

Restarting Your Business as New Jersey Embarks on the Road Back from COVID-19

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On April 27, 2020, Governor Murphy unveiled the “Road Back: Restoring Economic Health through Public Health,” a set of guidelines and benchmarks which the New Jersey State government will utilize as it determines how and when to reopen parts of the state and its economy. On June 15, 2020, New Jersey entered the second stage of the Road Back, which includes the reopening of “non-essential” retail stores (albeit with a limited customer capacity), child care centers and outdoor dining. Personal care businesses, including barbershops and hair and nail salons, opened on June 22, 2020. Further incremental steps of the second stage of the Road Back are scheduled for the coming weeks, including the partial reopening of indoor retail shopping malls and indoor dining.

As New Jersey’s government reopens the state in phases in accordance with the Road Back, many small business owners are also charting the road back for their businesses. This article contains a high level overview of a few of the factors small business owners might consider as they are faced with the prospect of restarting their businesses in the “new normal” as our country and state continue to combat COVID-19.

Back to Business Plan

It is imperative that employers develop a comprehensive plan to welcome employees back to the workplace. While creating this plan, an employer should analyze all the relevant issues related to and challenges presented by the return of its employees to the workplace. A key component of the planning phase is to not only create new policies and procedures for maintaining a safe workplace environment during this pandemic, but to also review and revise existing policies and procedures to ensure compliance with new laws and modifications to existing laws. To that end, employers must remain flexible and be prepared to adapt to changes in relevant laws and guidance relating to workplace best practices to minimize the risk of COVID-19 infection.

Employers should ensure their plan addresses the basics of returning to work, such as policies regarding employee screenings (for example, temperature checks and health questionnaires, if appropriate), visitors, social distancing, sanitation and hygiene, and the use of facemasks and other personal protective equipment, as well as contingency plans for certain scenarios, such as the company’s procedure if an employee tests positive for COVID-19. New and updated policies and procedures should be delivered in writing to all employees, and employees should receive training regarding these policies and procedures. It is also advisable that each employer designate a representative to address employee concerns, questions, and requests regarding these policies and procedures.

Employment-Related Considerations

As employers adapt to this new environment, they face unprecedented challenges in the areas of employment and human resources management. It is imperative that employers not only remain abreast of changes in federal and state laws and guidance regarding employment and health and safety, but also not lose sight of established tenets of employment, health and safety and privacy laws.

As noted above, employers must prepare for and monitor changes in federal and state laws in response to concerns arising from COVID-19. In recent months, the Families First Coronavirus Response Act expanded paid sick leave and family and medical sick leave for certain COVID-19 related reasons and imposed a requirement on certain employers to display a notice of employee rights under the Act for the remainder of the year. The New Jersey Family Leave Act has similarly been expanded to include certain employee protections, including protected unpaid time off, for reasons related to COVID-19.

In addition to new laws and regulations passed in response to COVID-19, employers must also ensure compliance with existing employment laws. For example, if workforce reductions are deemed necessary, employers must make decisions related to such reductions in compliance with anti-discrimination and anti-retaliation laws and, if applicable, the WARN Act and corresponding state WARN laws. Reasonable accommodations must continue to be granted to employees under the Americans with Disabilities Act. If an employee tests positive for COVID-19, an employer must take affirmative steps to maintain a safe environment for its employees while simultaneously ensuring it complies with employee leave laws and laws which protect the confidentiality of an employee's medical information. These examples represent just a few of the laws employers must consider with respect to managing its workforce during the COVID-19 outbreak.

COVID-19 Related Loans

The Federal and State governments have offered a number of loan and grant programs intended to support businesses which are impacted by COVID-19. The Federal Programs include the Paycheck Protection Program (PPP), expanded Economic Injury Disaster Loan (EIDL) program and Main Street Lending Program. New Jersey has launched the New Jersey Small Business Assistance Grant and Loan Programs, the New Jersey Emergency Assistance Guarantee Program and the New Jersey Entrepreneur Program. While the funding for certain of these programs may be exhausted, eligible businesses should monitor the programs closely for additional rounds of funding.

Any business which obtained a loan or grant under any of these programs should diligently review the program's requirements with respect to continued eligibility, utilization of proceeds and, if applicable, loan forgiveness. Certain deadlines and requirements of these programs are also subject to change in accordance with new laws and regulations, such as the Paycheck Protection Program Flexibility Act of 2020, which was signed into law on June 5, 2020. As the name of the Act suggests, the Act modified the initial rules which applied to PPP loans in order to provide borrowers greater flexibility with respect to the utilization of PPP funds, the timeframe for repayment of PPP loans and the criteria for loan forgiveness. Additional guidance and FAQs also continue to be published in connection with many of these programs.

Other Loans

Business owners should also review the documents evidencing other loans which their business obtained prior to or during the COVID-19 pandemic. Loan documents often include financial covenants which may prove difficult to satisfy while social distancing efforts remain in effect. A business which is in danger of defaulting on its loan obligations could consider seeking a waiver of such default from its lender. If a borrower is unable to make monthly payments during this health crisis, it may consider approaching its lender to negotiate a loan workout.

Contractual Considerations

COVID-19 has closed businesses and disrupted supply chains. Businesses, in conjunction with their legal representation, should analyze contracts to which they are a party to determine if the current environment has, or will have, an effect on their contractual obligations. For example, many contracts include a *force majeure* clause, which may excuse a party from performance in the event of certain unforeseen circumstances. Even if a contract does not have an express *force majeure* provision, a court may void a contract or excuse a party from its duty to perform if performance has unexpectedly become impossible or the nature of the parties' overall bargain has fundamentally changed as a result of a supervening event.

Commercial Leases

While Governor Murphy has signed Executive Orders granting certain relief to residential homeowners and residential tenants, similar relief has not been extended to commercial tenants as of the date of submission of this article. Businesses that are having difficulty making lease payments as a result of the impacted of the COVID-19 pandemic should carefully review their lease terms with legal counsel and should initiate a dialogue with their landlords to explore alternative payment options or a lease amendment. In some instances, *force majeure* and similar provisions in a lease may offer relief for a lessee.

Additional Considerations

Additional details regarding a number of the items listed in this article can be found at the COVID-19 resource center that has been published on our firm's website, www.saiber.com. We wish you, your families and your businesses health, safety and success on the road back.