



**Action Plan – Need for Legal Review:**

*A. Providing a Safe Workplace*

1. Tort liability if employer does not – which is other than OSHA requirements.
2. Legal obligations of employers.

*B. Business Contracts*

1. Right to excuse or cancel performance.
  - a. Terms of the contract.
  - b. Force majeure.
  - c. Contract law principles (e.g., impossibility of performance).
  - d. Material adverse change or material adverse effect clauses.
  - e. Contract subject to Uniform Commercial Code?
  - f. “Time is of the essence” clauses.
2. Notice periods (e.g., what is a “Business Day”).
3. Penalty provisions.
4. Governing law provisions.
5. Types of contracts.
  - a. Supply agreements (your suppliers).
  - b. Purchase orders (your customers or clients).
  - c. Collaboration agreements.
  - d. Independent contractor/consulting agreements.
  - e. M&A agreements.
  - f. Other third-party agreements.

*C. Employment Considerations*

1. Paid sick leave – mandated by law and other.
2. Family leave – expanded FMLA.
3. Expanded unemployment compensation, and impact on employer experience.

4. Use of tax credits (see G 5., below).
5. Voluntary and involuntary layoffs.
6. Multi-state employers.

#### *D. Risk Management*

1. Business interruption insurance.
  - a. Policy language not universal for all policies.
  - b. Physical damage to premises may not be necessary to invoke coverage.
2. Installation of protective barriers.
  - a. Documented landlord approval.
  - b. Building permits.
  - c. ADA issues.
3. Limitation of liability.
4. Review warranties on your consumer products.

#### *E. Loan Agreements*

1. Financial covenants.
2. Negative covenants.
3. What constitutes default.
4. Curing defaults.
5. Accessing credit lines.
6. Improving financial metrics/ratios in loan agreements.

#### *F. Leases*

1. Tenant rights.
2. Landlord rights.
3. General issues.
  - a. "Time is of the Essence" clauses.
  - b. Material adverse change/effect on right to renew or extend lease.

- c. Effect of force majeure clauses.
- d. Does a government-imposed shut down of premises render them “uninhabitable” and qualify for rent relief.

#### *G. Tax*

1. Do NOT fail to pay employment or sales taxes when due.
  - a. Personal liability.
  - b. Non-waivable penalties and interest.
2. Decrease tax and accounting deductions (see D 6. above) if expecting a loss in current year or better use of deduction in later year.
  - a. Temporary loans in lieu of compensation. [Need to document.]
  - b. Depreciate versus Sec. 179 “expense” deduction.
  - c. Other.
3. Extension of tax payments beyond current deferral rules. [IRS has issued notices on this.]
4. Accelerate income to offset losses (and, see D 6. above).
5. Stay current on new/temporary laws that provide tax relief or credits for paid sick leave, family leave, payroll tax reductions or eliminations, and possible changes in use of net operating losses.

#### *H. Health and Benefit Plans*

1. Is COVID-19 a “disability”.
2. Employer waiving benefit plan requirements.
3. COBRA eligibility considerations.
4. Hardship distributions or loans from 401(k) plans.
5. Employees contributing vacation or sick time to other employees.

#### *I. Entity Governance*

1. Liability of directors if not adequately informed on companies’ COVID-19 risks and plans.
2. Legal authority issues of “summary” actions of president or CEO without proper review or board approval.

3. Liability risks if no legal review and opinion.
4. COVID-19 special committee or task force.

#### *J. Disclosure Requirements*

1. Under securities (SEC) laws.
2. Under contracts.
  - a. To suppliers and vendors.
  - b. To customers and clients.
3. To health officials.

#### *K. Liquidity vs. Solvency*

1. Understand the difference.
2. For liquidity, access cash resources (including review loan agreements, life insurance policies).
3. Learn asap of new government loan and assistance programs. [CPM can help.]
4. Need to know legal risks and do's and don'ts if insolvency is looming.
  - a. Need a plan to address.

#### *L. Use of and Protect Key Assets*

1. Out-source production with license agreement.
2. Move intellectual property, including trade secrets, away from operating entity.
3. Entity reorganization.
4. Monetize seldom used IP to generate cash.

#### *M. Dispute Preparation*

1. Identify anticipated disputes.
2. Develop strategy.
3. Litigation review in advance of negotiation.

#### *N. Identify Issues/Concerns Unique to Your Company or Industry*