

PANDEMIC PREPAREDNESS

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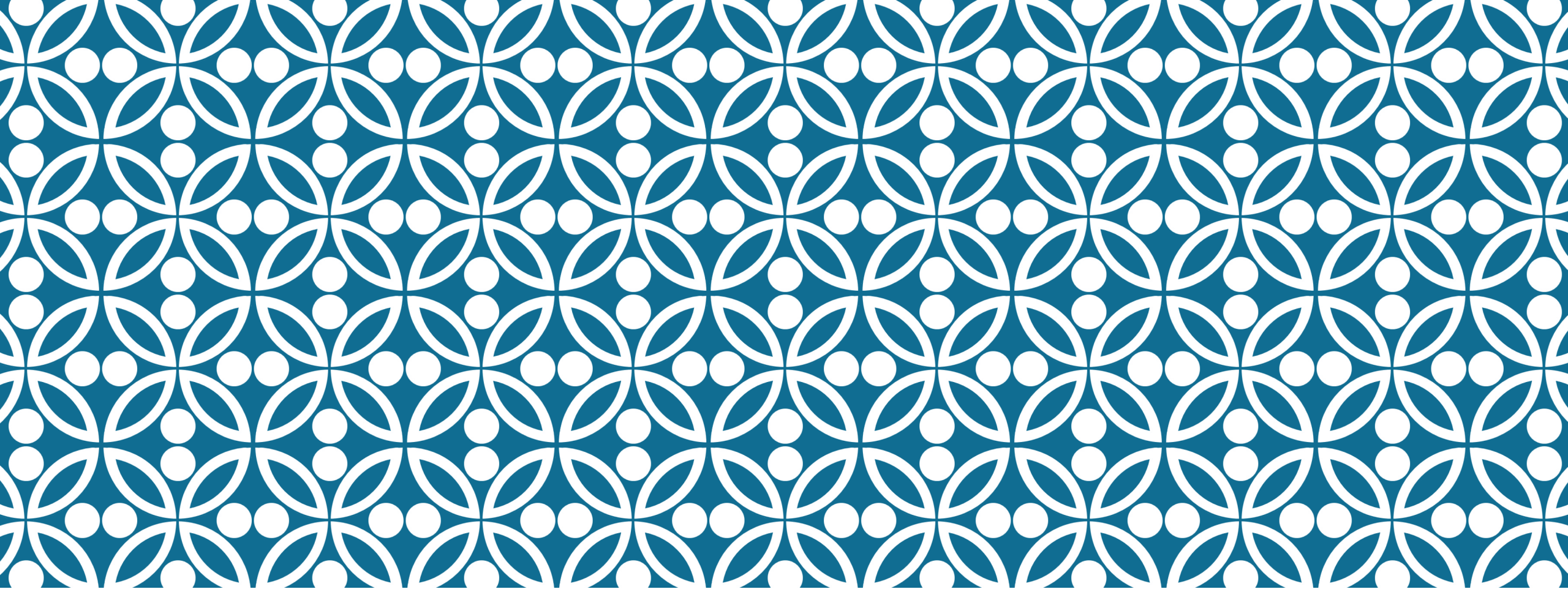


BACKGROUND / KEEP IN MIND

- **This is an unusual time and things are changing rapidly.**
 - **What I tell you today may be different from what I said last week, and what I would say next week.**
- **Because of this there are limits to the answers I am able to provide.**



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DEVELOP AN EMERGENCY RESPONSE PLAN

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A company's emergency response plan should deal with both natural and man-made disasters.

