vaccine Mandate Internal Memos Show*, NEWS CHANNEL 3 (Oct. 8, 2021), <https://wwmt.com/news/local/pfizer-employees-face-overtime-pay-cuts-vaccine-mandate-internal-memos-show> (explaining that all Pfizer employees were required to be fully vaccinated by mid-November. Those who failed to receive the vaccine were subject to “disciplinary action, including termination.”).

²⁹⁶ Chip Cutter, *Facebook Owner to Mandate Covid-19 Vaccine Boosters for Office Workers, Delay Reopening*, THE WALL STREET J. (Jan. 10, 2022, 5:00 PM), <https://www.wsj.com/articles/facebook-owner-to-mandate-covid-19-vaccine-boosters-for-office-workers-delay-reopening-11641852001>.

²⁹⁷ See Jason Aten, *Apple’s Covid-19 Booster Mandate Is the Best I’ve Seen Yet*, INC. (Jan. 19, 2022), <https://www.inc.com/jason-aten/apples-covid-19-booster-mandate-is-best-ive-seen-yet.html> (explaining that Apple is not “threatening to fire its employees if they don’t get vaccinated, or don’t get a booster shot . . . Apple is avoiding the unpleasant step of taking a hard line against its own employees . . . it is creating boundaries that reinforce that its priority is to protect the health of all stakeholders.”).

booster dose.²⁹⁸ Those employees who did not receive a booster shot were no longer “fully vaccinated” and are required to undergo regular testing before they enter stores or corporate offices, just like other employees who have received no doses of a COVID-19 vaccination.²⁹⁹ Prior to the booster update, Apple asked that unvaccinated employees in corporate offices take daily tests before entering the office, and that retail workers test twice per week.³⁰⁰

Some companies at one point required COVID-19 vaccinations but have since rolled policies back. JPMorgan at one point did “strongly urge” its employees to be vaccinated.³⁰¹ The bank’s CEO Jamie Dimon suggested that unvaccinated staff working out of JPMorgan’s New York City offices could be terminated if they refused to get the vaccine.³⁰² It has since repealed its stance. Starting in early April 2022, staff coming into the office no longer needed to test for COVID-19 – regardless of vaccination status.³⁰³ Moreover, the bank ended its policy of only hiring fully-vaccinated applicants.³⁰⁴

Google was initially the first major tech company to impose a vaccine mandate, but then it changed course.³⁰⁵ Google ceased enforcement of vaccination requirements in February 2022, but the tech company did note that employees on campus would still either need to be vaccinated or have

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ See Emma Roth & Zoe Schiffer, *Apple Will Now Require Employees to Submit Proof of COVID-19 Booster Shot*, THE VERGE (Jan. 15, 2022), <https://www.theverge.com/2022/1/15/22885181/apple-vaccine-covid-19-booster-shot-employees>.

³⁰¹ Hugh Son, *JPMorgan Chase ‘Strongly’ Urges all U.S. Employees to Get Vaccinated Ahead of Office Return*, CNBC (Jun. 24, 2021), <https://www.cnbc.com/2021/06/24/jpmorgan-chase-strongly-urges-all-us-employees-to-get-vaccinated-ahead-of-office-return.html> (JPMorgan required all US workers to log their vaccination status in an online portal by June 30, 2021).

³⁰² See Stephen Jones, *JPMorgan CEO Jamie Dimon Suggests New York Staff Could Lose Their Jobs If They’re Not Vaccinated*, BUS. INSIDER (Jan. 11, 2022, 9:42 AM), <https://www.businessinsider.com/jp-morgan-jamie-dimon-suggests-unvaccinated-banking-staff-fired-nyc-2022-1> (“If you aren’t going to get vaxxed, you won’t be able to work in that office. We’re not going to pay you to not work in the office.”).

³⁰³ See Joshua Franklin & Steff Chavez, *JPMorgan Chase Loosens Mask and Covid Vaccine Rules for US Workers*, FIN. TIMES (Mar. 14, 2022), <https://www.ft.com/content/474a4b06-23a5-4b19-a7e4-bd2699e3e095>.

