

Coronavirus: Legal and business insights



Wednesday, July 1, 2020

In response to the growing concern from our clients regarding their employee safety and ongoing business operations, McDonald Hopkins has compiled helpful information on common questions related to the impact the coronavirus outbreak can and will have on businesses. We will continue to provide updates as the situation develops and, as always, encourage our clients and contacts to reach out with any specific legal or business questions they have.

Automotive

- [Coronavirus: A force majeure in the automotive supply, or just another supply chain dispute?](#)

With the outbreak of the coronavirus, automotive suppliers and customers have scrambled to keep the supply chain running. While these efforts have succeeded with few exceptions so far, the ability of suppliers to meet customers' needs remains in jeopardy in many cases while the virus continues to spread.

Business Counseling

- [The novel coronavirus impact on secured loans: Considerations for secured lenders and borrowers](#)

Insight to help lenders and borrowers identify issues that should be considered due to the impact of the coronavirus. Specifically, lenders and borrowers should pay careful attention to the certain provisions in a credit agreement and related loan documents now more than ever.

- [Letters of intent: Binding or non-binding](#)

In light of the current economic climate brought on by the nation's response to the COVID-19 outbreak, many parties may have found their potential transactions stalled or outright canceled. This situation has likely left many wondering whether or not their executed letter of intent (or "LOI") can provide them with any protection, recourse or relief.

- [The practical reality of business and contractual relationships during COVID-19](#)

Practical steps to address the reality of doing business and managing contractual relationships during the COVID-19 crisis.

- [One page summaries for startups: Rent, SBA financing and employment decisions during the COVID19 shutdowns](#)

If you have already read 1,000 articles on COVID-19 issues for your Startup, and you are struggling to keep them straight, you are not alone. Each one-page summary that follows provides what your Startup needs to know today on each main issue to navigate the crisis.

- [SBA loans available for small businesses suffering due to coronavirus](#)

The United States Small Business Administration (SBA) issued guidelines for how to apply for \$2 million in low-interest loans for working capital to small businesses suffering substantial economic injury as a result of the coronavirus (COVID-19).

- [COVID-19's impact on the LIBOR transition](#)

Coronavirus Legal and business concerns

LIBOR – the London Interbank Offered Rate – represents the average interest rate at which major banks reasonably expect they can borrow money from each other without putting up collateral. With only 21 months left until the 2021 deadline to transition away from LIBOR, how does COVID-19 impact LIBOR transition plans?

- [Coronavirus and lending relationships: Communication and planning are key](#)

During the past several years, conditions have been very good for borrowers. However, the spread of the coronavirus will lead to uncertainty in the lending markets. So what does this mean to you and your business?

- [COVID-19 pandemic should cause businesses to review their business-interruption insurance coverage](#)

As the economic impact of the pandemic deepens, businesses would be wise to consider all manner of risk mitigation tools available. One step is for businesses to consult with their insurance brokers and review their insurance policies to determine whether they have available business-interruption insurance in place to help potentially mitigate losses stemming from the pandemic.

- [SEC response to coronavirus outbreak](#)

The SEC has issued an order providing conditional regulatory relief to publically traded companies that may have been affected by the coronavirus. Subject to certain conditions, the SEC's order provides qualifying companies an additional 45 days to file certain required reports that otherwise would be due between March 1, 2020 and April 30, 2020.

- [Confronting the impossibility of performing under a contract: Using a force majeure provision in response to the coronavirus outbreak](#)

As the virus continues to spread, it is unclear the long-term ramifications it will have for businesses. One of the questions companies should be asking is, "Does the coronavirus outbreak fall within the operation of a force majeure clause?"

Business Restructuring

- [Corporate directors and officers and fiduciary duties in the COVID 19 world: Same duties, but much more to do](#)

One thing that hasn't changed since the COVID-19 crisis hit? Directors and officers of corporations still have the same fiduciary duties that they had before the pandemic. What COVID-19 has changed is what constitutes due care, and the impact of this is likely

to be broadened by an enlargement of the parties who should be considered as fiduciary duties are discharged.

- [Orders and collections as usual in a pandemic? Looking ahead while addressing current needs](#)

Thousands of businesses across the country are looking at months of extended business distress due to the spread of COVID-19, and many companies are reevaluating their books and accounts receivable to determine cash flow issues. Given the unknown amount of time until business resumes as usual, your company may want to consider the following when planning for cash flow issues and determining strategies for orders and collections in the coming months.

- [What happens to contracts?](#)

Thoughts from an experienced restructuring attorney based on prior slowdowns on how to prepare for the economic Inasmuch as the appeal of American capitalism derives from the strength and predictability of its institutions, the sanctity of contracts forms one of its pillars. In principle and generally in practice, parties cannot disavow contractual obligations based on caprice or changed circumstances . . . except in bankruptcy.

- [Preparing for the economic fallout from the coronavirus](#)

Thoughts from an experienced restructuring attorney based on prior slowdowns on how to prepare for the economic fallout from the coronavirus.

- [So your business temporarily closed - now what do you do?](#)

The coronavirus crisis shouldn't be the end of your business, even if you had to temporarily shut down. To survive, you will need to preserve cash and proactively communicate with your lenders,

vendors, landlords, employees, customers and insurance brokers.

- [What if a vendor is considering bankruptcy](#)

Many of the same considerations for strategy if a client learns of a customer potentially filing for bankruptcy protection will pertain if suppliers or other vendors go down the same path.

