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Lum, Drasco & Positan LLC **Attorneys At Law Since 1870**

LUM, DRASCO & POSITAN LLC COVID-19 RESOURCE CENTER

Overview

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The COVID-19 outbreak presents serious challenges to the business community and residents of New Jersey. The crisis affects a broad range of areas such as employer-employee relations, workplace safety, commercial contracts and business relationships, corporate control and governance, taxes, health and liability insurance coverage, and family law issues.

Lum, Drasco & Positan LLC has established interdisciplinary capabilities to assist its clients with the multi-faceted legal, regulatory, business, and personal issues arising from the current health crisis. Our attorneys are closely monitoring developments under federal, state, and local law to provide advice and counsel regarding the effects of the COVID-19, in a variety of areas, as discussed below.

Status of Courts:

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While the COVID-19 outbreak has presented certain obstacles and delays the state and federal court of New Jersey and New York remain open and civil cases are proceeding with appropriate safety measures in place. Lum, Drasco & Positan LLC attorneys are closely monitoring the revised court procedures in order to best serve our clients and to provide accurate real-time status updates.

New Jersey State Courts: New Jersey State Courts remain open for essential business and conferences and arguments are being conducted remotely. No new civil jury trials are being conducted until further notice, but in certain circumstances, subject to the Court's availability, bench trials may proceed via video conference. The Judiciary Electronic Document Submission (JEDS) was launched to allow electronic filing in matters where it was previously unavailable (Family, Tax, Chancery, etc.). Most civil deadline are tolled during the period from March 16 through April 26, 2020 (and potentially beyond). Civil Arbitration sessions will resume on April 27, 2020, with participation in any session to be via video and/or telephone conference initiated the arbitrator. <https://njcourts.gov/public/covid19.html>

District of New Jersey: New Jersey's Federal Court remain open for essential business, with proceedings being conducted remotely. No jury trials shall be scheduled before May 31, 2020. Discovery and filing deadlines in civil matters currently falling between March 25 and April 30 shall remain unchanged and any filing or discovery deadlines falling between May 1, 2020 and May 31, 2020 are extended by 30 days. Statutes of limitation are not tolled or extended. <https://www.njd.uscourts.gov/covid-19-orders-procedures-and-changes>

New York State Courts: New York Courts remain open for essential business only, subject to Virtual Chambers protocols adopted by individual District and County Courts. <https://www.nycourts.gov/index.shtml>

New York Federal Courts (SDNY/EDNY): New York Federal Courts remain open for essential or emergent activities, to be conducted remotely where possible. Extensions and deadlines to be addressed by the Standing Orders of individual District Judges.

SDNY - <https://www.nysd.uscourts.gov/covid-19-coronavirus>

EDNY - <https://www.nyed.uscourts.gov/coronavirus>

Employment Law Update

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The significant impact of novel coronavirus (COVID-19) on employers and businesses in the New Jersey and New York areas has reshaped the landscape of the workforce and workplace. In-office work has been transformed to telework where possible, compliance with disinfection guidelines has been required in efforts to mitigate exposure risk in work spaces, workforces have been restructured through furloughs, salary reductions, reorganizations, and employee terminations, and employees have had to modify their interactions through remote communications and social distancing.

Employers with employees sick with COVID-19, quarantined, or responsible for caring for a sick family member or child whose school was closed due to COVID-19, or whom were simply reluctant to come to work for fear of exposure, have had to manage employee absences in an evolving regulatory environment. Throughout the employment effects of COVID-19, guidance on the numerous regulations provided by the U.S. and N.J. Department of Labor for employers, including the Families First Coronavirus Response Act (FFCRA), with its laws on the Emergency Paid Sick Leave Act, and the Family and Medical Leave Expansion Act, as well as New Jersey's regulations on the availability of employment benefits for a myriad of reasons related to COVID-19, have been shared with our clients to ensure continued counseling on key employment issues throughout this pandemic.