primary goals of the plan are

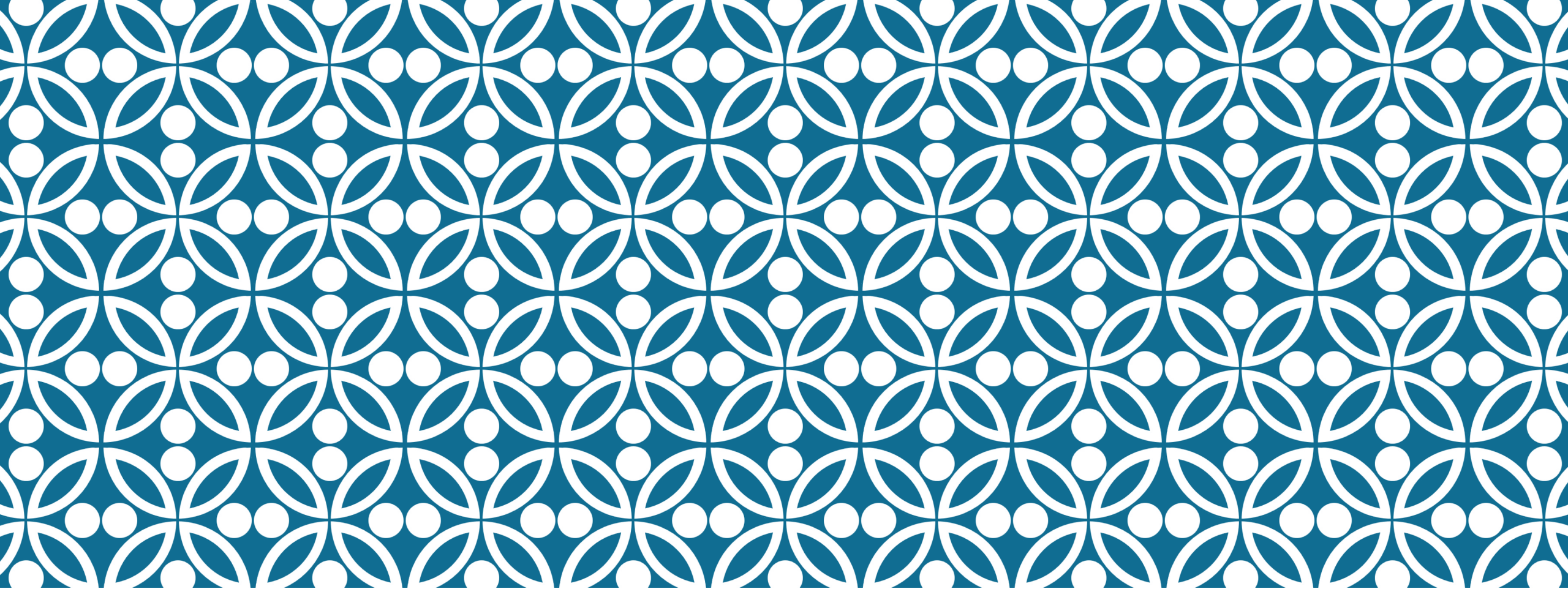
- protect the employees and
- ensure continued operations at the facility.

Part of the plan will identify business-essential positions and the people required to sustain business-necessary functions and operations.

Establish ways to manage and control operations and communication in the event the Company is denied use of its main facility or corporate headquarters, or communications are disrupted.



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REVIEW SAFETY POLICIES AND PRACTICES

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Develop "best practices" which go beyond legal requirements.

Immediate changes to prepare for a pandemic may include, education and communication programs, installation of additional hand-washing stations, eliminating or rescheduling "meetings," or even spreading out employee workstations or other efforts to accomplish social distancing.

COVID-19 Pandemic Employer Best Practices:

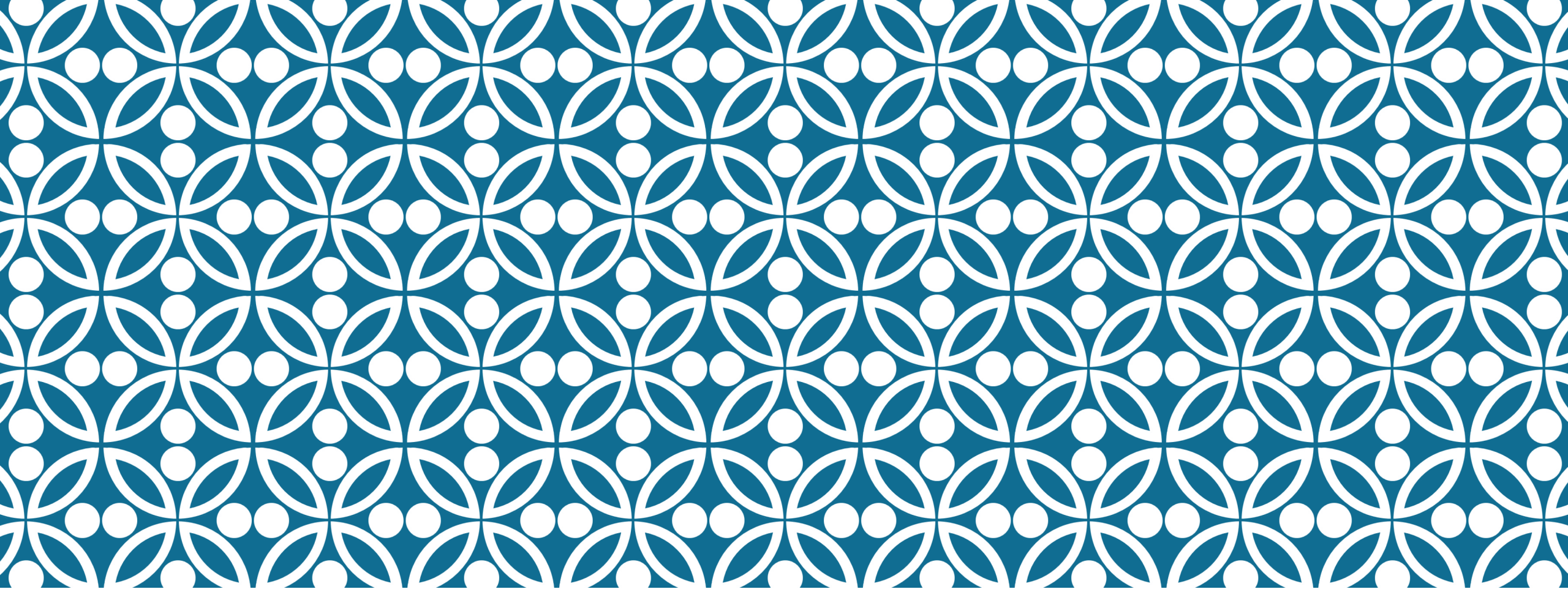
- Adhere to CDC Guidelines (constantly evolving)
- Daily Temperature screenings
- Requiring masks
- Limiting / eliminating all common space areas
- COVID Testing
- Remote Work
- Shift Work
- WRITTEN PANDEMIC PREPAREDNESS PLAN