- [What if a customer is considering bankruptcy](#)

It is not uncommon to receive calls from clients after learning of their customers negotiating with lenders and other creditors about balance sheet and liquidity issues, including planning for potential bankruptcy filings. Clients typically ask questions about collecting past due amounts or customers filing for bankruptcy protection. However, often unstated in these preliminary conversations, clients really want to know how they can protect themselves without losing the customer, particularly where that customer represents a significant portion of revenues

- [Don't be a stranger](#)

With proper planning, the current environment may create openings to deleverage bloated balance sheets, and to fix and extract value from broken or outdated business models.

Construction

- [OSHA issues COVID-19 case reporting relief for contractors](#)

On April 10, 2020, the Occupational Safety and Health Administration (OSHA) issued temporary guidance for recording cases of COVID-19 that provides relief to the construction industry. OSHA's announcement provides certainty to the construction industry and helps contractors focus their response efforts on implementing good hygiene practices in their workplaces and otherwise mitigating COVID-19's effects.

- [Coronavirus-related construction delays and force majeure provisions in industry-standard contracts](#)

As the coronavirus continues to spread across the country, the impact on the construction supply chain and workforce will almost certainly become greater in the weeks and months to come. As a result, contractors across the country will be evaluating the force majeure provisions of their contracts to determine whether they are entitled to an extension of time or increase in contract price from delays and other impacts related to the COVID-19 epidemic.

- [Ohio's "Stay at Home" Order regarding construction- issues and interpretations may cause confusion](#)

On March 22, 2020, the Ohio Department of Health issued its Director's "Stay at Home" Order which requires all Ohioans to stay in their homes to prevent further spread of COVID-19. The Order went into effect at 11:59 p.m. on March 23, 2020. However, the Order provides for certain exemptions to the general rule, including individuals that need to leave their residence to provide any services or perform any work related to "Essential Infrastructure."

- [OSHA Guidance – When is COVID-19 a recordable illness?](#)

Although recordkeeping requirements exempt recording of illnesses like the common cold and flu, OSHA has reminded employers that COVID-10 is a recordable illness if an employee is infected as a result of performing their work-related duties.

Data Privacy and Cybersecurity

- [10 ways to stay CyberSavvy while employees return to work](#)

Employees returning to the office after weeks of remote work creates data privacy and cybersecurity challenges that businesses need to confront head on. These considerations are especially

critical as many states and regulators are requiring employers to collect COVID-19 related health information. Below are 10 ways to combat potential cyber risks and stay #CyberSavvy while employees are returning to work.

- [Coronavirus relief funds mistakenly being direct deposited to cybercriminals](#)

The Internal Revenue Service has started direct depositing coronavirus relief funds into millions of bank accounts, but some of these funds are not arriving to the intended recipients.

- [Joint alert issued on exploitation of COVID-19 by malicious cyber actors](#)

A joint alert was issued yesterday from the United States Department of Homeland Security Cybersecurity and Infrastructure Security Agency and the United Kingdom's National Cyber Security Centre regarding exploitation of the novel coronavirus by malicious cyber actors.

- [Coronavirus outbreak does not halt CCPA enforcement](#)

The coronavirus outbreak has not stopped public and private enforcement of the California Consumer Privacy Act (CCPA). At a time when much of the world is busy with stopping a global pandemic, recent developments serve as a reminder that regulators and litigants remain steadfast in their commitment to enforce the CCPA—and to collect the steep fines and penalties associated with violating it.

- [Monitor your privacy settings for Zoom Video and Alexa](#)

In March 2020, as professionals worked from home due to COVID-19, Zoom video conferences surged in popularity while, conversely, lawyers cast weary glances at the Alexa device in their home office, wondering if it was recording confidential communications. While

society struggles with its relationship with ubiquitous communication devices, here is advice on properly configuring Zoom and Alexa privacy settings.

- [9 tips for keeping your workforce CyberSavvy while working from home](#)

As organizations and employees work from home, we can expect cyber criminals to attempt to profit off of the confusion. Here are some tips organizations should consider to protect themselves from cybercriminals during this unique “work from home” time.

- [Cybercriminals exploit coronavirus fears](#)

Cybercriminals continue to exploit any opportunity to target the data of unsuspecting victims with malicious malware, even using a growing health crisis like the coronavirus pandemic as subterfuge.

Employee Benefits

- [Protecting the health of retirement plans from COVID-19, Part III: Administrative and fiduciary issues for retirement plans](#)

The global coronavirus crisis is having a direct or indirect impact on employer’s retirement plans. In part three of this three part alert, we examine administrative and fiduciary issues due to the effects of layoffs, Families First Corona Response Act (FFCRA) payments and the stock market decline.

- [Protecting the health of retirement plans during the COVID-19 crisis, Part II: Gaining access to retirement benefits](#)

The global coronavirus crisis is having a direct or indirect impact on employer’s retirement plans. In part two of this three part alert, we will explore how employees may gain access to their retirement assets to handle the current financial struggles.

- [Protecting the health of retirement plans during the COVID-19 crisis, Part I: Reducing or eliminating employer contributions](#)

The global coronavirus crisis is having a direct or indirect impact on employer’s retirement plans. In part one of this three part alert, we

will address how an employer can stop or reduce its contributions to its retirement plans.

- [Deadline extended for contributions to IRAs, Qualified Retirement Plans, Health Savings Accounts, and Archer MSAs](#)

The Treasury Department and the Internal Revenue Service issued an announcement (Notice 2020-18) extending the deadline for contributing to an IRA, Qualified Retirement Plans, Health Savings Accounts, and Archer MSAs. The extension was in response to the coronavirus crisis and in line with the recent extension for federal tax filings and payments.

