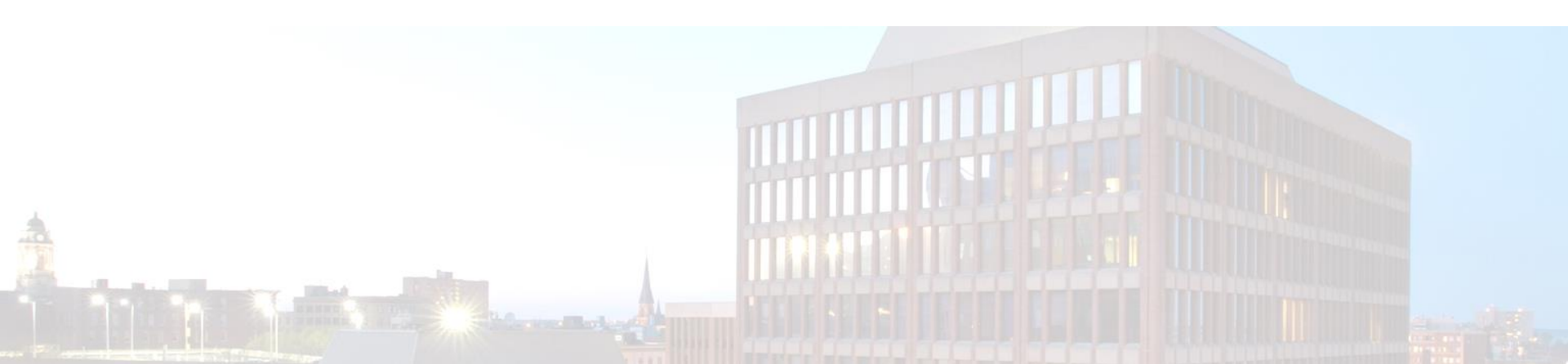




**COVID-19:
Legal and Practical
Guidance for Your
Business**

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COVID-19: Legal and Practical Guidance for Your Business

The Coronavirus Disease 2019 (COVID-19) is changing the way companies and non-profit organizations do business in extraordinary ways and at an unprecedented pace.

Companies and non-profits across the country are working to balance the need to continue business operations with the need to protect the health and safety of employees, vendors, customers and those they serve.

Successfully guiding your business through this outbreak requires a thoughtful communication strategy, adequate risk management, consideration of your contractual obligations and understanding of existing and emerging employment laws.

The following information includes introductory guidance to help your company navigate these uncertain times.

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Crisis Management & Messaging Considerations

- **COVID-19 is a crisis unlike any other in recent memory and it can impact every part of your business or organization.**
- **Developing a clear [Response Plan](#) can promote the safety and wellbeing of employees, vendors, customers and other stakeholders and help guide your business through the ongoing crisis.**
- **Businesses and non-profits should consider the following strategies when developing their Response Plan.**

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Dedicate an employee or small team to implement and execute the Response Plan

Crisis Management & Messaging Considerations

- Assign clear roles to the Response Team
- Train them to:
 - Develop and implement the plan
 - Develop messages to various stakeholders
 - Manage communications

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Gather and verify facts

Crisis Management & Messaging Considerations

- **Reliable information is key to planning for and responding to a crisis like COVID-19**
- **Your Response Plan should outline how information will be accurately gathered and communicated to stakeholder groups**
- **The facts as they relate to COVID-19 are changing fast and it is important to verify the information is accurate**
- **Keep current on the facts to allow your Response Team to adapt and guide their strategy for the business or organization**

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Communication

Crisis Management & Messaging Considerations

- During a time of crisis, your employees, customers, business partners and other stakeholders will look to leadership for information and guidance on how to navigate the changing landscape
- Once your Response Team has gathered the necessary facts and developed a Response Plan, **communication** is the key to successful implementation

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Communicating the Response Plan

Crisis Management & Messaging Considerations

- Address all stakeholders, including:
 - Employees
 - Customers
 - Clients
 - Suppliers
 - Business partners
 - The general public

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Communicating the Response Plan

Crisis Management & Messaging Considerations

- Give thought to the way different groups interact with your business or organization
 - For some groups, **indirect communication** like email or social media posts may be both effective and sufficient
 - For others, **direct communication** like a phone call may be needed to effectively communicate

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Employees are the lifeblood of businesses and non-profits

Employment Considerations

- Keeping employees engaged and safe during the COVID-19 outbreak is paramount
- The interplay between business necessity and the legal landscape can be daunting

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Compliance with federal and state employment laws

To ensure that your Response Plan does not violate federal or state employment laws, consider the following:

