



## MEMORANDUM

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SUBJECT: **A Small Business Coronavirus Survival Guide**

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# A Small Business Coronavirus Survival Guide

## From a Business Lawyer's Perspective

### **Introduction**

Hello. My name is Eric Diaz. I am a small business owner. I serve as the business lawyer on the Hispanic Chamber's Latino Small Business Roadshow Panels and on their Board. I work with many small business clients.

I hope you are all doing well personally during this public health crisis.

Businesswise, I offer some tips below on how to address questions arising out of the impact of the Coronavirus on small businesses.

We take a calm, measured, business approach to questions such as:

- How will I pay rent, what if I can't?
- Will my tenant pay rent, can I evict for nonpayment?
- Why evict if there's no replacement available?
- What are other options?
- Can I be excused from, or put off, my contractual obligations?

We will look into these questions and more below from the perspective that the specific answers to specific questions depend on the specific facts and circumstances of your situation and your agreements. We are providing suggestions to inform discussions and decision making in a fluid environment.

While the impulse to protect cash is a good survival instinct, we suggest equal vigilance in thinking before acting with both current and prospective counterparties. Review your thought process and decision with an experienced professional BEFORE ACTING. Preparing is always cheaper than repairing.

### **Tenants and Landlords**

- Pull out your leases and review the language with counsel to determine extent of, and exceptions to, obligations to:
  - pay base and additional rent
  - continuously operate in the premises
  - provide access to premises
  - provide services and utilities and amenities
  - approve assignments and subleases

### **Borrowers and Lenders**

- Review relevant Loan provisions with counsel to determine extent of, and exceptions, to obligations to:
  - fund loan proceeds
  - repay loan
  - satisfy loan to value, debt service coverage, or other financial requirements

### **All Parties to Contracts**

- Review provisions of agreements (e.g., manufacturer's, suppliers, service providers, internet providers, cell phone service, cleaning service) and laws with counsel re: a legal basis for excusing nonperformance or requiring performance, including:
  - force majeure
  - compliance with laws and regulations
  - impossibility
  - notice requirements

- change in circumstances
- termination rights
- conditions
- forbearance
- In current contract negotiations, consider appropriate allocation of the risk and consequences of further business deterioration resulting from the coronavirus impact.

### **Employees and Employers**

- Review provisions of employment or independent contractor agreements and laws with counsel re: respective rights and obligations. See “All Parties To Contracts” above.
- If unable to pay employees or to be paid as an employee, review state programs online for support such as unemployment benefits and other subsidies. (e.g. [pa.gov](http://pa.gov) for Unemployment or Workers' Compensation benefits)
- Payroll Support
  - SBA Economic Injury Disaster Loans - AVAILABLE NOW
    - offer up to \$2,000,000
    - for businesses without credit available elsewhere
    - to pay payroll, accounts payable and other bills and fixed costs
    - for more details, download [SBA EID Loan Fact Sheet](#)
- PIDC and City of Philadelphia - COMING SOON
  - will launch a tiered program to provide targeted support to help employers make payroll and preserve Coronavirus impacted jobs
  - offer new grants and zero-interest loans for Philadelphia businesses under \$5 million in annual revenue
- Sick Leave - NEW FEDERAL LAW
  - Families First Coronavirus Response Act ([H.R. 6201](#))
  - Offers paid sick leave for workers at companies with fewer than 500 employees
  - Just passed 3.18.20 - under review for affect on employers and employees