

Impact of COVID-19 on Small Businesses in New York

As a small business in NYC, its doubtless that the public's and the government's reactions to the spread of COVID-19, or the so-called Novel Coronavirus, has already impacted your business operation and your bottom line. COVID-19 has proven to be a serious threat to public health with significant economic ramifications that are felt by all businesses, regardless of size or sector. As you reconsider your small business's response to this public health emergency, below are several important issues and recommendations to keep in mind, in order to be better prepared to withstand what is likely to be a prolonged, expensive and challenging problem – as well as the first of its kind, which means there is no “playbook” per se. These issues and recommendations come down to “employee health” and “business health” considerations, since you, as a small business owner, must always consider both in tandem.

Employee Health Considerations

- **If you have employees that are sick, encourage them to stay home.** While you may be short-staffed when an employee or two are sick at home, having an employee who is sick at work may cause others to be infected and cause a debilitating staff shortage that causes operations to grind to a halt – in addition to continuing the longevity of the crisis we are facing. As a related consideration, if an employee *does* come in but starts showing signs of illness (*i.e.* sneezing or coughing), you can take the proactive measure and send them home. Note, however, that taking someone's temperature or performing other procedures to determine one's wellbeing may be considered a “medical examination” under the Americans with Disabilities Act (ADA), so its best if the employee is sent to a medical facility outright.
- **If you have a strict sick leave policy, it may be time to make it more flexible, and inform employees of the changes.** If your business has certain policies in place that may require employees to, say, come in to work, and only then leave for a medical check from work, for account for a valid sick leave under the employment contract, you may need to waive that requirement effective immediately. Further, if your business has a fixed number of sick days available to employees – as is the case in New York, you may want

to forgo counting the number of sick leave days employees have for the time being. For example, if an employee has used up all his sick days but comes in sick tomorrow, its best to extend a sick day to him under the circumstances of COVID-19. Needless to add, this should be communicated to all employees so that they know of their options *before* they decide to come in sick to work.

- **Good respiratory and hand hygiene is good practice not only for food establishments.** Under the Occupational Safety and Health Act (OSHA), as an employer, you have a general duty to maintain a safe workplace for your employees. An extension of that duty is encouraging employees to have proper cough and sneeze etiquette and to wash their hands thoroughly (for at least 20 seconds) and frequently. Another aspect of that duty is to actually *provide* tissues, disinfectant soap, and no-touch disposal bins for employee use. Throw in disinfectant wipes or lotions for good measure, too.
- **Employee absenteeism should not be a shock to your bottom line or to your business process.** Identify which employees, because of a specialized skill, if absent for a prolonged period, could significantly diminish operations, and start assigning other employees to learn the to perform those skills. In effect, you should create redundancies so that things move along, even if at a slower pace, should a critical employee become unavailable. Further, prepare for employee absenteeism by allowing employees to work from home, if their job allows for it, should they need to take care of sick family members or minors if schools close. Note that for employers subject to the Family and Medical Leave Act (50 or more employees within 75 miles), COVID-19 will likely be considered a “serious health condition” and so, employees of such employers will be able to take care of a qualifying family member under an FMLA leave.

Business Health Considerations

As previously noted, the health of your business should always be considered in conjunction with the health of your employees in the context of COVID-19. To this end, below are several recommendations and legal issues that you should think about as you prepare your business for the ramifications of COVID-19.

- **Call clients and customers, proactively, to communicate with them that you are open for business and can accommodate them.** If your business is in the food & beverage industry, for example, you may want to contact your clients (via social media,

or mailing lists) and assure them that you are taking precautions, you are open for business, and that you can deliver to them should they have issues with coming in to dine.

- **If you have outstanding business loans, contact your lenders and renegotiate your payments to avoid defaulting.** It is often the case that traditional lenders (*i.e.* banks) and nontraditional lenders (*i.e.* small business lending companies) will be happy to negotiate a reduction in the monthly payment due, or even a deferment of payment for a specified time period. Contrary to popular belief, you as the debtor, do have a lot of leverage. But, should you default, that leverage is gone. So, if there is any likelihood of your business not having enough cashflow to service a debt payment, contact your lender *before* you default. Also, you should probably be among the first debtors to do so, the creditor can still afford the adjustment.
- **Consider closing for business, rather than remain open, if more employees take a sick leave.** Under the law, if employees take sick leave and you remain open for business, you are liable for the employee's sick leave compensation; but if your business is closed, and not generating income, employees' days out of work will not be counted towards their sick days. This is a good option for businesses where a critical number of employees are absent; in that case, it simply doesn't make sense to remain open.
- **Governor Andrew Cuomo has issued a ban on gatherings with 500 people or more, and ordered establishments that fit 500 or fewer to half their capacity.** Governor Andrew Cuomo has issued an order, effective today at 5pm, that in effect necessitates establishments where 500 or more people are gathering to be closed for business. What is likely more pressing for small businesses is the additional order directing establishments that fit 500 or fewer people to *half their capacity*. If the math is right, a restaurant that can host a mere 20 people, where every customer is vital to cash flow, is now only able to host 10 people at a time.
- **Check your business's insurance policies for language that covers (or excludes) public health emergencies like COVID-19.** If you are covered by a business interruption insurance, which protects against economic loss resulting from your business's inability to put insured property damaged by covered peril to its usual use, then you may be covered for COVID-19 related losses if one of the perils that are covered are "diseases" or "viruses." While usually excluded from coverage, you may have added it by endorsement (amendment to the general exclusions). On a related note, if you're leasing your business premises, check the lease's "force majeure" clause that

discusses whether your liability for rent is lifted when a certain Act of God occurs, like a public health emergency.

- **Many small businesses will likely face bankruptcy in the aftermath of COVID-19, and the prudent businessperson must prepare for it.** Bankruptcy, it is said, comes slowly, and then all at once. However, there are usually symptoms of insolvency and other financial and cashflow maladies that are detectable to the tuned in businessperson. If COVID-19 is likely to cause your business to at least potentially consider bankruptcy, you must be proactive about anticipating the tough road of either liquidating or restructuring your business under Chapter 11 and should consult with a business bankruptcy specialist soon. Note that Congress has recently passed the Small Business Reorganization Act to streamline small business bankruptcies under the Federal Bankruptcy Code (*See Chapter 11, Subchapter 5*).
- **The Small Business Administration is working with state governments to provide low-interest loans to nonprofits and small businesses impacted by COVID-19.** Sole proprietors and small-to-medium sized business will benefit from a federal government emergency loan program to combat the economic blowback from the virus outbreak by providing liquidity. In conjunction to the federal loan program, there is a plan to federal government is planning on instituting a 3-month tax holiday for businesses.

No business has a certain path, nor is everything ever according to plan. What is always true is that where business owners take proactive steps to anticipate issues, these issues, should they become reality, are mitigated.

Koutsoudakis & Iakovou Law Group, PLLC has established a special e-mail for business owners with questions regarding any of the above issues. Our team of lawyers are here to assist you through these difficult times, and we will do our best to answer any and all questions you send to emergency2020@kilawgroup.com. We, together as a community of business owners, will get through this. We must, however, listen, provide assistance to each other, and most of all, face our issues head on with the fearless strength that makes all of us business owners in the first instance.

Stay safe and healthy throughout this challenging period.