Navigating the Immediate Business Implications from COVID-19

Presented by:

Hill Ward Henderson
COVID-19 Attorney Response Team

This is not legal advice; consult with your attorney.
Communication, Crisis Management and Emergency Preparedness

• Get the FACTS before you act
• Clear and timely communication is critical
• Alerting authorities
• Emergency plans change during uncharted situations

Robert A. Shimberg, Esq.
robert.shimberg@hwhlaw.com
(813) 227-8469

This is not legal advice; consult with your attorney.
Labor and Employment

Leaves of Absence under the Families First Coronavirus Response Act

• Requires job protected, paid leave for certain coronavirus-related circumstances
• Applies to all employers with less than 500 employees
• 2 types of leave:
  – Emergency Paid Sick Leave for coronavirus-related quarantines and child care issues
  – Expanded FMLA for coronavirus-related child care issues
• “Paid for” by employer tax credits
• Possible individual liability
• Effective 15 days from date of enactment – not retroactive
• Until December 31, 2020

S. Gordon Hill
gordon.hill@hwhlaw.com
(813) 222-8506
"The Emergency Paid Sick Leave Act"

- Employers must provide up to 80 hours of paid sick leave
- Generally capped per employee at $511 per day and $5,110 in the aggregate
- Triggers – an employee is unable to work or telework because:
  - Employee compelled by government to quarantine
  - Healthcare provider advises employee to self-quarantine
  - Employee has coronavirus symptoms and is seeking a medical diagnosis/test
  - To care for an individual who is compelled by the government to quarantine or who has been advised by a healthcare provider to quarantine
  - To care for the employee’s child if the child’s school or place of care (e.g., daycare) has been closed, or if a child care provider is unavailable due to COVID-19
  - A “TBD” for the federal government to come up with additional triggers when Regulations are enacted

This is not legal advice; consult with your attorney.
New FMLA Leave

• Employers must provide up to 12 weeks of job-protected leave if an employee is unable to work (or telework) in order to care for minor child because the child’s school has closed or a child care provider is unavailable due to COVID-19.

• First 10 days of leave could be unpaid, then the remainder must be paid at 66% of employee’s regular pay.

• Paid leave per employee capped at $200 per day and $10,000 in the aggregate.

• Significant expansion of FMLA including:
  – Small businesses not previously covered
  – Short-term employees not previously eligible for FMLA

• As with FMLA, must reinstate employee at the end of leave – except for employers with less than 25 employees experiencing significant economic hardship.
Employee Benefits and HIPAA

• HIPAA privacy issues
• Benefit offerings in the event of a temporary closure
• Modifications to health coverage addressing the testing and treatment of COVID-19

Kirsten L. Vignec
kirsten.vignec@hwhlaw.com
(813) 227-8731

This is not legal advice; consult with your attorney.
Business, Contracts & Force Majeure

What is Force Majeure?

• How does COVID-19 impact contract performance and rights?
• Review your contract (whether you are performing or are owed performance)
• Find the clause, if there is one
• Example language
• Is COVID-19 a force majeure event (probably)
• Requirement for and optics of early notice
• Consider causation... if an Act of God actually prevents or delays performance and how
• Document why performance can or cannot occur – don’t wait!
• Performance excused or merely a delay tied to the event itself?

Mark M. Wall – Board Certified Business Litigation Attorney
mark.wall@hwhlaw.com
(813) 227-8413

This is not legal advice; consult with your attorney.
Other Defenses and Doctrines

- Impracticability/frustration of purpose - defense
- Impossibility (of performance) - defense
- Express contract terms may control IF a force majeure clause
Business, Contracts & Force Majeure cont.

Damages Analysis

• The difficult decision to terminate or serve notice to mitigate further exposure
• Cannot close that deal... take on a new asset in this environment
• Cannot host that event for fear of PI liability
• Understanding the measure of damages and realistic exposure is critical
• Or your right to recover if the other side breaches
Construction

• Communication with building departments
• Owners who unilaterally suspend
• Contractor’s rights on suspended projects
• Cooperative efforts between all participants without complete suspension

Timothy A. Hunt
tim.hunt@hwhlaw.com
(813) 227-8451
Real Estate

• Public meetings, workshops and hearings cancelled through mid-April
  – Most agencies remain open and staff is working remotely
• State mandated permit extensions limited in 2019 legislative session
  – Permits extensions only required for “Natural Emergencies”
• Purchase and sale transactions delayed
  – Contractual obligations tied to approvals and permits

Kamala E. "Kami" Corbett
kamala.corbett@hwhlaw.com
(813) 227-8421
Real Estate cont.

• Commercial leasing disrupted
  – Evictions orders halted for 30 days
• Lending transactions continue – slow down expected
  – Closings still occurring where E-Recording available
• Practical Tips
  – Carefully review Contracts and Agreements before taking action
  – Closely Monitor Announcements made by Public Officials

This is not legal advice; consult with your attorney.
Healthcare

Testing Requirements for COVID-19

• Symptom + Exposure
• Primary Care Provider (referral by phone)
• Emergency Department

Ethen R. Shapiro
ethen.shapiro@hwlmaw.com
(813) 222-8549

This is not legal advice; consult with your attorney.
Healthcare cont.

Visitation to Nursing Facilities and Hospitals

• 30 days restrictions, subject to extensions

Suspension of Regulatory Requirements

• Florida Licensure for Skilled Nursing Facilities and Physicians

• Federal EMTALA for “Medical Screening”
Insurance and Risk Management

Recognize Potential Risks

• Business interruption / Loss of value
• Personal injury / Bodily harm
• Contractual liability
• Errors and omissions claims
• Employment practices risks
• Event cancellation

Mark J. Criser
mark.criser@hwhlaw.com
(813) 227-8468

Matthew F. Hall
Matthew.hall@hwhlaw.com
(813) 227-8479

This is not legal advice; consult with your attorney.
Insurance and Risk Management cont.

Examples of Common Policies & Coverages That Could Be Implicated

• Commercial Property / Business Interruption Policy
• General Liability Policy
• Errors & Omissions Policy
• Directors & Officers Policy
• Employment Liability Policy
• Event Cancellation Policy / Endorsement
• Pandemic Coverage Endorsement

This is not legal advice; consult with your attorney.
Insurance and Risk Management cont.

Common Exclusions That Could Bar Coverage

- Government shutdown
- Virus / bacteria / disease
- Contractual obligations
- Physical loss or damage to property

This is not legal advice; consult with your attorney.
Thank you for joining us!