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RETURNING EMPLOYEES BACK TO WORK - POTENTIAL ISSUES

- Selection decisions about which employees will be asked to return could form the basis of discrimination/retaliation claims.
 - Including those who took EPSL or EFMLA
- Consider whether you should conduct a disparate impact analysis.
- Be careful of age claims or "regarded as" disabled claims when determining whether to recall employees who may be member of population that is more vulnerable due to age or exposure to COVID
- Determine whether any local ordinances require return to work by seniority



MAINTAIN AND TEST A DISASTER COMMUNICATIONS POLICY AND SYSTEM

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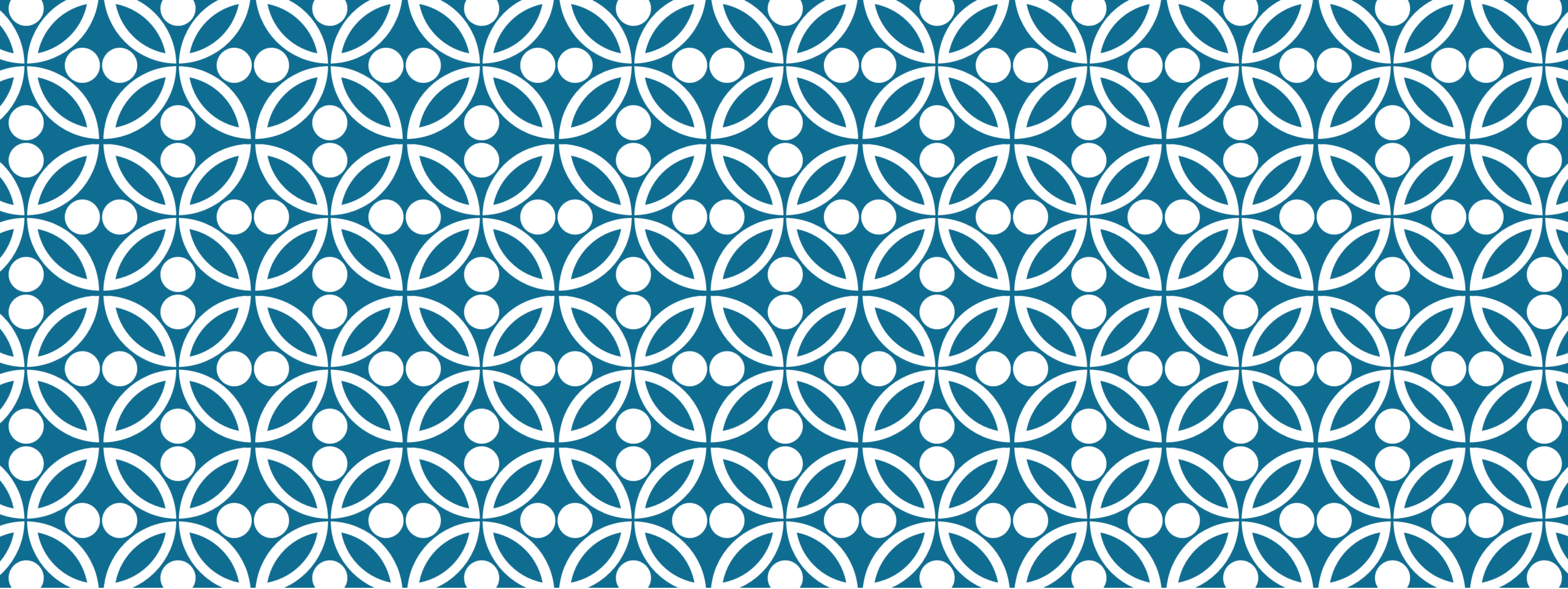
maintain a plan for communicating with employees in the event of an emergency.

Plan should include:

- alternative means of communicating with employees if it is not possible for them to come to work.
- Consider maintaining an alternative website and phone blasts ready to activate in the event of an emergency.
- Test the system just as you would an evacuation plan.



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REVISE COMPANY POLICIES

REVISE TELECOMMUTING POLICIES

Telecommuting will occur. Employers should prepare for the request and have policies in place in advance of that.

Lay the foundation for telecommuting and teleconferencing by investing in hardware and software systems, as well as implementing necessary policies.

Hourly employees should undergo additional training in light of the heightened wage-hour exposure associated with telecommuting and remote work, and ensure that employees strictly follow procedures for recording all hours worked.

