

COVID-19 Impact: Considerations for Business Shutdown Preparation

Article
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As the impact of the COVID-19 pandemic continues to heighten, many business owners are faced with making the extremely difficult decision to close their doors in an effort to help reduce the spread of coronavirus. Such decisions can trigger wage and hour factors, supply chain ripple effects and insurance claims, to name a few.

Everyone has likely already been affected by the rapid spread of the COVID-19 (Coronavirus) virus. As such, the federal government, State of Wisconsin and employers have taken drastic, targeted measures to help slow the spread of the virus throughout the State and Country.

In addition to last Friday's act of mandating school closures, Governor Evers recently ordered a ban on gatherings of 10 or more persons (effective as of 5:00 p.m. CST on March 17, 2020). President Trump also recommended limiting social gatherings to 10 or less people. These bans have already had a tremendous effect on Wisconsin's hospitality industry, including restaurants, bars and taverns. Milwaukee County, for example, has ordered dine-in restaurants to close to the public. Whether you elect, or are mandated, to close your business, business owners are advised to consider the following if they choose to limit or cease operations.

1. **Plan now.** The CDC is encouraging employers to consider how best to decrease the spread and lower the impact of COVID-19 in the workplace. Employers should start planning for an increased number of employee absences, whether due to sickness or disruptions in routine lifestyles, and should consider flexible work practices (working from home, flexible work hours, etc.) to encourage social distancing where applicable. CDC guidance is available to employers to help prepare for an infectious disease outbreak.
2. **Review your leave policies.** Employers should review their PTO and leave policies to make sure that they are flexible, consistent with public health guidance, and compliant with legal requirements around mandatory quarantines. Communicate these policies to your employees and inform them what pay and benefits will be available to them.
3. **Review your insurance policies.** Check your insurance policy or confer with your insurance broker to determine if your insurance policy includes

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“business interruption insurance.” Business interruption insurance might help cover some of the losses suffered by a business when a covered event causes a business to close. Whether a communicable disease is considered a covered event will depend on the language of your specific policy.

4. **Review your lease provisions.** Leases, especially those for spaces in shopping centers and those that include percentage rent provisions, often contain operating covenants that require tenants to continuously operate their businesses for a designated amount of hours and days each week. Such operating covenant provisions could compel tenants to continuously operate their businesses during their entire lease term or risk default if they do not comply. Tenants may be able to seek waiver of these lease provisions or rent abatement from their landlords.
5. **Review your supply/service contracts.** Performance-based contracts often include “force majeure” provisions that can relieve a party of performance of the contract for unforeseeable circumstances that prevent such party from fulfilling the contract. These provisions sometimes contain notice provisions where the nonperforming party is required to provide notice to the other party to the contract within a specified period of time after the force majeure event in order for such provision to be effective.
6. **Act appropriately if layoffs are required.** Employers are doing everything they can to keep their workforce in place and to make sure employees are taken care of. If mass layoffs or plant closings are necessary, businesses may need to make sure they comply with the federal Worker Adjustment and Retraining Notification Act (“**WARN Act**”) and the Wisconsin Business Closing and Mass Layoff Law (“**Wis-WARN**”). In certain circumstances, the WARN Act and Wis-WARN require employers that meet certain employee count thresholds to provide their employees and certain governmental units with notice prior to a permanent or temporary shutdown or mass layoff to help affected employees prepare for new employment. These notices are time-sensitive, so employers should evaluate whether they are required to provide notice to their employees. There are, however, certain exceptions to the notice requirements, including exceptions that apply to unforeseeable business circumstances.
7. **Most importantly, COMMUNICATE.** The COVID-19 pandemic is causing uncertainty every hour. In these times, it is extremely important that you communicate with your employees, customers, vendors, suppliers, lenders, landlords and tenants regarding your business operations and status to help ease the stress and alleviate the uncertainty caused by these unique and uncertain times.

In addition to the above-listed suggestions, the U.S. Chamber of Commerce provided guidance on the top CDC-recommended tips that small business owners can take to help get through these unprecedented times.

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We are continuously monitoring this rapidly evolving impact to provide our clients with the most updated guidance on how best to safeguard their workforce while maintaining business operations. In the coming days please watch for updated guidance and recommendations for employers to consider when reviewing their policies and response to this ever-changing pandemic.

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