Volume 3

Trust the Leaders 2.0

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Leading Through the COVID-19 Pandemic & Beyond

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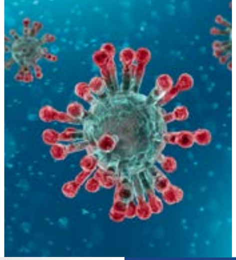

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Letter from the Editor

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Ladies and Gentlemen,

Welcome to the third edition of *Trust the Leaders 2.0*.

As we enter the heart, and the heat, of the summer, and the fifth month of the COVID-19 pandemic, one question reverberates in almost every aspect of our society: *What's next?* What's next on the medical front, with recent spikes in cases across the county? Is a vaccine early next year a real possibility? What's next for schools, and schoolchildren? Will the fall semester be spent in classrooms, or at home, or some of each? What's next on the political horizon, as officeholders at every level face an autumn reckoning for their response to the coronavirus outbreak?

And, "what's next" in the business setting? As you'll see in this issue of *TTL 2.0*, all sectors of business are dealing with that very question: Employers who are starting to reopen workplaces, but need to consider the health, safety, legal and privacy implications of doing so. Manufacturers who are back up and running but may be required to "onshore" the supply chain to reduce dependency on foreign sources of critical equipment. Businesses and individuals who may find themselves in hot water for taking certain liberties earlier this year in their applications for financial assistance under the CARES Act and other government aid programs. And companies who, despite their best efforts at weathering the coronavirus storm, may ultimately realize that, for them, reorganization under the U.S. bankruptcy laws is the only viable way to move forward.

In the pages that follow, you will find a variety of articles from my colleagues at Smith, Gambrell & Russell that explore just a few of the plethora of challenges that businesses may encounter as we enter the next phase of navigating the pandemic.

Also, we continue to maintain a COVID-19 Resource Center on our website for you to access in one convenient place all of the guidance we are creating and sharing as legal issues associated with the pandemic continue to emerge. You may access the Resource Center **HERE**. We hope you find the information helpful.

Thank you, and please continue to stay safe and healthy.

Dana M. Richens
Editor-in-Chief
editor@sgrlaw.com

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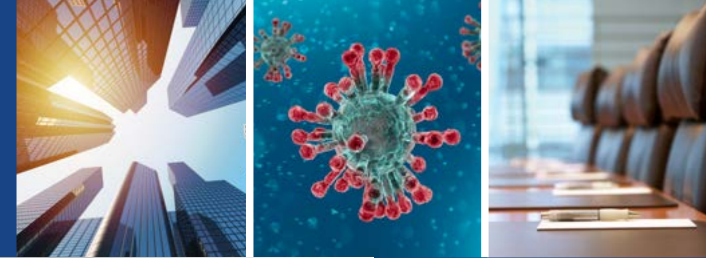
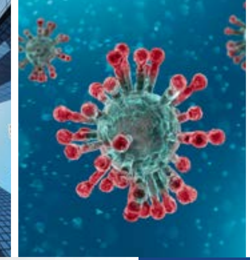


The COVID-19 Pandemic: How Employers are Preparing to Reopen their Workplaces

By:
Matt Clarke, Emily Friedman,
Phillip Hoover and Pat Cain


The COVID-19 Pandemic: How Employers are Preparing to Reopen their Workplaces

Now that federal, state and local "stay-home" orders are gradually lifting, employers are bringing workers back into the workplace. The process for bringing workers back needs to be carefully and thoughtfully planned. Each workplace is different and there is no one-size-fits-all preparedness plan that will work for all workplaces. Unique situations are bound to arise, but many issues for returning to work will be faced by most employers. The manner in which these issues need to be addressed often will be a matter of state, county or even city requirements, all of which are in a state of continual change. Below we address some of the common questions and issues employers will face.

Partners in SGR's Employment and Benefits groups recently held a webinar to address COVID-19 Return-to-Work Issues: Employer Considerations. Click HERE to view webinar. Click HERE to download material.

The Need for Advance Planning

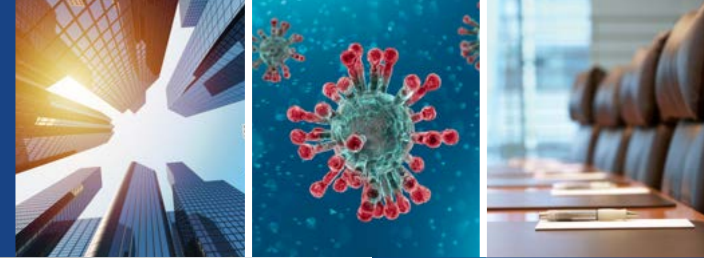
Can't we just tell our workers to "come on back"? Or do we have to do more?

- Employers need to carefully develop a written return-to-work plan (a/k/a an Infectious Disease Preparedness and Response Plan ("IDPRP")). Such a plan needs to address applicable federal, state and local return-to-work orders, workplace safety issues, screening measures, and other employee health-related matters.
- Analyze applicable federal, state and local orders that may impact the way in which your business may reopen. Adopt procedures to ensure compliance with these orders and other federal, state and local guidance.

Getting the Workplace Ready

What measures should we take to get the physical premises ready?

- Ensure facilities meet applicable rules and regulations. These will vary by jurisdiction.
- Conduct advance cleaning of the workplace using approved and recommended disinfectants and cleaning procedures. ▶



- Consider whether you need to obtain resources from external vendors to assist with return-to-work procedures mandated at the state or local level, including body temperature or related medical screenings/questionnaires.

- Ensure adequate supplies of cleaning and personal protective gear, *e.g.*, hand sanitizer, gloves, face masks, face shields, etc.

- Ensure the workplace has required postings under the new federal Families First Coronavirus Response Act, as well as any postings required by state or local laws.

- Install signage reminding employees and guests of suggested hygiene standards and any other safety measures that have been adopted to thwart the spread of COVID-19 in the workplace.

- If you are in an office building, contact building management to find out what the building is doing for common areas and building access, and communicate that to your employees in advance so that they will know what to expect when they come to the office.

Employee Compensation and Unemployment Considerations

What do we do about employee compensation?

- Consider the impact that recalling employees to full- or part-time work may have on unemployment or partial unemployment benefits employees may be receiving.

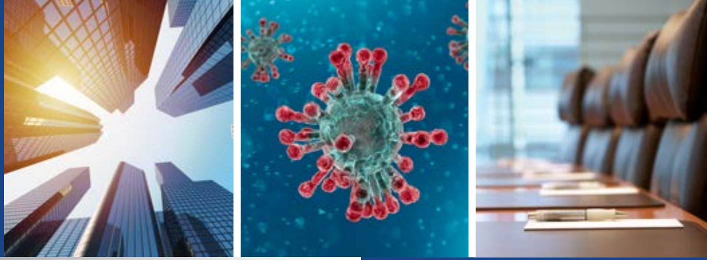
- If employees have had their salaries or wage rates reduced, consider criteria for possible future adjustments.

- Consider the impact applicable federal and state wage and hour laws will have on any changes in employee compensation and/or employee classification (*i.e.*, status as an exempt or non-exempt employee).

What impact will the reopening of the business have on unemployment benefits entitlement?

- Employee entitlement to unemployment insurance benefits will vary by state. State guidance on unemployment insurance benefits entitlement is changing regularly.

- Rules implemented by the state as a result of the expansion of unemployment insurance programs through the federal CARES Act also may impact unemployment benefits entitlement. ▶



- Some states have carved out exceptions for employees who are unable to return to work due to childcare issues or because they fall into high-risk categories.
- Partial unemployment insurance benefits may still be available for some workers returning to work on a reduced schedule. These rules will vary by state.
- Under some state rules, employees who refuse to take available work may lose out on their entitlement to further unemployment benefits.

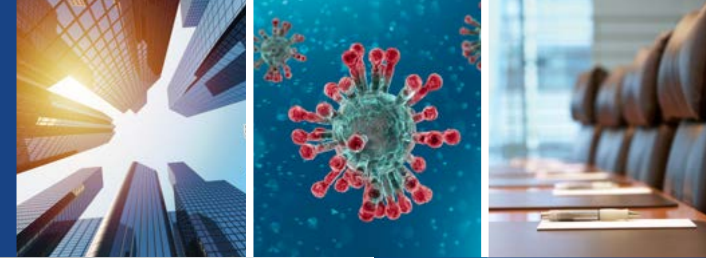
Worker Health and Safety

What measures should we take to help protect our workers? What do we do if someone gets sick?

- Consider whether you must or will take measures to ensure social distancing in the workplace, *i.e.*, at least six feet between individuals.
- Assess whether you should or must have workers and visitors wear protective face masks. An SGR state-by-state employer guide to face-covering regulations can be found HERE.
- Assess what personal protective equipment (PPE) the company will provide to employees and what you will encourage employees to wear/use.
- Consider whether you will screen or test employees before they return to work. Some states and/or localities are requiring employers to conduct mandatory screens of employees prior to entering the workplace (this also will vary based on the employer's industry).
- Where screening is not mandatory, employers have various options for implementing screening measures. Some have opted to allow employees to self-screen while reserving the right to conduct follow-up testing, while other employers are taking a broader approach to screening and are conducting their own screens of employees prior to returning to work.