Employers should also take steps to protect company confidential and trade secret materials.

Get plans in place for remote workers compensation coverage.

REVISE ATTENDANCE AND LEAVE POLICIES

Traditional attendance policies are designed to penalize employees who are absent or tardy. However, during a health pandemic employers do not want sick or infected employees reporting to work.

Additionally, employers may not have the luxury of terminating employees who are absent, even for an extended period.

Employers will need to revise their policies to anticipate such crises and to provide practical solutions to these unique problems.

Through year end 2020 – Families First Coronavirus Response Act for employers less than 500

- Emergency Paid Sick Leave
- Extended Family Medical Leave

REVISE ATTENDANCE POLICY CONT'D

Will you allow people to bring children to work in the event schools are closed?

- If so, you should have a written policy and release of liability for this.
- Think about this in the pandemic and hurricane circumstances
 - Will you allow for pets?

REVISE VACATION OR PAID TIME OFF POLICIES

Consider adopting vacation or paid time off policies that

- allow employees to get advances of paid time off or to borrow against expected future benefits.
- allow employees to donate paid time off to other employees may prove beneficial in a pandemic.

Revise the notice required before an employee takes vacation or paid time off may also be appropriate.

Revise policies to allow employers more discretion in times of crisis.

Remember FL law does not require the payout of PTO at separation unless your handbook or policies require that.



REVISE LOAN POLICIES

Pay Loans

Pay Advances

Hardship Withdrawals from 401(k) plans

Make a conscious decision of whether to allow loans or advances

If you are willing to allow them in pandemic or ER situations specify:

- Limits
- Who can is eligible
- How repayment is handled
- What happens at termination
- Establish forms that employee signs in advance.



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REVISE ANTI-DISCRIMINATION POLICIES

Update policies to address assumptions regarding COVID-19 and the countries where it originated.

Policies should expressly prohibit discrimination and harassment on the basis of national origin, age, disability and perceived disability.

Reasonable accommodation procedures should be reviewed, and Company should implement similar procedures for evaluating continuing work from home and other accommodation requests from employees who identify as vulnerable to COVID-19 exposure under federal, state and local guidance.



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REVISE PAY POLICIES

The DOL has a [fact sheet](#) outlining pay questions in a disaster (exa: hurricanes).

Fair Labor Standards Act (FLSA) requires that employers pay their exempt employees during any closure of less than a week.

- private employers may require employees to use their paid vacation or paid time off, as long as the employee receives his or her full salary for the week and was notified of these policies in advance.
- If the office is open but as a result of the natural disaster the employee cannot work, then the employer does not have to pay the exempt employee's salary for the absence.

Employers do not have to pay a nonexempt employee for days the employee does not perform any actual work, regardless of whether the cause of nonperformance was because the business was closed due to a natural disaster.

- However, if the nonexempt employee is paid on a fluctuating workweek basis, then the employee must be paid the full weekly salary for any week during which any work is performed, even if they miss some work due to the natural disaster.



PAY POLICIES CONT'D

On Call Pay:

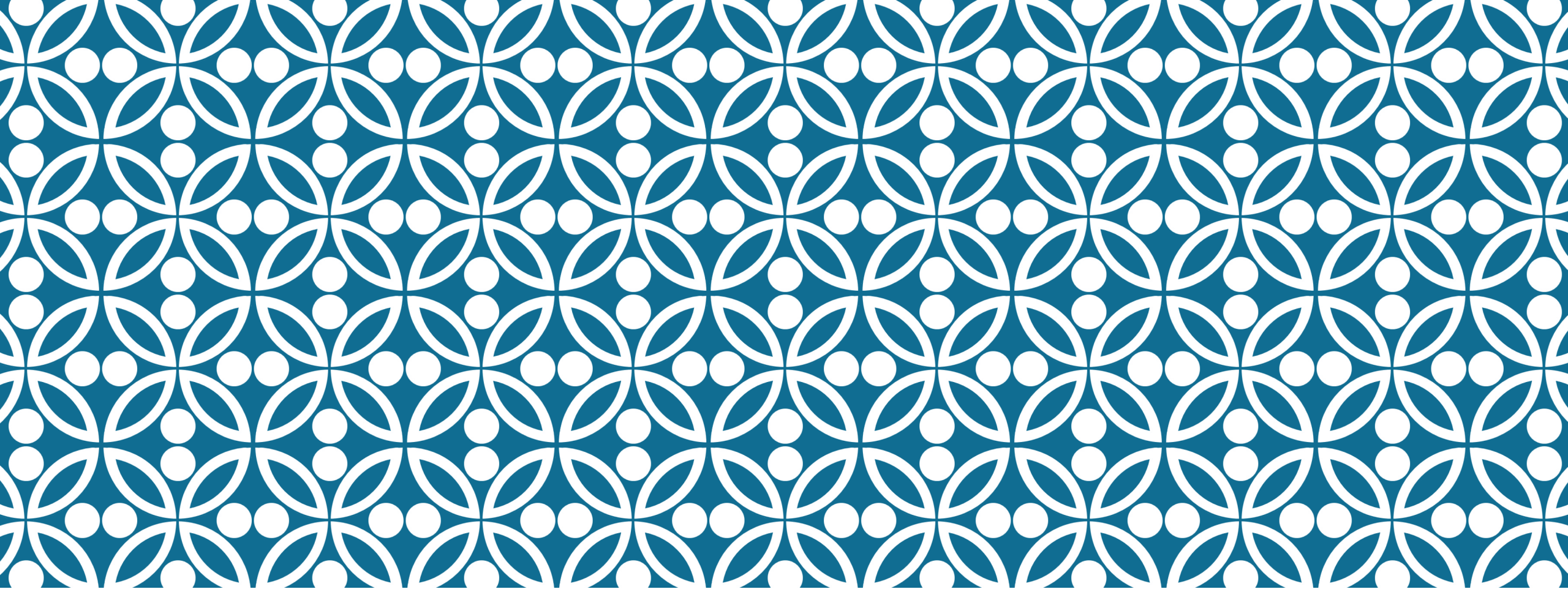
- Under the FLSA, if an employer has closed an office due to a natural disaster and the employer requires an employee to be on-call such that the employee cannot effectively use the time for his or her own purposes, then the employer must pay the employee for the on-call time.