³⁰⁴ *Id.*

³⁰⁵ See Haley Messenger, *From Amex to Walmart, here are the Companies Mandating the Covid Vaccines for Employees*, NBC NEWS (Jan. 25, 2022), <https://www.nbcnews.com/business/business-news/amex-walmart-are-companies-mandating-covid-vaccine-employees-rcna11049>.

an exemption to enter the office.³⁰⁶ Initially, Google threatened unvaccinated employees with loss of pay and termination if they refused to get vaccinated.³⁰⁷

P&G also, at one point, mandated vaccines or weekly testing for all of its 26,000 employees in the United States.³⁰⁸ The initial mandate was announced following OSHA's ETS that would require businesses with over one-hundred employees ensure employees are either vaccinated or undergo weekly testing.³⁰⁹ Once the Supreme Court issued its ruling, P&G decided to delay its mandate.³¹⁰ Today, P&G "strongly encourage[s] vaccination," but does not mandate it for its employees.³¹¹ If employees do not opt to get vaccinated, it will "provide, pay for, and facilitate weekly testing on-site during regular working hours."³¹²

After conducting research, it was indefinite whether Nvidia or Visa have or have had a vaccine mandate in effect. During the summer of 2021, Visa was considering imposing a vaccine mandate for its employees, but it is unclear if the financial services company ever actually implemented any such policy.³¹³

Home Depot, although not mandating the vaccine, "strongly encourage[s] all associates to get the COVID-19 vaccine."³¹⁴ To allow employees to get the vaccine, Home Depot provided free resources to make it easier for associates to get the vaccine, including assistance in

³⁰⁶ See Jennifer Elias, *Google Relaxes Mandates, Opens Amenities as it Prepares for Workers to Return*, CNBC (Feb. 24, 2022, 11:53 AM), <https://www.cnbc.com/2022/02/23/googles-relaxes-mandates-opens-amenities-for-return-to-office.html>.

³⁰⁷ *Id.*

³⁰⁸ Quinlan Bentley, *P&G Releases Details on Possible Vaccine Requirement Impacting Over 26,000 U.S. Employees*, CINCINNATI ENQUIRER (updated Sept. 25, 2021, 2:53 PM), <https://www.cincinnati.com/story/news/2021/09/24/covid-19-shot-p-g-releases-details-possible-vaccine-policy/5851370001/>.

³⁰⁹ *Id.*

³¹⁰ See Jim Weiker, *Some Large Ohio Employers Pause Vaccine Requirements Pending Legal Battle Over Biden Rule*, THE COLUMBUS DISPATCH (Dec. 7, 2021, 8:42AM), <https://www.dispatch.com/story/business/2021/12/06/covid-vaccine-requirement-ohio-companies-back-off-biden-rule-challenge/8793617002/>.

³¹¹ *U.S. COVID Policy Update: Maintaining a Safe Workplace*, P&G (Nov. 9, 2021), <https://us.pg.com/blogs/us-covid-policy-update-november-2021/#:~:text=Effective%20January%202022%2C%20we%20are,to%20receive%20each%20vaccination%20dose>.

³¹² *Id.*

³¹³ See Jennifer Surane, *Visa is Weighing Vaccine Mandate Ahead of Staff Returning*, BLOOMBERG (Jul. 30, 2021, 11:34 AM), <https://www.bloomberg.com/news/articles/2021-07-30/visa-weighing-vaccine-mandate-ahead-of-staff-returning-in-fall?srnd=premium>.

³¹⁴ *Home Depot Updates Mask Policy, Urges Vaccinations for Associates*, HOME DEPOT (Aug. 2, 2021), <https://corporate.homedepot.com/newsroom/mask-policy-update-associates-urged-to-vaccinate#:~:text=Home%20Depot%20continues%20to%20strongly,live%20for%20more%20information>.

finding appointments, childcare, and transportation if necessary.³¹⁵ Bank of America is similarly not requiring employees to get vaccinated but strongly encourages it.³¹⁶

2. Vaccine Incentive Programs

Amazon, Tesla, and Bank of America do not require their employees to be vaccinated, but they all rolled out incentive programs to encourage their workforce to get shots. Vaccine incentive programs have been utilized by both private businesses and state governments to encourage individuals to get one of the COVID-19 vaccines available.³¹⁷ Incentive programs are different from policies that make the process of getting a vaccine less of a burden for the individual, such as providing transportation to vaccination appointments or paid time off for vaccination appointments.³¹⁸ These programs can include either monetary incentives or non-monetary incentives.³¹⁹ Research indicates that the utilization of incentives can correlate to increased immunization rates.³²⁰ In 2015, the CDC Community Preventative Services Taskforce evaluated the impact of reward programs on vaccination rates.³²¹ Vaccination rates increased by eight-percent when incentives were utilized.³²² Thus, “even small incentives can be effective in increasing vaccination rates.”³²³ The U.S. Equal Employment Opportunity Commission confirmed that ““federal

³¹⁵ *Id.*

³¹⁶ See Jessica Dickler, *More than Half of Employers to Require Covid Vaccines as Omicron Fears Grow*, CNBC (Dec. 1, 2021, 11:29 AM), <https://www.cnbc.com/2021/12/01/more-employers-will-make-vaccines-mandatory-as-omicron-fears-grow.html>. See also *More Information About Coronavirus Vaccinations*, BANK OF AM., <https://www.bankofamerica.com/content/documents/employees/vaccinations.pdf> (last accessed May 31, 2022).