  Possible screening options include, but are not limited to:

  - Taking the temperature of employees (and other guests) before they enter the workplace;
  - Requiring employees to be tested for COVID-19;
  - Requiring antibody testing of employees;
  - Screening employees through use of a questionnaire that asks employees about potential COVID-19 symptoms and/or potential exposure to the virus; and
  - Requiring employees to self-certify that they have not been diagnosed with COVID-19, do not have signs or symptoms of the virus, and have not been knowingly exposed to the virus.



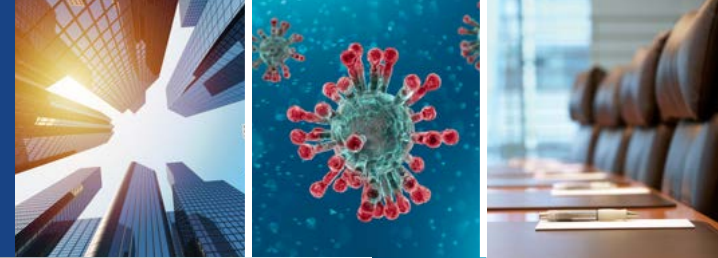
- Consider whether applicable federal and state wage and hour laws require employers to compensate employees for screening time and/or time spent waiting in line for screening or completing screening questionnaires.
- Assess employee training and certification requirements for PPE, General Sanitation, Hazard Communication and other OSHA standards.
- For a more extensive look at OSHA-related guidance to reopening the workplace, please see this SGR Guide.

Should we make changes to our "regular" way of working?

- Consider staggering work shifts and break times to reduce the number of employees in the facility or a work area at any given time.
- Limit the size of meetings and encourage virtual meetings when possible.
- Limit non-essential travel.
- Consider altering employee start and stop times to reduce number of employees coming into or leaving the facility at any given time, including possible elevator usage plans.
- Ensure that information collected from or about employee health is kept confidential and separately from the employee's regular personnel file.

Do we need to revisit our teleworking policies?

- Consider if telework may be a reasonable accommodation under the ADA or analogous state laws.
- Consider allowing employees to continue to work remotely, particularly if things have been going well.
- Develop protocols for dealing with at-risk employees. This may include employees age 65 or above and those who are in medically vulnerable groups.
- If telework is not an option, consider eligibility for additional leave under company policies, the FMLA, and state or local leave laws.
- Consider temporary changes to leave and teleworking policies specifically tied to COVID-19 pandemic.
- Understand and comply with laws relating to reimbursement of employee expenses, both with regard to the period of time covered by stay-home orders and in connection with any continued telework. ▶



Develop Protocols for Suspected or Confirmed Future COVID-19 Cases

What should we do to prepare for future instances of employees who may be diagnosed with COVID-19 or who are exposed to someone with it?

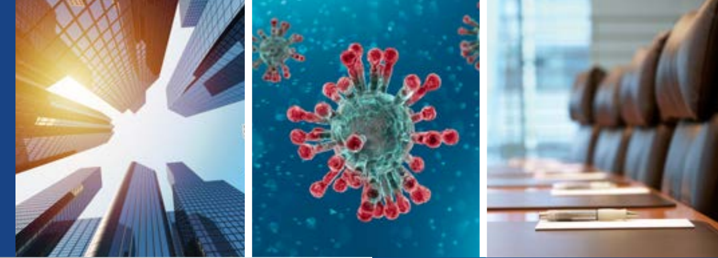
- Employers need to establish protocols for the handling of future situations, which should, at a minimum, include:
  - Instructing employees to stay home if sick;
  - Informing employees whom to notify if symptomatic;
  - Designating key HR or management personnel with knowledge of how to handle concerns;
  - Identifying when employees will be required to self-quarantine based on own symptoms or exposure to others;
  - Ensuring compliance with applicable leave laws;
  - Establishing duration of quarantine; and
  - Establishing conditions for return to work.
- Assess reporting obligations under workers' compensation and OSHA regulations.
- Establish protocol for contact tracing for workplace COVID exposure.
- Establish protocol for assuring employee privacy.
- Continue to monitor CDC guidance as recommendations tend to be updated regularly.

Employment Policies and Practices

Are there additional legal considerations to consider?

- Update employment policies, including those related to workplace safety, vacation or paid time off, attendance, work hours, telework, accommodation procedures, privacy, and travel.
- Ensure leave policies are updated to address newly enacted leave requirements, such as those under the paid sick leave and expanded FMLA provisions of the federal Families First Coronavirus Response Act, as well as any similar state or local laws.

- Ensure that decisions on whom to bring back into the workplace and in what order are not done in a discriminatory manner and do not have an adverse impact on a particular protected group, *i.e.*, sex, religion, age, race, national origin, etc.
- Ensure terminations, furloughs, layoffs and recalls are done in accordance with any applicable collective bargaining agreement. ▶



- Assess workplace accommodation considerations for employees who may contract the virus or show signs or symptoms of the virus, or who may come into contact with others who have such symptoms.

- Remind employees that if they need an accommodation, they should follow company protocols for requesting such.

- Review applicable EEOC guidance on the impact of the ADA and COVID-19 considerations, including guidance found HERE.

What do I do about employees who refuse to come back to the office?

- Engage with the employee to understand their reasons for refusing to return to the office.

- Consult with counsel before taking any adverse action against employees who may undertake collective concerted activities to protest an employer's handling of workplace safety issues, as such conduct may be protected under the National Labor Relations Act and the anti-retaliation provisions of OSHA.

- Do any applicable guidelines place the employee in a high-risk category (*e.g.*, age, underlying health conditions) for developing severe illness as a result of COVID-19? Employees with disabilities may be entitled to reasonable accommodation under the ADA, and individual circumstances need to be considered.

- If the conclusion is that the employee's concerns are not objectively reasonable, then the employer should consult with counsel about the appropriate next steps.

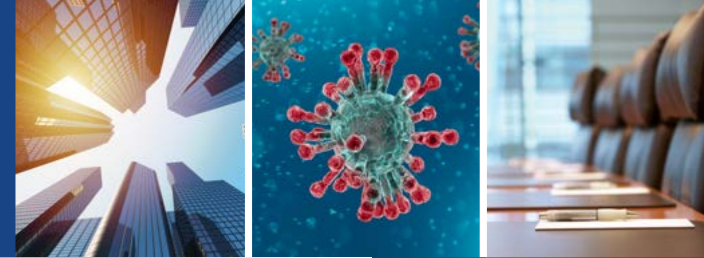
If you have any questions about these issues, please contact your Labor and Employment counsel at Smith, Gambrell & Russell, LLP or contact any of the following:

Matt Clarke
mclarke@sgrlaw.com

Phillip Hoover
phoover@sgrlaw.com

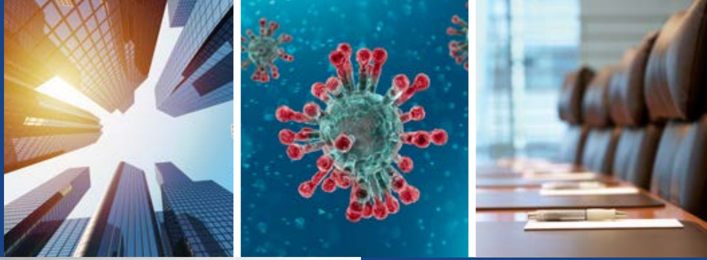
Emily Friedman
efriedman@sgrlaw.com

Pat Cain
pcain@sgrlaw.com



Rerouting Supply Chains: Onshoring Manufacturing of Critical Supplies

By:
Peter Crofton and Greg Smith



Rerouting Supply Chains: Onshoring Manufacturing of Critical Supplies

The COVID-19 pandemic has spotlighted the danger of relying on foreign sources of supply for pharmaceuticals and other medical supplies. However, a closer look shows that the United States is dependent on foreign sources of supply in many areas critical to our economy and national security, including semiconductors and other electronics, telecommunication equipment, electric power transmission equipment, and military parts and equipment.

Early in his administration, President Trump began encouraging businesses to increase domestic manufacturing activity, including relocating offshore production to the U.S., hence the term "onshoring." These early efforts involved tariffs, tax code changes and the bully pulpit.

As a result of the pandemic, many political and business leaders have taken up the cause of onshoring the production of critical supplies. Recently, President Trump issued executive orders that prohibit use of telecommunications equipment produced by a Chinese company with ties to the ruling Communist Party, and barring the purchase or use of electric power transmission equipment produced in countries deemed "foreign adversaries." The President is also reportedly considering an executive order that would require federal agencies to purchase domestically produced pharmaceuticals and other medical supplies.

