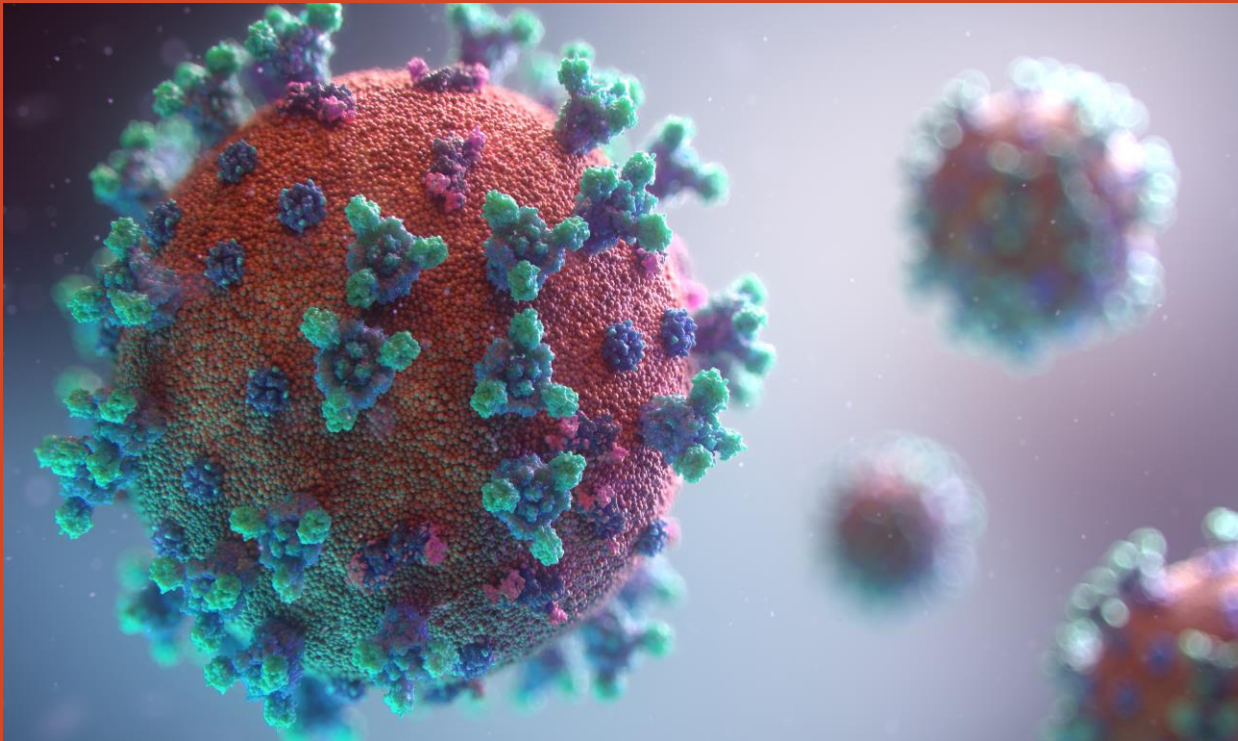


The New Normal – the Intersection of COVID 19 and Employee Issues, Real Estate, and Your Company's Future



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We Know This Virus Has Been
Overwhelming For Everyone . . .



We Are Here To Help

- ☐ How to handle your employees
- ☐ What can you do with your lease?
- ☐ And what about the future?



Beth Schroeder
Labor & Employment – Department Chair
Hospitality Group



Coronavirus in the Workplace

- ❑ Balancing the Need to Protect the Employees;
- ❑ Against the Rights of Privacy and Non-Discrimination;
- ❑ How to Handle Sick and Absent Employees;
- ❑ And Finally, What About Lack of Work, Layoffs and Closures, Including . . .
- ❑ The Families First Coronavirus Response Act