- [COVID-19: Continuing healthcare coverage for furloughed or laid-off employees](#)

As the coronavirus and its economic impact continue spreading across the nation, employers are dealing with a variety of unprecedented issues in regards to their business operations, including employee benefits plans. Many employers are concerned about continuing healthcare coverage for employees who are furloughed or laid off during this time.

Estate Planning

- [6 techniques high net worth individuals should be considering now](#)

Historically low interest rates and asset values at suppressed values due to the COVID-19 crisis makes this the perfect time to consider the following estate planning strategies.

Franchise

- [Merchant cash advances: Making good decisions in unprecedented times](#)

Operating a successful business requires working capital and regular cash flow. When money is tight, business owners often

consider alternative sources of funding. With the effects of the COVID-19 pandemic, many small businesses are encountering a slowdown, while attempting to do right by employees and hold out hope that things will return to business as usual quickly. These are unprecedented times, and it is important that business owners consider all of their options and the potential risk before committing to a funding path.

- [Service industry crowdsourcing funds amid coronavirus shutdowns and scale-backs](#)

Local governments, business organizations, hospitality groups and restaurants are turning to the public to help bridge the fiscal gap for employees during government mandated shutdowns and scale-backs.

- [The impact of the coronavirus on restaurants](#)

According to the National Restaurant Association, over 1 million restaurants operate in the United States. They employ over 15.6 million and were projected to generate sales of \$899 billion in 2020. With outbreaks of the new Coronavirus (COVID-19) spreading throughout the country, the restaurant and hospitality industries have been hard hit.

Healthcare

- [The state of COVID-19 telehealth](#)

The onset of the COVID-19 public health crisis has brought about extraordinarily rapid changes throughout the healthcare landscape of this country. Changes have been particularly sweeping and urgently needed in the telehealth space. It is imperative that providers keep up with these changes, as failure to properly abide

by these relaxed and fluctuating guidelines could lead to enforcement issues once the COVID-19 public health emergency ends.

- [FDA announces new Coronavirus Treatment Acceleration Program](#)

On March 31, the U.S. FDA announced a new program, known as the Coronavirus Treatment Acceleration Program (CTAP), focused on bringing new therapies to sick patients as quickly as possible, while supporting research to ensure safety and efficacy of new treatments and countermeasures. The program aims to streamline and coordinate efforts in both the public and private sectors to bring coronavirus treatments to market.

- [FDA issues first Emergency Use Authorization for laboratory developed test for COVID-19 to Yale New Haven Hospital](#)

On March 31, 2020, the FDA issued an Emergency Use Authorization (EUA) for molecular-based laboratory developed tests (LDTs) for detection of nucleic acid from SARS-CoV-2 (Molecular LDT COVID-19) in specimens from individuals suspected of COVID-19 by their healthcare provider. On April 1, FDA authorized the first Yale New Haven Hospital's SARS-CoV-2 PCR test —the first authorized Molecular LDT COVID-19 test.

- [OCR announces enforcement discretion to allow uses and disclosures of PHI by business associates for public health and health oversight activities during COVID-19 pandemic](#)

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services announced that it will exercise enforcement discretion for certain provisions of the HIPAA Privacy Rule and will not assess penalties against health care providers or their business associates under certain circumstances. Specifically, OCR will not assess penalties against business associates who use or disclosure protected health information for good faith uses and disclosures for

public health and health oversight activities during the COVID-19 emergency period.

- [CMS expands accelerated and advanced payments to offer additional financial relief for providers during the COVID-19 emergency period](#)

In a press release on March 28, 2020, the Centers for Medicare and Medicaid (CMS) announced expanded availability of financial assistance for providers through accelerated and advanced Medicare payment programs. Although these expedited payments are usually offered during natural disasters in specific locations and to specific providers, CMS is expanding the program for Medicare providers throughout the country during the COVID-19 Emergency Period.

- [FDA's emergency use authorization policy for COVID-19 diagnostic tests](#)

On March 16, 2020, the United States Food and Drug Administration issued updated guidance for clinical laboratories, commercial manufacturers, and Food and Drug Administration staff on its Policy for Diagnostic Tests for Coronavirus Disease-2019 during the Public Health Emergency.

- [Industry updates: FDA Emergency Use Authorizations for novel coronavirus diagnostic testing](#)

On February 4, 2020, the FDA issued a EUA for the Centers for Disease Control and Prevention's (CDC) 2019-nCoV (RT)-PCR Diagnostic Panel for the presumptive qualitative detection of nucleic acid from the 2019-nCoV in upper and lower respiratory specimens. This EUA was re-issued in its entirety on March 15, 2020 to reflect a number of amendments including changes to the intended use and primer and probe materials.

- [CMS issues CLIA guidance during COVID-19 public health emergency](#)

On March 26, CMS issued a Memo to all CLIA State Survey Agency

directors regarding CLIA guidance during the COVID-19 Public Health Emergency. The guidance took effect immediately. The memo and associated guidance are only applicable during the COVID-19 public health emergency and accredited labs must follow their accrediting organization requirements and applicable state laws, which may be more stringent than CLIA.

- [OCR issues HIPAA guidance on COVID-19 disclosures to law enforcement, first responders and public health authorities](#)

On March 24, 2020, the Office for Civil Rights (OCR) at the Department of Health and Human Services issued guidance on when the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule permits covered entities to share protected health information (PHI) of an individual who is infected with or exposed to COVID-19 with law enforcement, first responders and public health authorities.