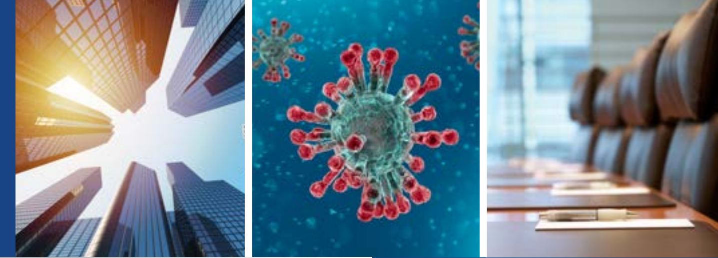
Congress has joined the onshoring effort with several pending bills that would encourage or require expanded domestic production. These bills range from tax code changes that encourage onshoring, to "Buy American"-type prohibitions on the use of foreign-produced supplies by the federal government or by others that receive federal funds. State governments are also joining the effort by supporting manufacturers located within their respective states.

Onshoring provides tremendous challenges and opportunities for business in affected industries. After years of expanding global supply chains, onshoring requires changing business models to expand production and use of American-made products. Businesses may need to build and equip new plants, or to modernize and expand existing facilities located in the U.S. Businesses will need legal partners to assist with many aspects of the onshoring process, including site selection and land use, environmental issues, real estate, financing, construction and procurement, and compliance. Smith Gambrell & Russell is uniquely positioned to guide clients through the onshoring process because of the breadth of our practices and the experience of our attorneys. We have successfully helped both U.S.-based and foreign corporations create and expand manufacturing, distribution and other infrastructure in the United States.

If you have any questions about these issues, please contact your Government Procurement counsel at Smith, Gambrell & Russell, LLP or contact any of the following:

Greg Smith
gsmith@sgrlaw.com

Peter Crofton
pcrofton@sgrlaw.com



White-Collar Criminal Investigations and Prosecutions in the Age of Coronavirus

By:
Emily Ward

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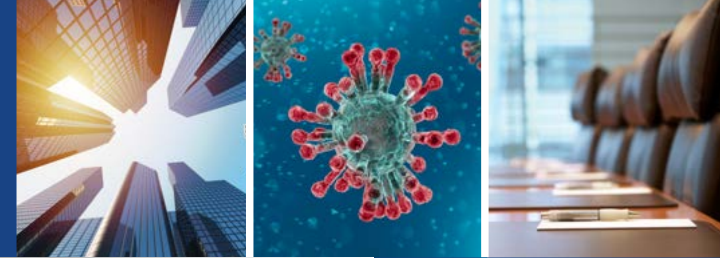


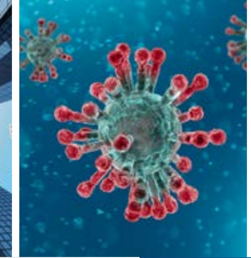
White-Collar Criminal Investigations and Prosecutions in the Age of Coronavirus

It is hard to imagine a more all-encompassing global situation occurring during our lifetimes that will have as prolonged an impact on society writ large as the coronavirus. A large part of the U.S. implemented lockdowns of some form starting in March 2020, and by the end of March, well over 100 countries had instituted lockdowns of varying degrees. The resulting economic catastrophe compelled Congress to take greater action than even that seen during the 2007-08 financial crisis through the Troubled Asset Relief Program (TARP). Whereas Congress authorized TARP to purchase $700 billion in "toxic assets" from troubled financial institutions, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) has set aside $2 trillion in aid for vast swaths of the American economy, including $500 million for corporate relief. In the decade since TARP was implemented, the Special Inspector General charged with oversight of TARP funds (SIGTARP) recovered over $11 billion and obtained 380 convictions. Given the scope and scale of the CARES Act, it is inevitable that investigations, prosecutions and convictions of both the outright fraudsters as well as the unwise recipients of funds will dwarf those obtained under TARP in the months and years to come.

The CARES Act designates three layers of oversight of the government's response to the pandemic:

- A special inspector general, to be appointed by the president;
- A Congressional Oversight Commission, a five-member panel appointed by leaders in Congress; and
- A Pandemic Response Accountability Committee (PRAC) of at least nine federal inspectors general.

With various moving parts and competing priorities, effectiveness of this oversight will likely depend on who ultimately serves in those leadership roles, whether those individuals have executive and congressional support, and the public perception of favoritism, bias and overall success in keeping oversight transparent and effective. Interestingly, the original head of PRAC was removed by President Trump after only a few days on the job, leading to speculation of politicization of the post before its work had even begun in earnest. Combined with Congress allocating only half the budget received by the SIGTARP and the Congressional Oversight Commission's lack of subpoena power, an ongoing power vacuum in the PRAC and Congress could lead to inconsistent and irregular enforcement generally. ▶



One of the major flaws resulting from Congress' rush to provide aid to a sputtering economy is persistent vagueness and over-generality in much of the CARES Act. This problem has already led to the public shaming of large companies, like Shake Shack, who received PPP loans, multiple revisions to official government advice, and a formal amendment to the law on April 24, 2020. While Treasury Secretary Steven Mnuchin warned that "[A]nybody that took the money that they shouldn't have taken — one, it won't be forgiven, and two, they may be subject to criminal liability, which is a big deal," the limited prosecutorial resources available and imprecise language of the CARES Act likely mean enforcement, prosecutions and regulatory action are subject more to the political whims of Washington than to strict interpretation of a vague statute.

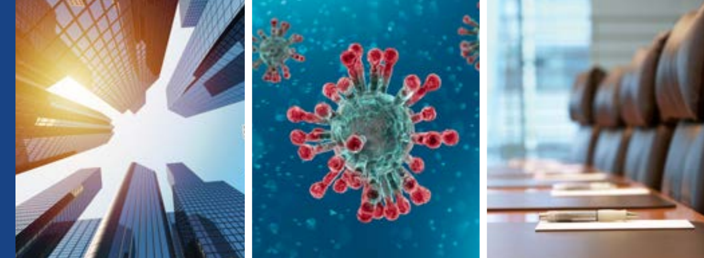
Fortunately for individuals and business who are struggling to navigate the ever-changing rules of the CARES Act, the rule of lenity requires courts to resolve any statutory ambiguity in favor of a criminal defendant. In practice, one can expect that in all but the most egregious examples of misfeasance, proactive documentation of attempted compliance with the often confusing rules and regulations concerning the CARES Act can be a strong defense against investigations and enforcement actions.

In spite of the vagueness of the statute and perceived – if not actual – dysfunction in the oversight mechanisms devised by Congress, businesses and individuals should anticipate investigations in many, if not all, of the areas listed below, although in the shadow of the 2020 presidential election, it also seems safe to assume CARES Act enforcement will also follow the whims of partisan politics.

Financial Fraud – In light of the significant reporting and certifications required of businesses participating in CARES Act programs, investigations into all sorts of alleged financial misconduct relating to financial frauds, fraudulent accounting practices, cyber-crime, and other white-collar transgressions are certain to abound for the foreseeable future.

Corruption – Many segments of the economy have experienced supply-chain troubles during this crisis, providing ongoing opportunities for wrongdoers to exploit real needs through bribery and corruption. Both private and public officials should be wary of asking for or receiving bribes, kickbacks or other improper benefits in exchange for prioritized treatment. Investigations are likely to focus on licensing, import and export transactions, and public/private partnerships.

Antitrust – The unfortunate but reoccurring offshoots of crises are price fixing, price gouging and bid rigging. Expect the DOJ's new Procurement Collusion Strike Force and individual companies, like 3M, to be vigilant in exposing the sale of products to federal, state and local agencies, as well as the public, at inflated or improper price points. ▶



Procurement – Government contractors and other recipients of federal grants and loan dollars should bear in mind the potential for False Claims Act lawsuits and government investigations resulting from the COVID-19 crisis. Massive federal spending to address the spread of COVID-19 already totals in the billions of dollars, so the DOJ and whistleblowers will undoubtedly examine how, where and why those funds are spent.

Healthcare – If history is any predictor of the future, the vast healthcare spending associated with COVID-19 and the CARES Act will be shadowed by vigorous whistleblower activity and False Claims Act investigations.

A transformative crisis like COVID-19 exposes the risks and opportunities for all manner of misdeeds, intentional or negligent. Even if you or your company do not work in a field directly impacted by the crisis or have not received government funds tied to the national response, risks for investigation and even prosecution will exist for the foreseeable future. A persistent focus on ethics, compliance, internal policies and procedures, staying out of the limelight, and obtaining sophisticated counsel to guide you through the ever-changing circumstances can mitigate some of the inherent risks in this unprecedented time.

