

HOW BUSINESS OWNERS CAN HANDLE THE CHALLENGES PRESENTED BY THE COVID-19 CRISIS

By Jennifer B. Zourigui, Esq.*

We have never lived through a time like this, nor could we have imagined it just a short time ago. Life as we know it has come to a grinding halt as we adjust to social distancing and remote working. Things have been changing quickly during the COVID-19 outbreak and we are being forced to adapt just as swiftly. Business owners face the challenge of overcoming the disruption caused by this pandemic. For each individual and each business, the path will be different. But as you navigate, use this time to be proactive and consider the following:

Check your eligibility for loan and grant opportunities. The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) includes provisions for loans and grants to small businesses. It establishes the Paycheck Protection Program that provides forgivable loans to small businesses of up to \$10 million. The maximum amount of each loan is based on a formula of up to 2.5 times a company’s monthly average payroll costs (excluding salary over \$100,000 for any one employee). To be eligible for forgiveness, the loan must be used for payment of payroll, rent, health benefits, insurance premiums, utilities and other covered costs during the period from February 15, 2020 to June 30, 2020. Small businesses with 500 employees or less are eligible. Independent contractors, 1099 workers, self-employed individuals and sole proprietors are also eligible. If requirements are met, all or part of the loan may be forgiven by a second application and essentially converted into a grant. If not converted into a grant, the loan is payable in 2 years and has an interest rate of 2%. Additionally, the Small Business Administration’s Economic Injury Disaster Loan (EIDL) Program provides small businesses that meet a more stringent small business criteria with low-interest loans of up to \$2 million that can provide crucial economic support to help overcome the temporary loss of revenue due to COVID-19. As part of the COVID-19 relief effort, borrowers can also apply for an advance on the loan of up to \$10,000 to be distributed within 3 days of the request. The up to \$10,000 advance will be considered an Emergency EIDL grant and the borrower will not be required to pay back that amount even if they are subsequently denied for an EIDL loan. Your business may be eligible for these or other types of loans to help stay afloat while this crisis continues.

Evaluate your insurance policies. Carefully review your insurance policies for potential business interruption coverage in connection with the coronavirus crisis. In many commercial property insurance policies such coverage is triggered by “physical loss” to the insured property. While some insurance companies may dispute that there has been a “physical loss” to sufficiently trigger coverage, in some jurisdictions, contamination or other incidents that render a property uninhabitable or otherwise unfit for its intended use have been considered the requisite “physical loss” to trigger coverage for business interruption. Also, in several states, including New York, bills have been proposed to, among other things, create a fund to repay insurers for payment of claims under business interruption insurance that might be excluded under the terms of the policy. Additionally, some commercial property insurance policies provide for coverage of business income losses when a civil authority prohibits access to the premises. Such provisions may or may not require that the access restriction result from “physical loss.” Determination whether a claim should be submitted will require careful examination of your policies and the relevant facts

and circumstances. Move quickly because timely reporting is critical to preserving your rights under your policies.

Review your contracts. It is important to assess how COVID-19 may impact your business agreements. In order to determine your legal obligations, and those owed to you, review your contracts with a particular eye to key issues. You should look at the termination clauses of your agreements to understand both your options for termination, as well as those for your counterparty. Also, many contracts have force majeure clauses which excuse a party's nonperformance under a contract due to an unforeseen and extraordinary event that prevents the party from fulfilling its obligations under the contract. Whether such a clause will apply to the coronavirus pandemic will largely depend on the specific contractual language and how it defines force majeure. Other doctrines that may support excusing performance under a contract include impossibility of performance or frustration of purpose. However, Courts typically construe these doctrines narrowly. Other portions of your contract you should look at are the governing law, dispute resolution, and notice clauses. While the goal should be to resolve any disputes that may arise, you should familiarize yourself with the law that governs the contract and the requisite processes and forums for disputes that may inevitably arise. How the courts will apply principles of contract interpretation may vary state to state. And you will need to be sure whether mediation or arbitration is required or notice is even required before you can pursue a claim. Plan ahead and know your options.

Seek advice from professionals. There is a lot of information out there about options and opportunities for small businesses in light of the COVID-19 crisis. How this applies to you and your business will depend on your particular circumstances. You will likely need help determining the best courses of action. Seek advice from those in the best position to give it, such as accountants and lawyers. Whether you have questions about what the CARES Act may mean for your business or how to handle employment issues such as layoffs and furloughs, or you need guidance on re-negotiation of contracts or how to handle business disputes to potentially avoid litigation, now is the time to address these issues. Seek out counsel from the professionals you trust or look now to find someone to assist. We are working with our clients and helping them through difficult times and tough decisions. Things are moving fast, so stay in touch with your accountant and/or attorney so you can move swiftly and also learn about new programs and options as they become available.

Pursue opportunities for collaboration and mentorship. When it comes to some of the day-to-day issues you face and will continue to face in the weeks and months ahead, look to others in your network for guidance. Those around you may have valuable knowledge or experience that can help you traverse the challenges to come. If you are a member of any professional networks, now is a good time to leverage those networks. Look for mentorship opportunities or other programs that may offer meaningful advice from other business owners. There is great value in the beneficial relationships developed, the quality of the advice and guidance that can be provided, and the significance of positive platforms among peers in which to address real business concerns and challenges. You may want to consider which organizations or programs will provide valuable information pertinent to your particular business. The important thing is to look to those in your network, and beyond, and don't be afraid to ask for guidance. Asking for help is not a sign of weakness, but rather strength and wisdom.

The toll that this pandemic has already taken on us is immeasurable. But while we navigate the continuing crisis, try to remain optimistic. There are options available and people ready to assist you. Most importantly, try as best you can to take care of yourself—both physically and mentally. The uncharted terrain we face can be stressful and overwhelming but we must be kind to ourselves.

Stay safe and well as we look forward to better days to come.

*Jennifer B. Zourigui is a partner of the law firm Ingram, Yuzek, Gainen, Carroll & Bertolotti, LLP. Jennifer focuses her practice on complex commercial litigation, including business disputes, employment matters, real estate litigation and creditors' rights issues in bankruptcy court. Jennifer is a steadfast advocate for her clients and believes in creative thinking regarding both the legal and practical issues that impact her clients and their businesses. Whatever the task at hand, Jennifer is committed to seeking the best result possible for her clients. Jennifer is a strong advocate and supporter of the growth of women in business and, together with her partners at Ingram LLP, a proud sponsor of She Leads Media and the National Association of Women Business Owners (NAWBO).

jzourigui@ingramllp.com

www.ingramllp.com

SheLeads
media

INGRAM
YUZEK • GAINEN • CARROLL • BERTOLOTTI • LLP


NAWBO
NEW YORK CITY