As we await regulations on re-opening businesses, we anticipate that new employment issues concerning employees' return-to-work may arise that will require the consideration and preparation of new employment policies, including potential employee screening/testing, enforcement of social distancing and wearing masks. Employers may find they have to respond to claims of discrimination, wrongful termination, wage and hour violations, and improper treatment by employees who believe they were not properly accommodated during the work closure or restructuring period. Additionally, employment interactions continue through telework communications, and as in any such cases, issues may arise that may require employer investigations.

As any new employment issues arise, the Firm's employment attorneys will continue to be available to address employer questions or concerns, provide counseling and guidance on business regulations issued by the federal and state Departments of Labor, conduct investigations relating to employee interactions, and defend employers faced with adverse employment claims.

Business and Corporate Law Update

Maximizing Forgiveness Under the Paycheck Protection Program

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Congress has authorized an additional \$310 billion commitment for the Paycheck Protection Program. The initial funding of \$350 billion was fully subscribed within days of the program's opening on April 3, 2020. The program was set up under the CARES Act to deliver aid to small businesses struggling from the economic fallout triggered by the pandemic.

Although small businesses participating in the program are taking out a loan, it is essentially a small business bailout as most of the loan should be forgiven. Upon receipt of the funds by the small business, the amount spent over the next 8 weeks on payroll, mortgage interest, rent and utilities is eligible to be forgiven. Any portion of the loan that isn't forgiven must be repaid over 18 months (after a 6 month deferral period) at a 1% interest rate.

It is critical for small businesses participating in the program to maximize the amount to be forgiven. Recently, the Small Business Administration (SBA) has issued guidance. Most notable, although not set forth within the CARES legislation, the SBA stated that no more than 25% of the forgivable amount of the loan can be attributable to non-payroll expenses.

For example, assume the participating small business had \$2,880,000 in payroll costs in 2019. The maximum loan proceeds available are \$600,000. Further assume that payroll costs remain constant in 2020 so that during the 8 week period following receipt of the funds the company pays out \$480,000 in payroll costs. If the company uses the remaining \$120,000 to pay rent, mortgage interest and utilities, the full \$600,000 should be forgiven.

However, let's change the facts and assume some employees left the company in December 2019 and the payroll costs for the 8 week period are \$420,000. The maximum that can be paid for rent, mortgage interest and utilities would be limited to \$150,000 and therefore \$30,000 could not be forgiven.

Seventy percent of small businesses in this country have applied for this program and have either recently received funding or will receive funding in the next 2 weeks. Their focus now should be to optimize the amount of loan forgiveness. To achieve this goal will require careful planning and understanding of the SBA pronouncements interpreting the rules for this program.

Family Law Update

Consequences of COVID-19 on Shared Custody and Parenting Time Agreements

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The emergence of COVID-19 as a global pandemic has raised new questions for family law practitioners and litigants alike, particularly with respect to the obligations of parties to existing custody and parenting time orders. Despite the implementation of stay-at-home initiatives throughout the State, parties to existing custody and parenting time orders should anticipate that those orders will remain in effect, absent an agreement to the contrary, or a new order modifying the parties' respective obligations.

Although the current health crisis does not relieve parents from their obligations under an existing custody and parenting time order, a parent may seek to temporarily suspend or modify such an order, absent the agreement of the other, where there is a risk of irreparable harm to the health or safety of the child. In a recent unpublished decision, the New Jersey Supreme Court granted the emergent application of a father seeking to suspend his former wife's visitation with the parties' minor child, where the mother was a doctor treating COVID-19 patients, based on her increased risk of exposure. The Court later reinstated the mother's visitation when she informed the Court that she had requested reassignment to another unit of the hospital, and would cease treating COVID-19 patients.

Although it has yet to be tested what other circumstances might satisfy the "irreparable harm" standard in COVID-19 related applications to modify custody and parenting time, presumably, such circumstances would exist where one parent has tested positive for COVID-19, is exhibiting symptoms, or has a similar high risk of exposure.

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Lum Law Notes is a publication intended for the clients of Lum, Drasco & Positan LLC and other interested persons. It is designed to keep its readers generally informed about developments in the firm and its areas of practice and should not be construed as legal advice concerning any specific factual situation

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