Family Medical Leave Act Pay:

- If business is closed for a week or more due to the natural disaster, then the days the business is closed would not count towards an employee's FMLA leave.
- If the business is closed for less than a week and an employee is on FMLA leave, then the entire week would count against the employee's FMLA leave. However, if the employee is taking intermittent FMLA leave, then only the days that a) the business is closed and b) the employee was expected to work can be counted against the employee's FMLA leave.

Employees affected by a natural disaster may be entitled to leave under the FMLA for a serious health condition caused by the disaster. Additionally, employees affected by a natural disaster who must care for a child, spouse, or parent with a serious health condition may also be entitled to leave under the FMLA.

- Some examples of storm related issues might include absences caused by an employee's need to care for a family member who requires refrigerated medicine or medical equipment not operating because of a power outage.



PREPARE FOR HOW TO HANDLE EMPLOYEES WHO REFUSE TO COME TO WORK

HOW TO HANDLE EMPLOYEES WHO REFUSE TO TRAVEL OR TO COME TO WORK

Have forms signed / prepared in advance (exa: hurricane situations) where employee acknowledges that during a “Business Continuity Event” failure to report would result in termination.

- Allow for opt-outs that occur at least 2 weeks before BCP event

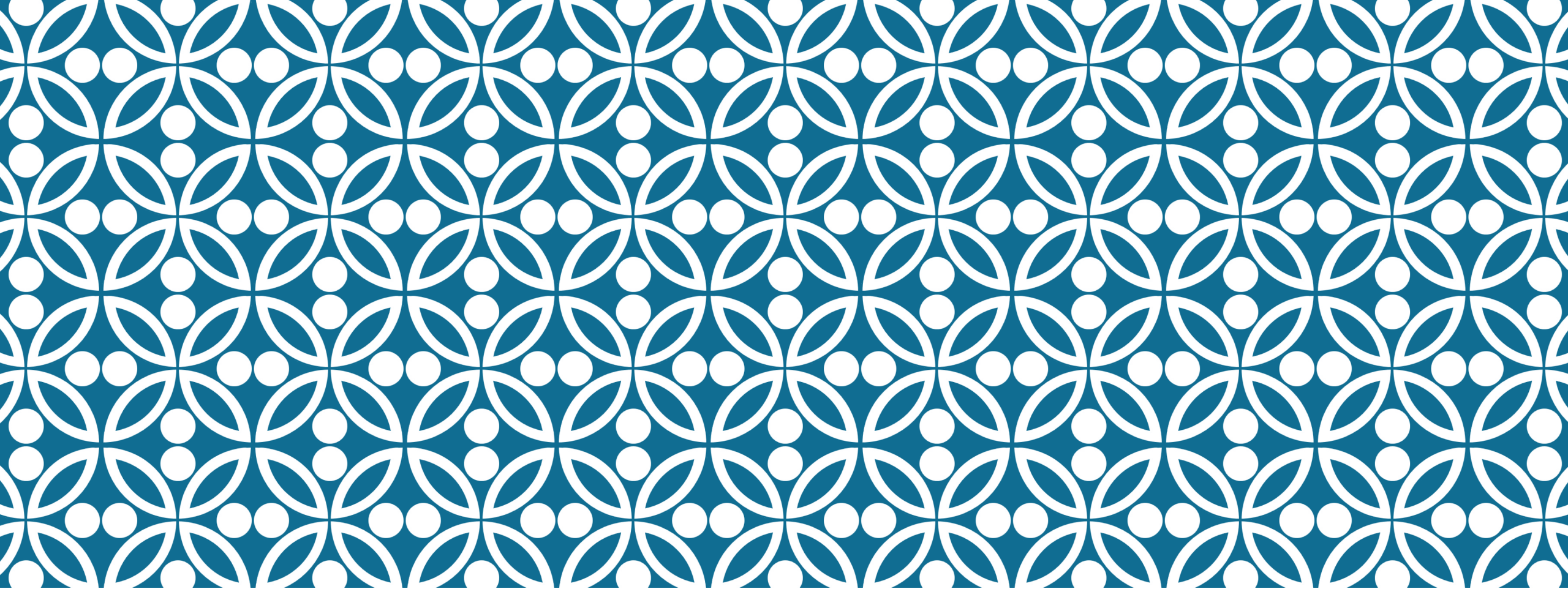
Educate supervisors as to when such refusals may constitute a protected refusal to engage in an unsafe activity, or may be treated as protected concerned activity