- [OIG issues guidance on cost-sharing waivers for providers of telehealth services during COVID-19 outbreak](#)

On March 24, 2020, the Office of the Inspector General (OIG) released timely guidance to its previous Policy Statement dated March 17, 2020, regarding providers' ability to reduce or waive cost-sharing expenses for federal health care program beneficiaries, as an exception for telehealth services provided during the coronavirus (COVID-19) outbreak. The OIG's new guidance addresses a number of questions from healthcare providers seeking to clarify the scope of the cost-sharing waiver Policy Statement.

- [DEA allows remote prescribing of controlled substances](#)

On March 20, 2020, the Drug Enforcement Administration (DEA) posted guidance allowing DEA-registered practitioners to prescribe controlled substances remotely (e.g., through telehealth) during the

COVID-19 national emergency period.

- [SAMHSA encourages telehealth for substance use disorder patients](#)

Late last week the Substance Abuse and Mental Health Services Administration (SAMHSA) issued guidance encouraging the use of telehealth for substance use disorder (SUD) patients during the COVID-19 pandemic national emergency period.

- [SAMHSA issues guidance on disclosure of substance use disorder patient information](#)

On March 19, 2020, the Substance Abuse and Mental Health Services Administration (SAMHSA) issued guidance on disclosure of substance use disorder (SUD) information during the COVID-19 pandemic national emergency period.

- [CMS issues guidance on payments for state medicaid telehealth services provided during COVID-19 pandemic](#)

In recent guidance, the Centers for Medicare and Medicaid Services (CMS) intended to help states better understand policy options for paying Medicaid providers using telehealth to deliver patient services in combating COVID-19. CMS has recently been encouraging providers to use telehealth services due to the benefit of increasing access to care while reducing the risks for spread of infection and exposure for vulnerable populations.

- [OCR announces penalty waivers for telehealth COVID-19 emergency and other treatment](#)

On Tuesday, March 17, 2020, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) announced, effective immediately, that it will exercise its enforcement discretion and will waive potential penalties for Health Insurance Portability and Accountability Act (HIPAA) violations against any health care providers that are treating patients through remote audio or video communication technologies during the COVID-19 nationwide

public health emergency.

- [OIG issues policy statement and fact sheet on COVID-19 telehealth cost sharing waivers](#)

On Tuesday, March 17, 2020 , the Office of Inspector General (OIG) issued a policy statement and related fact sheet stating that providers will not be subject to administrative sanctions for waiving cost-sharing (deductibles or coinsurance) obligations for telehealth services during this public health crisis. .

- [CMS updates regarding coronavirus lab tests](#)

CMS is issuing nearly daily updates regarding its actions to support American's healthcare facilities and clinical laboratories in responding to COVID-19. This alert provides a list of some of the more recent information provided by CMS on its current emergencies page.

- [Coronavirus legislation allows expanded use of telehealth](#)

The Coronavirus Preparedness and Response Supplementation Appropriations Act includes a provision which gives the Secretary of Health and Human Services authority to expand the use of telehealth within outbreak areas during the current (or a renewal) coronavirus emergency period.

Intellectual Property

- [USPTO announces priority examination for COVID-19 related patents held by small and micro entities](#)

The U.S. Patent and Trademark Office announced a new [Prioritized Examination Pilot Program](#) for qualifying applications and applicants.

- [Facilitating Innovation to Fight Coronavirus Act: Would it help or hurt patent owners?](#)

With numerous private entities, major national health centers, and non-governmental organizations concentrating their efforts on developing and bringing to market diagnostics, treatments and preventatives to combat COVID-19, the issue of patent protection—and potential enforcement of patents—has also come to the forefront.

- [USPTO extends patent and trademark deadlines due to COVID-19 related delays](#)

On March 31, the United States Patent and Trademark Office announced extensions of certain patent and trademark deadlines under the recently passed CARES Act. The extensions provide relief for inventors and entrepreneurs during the COVID-19 crisis.

- [Non-medical companies filling medical equipment voids](#)

Necessity breeds innovation. While faced with a worldwide shortage of medical equipment and personal protective equipment (PPE), many business owners are implementing drastic changes to their operations to step up and help fill the gaps.

- [Intellectual property extensions resulting from coronavirus](#)

A summary of patent and trademark offices around the world that are granting automatic extensions or relaxing revival rules due to the coronavirus.

- [No new normal for IP litigation deadlines in the age of coronavirus](#)

Just as it is with the rest of life as we know it in the coronavirus era, the COVID-19 pandemic is having a dramatic impact on the norms in IP litigation deadlines. There is no consistent rule of thumb as courts across the nation are addressing IP litigation deadlines in different ways

- [Patent office deadlines amid COVID-19](#)

According to the latest United States Patent and Trademark Office (USPTO) update, while their offices are closed to the public, all patent and trademark application deadlines and other deadlines are not extended.

- [Will the coronavirus pandemic affect your intellectual property litigation?](#)

Count the United States courts among the institutions taking precautions to curb the spread of Coronavirus as confirmed cases of COVID-19 eclipsed 100,000 worldwide.

False Advertising

- [State and federal offices seek to protect consumers by cracking down on false and misleading COVID-19 treatment claims](#)

Earlier this month the U.S. Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) jointly issued warning letters to seven companies for selling products that fraudulently claim to prevent, treat or cure COVID-19. The products cited in these warning letters are teas, essential oils, tinctures and colloidal silver, all of which FDA considers unapproved drugs that pose significant risks to patient health and violate federal law.

