

## Restaurants and Hospitality: Mitigate Risk and Respond to the Impacts from COVID-19



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As you are all too aware, the global COVID-19 pandemic continues to have a devastating impact across all segments of the restaurant and hospitality industries.

Bars, restaurants, nightclubs and other industry venues throughout New York State were either shuttered for months or forced to operate at limited capacity, virtually cutting off revenues that they once could rely on. Undoubtedly, the COVID-19 pandemic has fundamentally altered the landscape of these industries.

However, as venues begin to (once again) re-open their doors, it is important for the restaurant and hospitality industries to take additional steps now in order to mitigate risk and respond to the impacts from COVID-19. Stakeholders in these industries should consider a variety of legal issues and strategic opportunities to aid in

recovery and to position themselves to thrive in the future, including:

### **Update Key Contracts**

- Restaurant and hospitality companies should locate and carefully review their key contracts in light of the current crisis. Review should focus on so-called “force majeure” and “material adverse change” or “material adverse effect” clauses, which are routinely included in lease agreements, service agreements, license agreements, private event agreements, franchise agreements, and other industry contracts.
- Historically, these provisions were not heavily negotiated. But now, the precise wording of these clauses is critically important for determining whether the contract remains enforceable or if a party has a basis to delay, rescind, or modify performance.
- These provisions must be analyzed on a fact-specific basis under the terms of the agreement and governing law. Restaurant and hospitality companies should undertake a review of these provisions with their counsel to assess the parties’ respective rights and obligations under the contract and applicable law.

### **Review Existing Insurance Policies**

- Industry stakeholders should also review their existing insurance policies, including commercial general liability, business interruption, and event cancellation policies, to determine possible coverage in the event of closures, restrictions, or other business disruptions.
- Restaurant and hospitality companies should also review any and all internal risk management procedures.

### **Employment Law Considerations**

- Pursuant to the Occupational Safety and Health Act (OSHA) and various other similar state laws, employers have an obligation to provide a safe and healthy work environment (even if work occurs outside the employer’s physical premises). Under these laws, employers must not place their employees in situations that are likely to cause serious physical harm or death.
- Employers in these industries will likely need to implement new procedures and practices to ensure compliance with these laws. Properly planning for and implementing internal plans and policies to deal with COVID-19 will likely include facilitating remote work options for employees.
- Employers should consult with qualified counsel before implementing these policies and procedures as broad internal employee policies and business decisions about employees not based on statistical realities could result in an employer being sued under laws that prohibit discrimination.

### **Considerations for Additional Capital**

- If additional capital sources are required for sustainability, companies can consider various alternative sources of funding.
- New federal and state assistance including SBA loans may be available to smaller restaurant and hospitality companies to help bridge payroll and operational needs under recently enacted legislation.

Effective planning for any business will be critical and should involve guidance from a multi-disciplinary team. Lippes Mathias’ Sports, Entertainment & Hospitality team has the legal and practical expertise to assist clients in this industry. Our attorneys routinely assist clients in the restaurant and hospitality industry with:

- Formation and sale of restaurant and hospitality properties
- Real estate and financing transactions
- Liquor licensing and permits

- Intellectual property matters, including federal and state trademark and copyright registration
- License agreements
- Franchise agreements
- Labor and employment matters
- Private event contracts
- Service agreements
- Tip policies
- Insurance review
- Defense of restaurant and hospitality companies in litigation matters
- License agreements
- Sponsorship agreements

We have no doubt that these industries will recover and return equipped for future success. If you or your company is grappling with any legal issues as you manage through the recovery process, we would be happy to provide the coordination, guidance, advice, and counsel needed for success.

Please contact Benjamin T. White, 716.853.5100 x1316 / [bwhite@lippes.com](mailto:bwhite@lippes.com), with any questions or to discuss your business needs.

## Related Team



### **Benjamin T. White**

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