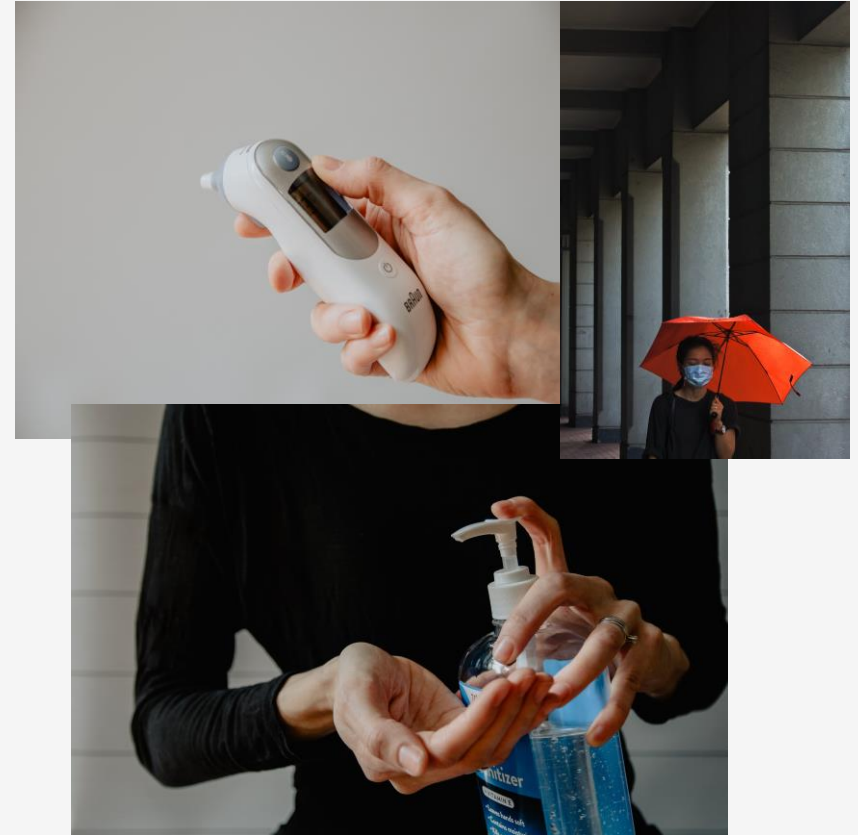
General Legal Obligations – Federal and State

- ☐ OSHA – protect employees' health & safety
- ☐ Protect privacy – California Constitution
- ☐ Protect against discrimination under Americans with Disabilities Act and California Fair Employment & Housing Act
- ☐ Provide leaves of absence under FMLA/CFRA
- ☐ California and local sick pay laws
- ☐ New FFCRA – expanded pay and leave
- ☐ Obligations to pay – vacation, final wages, EDD, SDI, PFL
- ☐ WARN Act – 60 days advance notice of mass layoff or closing
- ☐ COBRA – continuation of benefits



Dealing With Current Employees

- ❑ Written policies for current workplace
- ❑ Providing a safe environment –
 - ✓ Clean, sanitize
 - ✓ Limit number of employees
 - ✓ Follow local work orders
- ❑ Dealing with possibly ill employees
- ❑ Can we require employees submit to tests, temperatures, doctors notes, or send home? (may be case by case)



Time Off and Benefits

Existing Law:

- Employees entitled to time off under state and local sick pay laws, FMLA/CFRA/ADA
- Paid under sick pay, vacation (optional), state (SDI and PFL), employer private STD insurance
- Health insurance per FMLA (12 weeks)



Recent Memo From City of LA

Outlines sick pay obligations under LA law



CITY OF LOS ANGELES
CALIFORNIA



**Office of Wage Standards,
Bureau of Contract Administration**

Paid Sick Leave and COVID-19

March 18, 2020

Employers must allow Employees covered by LAMC 187 to use accrued Paid Sick Leave in the following situations, which fall under preventive care:

- The Employee takes time off work because public health officials or healthcare providers require or recommend an Employee isolate or quarantine to prevent the spread of disease;
- The Employee takes time off work because they are 65 or older or have a serious chronic medical condition as described by the Centers for Disease Control;
- The Employee takes time off work or loses regular or scheduled work hours because the employee's business or a work location temporarily ceases operations in response to a public health or other public official's recommendation or mandate;
- The Employee takes time off work because the Employee needs to provide care for a family member, by blood or affinity, who is not sick but who public health officials or healthcare providers have required or recommended isolate or quarantine; or
- The Employee takes time off work because the Employee needs to provide care for a family member whose school, child care provider, senior care provider, or work temporarily ceases operations in response to a public health or other public official's recommendation or mandate that is made to prevent the spread of disease.