Labor and Employment

- [As employers prepare to return to work, more EEOC guidance on COVID-19 and ADA](#)

As employers begin to cautiously prepare for a return to the physical workplace in the coming weeks, the Equal Employment Opportunity Commission (EEOC) is continuing to update its Technical Assistance Guidance on COVID-19 and the Americans with Disabilities Act (ADA). In a series of new questions and answers issued on April 17, 2020, the EEOC addresses some practical questions related to reasonable accommodations and adds a new section to its guidance on return to work issues.

- [COVID-19 claims and public employers](#)

In Ohio, employees who are disabled due to the contraction of an occupational disease or are the dependents of an employee whose death is caused by an occupational disease are entitled to

compensation under Ohio's Workers' Compensation system. In light of the current pandemic, an issue of concern for public employers is whether an employee has contracted COVID-19 in the performance of their work duties.

- [EEOC provides updated guidance on COVID-19 and ADA related issues](#)

The Equal Employment Opportunity Commission (EEOC), which enforces the ADA, had existing pandemic guidance in place that provided employers some initial insight on handling the onslaught of issues. However, because this crisis is like none before, employer questions and concerns have continued to evolve and many remained unaddressed. To assist employers, the EEOC updated its Technical Assistance Guidance to specifically address employers' common COVID-19 questions and concerns related to the ADA and other EEOC-enforced laws.

- [New CDC guidance helps employers keep critical infrastructure workers safe](#)

The CDC has issued a one page guidance document, "Interim Guidance for Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19" that concisely addresses some of the key concerns about how to keep essential infrastructure workers safe while attempting to operate during the coronavirus crisis. The new CDC guidance provides insight into one of the most pressing issues: What should an employer do in a potential employee exposure situation?

- [DOL issues 4th Q&A guidance on Families First Coronavirus Response Act](#)

On April 3, 2020, the DOL issued a 4th set of questions and answers that dig into some of the specifics regarding when emergency paid

sick leave (EPSL) and emergency FMLA (EFMLA) leave are available for use.

- [Health care providers and emergency responders under the Families First Coronavirus Response Act](#)

On March 27th, the DOL addressed for the first time employees that qualify as a “health care provider” for purposes of determining individuals whose advice to self-quarantine due to concerns related to COVID-19 can be relied upon as a qualifying reason for paid sick leave.

- [Additional DOL guidance on paid sick and paid FMLA provides practical advice](#)

On March 27, the Department of Labor issued additional guidance on the Emergency Paid Sick Leave (EPSL) provisions and the Emergency FMLA (EFMLA) requirements of the Families First Coronavirus Response Act (FFCRA). The new Guidance includes questions and answers that address many of the practical issues and concerns that employers have raised related to implementing the FFCRA on April 1.

- [New FFCRA required poster available for April 1 effective date](#)

The Families First Coronavirus Response Act (FFCRA) requires covered employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020. The FFCRA also requires a poster to notify employees of their rights. That poster has now been issued by the DOL and is available on the DOL website.

- [DOL provides Q&A style guidance on Families First Coronavirus Response Act](#)

For many employers, what has followed since March 18th are questions and more questions about coverage, notice, use, and

other basic compliance requirements of the FFCRA. On March 24th, the DOL issued a Q & A-style Guidance that answers some questions, but leaves many more unanswered just a week before the FFCRA is to be effective.

- [5 key points in developing a telework policy](#)

States and the federal government are requesting that employers allow employees to telecommute. Some states may even mandate telework in the wake of the coronavirus (COVID-19) outbreak. Here are five considerations for developing a telework policy.

- [Families First Coronavirus Response Act becomes law](#)

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act, which includes broad assistance to businesses and individuals. For employers and employees, the bill includes measures that expand the FMLA and provide for emergency paid leave for employers of 500 or fewer employees. The law is effective April 2, 2020, and will extend these protections through December 31, 2020.

- [Temperatures, medical questions and how the ADA intersects with public safety](#)

Most employers know that they should steer clear of asking employees certain medical questions to avoid overstepping the Americans with Disabilities Act (ADA). Yet, the coronavirus pandemic has put employers in the undesirable position of trying to assess whether employees are coming to work with symptoms of the coronavirus. So, what's an employer to do?

- [Employment Law Q&A: Responding to a positive COVID-19 test](#)

How do I respond to an employee who has tested positive for COVID-19 or had potential contact with someone who has?

- [House amends Emergency Leave Legislation before it gets to the Senate](#)

The U.S. House of Representatives has already amended the broad Families First Coronavirus Response Act legislation that provides new FMLA rights and paid sick leave for employees related to the coronavirus (COVID-19). The House had just passed the legislation with overwhelming support on Saturday, March 14, 2020.

- [COVID-19 Bill with FMLA leave and sick pay provisions is passed by House and moves to Senate](#)

In response to the unprecedented impact of the Coronavirus (COVID-19), on March 14 the U.S. House of Representatives passed the [Families First Coronavirus Response Act](#), which is intended to provide a broad range of assistance to businesses and individuals. Specifically, for employers and employees the bill includes measures that will expand the FMLA and provide for emergency paid leave for employers of 500 or fewer employees. The bill would extend these protections through the end of 2020.

- [Practical guidance for employers on responding to the coronavirus](#)

The U.S. Centers for Disease Control and Prevention (CDC) has issued an interim guidance for employers regarding the coronavirus (COVID-19). This guidance may help prevent workplace exposure to COVID-19.

- [Employment Law Q&A: Coronavirus wage and hour questions](#)

With the anticipated spread of the coronavirus, employers are looking for ways to continue operations and at the same time limit their employees' risk of exposure to the virus. Employers may direct some employees to work from home, while others employees may be furloughed, asked to work a reduced schedule, or may be sick.