- Preventative measures and sick employees
- Remote work
- Suspension of non-essential business travel
- Disclosure of leisure travel plans
- Current and pending legislation regarding Paid Leave
- Avoiding discrimination and harassment

Employment Considerations

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Employment Considerations

Preventative measures and sick employees

- Require employees to **wash their hands** upon arriving at work and to do so throughout the day
- **Sanitize** the workspace throughout the day
- **Discourage handshaking** and other physical contact
- Emphasize the importance of **personal space**
- Encourage sick employees to **stay home**
- Allow employees with sick family members to **stay home** and **use PTO time**
- While an employer must exercise good judgment and protect the privacy rights its employees, **if an employee exhibits COVID-19 symptoms in the workplace, the employee should be sent home**

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Business travel

- **Businesses and non-profits should suspend all non-essential business travel during the COVID-19 outbreak**
- **If an employee must travel during this time, employers should consider a **quarantine period** upon the employee's return**

Employment Considerations

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Leisure travel

- **Businesses and non-profits may ask employees to disclose leisure travel plans**
- **An employer may impose a **quarantine period** for employees who travel for leisure during the outbreak**
- **An employer should **make employees aware** of the quarantine policy in advance of the employee's travel**

Employment Considerations

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Paid Leave legislation

- Review your company's leave policies to ensure they comply with existing federal and state minimum standards for employee leave
- Employers should also track federal and state emergency relief laws which may require some employers to provide employees with additional leave

Employment Considerations

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Contract Considerations

Contract Considerations

- The uncertainty caused by COVID-19 could impact your ability to perform certain requirements under your contracts
- On the other hand, a counterparty that has a requirement to perform to your benefit may also claim that they are unable to do so
- Certain insurance coverage may be available to assist in the event a counterparty fails to perform
- The following key contract provisions may give you or a counterparty the ability to not be required to perform under a contract

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Force Majeure clauses

- A force majeure clause is a contract provision that typically excuses a party's inability to perform if an unforeseeable event prevents such performance
- Most force majeure clauses apply to both parties, so be prepared if the opposite party attempts to invoke it

Contract Considerations

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Force Majeure clauses

- How the clause is drafted matters: does it include language incorporating epidemics and pandemics?
- The clause may allow for termination of the contract after a certain period of time if the cause of non-performance cannot be cured

Contract Considerations

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Other legal clauses that MAY excuse performance

Contract Considerations

Doctrine of Impossibility

- Typically raised as a defense to a breach of contract claim
- May be cited as a ground for termination
- A party may be released on the ground that uncontrollable circumstances have rendered performance impossible

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Other legal clauses that MAY excuse performance

Doctrine of Impracticability

- Similar to Doctrine of Impossibility
- Performance under the contract may not be impossible, but is exceptionally difficult or expensive

Contract Considerations

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Insurance coverage

- Review insurance policies for possible business interruption insurance, which generally helps protect against lost income after a covered peril
- Many policies may exclude viruses and infections and often require that physical damage be the cause of interruption – not just a disruption in supply chains or forced closures

Contract Considerations

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Next steps

Contract Considerations

- Review all key contracts to determine performance requirements by you or a counterparty
 - Does the contract have a force majeure clause?
- Involve legal counsel in the review process to help assess requirements under key contracts

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Next steps

Contract Considerations

- Review options with the counterparty – both parties can mutually agree to renegotiate or temporarily suspend performance
- Review insurance policies and put insurance providers on notice if you believe you have coverage
- Determine if you can currently perform under the contract

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Commercial Real Estate Considerations

Commercial Real Estate Considerations

- **The commercial real estate world is no exception to the effects of COVID-19**
- **Commercial landlords, tenants, buyers, sellers and lenders are all likely to encounter difficulties as they attempt to consummate pending deals or maintain existing relationships**

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Commercial landlords and tenants

Commercial Real Estate Considerations

- May have problems meeting their obligations due to critical vendor disruptions and reductions in customer traffic, particularly in the hospitality industry
- The force majeure and business interruption concepts discussed previously are important considerations in the lease context
- Parties should work to understand what may or may not constitute events of default and how to address those issues

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Buyers and sellers of commercial real estate

Commercial Real Estate Considerations

- Likely to see delays at several points in the purchase and sale process
- The due diligence process may be slowed by difficulties in procuring title commitments and delays in physical inspections and other on-site work
- Buyers are likely to encounter financing difficulties due to ongoing uncertainty

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Buyers and sellers of commercial real estate

Commercial Real Estate Considerations

- Expect logistical delays during the actual closing process, including prompt recording of the deed and obtaining final policies of title insurance
- Buyers and sellers should review existing purchase and sale agreements for force majeure considerations or “material adverse change” clauses that may allow delays in the process or outright terminations of agreements
- Consider whether to include such provisions in new purchase and sale agreements