Paid sick leave can also be used for absences due to illness; the diagnosis, care, or treatment of an existing health condition; or preventive care for the Employee or the Employee's family member by blood or affinity.

The City's Economic Workforce Development Department is offering job matching, referrals, and placement services [for employees](#) and financing, consulting, and more [for employers](#). Small businesses may be eligible for the [City's Emergency Microloan Program](#).

Employees may also be eligible for Disability Insurance, Paid Family Leave, Unemployment Insurance. Employers may also be eligible for tax assistance, rapid response, and other resources. Please visit the [State of California's Employment Development Department website](#) for more information.

For more information on applicable California labor laws, please visit the [Division of Labor Standards Enforcement's website](#).

For more information on COVID-19 and the City's response, please visit <http://coronavirus.lacity.org/>.

Families First Coronavirus Response Act

- ❑ Affects employers of under 500 employees (possible exclusions for employers under 50)
- ❑ Two different kinds of protected paid leave
- ❑ Emergency Paid Sick Time (EPST):
 - Ee under quarantine or isolation order;
 - Ee has self isolated;
 - Ee has symptoms and is seeking diagnosis
 - Ee is caring for someone (anyone!) subject to order to quarantine or advised to self quarantine;
 - Ee is caring for child and school is closed;
 - Ee is experiencing symptoms (unless healthcare or first responder)
 - Amount: 80 hours (10 days) for FT employees. Otherwise, pro rated
 - Ee's pay, capped at \$511 day (x 10 days) or \$200 day (x 10 days) depending on reason for use (1, 2, 3 or 4, 5, 6, above).
 - In addition to other paid leave
 - Can't require a doctor's note
- ❑ Can't discriminate or retaliate



Families First Coronavirus Response Act

- ❖ Second leave- Amendments to FMLA – Public Health Emergency Leave (PHEL)
- ❖ Temporary changes to FMLA (until end of 2020 unless extended)
- ❖ Expansion of PHEL applies to employers of under 50, unless Secretary of Labor may exempt if “viability of business is in jeopardy” ???
- ❖ PHEL applies to employees only employed for 30 days, not 12 months
- ❖ **Applies to employees unable to work due to caring for a minor child whose school is closed or caretaker is unavailable due to COVID 19 – ONLY.**
- ❖ First ten days unpaid (may substitute other paid time off)
- ❖ **Remaining leave (up to 12 weeks) paid at two-thirds of employee’s compensation up to \$200/day, capped at \$10K per employee.**
- ❖ **For both EPST and PHEL, employers are to receive tax credits out of payroll taxes, claimed on the next quarter**



Remote Work Options



1. Draft good telecommuting policies
 - i. Remember IT security and hygiene (see our Alert!)
2. Think outside the box
3. Remember wage and hour compliance:
 - i. Track hours and breaks
 - ii. Reimburse for out of pocket expenses (Labor Code Sec 2802) – internet, phone, possible equipment costs
 - iii. Converting “salaried employees” to hourly
4. Stay in touch – constant communication with remote working employees
5. “Corporate wellness” higher priority than usual.

And . . .What About Employees Who Are Out of Work Altogether?

- ❑ Layoff v furlough v termination
- ❑ Paid vs unpaid
- ❑ Payment of sick and vacation pay
 - **Latest memo from City of LA – requiring payment of sick pay for furloughed employees!**
- ❑ **WARN Act implications (mass layoff) – California WARN suspended**, exceptions to Federal WARN
- ❑ Staying in touch with “furloughed” employees
- ❑ **BE TRANSPARENT. And COMPASSIONATE!**



Andrew Raines - Real Estate
Department Chair
Founding Partner
Monster Spin Instructor



What About my Lease.....?

☐ Legal Issues to Consider:

- ✓ Force Majeure
- ✓ Impossibility
- ✓ Frustration of Purpose
- ✓ Impracticability



Legal Considerations

❑ Force Majeure

- Test – what constitutes “Force Majeure”?
- General purpose in leases
- What does it exempt me from?