- OSHA - "imminent danger"
- National Labor Relations Act (NLRA) - Protection for employees who engage in "concerted activities"

Develop a communication plan to provide reassurance about your adoption and implementation of CDC and OSHA guidelines.



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DEVELOP RELATIONSHIPS WITH EXTERNAL ADVISORS

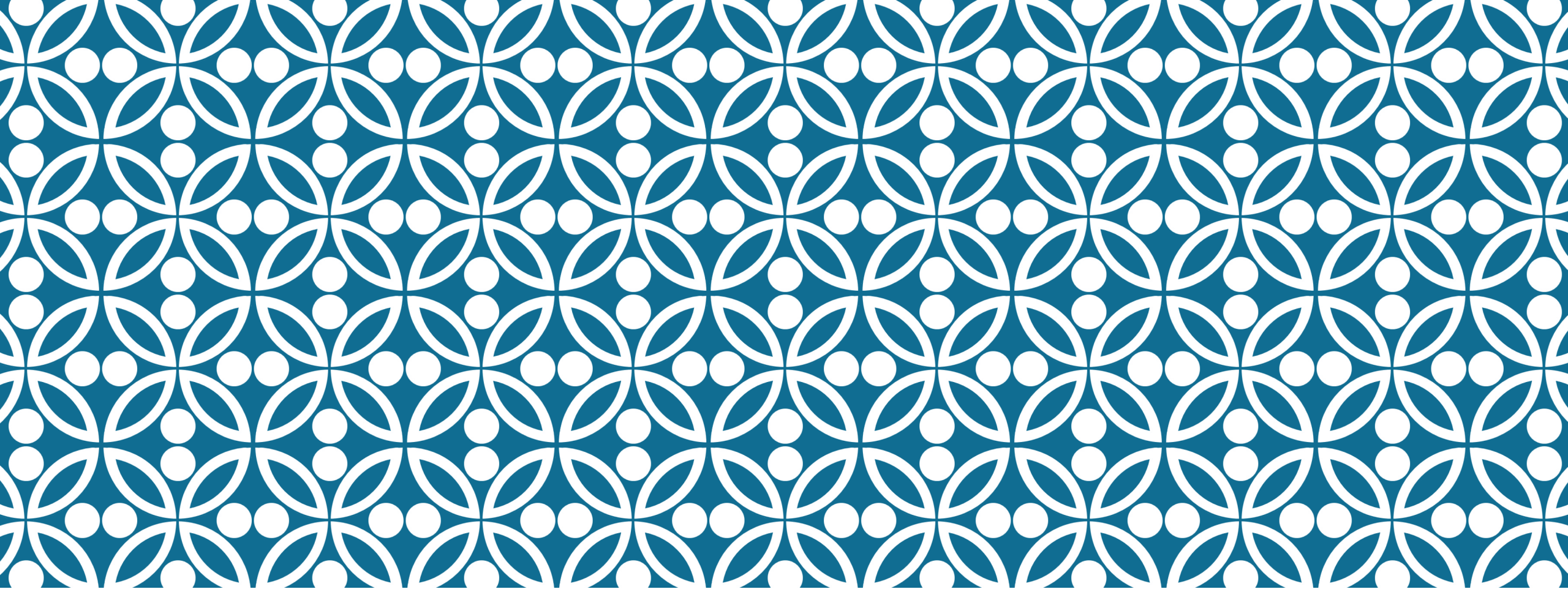
DEVELOP RELATIONSHIPS WITH EXTERNAL ADVISORS

During a pandemic advisors are busy with existing clients. You want to ensure that you are one of the existing clients, and not someone new at the bottom of the priority list.

- Banks
- Accountants
- Attorneys
- Physician / Nurse / Workers Comp Physician



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CONTACT VENDORS AND SUPPLIERS

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know what your business partners are doing in the event of a pandemic.