If you have any questions about these issues, please contact your Litigation and White-Collar counsel at Smith, Gambrell & Russell, LLP or contact the following:

Emily Ward
eward@sgrlaw.com

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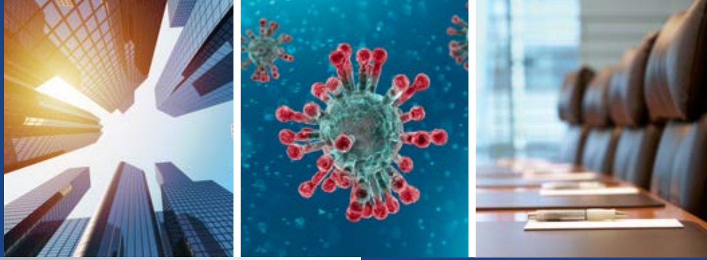
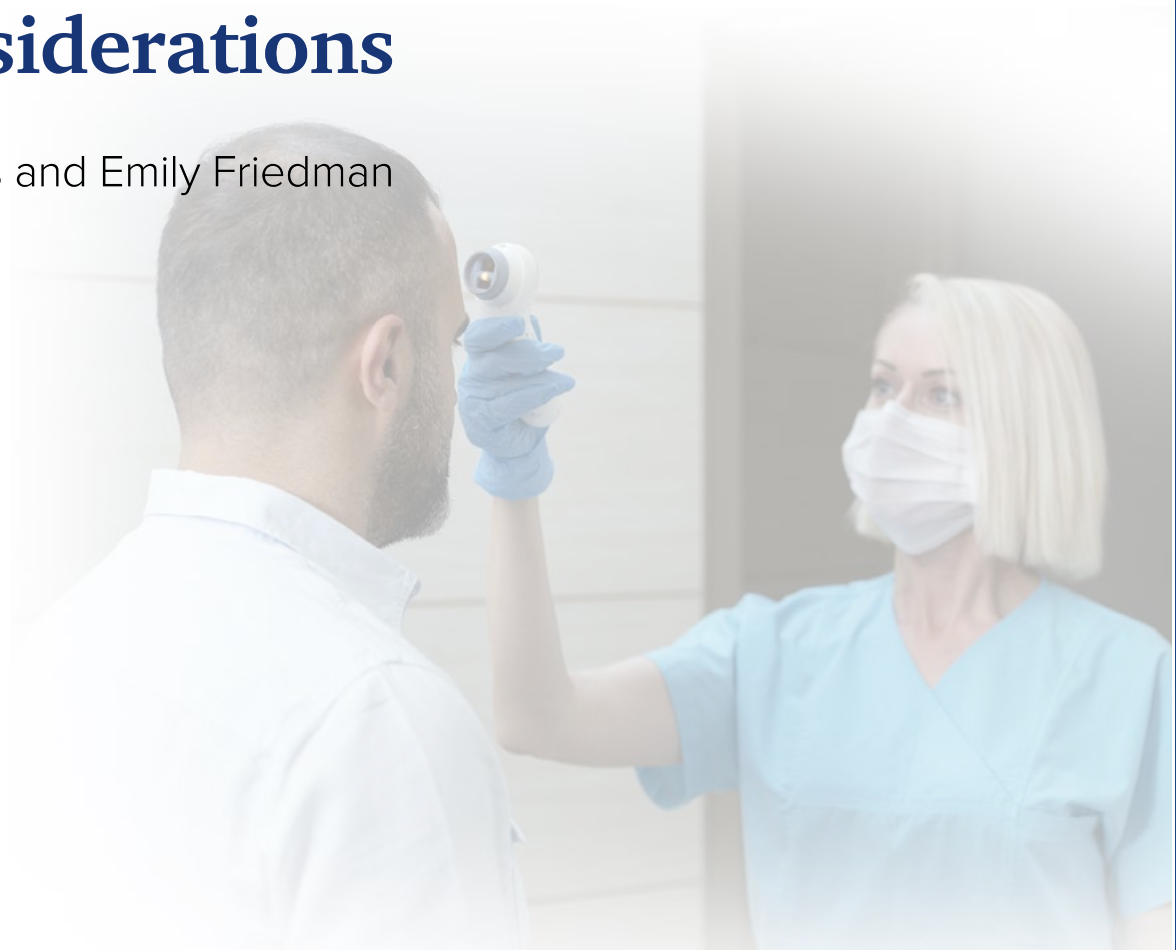


Screening, Privacy & Safety-Related Return-to-Work Considerations

By:
Susan Atkinson, Tori Silas and Emily Friedman



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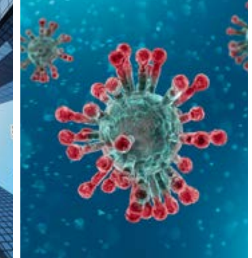


Screening, Privacy & Safety-Related Return-to-Work Considerations

As businesses prepare to reopen, they are weighing implementation of various practices to ensure a safe environment and minimize the spread of COVID-19. To protect employees, clients, customers and visitors, businesses must adopt new measures, which may include testing and other screening procedures, self-reporting obligations, and certain medical examinations. Thinking ahead to key issues under the Americans with Disabilities Act (ADA), the Health Insurance Portability and Accountability Act (HIPAA), the Occupational Safety and Health Act (OSHA), and state privacy laws can help companies mitigate risk in a compliant manner. The below provides an overview of some rules and best practices for businesses welcoming back employees and other visitors onto their premises.

Workplace Testing and Other Screening Considerations

- The ADA generally permits employers to (1) measure an employee's body temperature as part of a screening procedure, and (2) administer COVID-19 tests to detect the presence of the COVID-19 virus before permitting employees into the workplace. However, employers must treat the results of these checks and tests as confidential. This means employers must limit access to the information and must securely store the information separately from the employee's personnel file.
    - Employers collecting body temperatures and COVID-19 test results must remain mindful of the potential applicability of state data privacy laws that may cover and regulate this information. Additional compliance obligations will apply in the event these state laws are applicable.
    - The use of tests and other screening procedures does not alleviate an employer's responsibility to continue to observe infection control practices in the workplace to prevent transmission of the virus (*e.g.*, enforcing social distancing, encouraging use of masks and regular handwashing, etc.).
- Employer-sponsored group health plans are not required to cover employer-mandated COVID-19 tests for those employees returning to the workplace (*i.e.*, testing conducted to screen for general workplace health and safety purposes).
- Antibody tests are currently considered a prohibited "medical examination" under the ADA. This means employers cannot administer or require antibody tests as a condition of employment or as a condition for reentry into the workplace. Note that this rule may change based on future CDC guidance or recommendations. ▶

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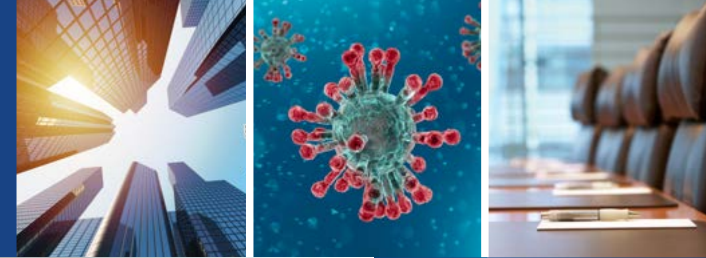


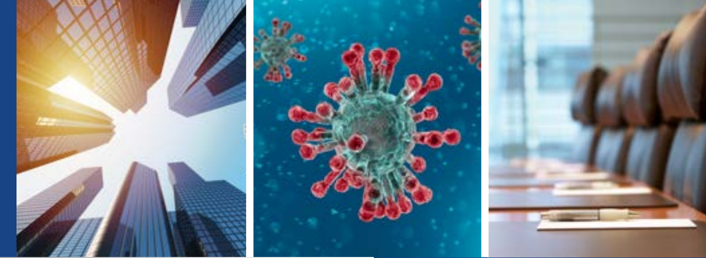
- The ADA allows employers to require a doctor's note (or similar forms and communications from healthcare providers) certifying fitness for duty in connection with an employee's return to work. Employers are also permitted to use questionnaires to ask employees about recent exposure to or symptoms of COVID-19, or to ask employees to self-report potential exposure or infection.

- An employer-sponsored health plan is considered a separate legal entity from the employer itself. So while an employer may not be covered by HIPAA, the employer's health plan definitely is. Therefore, although the ADA allows the temperature checks and COVID-19 testing and screening described above, HIPAA prohibits employers from using employees' health claim records as a source for information on COVID-19 status unless the employee has signed a HIPAA-compliant authorization permitting this use by the employer.

  - Because employers (in their role as employers) are not covered by HIPAA, the results of employer-administered COVID-19 tests or screening procedures stored in regular (non-health plan) employment records are not subject to HIPAA's rules and requirements. However, if any of the documentation outlined above contains medical information, it must be maintained as confidential and securely stored separate from the employee's personnel file. No separate "COVID-19" file is required; an employer may store medical information related to COVID-19 in existing confidential and segregated medical files, if any.

- Employers should remain apprised of any local orders or guidelines outlining additional screening measures employers are required to implement to ensure a safe workplace. These orders or guidelines vary based on jurisdiction and industry type.

