

Coming Soon after COVID-19: When the State Reopens and the Regulators Return
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Federal and state agencies have assured businesses they will use discretion and grant latitude for certain compliance, permit, and reporting requirements, due to the difficult conditions imposed by COVID-19. For example, in April the Arizona Department of Environmental Quality issued a statement explaining how it will apply that discretion.

However, at some point businesses will need to be prepared for the resumption of state inspections and compliance audits. Advocacy groups have been clamoring for agencies to take a hard look at what regulated companies did during the pandemic and to require companies to document their claims for leniency.

While the government policy for leniency during the pandemic is temporary, Arizona companies enjoy a permanent “Regulatory Bill of Rights,” which establishes administrative law rights for businesses that are regulated by many Arizona and county agencies. Gallagher & Kennedy’s government relations attorneys were there when the Arizona Legislature passed A.R.S sections 11-1602 (county agencies) and 41-1001.01 (state agencies). While these laws have been on the books for years, surprisingly they are unfamiliar to many companies; and employee turnover might reduce an agency’s attention to such details. Now is a good time for businesses to review their rights, before the inspector is at the door.

Both the state and county versions of the Regulatory Bill of Rights start with a list of rights, which cross-references specific statutes that explain each right in more detail. Most of these rights require government inspectors to conduct their on-site inspections and audits, and make their decisions, in a fair, structured, and transparent manner that gives regulated businesses a reasonable opportunity to ensure inspectors get the facts right and even a chance for the businesses to correct certain deficiencies before a final decision is made.

Over the next few weeks we will update this report to cover one topic at a time to explain a business’s rights when the state or county government comes calling after the pandemic.

Future updates will include:

- What rules of fair play apply to government inspections of your business?
- When are you entitled to know what the inspector thinks?
- Can you correct deficiencies before the enforcement machine starts churning?