- [Coronavirus: What is an employer to do?](#)

As concern and fear of the coronavirus grows, many employers are wondering what, if anything, they should be doing to keep their workplace safe. McDonald Hopkins has information on workplace safety precautions during the coronavirus outbreak and guidance on ADA and FMLA concerns related to the illness.

Litigation

- [Coronavirus will lead to litigation funding boom](#)

By now, COVID-19's immediate and direct impacts on the business and legal communities are obvious and well known. However, the secondary affects on those industries will continue to ripple for months and years ahead. Among those is the likely surge in litigation funding that will result from the coronavirus fallout.

- [Enforceability of contracts during COVID-19: A litigator's perspective](#)

As COVID-19 continues to disrupt businesses and the economy, parties to a myriad of contracts are wondering: are contractual obligations enforceable even though performance is difficult, impracticable, or nearly impossible?

Public Law

- [States reopening despite federal guidelines](#)

Despite warnings from the Centers for Disease Control and Prevention to avoid reopening too early, many state officials are pushing forward with plans to reopen their states and economies as soon as this week. Although there are serious concerns about the health implications of reopening public businesses and easing social distancing requirements, many officials assert that, if states do not reopen sooner rather than later, the country will face unprecedented economic damage.

- [A timeline of returning to normal: When will each state reopen?](#)

In a bid to reopen the United States amidst economic fears, President Donald Trump unveiled the Guidelines for Opening Up America Again on Thursday, April 16. The roadmap is intended to

provide governors with a gradual and phased approach to restoring normal activity in each state by reopening their economies, returning people back to work, and continuing to protect lives against the health threats of COVID-19.

- [Comparing stay-at-home orders: Permitted activities in one state may be a violation in another](#)

Despite having generally similar provisions, certain states have further restricted the list of businesses that qualify as essential and implemented additional restrictions. The following article compares and identifies the differences between the stay-at-home orders in Florida, Illinois, Michigan and Ohio.

- [Available state resources and incentives](#)

In addition to programs such as those included in the federal CARES Act, state and local governments have tirelessly prepared programs that are intended to relieve some of the economic strain COVID-19 has created. This article highlights programs and resources available to our clients located in Florida, Illinois, Michigan and Ohio.

- [Confusion remains as state attorneys general order businesses to shutdown](#)

Although each state provides a definition or list of examples of businesses that qualify as essential, businesses not expressly listed continue to face difficulties when determining if they are permitted to continue operating. As a result, state attorneys general have been forced to decipher these stay-at-home orders and hold businesses accountable.

- [New businesses and workers considered essential under updated CISA guidelines](#)

As mandatory statewide stay-at-home orders are issued, states and businesses continue to struggle with what businesses and workers

qualify as essential. In an effort to better assist states and businesses, CISA released an updated memo that includes new essential sectors and workers.

- [Navigating a stay-at-home order: Is your business non-essential?](#)

In an attempt to stop the rapid spread of COVID-19, several states, counties and cities have issued mandatory “shelter-in-place”/“stay-at-home” orders. The orders, issued by either the state’s governor or department of health, generally require all individuals to remain in their residences when possible and that all nonessential businesses cease operations.

- [Navigating through economic instability and COVID-19: SBA economic injury disaster loans](#)

The negative affects caused by COVID-19 have forced small business owners to temporarily close without any clear indication on when they may open again. These closures have caused unprecedented revenue loss and economic instability. In an effort to mitigate the economic damage caused by COVID-19, several federal and state level financial relief programs have been activated to support small business owners.

- [COVID-19: Navigating a state's open meetings act](#)

Multiple state governments, including Ohio, Illinois and Michigan, have issued varying bans on mass gatherings in response to the rapid spread of COVID-19. Together with President Trump’s guidance to limit gatherings of people to 10 or fewer, these bans have left local governments and other public bodies scrambling while trying to navigate the requirements surrounding open-meetings.

Real Estate

- [Business interruption insurance claims: A potential source of funds for landlords and tenants](#)

The COVID-19 epidemic presents unique and unprecedented challenges for the commercial real estate industry. Landlords and tenants alike are scouring through their respective lease agreements reviewing whether contractual performance is excused under “force majeure” clauses, and what the respective remedies of the landlord may be in the event the tenant stops paying rent.

- [Eviction and foreclosure moratoriums](#)

COVID-19 has impacted the commercial real estate market in many ways, including defaults on lease and loan payments by tenants and borrowers. Landlords and lenders seeking to evict or judicially foreclose on defaulting tenants and borrowers may be hampered in their efforts as a result of state and local efforts to provide relief to financially stressed tenants and borrowers.

- [Commercial landlord responses to rent concession requests](#)

As a result of the COVID-19 global pandemic, the world is facing a healthcare and financial crisis. The commercial real estate industry and, particularly, commercial leasing and lending, are in uncharted waters. Many American businesses are struggling to meet their commitments, including their rent and mortgage payments.

- [Force Majeure lease provisions before and after the coronavirus \(Covid-19\)](#)

A Force Majeure (or Act of God) clause in a lease limits or eliminates liability for “an event or effect that can be neither anticipated nor controlled.”[i] There is a tragic irony in the fact that a microscopic organism such as Covid-19 can trigger a lease clause that means “superior force.” But, for the time being at least, the novel

coronavirus known as Covid-19 is a superior force – does it, however, trigger the force majeure clause in your lease, and thereby offer protection from liability to both landlords and tenants?