- In addition to implementing safeguards to make the workplace safe for employees and visitors, employers must also consider how they can keep employees safe from visitors, who, in addition to customers, may also include the business's suppliers and contractors. Businesses that provide healthcare services must also protect their patients from visitors, who, in addition to those mentioned above, also include family members. Depending on the nature of the business and factors such as whether or not social distancing can be maintained, employers may choose to restrict the presence of visitors entirely, or they may choose to implement screening procedures for visitors, such as requiring visitors to complete screening forms regarding their potential exposure to COVID-19, symptoms, etc. Employers may also require satisfactory temperature checks for visitors before allowing them onto the premises; if visitors will be on the premises for longer periods, additional temperature checks may also be required on the same schedule as employees or if a visitor begins to exhibit potential COVID-19 symptoms. ▶



Privacy Considerations

While a number of federal and state regulators have issued pandemic-related guidance, very little direction has been provided addressing an employer's privacy obligations as they prepare for a return to work. Despite the lack of formal legislation specific to the issue of data collection (tracking and tracing) of employees during the pandemic, guidelines can be derived from general privacy principles. When collecting employee COVID-19-related data, observing the following best practices can keep employers on the right side of the regulatory equation:

- **Plan ahead.** Devise policies that will, to the best of your abilities, not conflict with existing employee data protections. Consider current business practices and technologies that are employed in the business to ensure that policies and procedures related to COVID-19 data collection comply with existing regulatory requirements.
- **Be transparent.** Explain the purpose and reasoning behind data collection. Explain that personal data will be protected and will not be used in a manner that is not consistent with applicable laws. Explain how and where data will be kept, and who will be privy to it. Explain what rights employees have regarding the data.
- **Convey safety as a priority.** Clearly expressing the priority of safety in this effort will go a long way toward gaining compliance and goodwill in the collection of this information, which is necessary to maintain a safe working environment.
- **Minimize data collection.** Be certain to collect the minimum amount of information needed (*e.g.*, symptoms, exposure to carriers, testing results, etc.) to make informed decisions related to your employees' return to the office. Refrain from collecting information that may be considered discriminatory (*e.g.*, pre-existing conditions). Remember that medical information must be maintained as confidential.
- **Separate data.** Be certain to keep employee pandemic-related records completely separate from other employee data stored in personnel records (*e.g.*, work history, salaries, legal documentation, etc.). Further, ensure that pandemic-related employee data is stored securely, using strong technical and administrative safeguards.
- **Have data retention/disposal rules.** Limit the time period this data is retained. Be certain to have a comprehensive and secure data disposal/destruction policy as well. State data privacy laws may also impose additional retention requirements.
- **Effectively manage third parties.** The foregoing guidelines are also applicable and should be observed when receiving information from third parties who may be visiting your facilities/office. ▶

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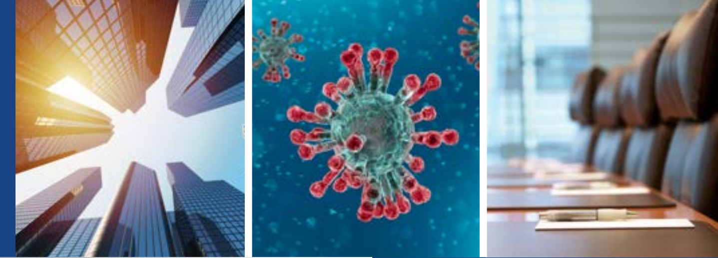

- In determining whether to restrict or screen visitors to the workplace, employers should consider visitors' privacy. To that end, employers should post their screening policies so they are clearly visible to potential workplace visitors (and translated for non-English speakers as applicable to the specific workplace). If employers choose to collect information or forms from visitors, they should establish protocols for collecting and maintaining this information, including measures to protect personal information.

- While it is less likely that employers will use "contact tracing" apps in connection with the reopening of workplaces, if these apps are used, concerns are being raised over how the mobile data will be processed and whether the collection and use of this data is lawful. Employers who are considering undertaking "contact tracing" would be well served to follow the guidance above and give careful consideration to the use and processing of this data.

Additional Safety-Related Considerations

- Under OSHA, employers have a general duty to provide a safe workplace for their employees. In the era of COVID-19, this means that employers must make arrangements for enhanced cleaning and sanitizing throughout the workplace, but especially in "high touch" areas such as central doors, elevators and restrooms. Other precautions that employers should consider include installing plexiglass barriers when the nature of the employees' work does not permit social distancing; temporarily restricting (or carefully scheduling) employees' use of common areas in which people tend to congregate; and temporarily restricting the use of break rooms with "high touch" food and beverage equipment (refrigerators, coffee and soda machine, microwaves, etc.) that would be difficult to adequately sanitize after each use.

- If employees customarily use personal protective equipment (PPE) such as masks or gloves in performing their non-healthcare jobs (for example, for protection from chemicals), then the business may need to find new sources of supply for these items. The combination of the worldwide shortage and the increased demand for PPE among both medical professionals and the general public means that a company's usual suppliers probably won't have inventory on hand to fill orders on short notice. Plan far ahead.

- If an employer's or business owner's ability to provide a safe workplace depends upon visitors wearing masks, then the employer or business owner can require visitors to wear masks as a condition of entering the business premises. We're all familiar with the signs saying, "No shirt, no shoes, no service." A sign requiring visitors to wear masks is no different. Consider making disposable masks available for those customers who don't have their own. ▶

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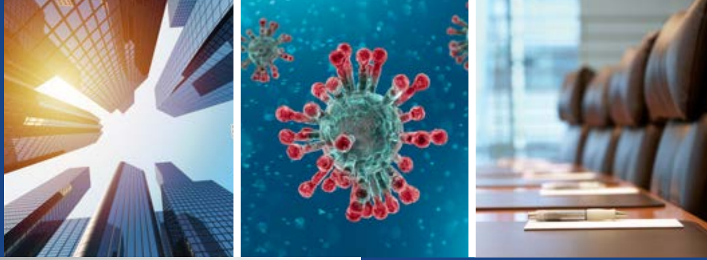

- Employers may also consider other options to protect their employees from infection by visitors, such as:

    - Adjusting business practices to reduce close contact with visitors, such as offering curbside pick-up, delivery options, or opening a drive-thru;
    - Implementing other engineering controls such as:

        - Erecting partitions;
        - Marking floors to guide spacing at least six feet apart; and/or
        - Moving, re-arranging or removing furniture.

    - Providing workers, customers and other worksite visitors with a place to wash their hands as well as access to tissues and no-touch trash receptacles.

If you have any questions about these issues, please contact your Corporate counsel at Smith, Gambrell & Russell, LLP or contact any of the following:

Susan Atkinson
satkinson@sgrlaw.com

Emily Friedman
efriedman@sgrlaw.com

Tori Silas
tsilas@sgrlaw.com

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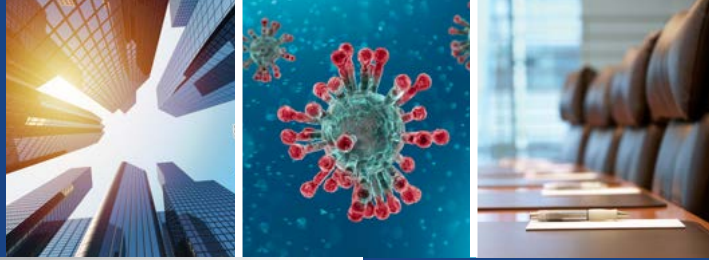
Chapter 11 - A Worthy Planning Tool for a Distressed Business

By:
Ron Barab and Brian Hall



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Chapter 11 - A Worthy Planning Tool for a Distressed Business

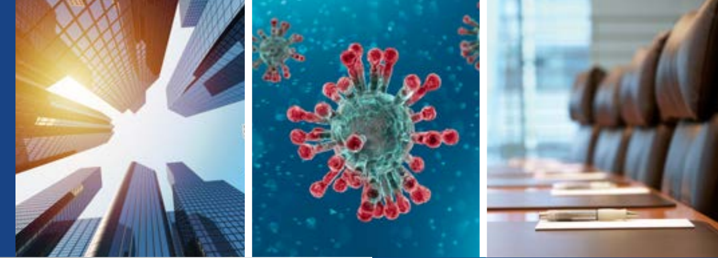
While historically U.S. companies went to great lengths to avoid the stigma of bankruptcy, toward the end of the 20th century and continuing into the 21st, highly publicized cases resulting in the successful reorganization under chapter 11 of the U.S. Bankruptcy Code of several major U.S. corporations, *e.g.*, Delta Airlines, General Motors Co. and Kmart Corporation, led to the recognition of chapter 11 as a respectable planning tool, worthy of consideration by any eligible company that requires financial restructuring to survive and prosper. Indeed, it is common for employees, customers and venders to continue to work for and do business with a company following its commencement of a case under chapter 11 as if nothing had changed, giving the company the opportunity to emerge from its case as a financially strong and healthy enterprise that continues to employ its workforce and provide goods or services to the public for years to come.

