

COVID-19 LEGAL CONSIDERATIONS CHECKLIST

□ ACCESS TO GOVERNMENT FUNDS AND PROGRAMS

- SBA's Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDLs)
- The Federal Reserve's Main Street Business Lending Program and Municipal Liquidity Facility
- FEMA
- State and local programs
- Health care funding and other provisions under CARES Act
- Coronavirus-related business opportunities

□ BANKRUPTCY PREPAREDNESS

- Vendors
- Customers
- Partners
- Company/subsidiaries

□ COMMERCIAL CONTRACTS

- *Force majeure* clauses
- Frustration of purpose
- Impracticality/impossibility
- Breach
- Remedy
- Insurance
- Exclusivity
- Payment rights
- Liquidated damages
- Indemnity clauses
- Schedule and delivery terms
- Termination rights
- Choice of law
- Notice requirements
- Dispute resolution requirements
- Prevailing party attorney's fee clauses

□ COMPLIANCE

□ CORPORATE GOVERNANCE AND PUBLIC COMPANIES

- Annual meeting
- Electronic meetings and proxy materials
- Fiduciary duties
- Filing deadline extensions

- Adding risk factors in public filings
- Delays in response time
- Other disclosures

□ CUSTOMERS

- Exploitative sales and pricing practices
- Cash-strapped/financially-challenged
- Meeting contractual obligations
- Product liability
- Opportunities

□ DATA PROTECTION, PRIVACY AND CYBERSECURITY

(SEE ALSO INFORMATION TECHNOLOGY)

- Health care and employer group health plans
 - Relaxation of HIPAA for telehealth only for health care providers
- Other privacy laws still in full effect
 - CCPA (customer information, employee information)
- Remote workforce
 - Access for furloughed employees
- BYOD concerns
 - MFA and MDM
- Control concerns
 - Moving to personal email or unsupported databases

□ EMPLOYMENT

- Tax measures
- Social Security measures
- Temporary layoffs
- Temporary hires/outourcing
- Reduction in pay/hours
- Benefits
- Benefit enhancements
- Terminations
- Payroll protection laws
- Employee mobility/travel
- Teleworking
- Alternative work schedules/arrangements
- Preventative actions
- Liability

COVID-19 LEGAL CONSIDERATIONS CHECKLIST

EMPLOYMENT *(CONTINUED)*

- Employees with dependents
- Child care/parental care
- Independent contractors
- Essential employees/documentation
- Executive stay-at-home orders
- Health care employees
- Workers' compensation insurance
- Unemployment compensation

ENVIRONMENT, HEALTH AND SAFETY

- EPA suspended enforcement
- Continued reporting where feasible
- Delayed deliverables under settlement and consent decrees
- Temporary storage of hazardous waste

EXPORT AND TRADE

- Export restrictions (U.S. and source country)
- Supply chain stability
- Foreign investment/CFIUS
- Tariffs (§301 and §232)

FINANCE

- Banking relationships
- Cashflow
- Restructure/forbearance
- Equity infusions and relationships
- Non-bank debt
- Covenants
- Material adverse changes

GOVERNMENT CONTRACTS

- Excusable delays
- Compensable delays
- Stop-work orders
- Changes clause
- Subcontractors
- Indemnification (DOE contractors engaged in COVID-19 response work)

IMMIGRATION

- Employment verification adjustments (I-9 and E-Verify)
- Travel bans
- Immigration office closures (worldwide)
- Pending applications
- Immigration enforcement
- Expirations and renewal
- Implications of change of work location, layoff, or furlough for sponsored workers
- Work from abroad while unable to enter – foreign country issue
- F-1 student programs (foreign exchange)

INFORMATION TECHNOLOGY

- COVID-19 malware
- Remote working
 - MFA
- Additional help desk roles/workforce needs
- Incident response in remote situations
- Business continuity/disaster recovery
- Security controls
 - Consideration of additional controls
- Delayed projects
- Support
 - Third-party vendors (service levels)
 - Call centers, particularly global

INSURANCE

- Business interruption
- Contingent business interruption
- Commercial general liability
- Cancellation insurance
- Trade credit insurance
- Supply chain insurance
- Specialty coverage
- D&O insurance
- E&O insurance
- EPLI insurance

INTELLECTUAL PROPERTY

- Delayed submissions
 - Enforcement
 - Deadline extensions
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COVID-19 LEGAL CONSIDERATIONS CHECKLIST

□ LITIGATION

- Impact of court closures
- Remote depositions
- Remote dispute resolution
- Settlement strategies

□ LOGISTICS

- Essential businesses
- Backup plans and alternative routes
- Labor issues
- Managing deliveries (domestic and international)
- Contracts
- Supplier disruption/unavailability

□ MERGERS & ACQUISITIONS

- Delayed or terminated transactions
 - Material adverse change
- Diligence
- Indemnification
- Opportunities
 - Cash-strapped companies
 - Strategic partners

□ REAL ESTATE

- Leases (office, retail and industrial)
- Abandonment or vacation of a leased space
- Common areas
- Insurance protection
- Government use of private facility to fight COVID-19 (eminent domain)

□ SUPPLY CHAIN

(SEE ALSO LOGISTICS)

- Exploitative sales and pricing practices
- Ability to meet own contractual obligations
- Designated scarce or threatened materials
- Identify affected suppliers
- Identify affected parts and materials
- Identify affected logistics providers
- Identify affected customers
- Insurance
 - Available coverage
 - Obligation to provide coverage or indemnification to supply chain partners
 - Coverage from supply chain partners
- Maintaining detailed records
- Duty to mitigate
- Local statutes and regulations
- Dispute management

□ TAX

- CARES Act
 - Employer retention tax credit
 - Refundable payroll tax credit
 - SBA loan forgiveness
 - NOL carry forward
 - Pass-through business losses
 - Business interest expense
 - Depreciating assets
 - Alternative minimum tax
 - Federal excise tax – distilled spirits
 - Postponement of ERISA filing deadlines
 - Single employer pension plans
 - Federal excise tax on air transportation
- State and local tax (S.A.L.T.)
 - Return filing responsibilities
 - Payment deferrals
- Global

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