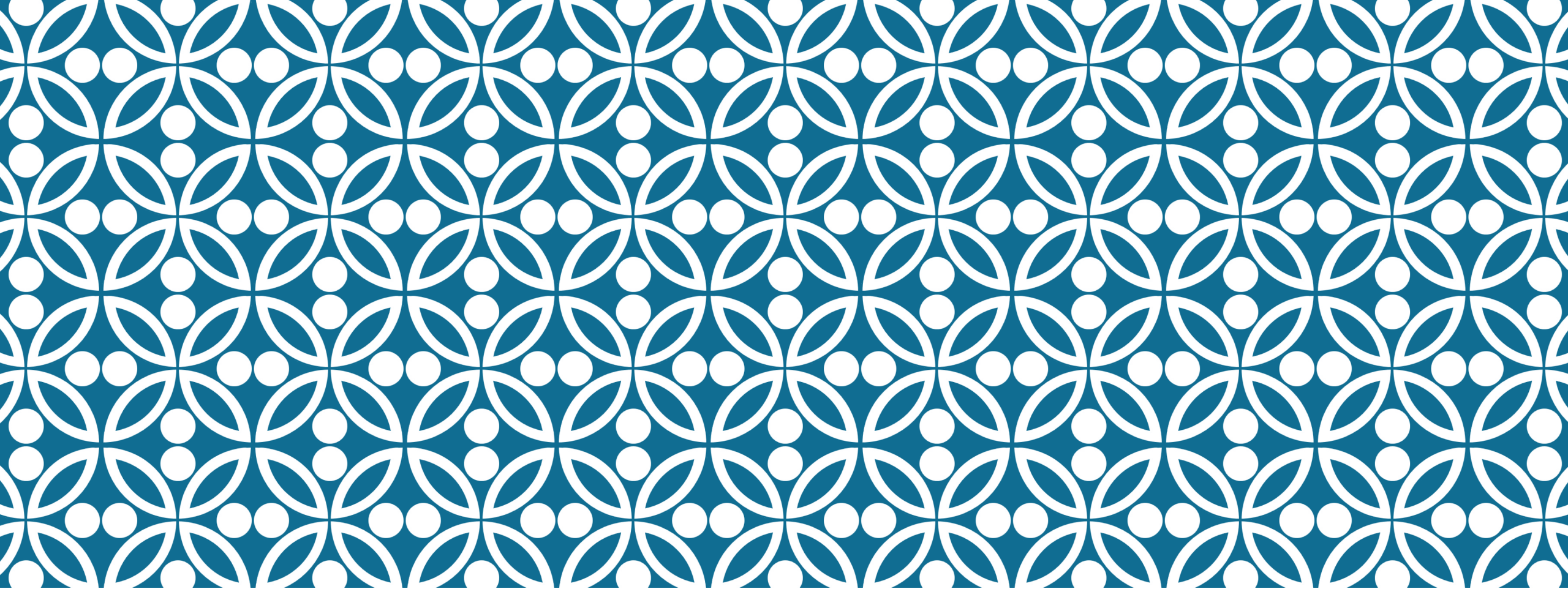
- Will they be available.

Maintain communications and be prepared to seek other suppliers.

Communicate with your clients and ensure that they know that you are taking steps to maintain service.

Key suppliers to consider:

- Payroll provider (hard checks?)
- PPE supplies
- Food



PURCHASE STD AND SALARY CONTINUATION POLICIES

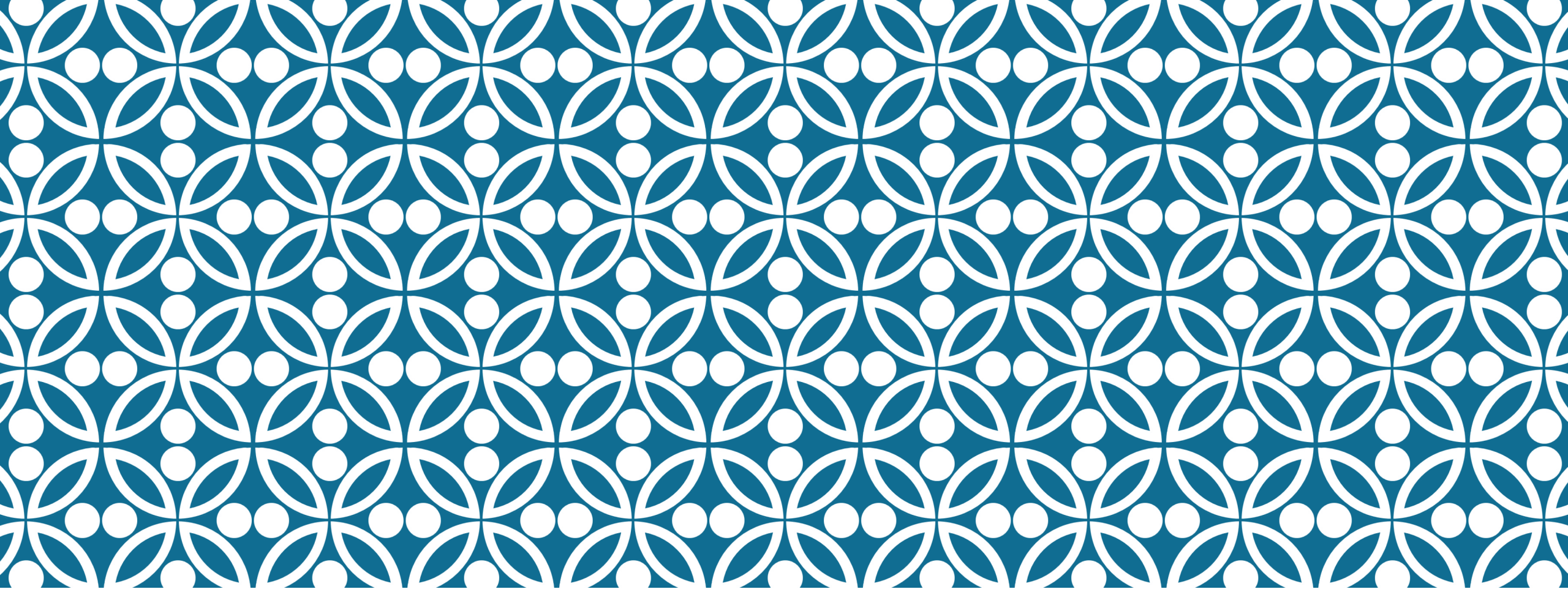
BUY AN INSURANCE POLICY FOR SHORT-TERM DISABILITY AND SALARY CONTINUATION PROGRAMS