Benefits of a Chapter 11 Case, in General

Any individual or company (with a few exceptions, like banks, railroads and insurance companies) that has a domicile, a place of business or property in the United States may commence a case under chapter 11 of the Bankruptcy Code. Even individuals and companies that do not reside or are not chartered in the U.S. are eligible for chapter 11 in the U.S., so long as they have a residence or place of business or property in the U.S.

Continuation of Operations and Management

When a company commences a voluntary case under chapter 11 of the Code, there is a presumption that the company will be, and will continue to be, a "debtor in possession." As long as the company remains a debtor in possession, the company remains in possession and control of, and its management continues to have the authority, duty and responsibility to operate and manage, its properties and business. The company, as a debtor in possession, also has the exclusive right, for a period of 120 days after the commencement of its case (which period may be, and in most cases is, extended for up to 18 months) to file a plan of reorganization. ▶



The Automatic Stay

Upon the filing of a petition commencing a chapter 11 case, a stay is automatically imposed that prohibits the taking or continuation of any action to collect a debt arising pre-petition, any action to enforce any lien securing a debt arising pre-petition, and any action to take possession or control of any property, real or personal, of the debtor's estate or otherwise to deprive the estate of any property. The automatic stay will continue in effect generally with respect to any particular property of the estate until the property is no longer property of the bankruptcy estate or unless and until a party with an interest in the property seeks, and is granted, relief from the stay for good cause, which includes failure of the debtor to adequately protect the party's interest in the property.

Use, Sale and Lease of Property and other Transactions

The debtor's authority to operate its business includes the authority to use, sell or lease property of its estate and to enter into other transactions, without notice to creditors or order of the bankruptcy court, as long as the transaction is in the ordinary course of business and the transaction is not the use, sale or lease of property constituting collateral for a secured creditor's claim. The company may also enter into transactions other than in the ordinary course of business with notice to creditors, if approved by an order of the bankruptcy court. The court will generally approve a company's request to enter into transactions not in the ordinary course of business, unless the court finds that management violated its duties to the company, including its duties of loyalty, prudence and care, in reaching its judgment that the transaction is in the best interests of the company, its creditors and, if applicable, stockholders, or unless the transaction is a use, sale or lease of property that is collateral for a secured creditor's claim.

If a company seeks authority to use, sell or lease collateral for a secured creditor's claim, the company will be entitled to use the collateral, other than "cash collateral" (which includes collateral consisting of cash, checks, promissory notes, stocks, bonds and bank deposit accounts), in the ordinary course of business so long as the secured creditors' interests in the collateral are "adequately protected." "Adequate protection" can be provided, depending on the value of the property and the amount of the debt the property secures, by demonstrating an "equity cushion" – that is, a good amount of value of the collateral in excess of the amount of the debt it secures, by providing to the creditor a

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senior lien on additional unencumbered collateral or a junior lien on otherwise encumbered collateral, or by making cash payments to the secured creditor in amounts that will compensate the creditor for the decrease in the value of the collateral that will result from its use by the debtor.

Freeing Up Collateral Acquired after the Petition Date

Property acquired by a debtor after the date it filed its petition under chapter 11 generally is not subject to any lien created by any security agreement, mortgage or other instrument the debtor may have entered into before the petition date, except to the extent that the post-petition property constitutes “proceeds, products, offspring, or profits” of the property acquired pre-petition.

Use of Cash Collateral and “DIP” Financing

When a company commences a chapter 11 case, it is required in the first instance to segregate and account for any cash collateral in its possession, custody or control, including collections the debtor has received or receives on or after the petition date on any accounts receivable on which a secured creditor has a lien. But when the debtor is relying on cash collateral for operating funds, the company may still use the cash, if the secured creditor consents or, if consent is denied, if the debtor can demonstrate that the secured creditor’s interest in the cash is adequately protected. Adequate protection of a secured creditor’s interest in, *e.g.*, collections on pre-petition accounts receivable, is most often provided by the debtor creating in favor of the secured creditor, with court permission, a lien on future accounts receivable.

Alternatively, a secured creditor may agree to provide post-petition financing (debtor in possession, or “DIP,” financing), because the debtor may, with court approval, grant favorable terms to a person providing DIP financing, which may include providing to the creditor, in addition to a lien on all property of the estate, a claim for the indebtedness incurred under the DIP financing facility that has priority over any or all administrative claims and that is secured by any or all property of the estate.

Rejection of Executory Contracts and Unexpired Leases

A debtor in a chapter 11 case is entitled, with the approval of the court and within specified time periods, to assume or reject any executory contract or unexpired lease. An “executory contract” is a “contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.” ▶

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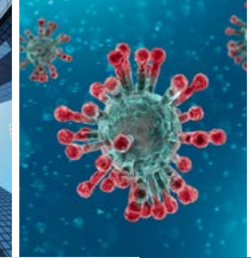
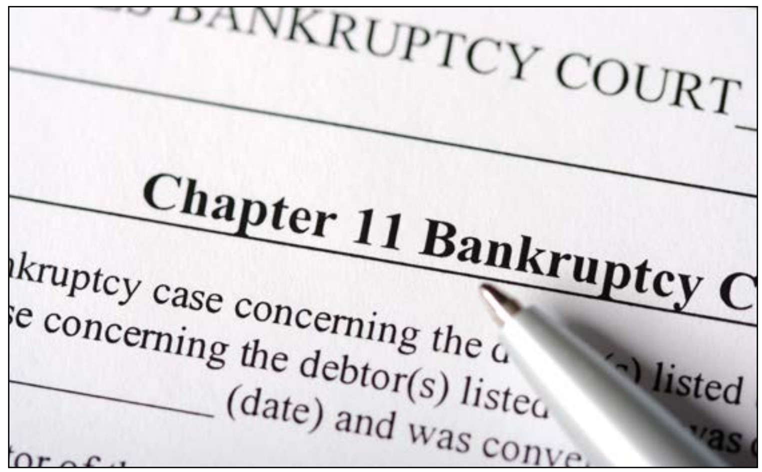


While the other party to the contract or lease is entitled to a claim for breach in the event that its contract or lease is rejected, its claim is typically an unsecured claim, not entitled to priority, and the debtor is relieved from further performance under the contract or lease. In the case of real property leases and employment contracts, the other parties' damage claims (as well as the indemnity claims of guarantors) are limited, in the case of real property leases, to the accrued and unpaid rent that is due plus the present value of future rent for no more than three years, and in the case of employment contracts, to the accrued and unpaid compensation that is due plus future compensation for no more than one year.

Recovery of Preferences and Fraudulent Transfers

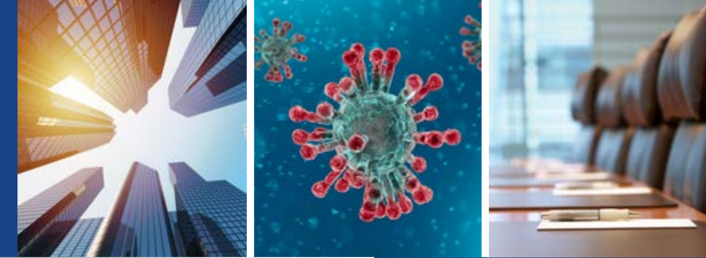
The Bankruptcy Code permits a debtor to avoid and recover as preferences certain payments and other transfers (*e.g.*, transfers of collateral) made to its creditors during the 90 days preceding a bankruptcy filing (the period is extended to one year for payments made to related parties) if the transfer was for or on account of an antecedent debt and made while the debtor was insolvent. Creditors may assert several defenses to preference claims, including that the payment was made in the ordinary course of business, and, although the company will be presumed to have been insolvent during the 90 days preceding the petition date, the presumption is rebuttable.

The Code further permits a debtor to avoid and recover as fraudulent transfers payments and other transfers of its property and obligations incurred within two years before the petition date, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay or defraud its creditors, if the debtor received less than a reasonably equivalent value in exchange for the transfer or obligation and was insolvent at the time the transfer was made or the obligation was incurred, or if the debtor made the transfer or incurred the obligation under other specified conditions that in general had the effect of prejudicing its creditors.



The Chapter 11 Plan

Although a company may propose a plan that provides for the liquidation of all of its assets, chapter 11 may be used constructively as a tool to reorganize a company's financial affairs so that it can continue in business as a viable concern. In formulating its plan, the debtor will need to keep in mind both the features the Bankruptcy Code requires the debtor to include, and the features the Code gives the debtor the opportunity to include, in the plan. ▶



Classification of Claims

The plan must divide the equity interests in and claims (except for certain priority claims) against its estate into designated classes.

The plan may place a claim or interest in a class only if the claim or interest is substantially similar to the other claims or interests in the class, except that the plan may designate a separate class of all unsecured claims that are less than, or have been reduced to, a relatively small amount that has been approved by the court as reasonable and necessary for administrative convenience.