³¹⁷ See *COVID-19 Vaccine Incentives*, NAT'L GOVERNORS ASS'N (Oct. 19, 2021), <https://www.nga.org/center/publications/covid-19-vaccine-incentives/> (this page provides a breakdown of what incentives each state is or was offering to citizens who are vaccinated against COVID-19).

³¹⁸ See Parsa Erfani & Margaret Bordeaux, *Can Vaccine Incentive Programs Increase COVID-19 Vaccine Uptake?*, HARVARD MED. SCH., BLAVATNIK INST. FOR GLOBAL HEALTH & SOC. MED., https://ghsm.hms.harvard.edu/sites/g/files/mcu871/files/assets/Programs/PublicPolicy/Vaccine%20Incentives_PGPPSC.pdf (last accessed Jun. 25, 2022).

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

EEO laws do not prevent or limit employers from offering incentives” to encourage vaccination.³²⁴

Amazon offered a forty-dollar cash reward to hourly employees who chose to get vaccinated.³²⁵ Employees were eligible to receive a forty-dollar reward for each dose received. In addition to the cash incentive, Amazon also developed the “Max Your Vax Sweepstakes.”³²⁶ When employees shared their vaccination information with the company, those employees were automatically entered to win one of eighteen big money prizes, which included especially appealing prizes like cars, vacations, and more.³²⁷ Amazon also gave any new hire who provided proof of vaccination an additional one-hundred-dollar reward.³²⁸

Tesla also utilized incentives to encourage its workforce to get vaccinated. The company established a monthly lottery for vaccinated workers that ran from October through December 2021.³²⁹ Every employee that uploaded their completed, verified vaccination card was eligible for a ten-thousand-dollar grand prize.³³⁰ The lottery also offered other smaller prizes, including over one-hundred \$50 credits employees could use at the Tesla shop.³³¹

Bank of America offered two-hundred-dollar rewards to specific employees in its Merrill Lynch Wealth Management branch who returned to the office fully vaccinated.³³² The cash reward was limited; only Merrill

³²⁴ Paige Smith, *Employers Can Offer Vaccine Incentives to Workers, EEOC Says (2)*, BLOOMBERG L. (May 28, 2021, 10:29 AM), <https://news.bloomberglaw.com/daily-labor-report/employers-can-offer-vaccine-incentives-to-workers-eeoc-says>.

³²⁵ Amazon Staff, *Amazon Offers Up to \$80 to Front-Line Employees Getting the COVID-19 Vaccine*, AMAZON (Feb. 12, 2021), <https://www.aboutamazon.com/news/company-news/amazon-offers-up-to-80-to-front-line-employees-getting-the-covid-19-vaccine> (the cash incentive was available to associates in the following departments: Operations; Customer Service; AWS Support and Data Centers; Devices Support and Data Associates; Whole Foods Markets).

³²⁶ Amazon Staff, *\$15B in COVID-19 Related Costs to Prioritize Employee Health and Safety*, AMAZON (Oct. 28, 2021), <https://www.aboutamazon.com/news/workplace/15b-in-covid-19-related-costs-to-prioritize-employee-health-and-safety>.

³²⁷ *Id. See, e.g.*, Fred Lambert, *Tesla Launches a \$10,000 Monthly Lottery to Encourage Workers to Get COVID-19 Vaccines*, ELECTREK (Sept. 28, 2021, 12:39 PM), <https://electrek.co/2021/09/28/tesla-monthly-lottery-encourage-workers-get-covid-vaccines/>.

³²⁸ Amazon Staff, *Amazon Hiring 75,000 Employees Across Fulfillment and Transportation*, AMAZON (May 13, 2021) <https://www.aboutamazon.com/news/operations/amazon-hiring-75-000-employees-across-fulfillment-and-transportation>.

³²⁹ Lambert, *supra* note 327.

