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LEGAL UPDATE

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Answering the Common Legal Questions Surrounding the Coronavirus

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Individuals and businesses are taking drastic steps to minimize the spread of the Coronavirus, or COVID-19. Companies are requiring employees work from home, many events have been or will be cancelled, and people are cancelling flights and other forms of travel. As companies prepare to deal with the virus, they are facing unique legal issues that they otherwise have never encountered. Law firms are getting bombarded with questions about these unique issues.

This article is intended to briefly summarize some of the key issues businesses face, but there are many other unique legal issues posed by the Coronavirus that will require careful consideration and legal analysis.

How Does Coronavirus Impact Business Contracts?

Many contracts have *force majeure* provisions. *Force majeure* is a legal doctrine that excuses contractual nonperformance when an unforeseeable event renders a party unable to perform under the contract. *Force majeure* provisions vary from contract to contract, so it is essential you read any contracts that may be impacted by Coronavirus to determine if you are prepared to comply with any requirements that may impact the enforceability of a *force majeure* provision.

If your contracts do not have *force majeure* provisions, you may look at the common law doctrines of impracticability and impossibility. The doctrine of impracticability could be asserted when a superseding cause, such as the Coronavirus outbreak, makes performance under a contract sufficiently unreasonable. The doctrine of impossibility may be more difficult to assert, which states a party may back out of a contract when performance is rendered objectively impossible under the circumstances.

Are Coronavirus-Related Business Losses Covered By Insurance?

Most Commercial Property and Businessowners policies provide some form of business interruption coverage. Business interruption coverage is designed to compensate an insured for any business loss it suffers as a result of a catastrophe. Most business interruption provisions require, however, that the loss of business income or business interruption be caused by a direct physical loss to property as a precondition to coverage. Whether the presence or threatened presence of a microorganism constitutes “direct physical loss” is the subject of much debate, and the question has not been fully settled in all states.

Another problem for policyholders is that in 2006, standard insurance policy forms were amended in response to the SARS epidemic to include a virus exclusion. The specific intent of the exclusion is to avoid having to cover losses resulting from disease-causing viruses or bacteria. Nevertheless, many lawyers are already discussing new ways to create coverage obligations for business owners affected by the Coronavirus, even in light of the “direct physical loss” requirement and microorganism exclusion that are common in business interruption coverage provisions.

One thing is certain: whether an insured is entitled to business interruption coverage as a result of Coronavirus-related loss is likely to be a hotly litigated issue in the coming months.

Can A Company Implement Plans to Manage the Impact of the Coronavirus?

Of course, but be careful. There are a variety of guidelines and laws that deal with how an employer can and should respond to a pandemic. For starters, management and human resource professionals should consult the Equal Employment Opportunity Commission’s pandemic guidance^[1], the Department of Labor’s various OSHA-related pandemic guidance statements^[2], and the Department of Labor’s various wage and leave-related statements^[3].

Employers should also be aware that pending state and federal legislation may later alter employers' obligations in the workplace on very short notice.

As employers learn more about state and federal guidelines and laws that concern Coronavirus, they should compare those guidelines and laws to employment handbooks, policies, and procedures. Companies should consider making updates where necessary.

The Coronavirus pandemic is rapidly evolving, and so are the legal issues it creates. It is paramount companies do their best to track any legal developments that may impact them. Where necessary, companies should consider contacting counsel.

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[1] The EEOC's pandemic guidance can be found here:

https://www.eeoc.gov/facts/pandemic_flu.html

[2] OSHA's influenza pandemic guidelines can be found here:

<https://www.osha.gov/SLTC/pandemicinfluenza/>

[3] The Department of Labor published a good Coronavirus FMLA and public health emergency Q&A, which can be found here: <https://www.dol.gov/agencies/whd/fmla/pandemic>

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