State Updates

- [The coronavirus impact on enrollment in Ohio public and private colleges and universities](#)

Ohio's Gov. Mike DeWine recently proposed \$110 million in cuts to higher education – amounting to a 3.8% cut to all four-year and two-year state colleges and universities. Although this is slightly better than had been anticipated, before we begin to celebrate it is important to realize the real reckoning is coming next school year when all Ohio universities and colleges, both private and public, are facing enormous challenges for the fall.

- [Illinois provides rebuttable presumption to front line workers in COVID-19 workers' compensation claims](#)

The Illinois Workers' Compensation Commission approved a new emergency rule that would create a “rebuttable presumption” for any employee of an “essential business” diagnosed with COVID-19. This means that it is likely that employees will obtain workers' compensation benefits if they are diagnosed with the COVID-19 virus and are working in an essential business.

- [COVID-19 antibody test kits advisory and checklist](#)

It has been reported recently that some companies in Ohio are purchasing serological tests that detect antibodies, or proteins, found in the blood when the body responds to the virus that causes COVID-19. They plan to use the tests on staff and, in some cases, customers.

- [Only limited construction projects permissible under Michigan stay-at-home order](#)

As COVID-19 continues to spread, some states have doubled down on the enforcement of stay-at-home orders and have intensified restrictions on businesses. For example, Michigan Gov. Gretchen Whitmer recently provided guidance explaining that, under Michigan's stay-at-home order, only limited construction projects are permissible.

- [Ohio businesses face threat of restraining orders, injunctions and citations for violating the stay at home order](#)

Prosecuting attorneys at the request of divisions of the Ohio Board of Health and the State of Ohio have been seeking temporary restraining orders and injunctions to compel businesses to comply with the Stay at Home Order issued by Ohio Director of Health, Dr. Amy Acton, on March 23, 2020, and amended on April 2, 2020. Local police departments have also been issuing warnings and misdemeanor citations to businesses that violate the Stay at Home Order

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- [Michigan's extended Stay Home Order adds new limitations](#)

On April 9, 2020, Michigan's Gov. Gretchen Whitmer issued [Executive Order No. 2020-42](#), which supersedes her prior "Stay Home, Stay

Safe” executive order and implements new requirements for residents and businesses in the state through April 30, 2020. While the new order reaffirms many of the primary measures in the initial order, it goes beyond that to add restrictions that limit gatherings and travel and that require all workers who are not necessary to sustain or protect life or minimum basic operations to stay home.

- [New Michigan executive order addresses time off and employment protections](#)

In an April 3, 2020 Executive Order, Executive Order 2020-36, Michigan Governor Gretchen Whitmer has refined the requirements of the initial Stay Home, Stay Safe Executive Order issued on March 24.

- [Ohio to extend stay-at-home order until May 1](#)

Governor Mike DeWine announced Thursday, April 2 that Ohio’s current stay-at-home order – initially set to expire the evening of Monday, April 6 – would be extended until May 1.

- [First response employees in Michigan receive workers' compensation for COVID-19](#)

In Michigan, first response employees will be entitled to workers’ compensation coverage for a COVID-19 injury based upon new Emergency Rules. First response employees in Michigan include individuals working in healthcare facilities, health care organizations, industrial medicine clinics, practitioners, anyone considered a first response employee under the workers’ compensation disability act, state police officers or officers of the motor carrier enforcement division of the state police.

- [Ohio Governor Mike DeWine orders 90-day pause in foreclosures](#)

The order, which according to the Columbus Business Journal, closes a loop created by earlier government actions to help those

who have lost jobs during the pandemic statewide stay-home-order,” was welcome news for Ohio businesses, but it also raised several questions.

- [ODH order for non-congregate sheltering: Protecting against liability while joining the battle against COVID-19](#)

Ohio Department of Health Director Amy Acton ordered the utilization of non-congregate sheltering in the state on Tuesday, March 31, furthering the state’s attempts to offer help to citizens impacted by the COVID-19 pandemic while also opening new dangers for property owners.

- [Major disaster declaration critical to Ohio governments](#)

McDonald Hopkins attorneys consider the impact of the major disaster announcement.

- [Ohio eliminates "20-day rule" under municipal income tax for employees working from home during the health emergency](#)

Governor DeWine signed [HB 197](#) into law, which among other things, eliminates Ohio’s “20-day rule” under municipal income tax for employees working from home during the COVID-19 health emergency.

- [Ohio elections, taxation, open meetings, water utilities and more: Public entities affected by sweeping state COVID-19 response](#)

When Ohio Governor Mike DeWine signs House Bill 159 into law, as he is expected to do on March 27, 2020, Ohio’s public entities must quickly prepare for important measures that provide governments and their constituents relief from the COVID-19 epidemic. The bill was introduced in 2019 but was amended to serve as omnibus state legislation meant to respond to the coronavirus outbreak. We've prepared a list of items that should be of particular concern to public entities in Ohio.

- [Florida not moving toward shutdown](#)

As more and more governors move toward statewide shutdowns of non-essential businesses and services to decrease the spread of COVID-19, Governor Ron Desantis will not shut down the State of Florida. The Governor continues to hold firm to this position despite the fact that 47 of Florida's 67 counties have reported cases of COVID-19.

- [Is COVID-19 a workers' compensation claim in Ohio?](#)

- In light of the current pandemic, an issue of concern for employers in Ohio is whether an employee may have a workers' compensation claim if the employees contracts COVID-19 in a work related setting.

- [Deferral of Ohio Workers' Compensation premiums and other BWC updates](#)

Ohio's Bureau of Workers' Compensation (BWC) system is the exclusive provider of workers' compensation insurance in Ohio. The BWC serves 249,000 public and private employers. Significantly, for employers the BWC has announced that employers' insurance premium installment payments due for March, April, and May for the current policy year may be deferred until June 1, 2020.