³³⁰ *Id.*

³³¹ *Id.*

³³² Katherine Doherty & Bloomberg, *Bank of America is Giving \$200 to Merrill Lynch Workers Who Have Been Vaccinated*, FORTUNE (Oct. 6, 2021, 2:08 PM), <https://fortune.com/2021/10/06/bank-of-america-is-giving-200-to-merrill-lynch-fully-vaccinated-workers/>.

Lynch client associates, administrative support staff, and operations staff were eligible for the cash incentive.³³³ Bank of America also donated one-hundred-dollars toward local food banks and hunger relief organizations for each employee who provided proof of a COVID-19 booster, but some experts noted that a ““direct financial incentive to the employee”” would probably have been a more powerful incentive for employees to get boosted.³³⁴

Vaccine incentives provided a way around vaccine mandates for these three companies. Amazon and Tesla would both benefit from increased vaccination rates within their workforce given that a large portion of their employees are in warehouses or manufacturing plants. If even one employee had Covid and went to work, the virus could spread rapidly, and operations could be severely disrupted in a warehouse or on the manufacturing floor. Bank of America is similarly interested in reducing the spread of the virus among its corporate offices and branch locations. However, vaccine mandates can be polarizing.³³⁵ To further complicate the divide, employees tend to take one of two directly conflicting standpoints: those who strongly oppose their employer requiring the vaccine, and those who refuse to return to the workplace if others are not required to be vaccinated.³³⁶ Even though most employees support employer vaccine mandates, these numbers differ greatly across demographics.³³⁷ Further, these employers likely wanted to avoid the consequences of potential protests, strikes, and resignations launched by angry employees who are vehemently opposed to a vaccination mandate.³³⁸ A vaccine mandate could not only infuriate employees, but it

³³³ *Id.*

³³⁴ Matt Egan, *First on CNN: Bank of America's Plan to Get Workers Boosted: \$100 Donations for Hunger Relief*, CNN BUS. (Jan. 5, 2022), <https://www.cnn.com/2022/01/05/business/covid-booster-bank-of-america/index.html> (Dr. Leana Wen, CNN medial analyst, questioned if a donation was the most effective mechanism to increase vaccination rates among employees).

³³⁵ Steve Nyce & Jeff Levin-Scherz, *Employers Face a Polarized Workforce as They Address COVID-19 Risks*, WILLIS TOWERS WATSON (Mar. 22, 2022), <https://www.wtwco.com/en-US/Insights/2022/03/employers-face-a-polarized-workforce-as-they-address-covid-19-risks>.

³³⁶ Holly Ellyatt, *As Many Return to the Office, Tensions Flare Between the “Vaxxed and Unvaxxed”*, CNBC (updated Sept. 14, 2021), <https://www.cnbc.com/2021/09/13/office-tensions-rise-between-the-vaccinated-and-unvaccinated-.html>.

³³⁷ Nyce, *supra* note 335 (“Men, those with high incomes, those in self-reported good health, the vaccinated and those already subject to vaccine mandates are most likely to support vaccine mandates.”).

³³⁸ *See, e.g.*, Eric M. Johnson, *Boeing Workers Stage Protest Near Seattle Over U.S. Vaccine Mandate*, REUTERS (Oct. 16, 2021, 6:42 AM), <https://www.reuters.com/world/us/boeing-workers-stage-protest-over-vaccine-mandate-2021-10-15/> (around 200 Boeing employees in Seattle protested their employer’s vaccine requirement); Ally J. Levine et al.,

could also drive some consumers away from engaging with a particular business.³³⁹ As a result, it is no surprise that these companies chose to embrace vaccine incentives over mandates.

III. REFLECTION AND CONCLUSION

The pandemic has been “one of the biggest global events—and challenges—of our lifetime.”³⁴⁰ It exposed massive flaws in American public health infrastructure.³⁴¹ Simply put, the nation was “woefully unprepared” to manage a public health emergency of COVID’s magnitude.³⁴² As a result, the economy suffered.³⁴³

“For real change to happen in public health, the business community needs to be a driving force.”³⁴⁴ The surveyed companies took and continue to take many steps to improve employee health and safety.³⁴⁵ Some hired health experts to aid in the development of internal COVID policies. Most complied with CDC and OSHA guidance for in-person operations. They all shifted to remote work models where possible. They all either required or encouraged vaccination.