Speak to insurance broker about:

- Short term Disability Policies
- Long Term Disability Policies
- Business Continuity Insurance



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REVIEW CURRENT CONTRACTS

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Force majeure clauses relieve parties to a contract from the requirements of the contract in the event of an "act of God."

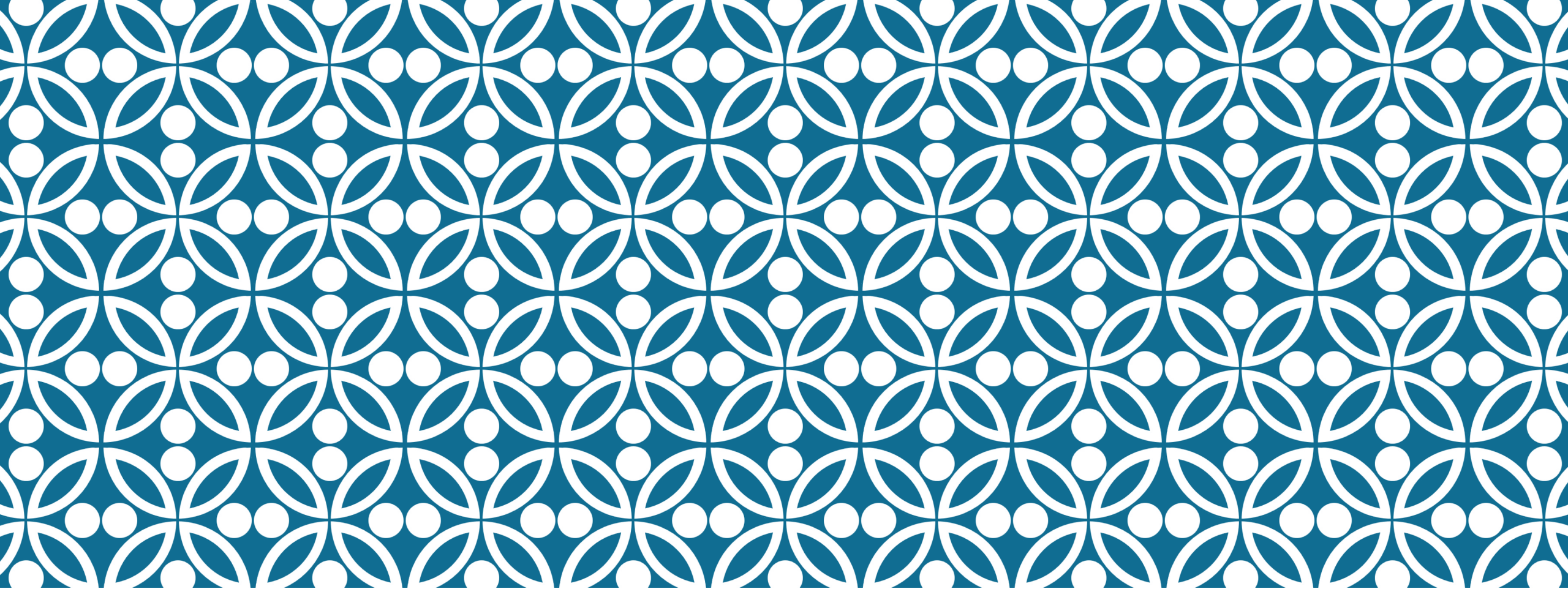
- Exa: an insurance policy may relieve the insurer of the obligation to cover an incident if it could be labeled an "act of God."
- Such provisions could then be used to deny coverage to business or medical losses caused by a pandemic.

An employer with a *Force Majeure* clause in its contracts may have the right to deviate from the contract or to make unilateral changes in the terms and conditions of based on the language.

review all documents to see whether such a clause should be included, deleted or revised.



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QUESTIONS?

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