

# Navigating the Immediate Business Implications from COVID-19

Presented by:

**Hill Ward Henderson  
COVID-19 Attorney Response Team**



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

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



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

Robert A. Shimberg, Esq.

[robert.shimberg@hwlaw.com](mailto:robert.shimberg@hwlaw.com)

(813) 227-8469



# 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](mailto:gordon.hill@hwhlaw.com)

(813) 222-8506



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

# Labor and Employment *cont.*

## “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



# Labor and Employment *cont.*

## 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



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

Kirsten L. Vignec  
[kirsten.vignec@hwlaw.com](mailto:kirsten.vignec@hwlaw.com)  
(813) 227-8731



# 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?



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

Mark M. Wall – Board Certified Business Litigation Attorney

[mark.wall@hwlaw.com](mailto:mark.wall@hwlaw.com)

(813) 227-8413



# Business, Contracts & Force Majeure *cont.*

## 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



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

Timothy A. Hunt  
[tim.hunt@hwlaw.com](mailto:tim.hunt@hwlaw.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@hwlaw.com](mailto:kamala.corbett@hwlaw.com)

(813) 227-8421



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

# 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



# Healthcare

## Testing Requirements for COVID-19

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



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

Ethen R. Shapiro  
[ethen.shapiro@hwlaw.com](mailto:ethen.shapiro@hwlaw.com)  
(813) 222-8549



# 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



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

Matthew F. Hall

[Matthew.hall@hwhlaw.com](mailto:Matthew.hall@hwhlaw.com)

(813) 227-8479



Mark J. Criser

[mark.criser@hwhlaw.com](mailto:mark.criser@hwhlaw.com)

(813) 227-8468



# 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





# Insurance and Risk Management *cont.*

## Common Exclusions That Could Bar Coverage

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



**Thank you for joining us!**



HILL WARD  
HENDERSON  
ATTORNEYS AT LAW

This is not legal advice; consult with your attorney.