Early in the pandemic, the Edmond J. Safra Center for Ethics at Harvard University noted that, “[g]iven the far greater and crucially broader trust levels in the business community as a whole, and the current

Inside the Anti-Vaccine Mandate Protests Disrupting Trade, REUTERS GRAPHICS (Feb. 11, 2022), <https://graphics.reuters.com/HEALTH-CORONAVIRUS/CANADA-TRUCKING/egvbkklwompq/> (Truckers infuriated by vaccine mandates in Canada and the United States organized the “Freedom Convoy” of trucks that blocked bridges crossing the border between the two countries.).

³³⁹ See Maya Yang, *Clothing Brand Carhartt in Conservative Crosshairs for Issuing Vaccine Directive*, THE GUARDIAN (Jan. 20, 2022, 5:00 AM), <https://www.theguardian.com/us-news/2022/jan/20/carhartt-vaccine-mandate-backlash-conservative>. After Carhartt instituted a mandatory vaccination policy for employees, the apparel company was met with protests from a “handful of employees.” *Id.* Additionally, the announcement sparked a wave of social media outrage among Conservatives, with many claiming they would never purchase any product from Carhartt again. *Id.*

³⁴⁰ *Building the Intelligent Enterprise: Learning from COVID-19 to Create Lasting Agility and Resiliency*, ACCENTURE 2 (Apr. 2020), https://www.accenture.com/_acnmedia/PDF-123/Accenture-COVID-19-Building-The-Intelligent-Enterprise-Resilience.pdf#zoom=40.

³⁴¹ *Seven Ways Businesses Can Align with Public Health for Bold Action and Innovation*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH 4 (Feb. 23, 2021), <https://debeaumont.org/wp-content/uploads/2021/02/Seven-Ways-Businesses-Can-Align-with-Public-Health.pdf>.

³⁴² *Id.*

³⁴³ See Weise, *supra* note 55.

³⁴⁴ See *Seven Ways Businesses Can Align with Public Health for Bold Action and Innovation*, *supra* note 341.

³⁴⁵ *Id.*

partisan nature of U.S. politics, it is unlikely that [a scientifically sound] plan will succeed unless businesses [are] seen as also leading in this policy initiative and are plainly doing so in support of and in tight coordination with the” federal government.³⁴⁶ The measures some surveyed companies took during the early days of the pandemic not only protected employees and made for flashy bullet points in ESG reports—they provided cover for federal and local governments. Sending all non-essential employees home to work remotely allowed elected officials to impose stay-at-home orders. Because corporations greatly influence policy in the U.S., many Americans—and, likewise, American businesses—looked toward these powerhouse companies in the early days of the pandemic.³⁴⁷ If household names allowed all non-essential employees to work remotely (an almost unfathomable business practice in early 2020) to stop the spread, the practice would be normalized indefinitely.

Currently, it is unclear to what extent surveyed companies’ vaccine mandates and incentive programs increased vaccination rates in communities. Although my research revealed which of the surveyed companies required vaccinations, none of the companies surveyed indicated what percentage of its workforce is vaccinated. This data would be valuable to public health professionals, as it could reinforce the observation that many individuals do not prioritize vaccination unless it is required.³⁴⁸ Additionally, this data could dispel potential misconceptions that vaccine mandates result in large-scale resignation and other pushback from employees.³⁴⁹

It must be noted that disclosure does not necessarily mean compliance. My research revealed a handful of instances where surveyed companies allegedly violated their own COVID-19 health and safety policies, even though they published blog posts and other materials claiming otherwise. It is very possible that other surveyed companies failed to comply with internal policies as well.

At the conclusion of writing this Article, the COVID-19 pandemic still exists, albeit to a lesser degree. As such, businesses in all industries must still account for changes in circumstances as they make decisions going

³⁴⁶ *Id.*

³⁴⁷ See Richard A. Devine & Michael Holmes, *Money Talks: Big Business, Political Strategy and Corporate Involvement in US State Politics*, THE CONVERSATION (Jun. 29, 2020, 8:11 AM), <https://theconversation.com/money-talks-big-business-political-strategy-and-corporate-involvement-in-us-state-politics-140686>.

³⁴⁸ Amy Dusto, *Vaccine Mandates: A Public Health Tool for Employers*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (Feb. 22, 2022), <https://publichealth.jhu.edu/2022/vaccine-mandates-a-public-health-tool-for-employers>.

³⁴⁹ *Id.* (“For example, . . . Tyson Foods announced a vaccine mandate for its 120,000-person workforce in August 2021. By November, 60,500 previously unvaccinated employees had received the shot, bringing the company-wide vaccination rate to 96%.”).

forward. Hopefully, these initial findings about the surveyed companies' health and safety policies will guide those decisions and serve as a reliable source of information for crises to come.