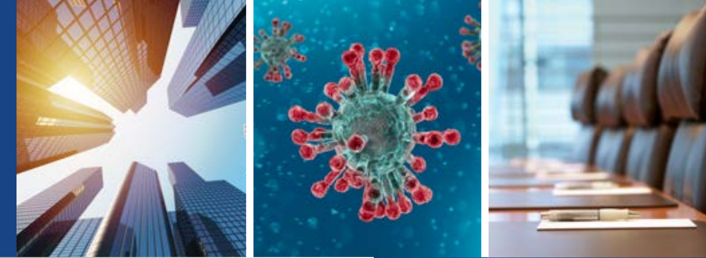
The "Best Interests of Creditors" Test

Any individual general unsecured creditor in any class who is entitled to vote on the plan but has not voted to accept the plan may block confirmation of the plan if it can demonstrate that it would not receive or retain under the plan on account of its claim property of a value that is more than it would have received if the debtor were liquidated under chapter 7 of the Bankruptcy Code. This requirement is referred to as the "best interests of creditors" test, and it requires that a debtor, to be prepared to meet a challenge by any single general unsecured creditor, understand and be prepared to show how the proceeds of its property would be distributed to its creditors and equity interest holders if its property were liquidated in a chapter 7 case.

Priority of Distributions to Creditors

In a chapter 7 case assets that are subject to liens created in favor of secured creditors are liquidated, and the proceeds of the liquidation (net of the reasonable fees, costs or charges of disposing of the property) are distributed first to the secured creditors, up to the amount of their secured claims. If the net proceeds of the liquidation of a secured creditor's collateral are insufficient to satisfy his allowed claim in full, the amount of his deficiency is considered an unsecured claim, which is then treated the same way that other similar unsecured claims are treated in the case. If the net proceeds of the liquidation of a secured creditor's collateral exceed the allowed amount of his claim, the surplus becomes available for distribution to unsecured creditors.

The surplus, if any, resulting from the liquidation of the property subject to liens and the net proceeds of the liquidation of all unencumbered property of the debtor's estate are distributed to satisfy unsecured claims in the order of priority expressly set out specifically in the Bankruptcy Code. ▶



Claims entitled to priority over general unsecured claims include claims for domestic support obligations, for the administration of the chapter 11 case (including post-petition wages, salaries and commissions, post-petition taxes, compensation of attorneys, accountants and other professionals employed, with the approval of the court, by the debtor or employed by an official committee of unsecured creditors and certain expenses incurred by members of the committee), fees payable to the U.S. trustee, wages, salaries and commissions, including vacation, severance and sick leave pay earned by employees and contractors, not to exceed $13,650 per creditor within 180 days before the petition date, contributions to employee benefit plans arising from services rendered within 180 days before the petition date (subject to specified limitations), deposits made by consumers, before the petition date, of money in connection with the purchase, lease or rental of property or the purchase of services, certain income taxes or gross receipts taxes, employment taxes, excise taxes and property taxes, and damages for death or personal injury resulting from the operation of a motor vehicle or vessel if the operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance.

Acceptance of the Plan

How a plan may treat the creditors in a class of creditors or the equity interest holders in a class of interests, and whether the court may confirm a plan, may be dependent on whether the class has accepted the plan. A class of creditors accepts a plan if creditors that hold at least two-thirds in amount and more than one-half in number of allowed claims in the class vote to accept the plan. A class of interests accepts the plan if holders of interests that hold at least two-thirds in amount of interests in the class accepts the plan.

Treatment of Claims under the Plan

While the Bankruptcy Code requires that a plan provide in general for priority claims to be paid in full, the Code does not in all cases mandate that they be paid in full in cash on the effective date of the plan. In the case of administrative claims, the Code does require that the plan provide for the payment of each claim in full on the effective date, unless the holder of the claim agrees to different treatment. But in the case of priority tax claims, the Code permits a plan to provide for the payment of such claims in ***deferred payments over a period ending up to five years after the petition date, so long as the deferred payments have a present value equal to the allowed amount of the claims.*** ▶

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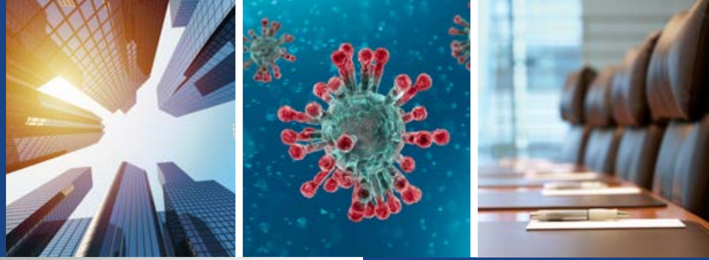


In the case of any class of priority domestic support claims, compensation, wage and commission claims, pension plan contribution claims, and consumer deposit claims, the Code requires that the plan provide for the payment of all claims in in the class in full in cash on the effective date of the plan, except for any claim held by a creditor who agrees to different treatment. But if the class accepts the plan, the Code permits the plan to provide for the payment of all claims in the class in ***deferred payments over any period of time so long as the deferred payments have a present value equal to the allowed amount of the claims.***

If there is a class of creditors holding priority wrongful death or personal injury claims, the debtor may treat the class the same way it treats any class of nonpriority unsecured claims, but taking into account the "best interests of creditors" test.

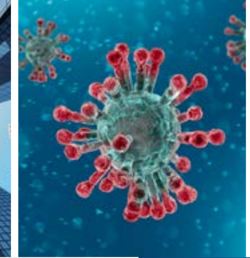
A plan may provide for the holders of nonpriority unsecured claims in any class and any class of equity interests, without the class accepting the plan, to retain unaltered all of the rights to which their claims entitle them or, if their claims would entitle them to accelerate payment of their claims, may provide for the reinstatement of the original maturity of their claims, as long as all defaults (other than defaults consisting of insolvency or bankruptcy or the like) are cured. If the plan provides for treatment of a class to receive treatment as described above, the class is considered to be "unimpaired" and is not entitled to vote on the plan.

If any class of nonpriority unsecured claims or any class of equity interests is impaired under the plan, the plan may provide for the holders of claims or interests in the class to receive any treatment that the debtor can persuade, in the case of a class of claims, a sufficient number of creditors in the class holding a sufficient amount of debt, or if a class of interests, the holders of a sufficient amount of interests, to accept, so long as the debtor can demonstrate, if challenged by any individual creditor in the class of claims, that the plan meets the "best interests of creditors" test, *i.e.*, that the objecting creditor will receive more under the plan than it would have received in a liquidation case. But if one or more impaired classes of claims or interests does not accept a plan, the plan may be confirmed only if the plan meets the "cram-down" requirements discussed below.

Cram-Down

A plan of reorganization can be confirmed without the acceptance of an impaired class of creditors or interest holders (commonly referred to as a "cram-down"), so long as, if a class of claims is impaired, at least one impaired class accepts the plan, and so long as (1) the plan must "not discriminate unfairly," and (2) the plan is "fair and equitable."

A plan does not "discriminate unfairly" with respect to a class if, among other things, the class is treated substantially the same as other similar classes, if any, and if a class is discriminated against, the discrimination is supported by a reasonable basis. ▶


A plan is "fair and equitable" with respect to a class of secured claims generally if the plan provides (a) that each secured creditor in the class retains under the plan the liens securing his claim and receives payments in installments in a total amount that is at least the allowed amount of his secured claim, and which have a present value, as of the effective date of the plan, of at least the value of his collateral; (b) for the sale of the property that is subject to the liens, free and clear of the liens, with the liens to attach to the proceeds of sale, and for the treatment of the liens on such proceeds as described in (a) above or (c) below; or (c) for the realization by the holders of such claims of the "indubitable equivalent" of such claims.

A plan is "fair and equitable" with respect to a class of unsecured claims generally if the plan provides for payment in full of the claims or if the plan follows the "rule of absolute priority," *i.e.*, that under the plan no holder of any claim or interest that is junior to the claims of the class will retain any property on account of such junior claim or interest. In other words, without the affirmative vote of each class of unsecured creditors or payment in full of each class of unsecured creditors, a company's plan cannot provide for the current stockholders of the company to retain their stock or any other interest in the company, at least not on account of their current stockholdings. It is possible, however, that the current stockholders could obtain stock in the surviving reorganized debtor by virtue of the so-called "new value corollary" to the "rule of absolute priority," *i.e.*, by contributing cash or property to the reorganized company, but only if existing stockholders are not given the exclusive right to invest in the new company and others are given the opportunity to bid on the stock of the reorganized company.

A plan is "fair and equitable" with respect to a class of interests only if the plan provides that each holder of an interest in the class receives or retains on account of such interest property of a value equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest, or the plan follows the "rule of absolute priority," *i.e.*, the plan provides that the holder of any interest that is junior to the interests of the class will not receive or retain any property on account of such junior interest.

