

## 9 Things for Businesses to Consider During a COVID-19 Cash Crunch

March 17, 2020

The abrupt mandatory closures of bars, coffee shops, restaurants, fitness centers and essentially any commercial location where people socially congregate has invoked surprise and unease in consumers throughout the country. For business owners, however, such news rises beyond mere concern or nuisance, as it may immediately create a cash flow emergency. Without normal hours of operation and the foot traffic of recently-thinning crowds of customers, a mandate to close your doors will negatively impact even the more successful businesses. Despite the uncertainty and the ever-evolving nature of this crisis, quick action now will put your business in the best position to weather the storm. Here are several considerations for any business:

- 1. Cut Non-Essential Costs and Conserve Cash Now.** Though closing your doors temporarily may have the immediate effect of trimming payroll expenses, you will want to cut recurring expenses, cancel refundable orders, and make a careful assessment of other expenses to run your business as efficiently as possible in the short term.
- 2. Impracticability/Impossibility.** You might be able to cancel purchases of goods based on an impracticability standard. California Commercial Code § 2-615(a) provides that “[d]elay in delivery or non-delivery ... is not a breach under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid...” Performance under an agreement may also be excused if intervening events make performance impossible.
- 3. Donate Goods.** For perishable and non-perishable goods already ordered, consider donating to your local food bank or homeless shelter. News agencies have recently reported that food banks will soon face an increased need in order to meet the demands of out-of-work families and the elderly. Donating your non-refundable orders now can ensure the goods will be consumed by those in need and also provide your business with the benefit of a tax write-off.
- 4. Reach Out to Your Creditors.** As opposed to simply defaulting and missing a payment, reach out to your creditors. Every situation will have its own repercussions, but for the most part, those who are owed money are going to be more receptive to some form of accommodation if you communicate with them.
- 5. Insurance.** Business interruption insurance coverage may be available depending on the specific language of the policy, however the “direct physical loss” requirement in many policies is going to be the principal hurdle to overcome.
- 6. Review Your Leases/Contracts.** Though there have been reports of government intervention to provide relief from evictions—which may or may not apply to commercial properties—now is the best time to review, or have your

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attorney review, your leases and contracts. Standard and often benign provisions, such as “force majeure” clauses—which come into play when an unforeseen act beyond your control occurs—may provide you significant leverage in negotiating with your landlord, vendor or other contract counterparty.

7. **Be Creative in Your Business Model.** Does your business model rely on customer traffic to a “brick-and-mortar” location? Now is the best time to expand your business’ virtual presence through social media promotions, home delivery options, and similar measures to both promote your business and stay relevant. Remember, those loyal customers are still out there and nearly all will turn to social media and other forms of online entertainment as they prudently implement personal social distancing policies.
8. **SBA Loans.** In the wake of COVID-19, the U.S. Small Business Administration (SBA) is now offering low-interest federal disaster loans to provide working capital to small businesses. These loans can provide critical aid to small businesses to help them make it to the other side of these difficult times. <https://disasterloan.sba.gov/ela>
9. **Restructurings.** If none of the above are adequate, a business can always consider a bankruptcy restructuring. The significant benefit of a bankruptcy in this environment is the automatic stay which precludes enforcement of actions against the debtor. Recent revisions to the Bankruptcy Code under the Small Business Reorganization Act of 2019 (SBRA) went into effect in February 2020. The law applies only to individuals or business engaged in commercial and business activities having aggregate noncontingent liquidated secured and unsecured debt of not more than \$2,725,625. Under this law Congress has developed a tool to make it easier (and significantly less costly) for small businesses to reorganize through a bankruptcy.

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We encourage you to reach out to a member of our Bankruptcy & Restructuring Group with any questions or concerns.

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