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Lenders

Commercial Real Estate Considerations

- Likely to experience delays in prompt payment on existing loans or in conducting due diligence and other logistical considerations
- Title insurance underwriters are working to address title update issues and to provide “gap” insurance for issues that may be created by recording delays
- Prepare borrowers for process delays accordingly

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Other Risk Management Considerations

Other Risk Management Considerations

- **In addition to the precautions discussed above, all businesses and non-profits should review their insurance policies to determine whether they have business interruption coverage or other coverage for disease, epidemics, pandemics, etc.**

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Resources for Businesses & Employees

Resources for businesses & employees

- **There are a number of resources for both businesses and employees impacted by COVID-19**
- **Many of these resources are still either in the planning stage or could change as more information becomes available**
- **We recommend contacting the provider of any benefit directly for the most current information**

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Resources for Businesses & Employees

U.S. Centers for Disease Control and Prevention (CDC)

- [CDC Interim Guidance for Businesses and Employers](#)

Occupational Safety and Health Administration (OSHA)

- [OSHA's COVID-19 Overview and Resources for Preventing Workplace Exposure](#)

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Resources for Businesses & Employees

U.S. Equal Employment Opportunity Commission (EEOC)

- [Pandemic Preparedness in the Workplace and the ADA](#)

Maine Department of Labor

- [Resources for Workers and Businesses on COVID-19](#)

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Resources for Businesses & Employees

Small Business Administration (SBA) Economic Injury Disaster Loans

- **March 16, 2020: The U.S. Small Business Administration (SBA) approved Governor Mill's application for SBA Economic Injury Disaster Loans**
- **[Apply for Assistance Online](#)**

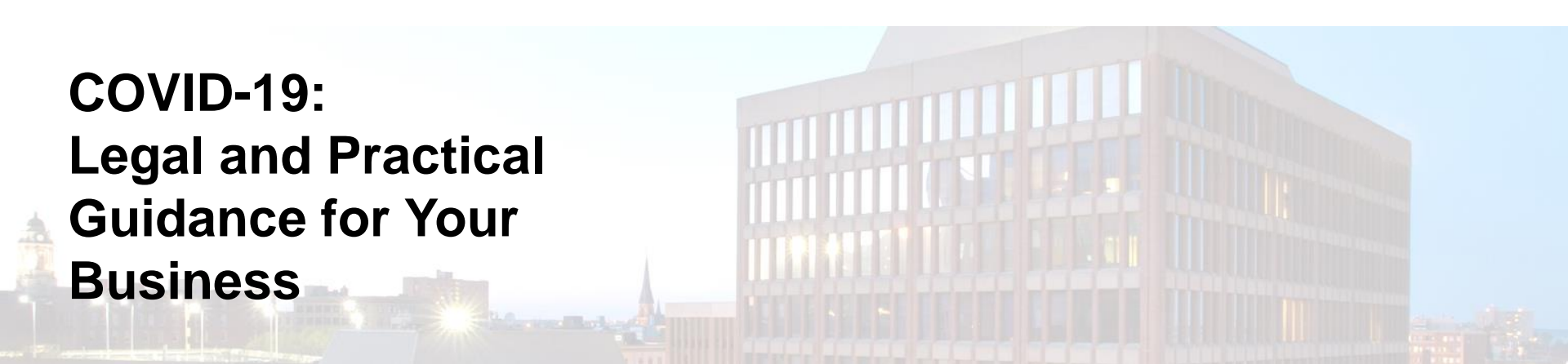
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Resources for Businesses & Employees

Office of the Comptroller of Currency (OCC)

- The OCC issued a [bulletin](#) to banks and lenders working with customers impacted by COVID-19
- The OCC is encouraging banks to:
 - Take steps to meet the financial needs of customers adversely impacted by COVID-19
 - Allow borrowers to defer or skip some payments or extend due dates to avoid negative credit bureau reporting
 - Take “prudent efforts” to modify loans where appropriate in order to “help borrowers recover or maintain their financial capacity and enhance their ability to service their debt.”

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Resources for Businesses & Employees



Maine Department of Health and Human Services (DHHS)

- Updated information on COVID-19 is available at the [Maine DHHS website](#)

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For More Information

Perkins Thompson attorneys are available to assist with your questions.

Please visit the following practice group pages for more information:

[Business Law Group](#)

[Employment Law Group](#)

[Litigation Group](#)

[Real Estate Law Group](#)

You may also visit our [COVID-19 blog](#), where we will post additional COVID-19 guidance as it becomes available.



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