



MARKS & KLEIN, LLP

STRATEGIES TO PROACTIVELY DEAL WITH THE EFFECTS OF COVID-19 ON YOUR BUSINESS

By: Allison Scaduto, Esq.

The development of the novel coronavirus (COVID-19) pandemic has led to unprecedented volatility and disruption in business. Over the past number of days, the Marks & Klein LLP Team has dedicated itself to responding to inquiries on a wide range of matters and counseling clients on the various legal and business implications of COVID-19. As we navigate these new obstacles together, the Marks & Klein LLP Team stands by ready to assist you in whatever way we can and help guide you through this ever-changing and uncertain period.

Here are a few of the areas that other business owners and franchisees are currently seeking advice on. Please feel free to contact us with any questions or reach out for additional information on best practices as the short and long-term impact of COVID-19 unfolds.

- ***SBA Economic Injury Disaster Loan Application Assistance*** –
 - Low-interest, working capital loans of up to \$2 million may be available to you through the SBA Economic Injury Disaster Loan program to help your business overcome the temporary loss of revenue resulting from the COVID-19 disaster. The SBA will be working directly with the states to provide economic support to small businesses that have been severely impacted by COVID-19. The M&K Team is assisting a number of clients navigate the application process and prepare the submissions required by the SBA. New developments on the reach of the SBA program come out daily – please contact M&K for real-time updates and to see if your business qualifies for SBA assistance.

- ***Landlord and Vendor Communication*** –
 - Most lease agreements and other material contracts contain negotiated “force majeure” provisions, which – based on the particular language of the provision – could excuse performance of one’s contractual obligations. In addition, under certain circumstances, contract law will excuse the performance of a contract under the legal doctrine of impossibility of performance. Based on these theories, among others, the M&K Team is guiding clients in the preparation of appropriate communications to landlords and other third parties to initiate the negotiation of reduced and/or deferred contract payments, among other things. Please reach out to M&K to understand what your options are and what forms of contract relief might exist for you.

- **Negotiation of Contractual Extensions –**
 - Franchisees and business owners should pay particular attention to the various deadlines and time-related benchmarks required to be met under their franchise agreements, leases and other agreements. Due to the government mandated restrictions on business, many area developers will no longer be able to meet their development schedules. In addition, franchisees in the early stages of development will be contractually obligated to start paying rent, CAM, royalty fees, brand fund fees and other amounts to third parties before they have even opened for business – or during a period where they are prohibited from opening for business. The M&K Team is working with clients to ensure that they understand what their agreements say and helping clients obtain extensions on the performance of these obligations from their franchisors, landlords and other key contract parties.

- **Development of Strategies for Employers –**
 - Employers are facing a whole host of new issues in the wake of COVID-19, including the possibility of short-term layoffs, office closings, reduction of hours, and furloughs – among others. Compliance with the notice requirements of the federal Worker Adjustment and Retraining Notification (WARN) Act and similar state mini-WARN Acts can be a concern for employers needing to rapidly address COVID-19 in the workplace through furloughs, hours reductions, and short-term layoffs. In addition, because employment benefits vary by state, businesses and franchisees should be aware of eligibility requirements in their state and consider a termination strategy that maximizes an employee’s ability to obtain benefits during the COVID-19 disaster period. The M&K Team is counseling clients through the various options and helping clients develop strategies on a case by case basis.

In the face of this crisis, proactively implementing strategies to protect your business are essential to weather this storm. Please contact us by phone at 732-747-7100 or 312-206-5162 or by email at info@marksklein.com to discuss these issues and/or if we can assist in any way.

Finally, Justin M. Klein will be participating in a live International Franchise Association (“IFA”) Webinar entitled **“Franchisee Response to Coronavirus – First Steps and Planning”** on **Monday, March 23, 2020 from 3:00 p.m. to 4:00 p.m. ET**. To register for the IFA’s live Webinar, please visit: <https://register.gotowebinar.com/register/4847975870931866124>



Allison R. Scaduto is a franchise and business attorney with the nationally recognized franchise law firm of Marks & Klein, LLP. Allison concentrates her practice on corporate law, with a focus on mergers and acquisitions and general corporate representation. She has worked on the buy and sell sides of mergers and stock and asset acquisitions, representing both financial and strategic buyers and sellers. Allison’s expertise includes counseling clients on general corporate matters such as business formation, corporate governance and structure, risk-mitigation strategies, and the negotiation and documentation of various contractual relationships. Allison can be reached at allison@marksklein.com.