Drawbacks to a Chapter 11 Case

Studies indicate that not more than 10 to 15% of chapter 11 cases result in successful reorganizations. The other cases are dismissed or converted to liquidation cases under chapter 7 of the Code. Clearly, there is no assurance that a chapter 11 case will solve any particular company's financial troubles.

Also, a company must recognize that its freedom while in chapter 11 is constrained by the limitation that without obtaining an order of the bankruptcy court, it may engage only in transactions "in the ordinary course of business." To engage in any activity outside the ordinary course of business, the debtor must obtain a court order, and there may be adverse consequences to taking actions outside the ordinary course of business without court approval or making a determination as to what constitutes ordinary course of business that is successfully challenged. ▶

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Furthermore, in a chapter 11 case the U.S. trustee is required to appoint an official committee of unsecured creditors. The committee has the authority, among other things, to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan." 11 U.S.C. § 1103(c). Any active committee can be expected to weigh in on any motions the debtor may make seeking any authority or relief requiring court approval. While a committee's support for the debtor's motions can be helpful, contending with a committee that is unsupportive can require time, effort and expense on the part of the debtor and its professionals. Of particular importance is the fact that a committee is authorized, with the approval of the court, to select and employ attorneys and other professionals to represent the committee, and the court customarily will award to its professionals reasonable compensation, which constitutes a priority administrative expense chargeable to the debtor's estate.

Finally, the bankruptcy court may deprive a company of the status of "debtor in possession" and order the appointment of a trustee, at the request of a creditor, the U.S. trustee or another interested party, upon a showing of persuasive evidence of fraud, dishonesty, gross mismanagement or the like on the part of the company, whether the objectionable conduct occurred before or after the commencement of the case, or that the appointment of a trustee is otherwise in the best interests of creditors, stockholders or other equity holders. A trustee, if appointed, will have the authority and duty to operate the business of the debtor, to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business," and to file a plan of reorganization. In the exercise of his or her rights, the trustee may, and customarily will, replace management of the company.

Conclusion

Before filing a petition under chapter 11 of the Bankruptcy Code, a company should diligently consider, in consultation with its legal and financial advisors, its financial condition and prospects, the reasons for its difficulties, the feasibility of overcoming those difficulties and developing a plan with a reasonable likelihood of success, and the likelihood of achieving the support of its employees, creditors and customers, and, in general, the costs (both monetary and intangible) and potential benefits of a chapter 11 case. In the case of any financially troubled company, the costs of a chapter 11 case can be substantial and the likelihood of success uncertain. But a chapter 11 case not only may be highly beneficial to a distressed company, it may constitute the only reasonably viable tool available to preserve the business of the company for the benefit of its employees, customers, vendors and, in a proper case, equity owners.

If you have any questions about these issues, please contact your Bankruptcy counsel at Smith, Gambrell & Russell, LLP or contact any of the following:

Ron Barab
rbarab@sgrlaw.com

Brian Hall
bhall@sgrlaw.com

Fourteen SGR attorneys and eight practice areas recognized by *Chambers USA Guide 2020*

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- Construction – Georgia (Band 3)
- Environment – Georgia (Band 3)
- Litigation: General Commercial – Georgia (Band 4)
- Corporate/M&A – Georgia (Band 4)
- Transportation: Aviation: Finance – USA – Nationwide (Band 4)

The following SGR attorneys were recognized:

- **Mark de St. Aubin** – Construction – Georgia (Band 3)
- **Tom Bever** – Litigation: White-Collar Crime & Government Investigations – Georgia (Band 2)
- **Jim Bikoff** – Intellectual Property: Trademark, Copyright & Trade Secrets – District of Columbia (Band 2)
- **Scott Cahalan** – Construction – Georgia (Band 3)
- **Tony Cochran** – Litigation: White-Collar Crime & Government Investigations – Georgia (Band 3)
- **Andy Fawbush** – Tax: Employee Benefits – Florida (Band 3)
- **Josh Gentner** – Transportation: Aviation: Finance – USA – Nationwide (Band 2)
- **Pat Hill** – Labor & Employment – Florida (Band 4)
- **Greg Kirsch** – Intellectual Property – Georgia (Band 3)
- **Bill Long** – Intellectual Property – Georgia (Band 4)
- **Don Mazursky** – Employee Benefits & Executive Compensation – Georgia (Band 1)
- **Steve O'Day** – Environment – Georgia (Band 2)
- **Jeff Tenen** – Transportation: Aviation: Finance – USA – Nationwide (Band 3)
- **Andy Thompson** – Environment – Georgia (Band 3)

RANKED IN Chambers USA 2020

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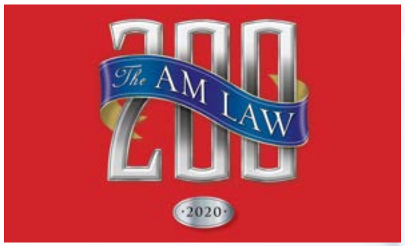
SGR is an Am Law 200 firm for sixth year in a row



SGR has been recognized by *The American Lawyer* as an Am Law 200 firm for the sixth consecutive year. Once again, SGR improved its standing on the list by advancing six spots from 2019, as a result of the firm's continuing growth and increase in revenue. SGR is one of only 21 firms in the "Am Law Second Hundred" with a double-digit increase in gross revenue.

The Am Law 200, a ranking of the 200 highest-grossing law firms in the U.S., is reported by ALM business of law journalists and researchers. The list is published annually with a first portion, the Am Law 100, followed by the Second Hundred comprised of the firms ranked 101-200.

SGR recognized as one of *Construction Executive's* Top 50 Construction Law Firms of 2020

SGR has been recognized by *Construction Executive* magazine in The Top 50 Construction Law Firms™ for 2020. *Construction Executive* ranked SGR 30th among the top 50 construction practices in the country. SGR's Construction Practice is known for its depth of knowledge of the architecture, engineering and construction (AEC) industry, ability to handle all aspects of the construction process from project conception through dispute resolution, and work on behalf of owners and contractors across the U.S. and abroad. The magazine released its second annual U.S. ranking of construction law firms on June 19.

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PRO BONO SUCCESS

SGR Responds to Urgent Need for Legal Assistance During COVID-19 Pandemic

E. Smythe Gambrell, one of SGR's name partners, founded the Atlanta Legal Aid Society in 1924 and served as its president for almost two decades. SGR has continued this deep sense of commitment to the communities it serves. The ongoing tradition of providing pro bono services has never been more important than now, in the face of the current global pandemic. SGR's New York office in particular, located in the epicenter of this crisis, has responded to the need for legal services during this uncertain period.

In one initiative, coordinated by SGR's **Roger Maldonado**, the former president of the New York City Bar Association, and **Danielle Comanducci**, and overseen by **Anne Pitter** and **Russell Wolfson**, the firm participated in the City Bar Justice Center's COVID-19 Small Business Remote Legal Clinic (the "CV-19 Clinic") to offer pro bono consultations to small business owners affected by the COVID-19 pandemic. Our attorneys, who have included **Victor Metsch** and **Hen Feder**, have assisted CV-19 Clinic pro bono clients with a wide range of legal questions. Issues have included counseling local business owners on commercial leases, sick paid leave for employees, maximizing benefits under the Paycheck Protection Program enacted in March 2020, loan forgiveness, and compliance with reopening guidelines. The pro bono clients SGR was able to assist through this clinic are truly small businesses with limited resources – restaurants, coffee shops, jewelry designers and photography studios.

The firm is also participating in a second initiative through Volunteer Lawyers for the Arts in New York (VLANY), a longstanding nonprofit assisting artists with a host of legal issues. Recently, all of the matters the firm has handled have related in some way to COVID-19. SGR attorneys currently working on longer pro bono projects include **Roger Maldonado, Russell Wolfson, Victor Metsch, Sasha Bau, Morgan Manley, Jonathan Roffe, Daniel Goldstein** and **Alexandra Davidson**. The most recent projects include:

- assisting a nonprofit artists' group in Brooklyn in negotiating a deal with the owner of the artists' studio spaces to delay a termination of their license to use those studios;
- assisting a multidisciplinary artist in regard to her shared studio space that the owner shut due to COVID-19 but continued to charge monthly dues;
- providing advice on whether an artist could be required to finish a commissioned work for a public space in light of COVID-19; and
- advising a photographer on his rights with respect to a company's delay, allegedly as a result of COVID-19, in paying for images it bought and was using in advertising. ▶

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We have received tremendous feedback from these businesses and individuals. One business owner wrote SGR:

> ***"Thank you so much for this. I really appreciate your help. This clinic is an amazing resource and I thank you for being a part of it."***

SGR is committed to helping small businesses and individuals who could not otherwise afford counsel. This commitment will extend not just through the duration of this pandemic, but also after the public restrictions on business operations are no longer needed and the economic strain on individuals that has been a byproduct of the pandemic are no longer felt – a time we all hope will come soon.

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