❑ Impossibility

- Objective Impossibility
- Grounds to Assert
- Remedies

❑ Frustration of Purpose

- Requirements to assert
- Governmental Regulations
- Remedies

❑ Impracticability

- Grounds to Assert
- Governmental Regulations
- Remedies



Business Considerations

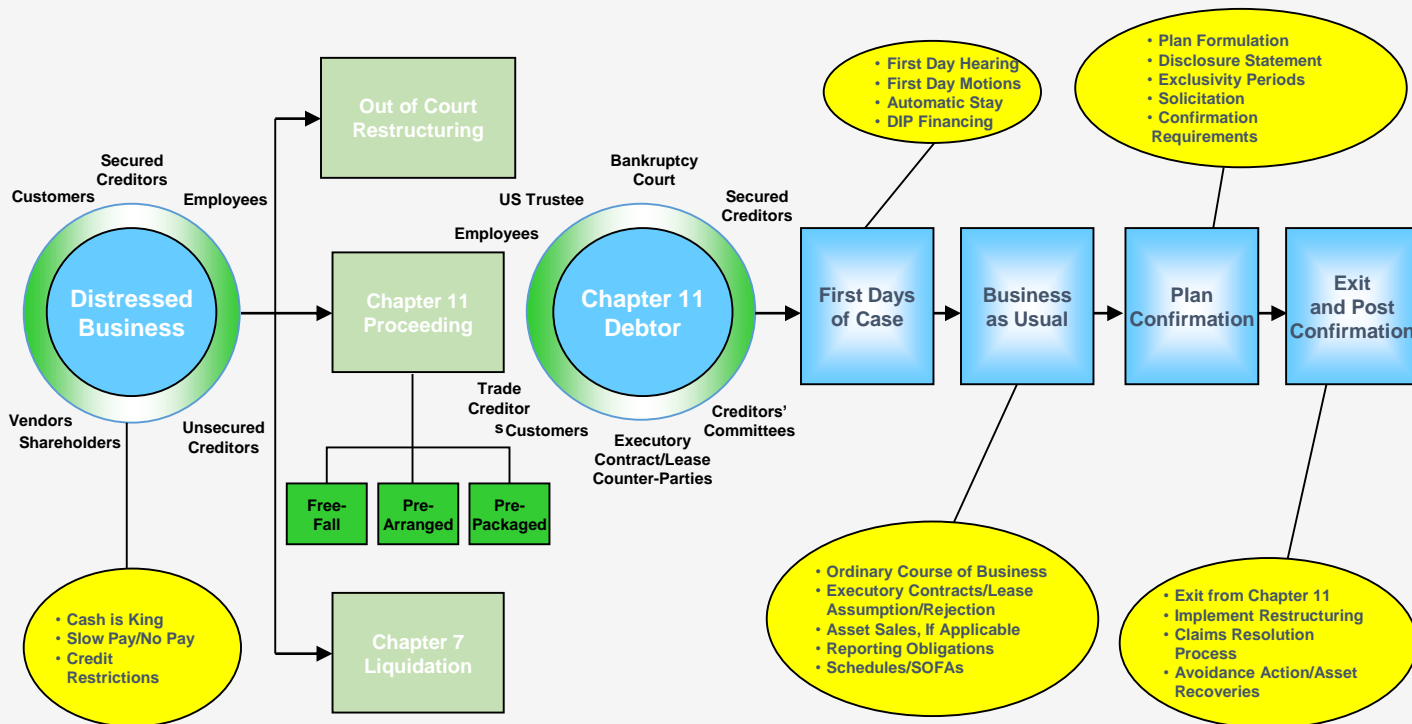
- Lease modification or Lease Termination?
- What to ask for and watch for under each scenario?
- Will moratorium on commercial evictions help?
- Will insurance help?
- Things to consider...



Hamid Rafatjoo – Bankruptcy & Insolvency Department Chair



A PRIMER ON THE LIFE CYCLE OF A DISTRESSED BUSINESS



Bankruptcy



- ☐ Non-consenting creditors can be bound
- ☐ Greater uniformity of laws, i.e. ability to sell free and clear; greater protection for lenders; greater acceptability by professionals
- ☐ Unique bankruptcy powers:
 - Automatic stay
 - Avoidance powers
 - Ability to “reject” unfavorable contracts/leases

v.

Non-Bankruptcy

e.g.

- Extension
- Assignment for the Benefit of Creditors
- Bulk Sale
- Out of Court Workout



- ☐ Smaller impact on operations
- ☐ More private
- ☐ Less expensive

Thank You for Attending!!

Let us know if you have any questions!!

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