- [Florida small businesses eligible for SBA assistance for economic injury from COVID19](#)

Florida Governor Ron DeSantis declared a state of emergency for the State of Florida on March 17. As a result, and as provided in the Coronavirus Preparedness and Response Supplemental Appropriations Act recently enacted, the U.S. Small Business Administration is offering low interest federal disaster loans to small business in the State of Florida impacted by COVID-19.

- [Florida approves emergency bridge loans for small businesses](#)

In order to alleviate some of economic distress faced by many small businesses as a result of the COVID-19 pandemic, the Florida

Department of Economic Opportunity (FLDEO) approved a Small Business Emergency Bridge Loan program effective as of March 19, 2020.

- [Michigan stay home, stay safe order in effect - now what?](#)

At 12:01 a.m. March 24, 2020, [Michigan Executive Order 2020-21](#), known as the “Stay Home, Stay Safe” order went into effect, halting all non-essential on-site business operations in Michigan, other than those operations necessary to sustain or protect life or to conduct minimum basic operations, until at least April 13, 2020. Businesses must designate employees that meet those criteria, and must adopt social distancing practices and other mitigation measures to protect workers and patrons in the performance of that necessary in-person work.

- [Oakland County issues new health order for screening employees and maintaining social distancing at essential businesses](#)

On March 24, 2020, Oakland County Executive David Coulter, in conjunction with Oakland County Health Division, issued Emergency Order (2020-5) For Control of Pandemic, requiring all open businesses and operations subject to Michigan Executive Order 2020-21 to implement the following screening procedures and social distancing measures, effective Wednesday, March 25, 2020.

- [Michigan non-essential businesses forced to close through April 13](#)

Starting Tuesday, March 24 at 12:01 a.m. all individuals in Michigan will be required to stay in their homes and all non-essential businesses will be required to shut their doors until at least April 13, 2020.

- [Illinois non-essential businesses forced to close through April 7](#)

Illinois Governor JB Pritzker has issued [Executive Order 2020-10](#), widely known as a “shelter-in-place” order, which requires citizens of Illinois “to stay at home or at their place of residence except as allowed in this Executive Order” through the remainder of the Gubernatorial Disaster Proclamation, which currently extends through April 7, 2020.

- [Ohio non-essential businesses forced to close through April 6](#)

Starting on Monday, March 23 at 11:59 p.m. all individuals in Ohio will be required to stay in their homes and all non-essential businesses will be required to shut their doors until at least April 6, 2020.

- [Michigan joins other states in expanding unemployment benefits to assist employees during COVID-19 pandemic](#)

Governors nationwide are taking unprecedented steps to mitigate negative impacts on businesses and their employees caused by the COVID-19 crises. Most recently, Michigan Governor Gretchen Whitmer, and Ohio Governor Mike DeWine followed their Illinois counterpart and announced that their respective state governments will be expanding coverage for unemployment benefits, effective immediately.

- [Ohio is extending unemployment to those affected by Coronavirus \(COVID-19\)](#)

At a press conference on Sunday, March 15, 2020, Ohio’s Lt. Governor John Husted announced that Ohio will be making a series of changes to the unemployment compensation system to assist workers who are displaced as a result of the coronavirus spread. Previously, unemployment was not available for such individuals.

- [Ohio to implement liquor buyback program in response to COVID-19](#)

In an effort to curb the negative economic affects of Governor

DeWine's executive order closing Ohio restaurants and bars, the Ohio Department of Commerce has announced a one-time liquor buyback option.

Tax and Benefits

- [Employers may make tax-free payments to employees for COVID-19 expenses](#)

In addition to the expanded sick pay and family medical leave benefits for employees under the Families First Coronavirus Response Act and the tax incentives and relief included in the CARES Act, employers have an additional tax-related tool to support their employees affected by the COVID-19 pandemic. Existing law allows employers to make “qualified disaster relief payments” to their employees that are tax-free to the employee.

- [States allowing for deferral of tax payments and tax return filings](#)

The IRS has issued guidance allowing for additional time to pay 2019 federal income taxes and 2020 first quarter estimated taxes up to certain amounts. States have begun to follow suit with some following the federal government and others taking different approaches.

- [Coronavirus creates challenges for ESOP companies](#)

The coronavirus and the attendant economic disruption is creating challenges for companies that sponsor retirement plans. This article highlights the unique challenges facing companies that sponsor Employee Stock Ownership Plans (ESOPs) and suggests some administrative and operational steps ESOP companies may wish to consider.

- [IRS allowing more time to file federal tax returns and pay federal income taxes](#)

The IRS has announced that individual taxpayers and trusts will be allowed to defer until July 15 the payment of up to \$1 million in federal income taxes and that C corporations will receive a similar accommodation on up to \$10 million in corporate income taxes.

- [Tax credits ease cost of extension of paid sick leave and FMLA](#)

With many employers and self-employed individuals already feeling the financial effects on their businesses from social distancing and mandatory closures, the FFCRA includes provisions to help reduce the cost of these expanded benefits on affected employers through refundable tax credits.

- [Treasury Secretary announces more time to pay federal income taxes](#)

Treasury Secretary Steve Mnuchin announced that individual taxpayers will be allowed a 90-day extension to pay federal income taxes otherwise due on April 15 of up to \$1 million and that C corporations will receive a similar accommodation on up to \$10 million in corporate income taxes.



The CARES Act Review



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