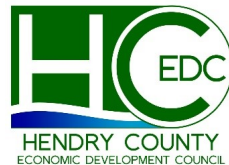


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# Close, Survive or Thrive: The Small Business Challenge Today

## Legal Challenges for Small Businesses in the age of COVID-19



**Patrick Neale, Attorney**

*Funded in part through a Cooperative Agreement  
with the U.S. Small Business Administration.*

# Webinar

- You have all been muted.
- This is one in a series of six webinars.
- Questions can be typed into the “Q&A” feature.
- We will answer as many questions as we can after this presentation.
- A link to this webinar will be sent to each registrant.
- In the event you are having a problem with your audio, local phone link is (929) 205-6099, webinar ID 935 9906 3794.



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# Agenda – Reopening and Beyond

- Reopening Guidelines - Can I reopen? If so, how much?
- What do I need to do to protect my business, employees and customers?
- What if something goes wrong?
- What if someone tests positive? What if someone is symptomatic?
- Who do I have to pay?
- When, who and how can I test?
- When do I need to close?
- Commercial lease issues
- Liability Considerations

## DISCLAIMER

**CAUTION: THIS AREA OF LAW IS IN A STATE OF CONSTANT CHANGE. CHECK WITH LOCAL COUNSEL BEFORE ACTING.**

# Reopening your Business Guidelines - Phase 2

- CDC – Florida Department Of Health – Best practices
  - <https://floridahealthcovid19.gov/>
- CDC FAQ Page
  - <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>
- Florida Covid-19 Resource Homepage
  - <https://www.flgov.com/covid-19>
- SHRM FAQs on Paid Leave
  - <https://www.shrm.org/ResourcesAndTools/tools-and-samples/exreq/Pages/Details.aspx?Erid=1563>

# Reopening your Business Guidelines - Phase 2

## (continued)

- **Recommendations from Executive Order 20-139:**

- All persons in Florida are encouraged to follow appropriate social distancing and safety protocols issued by the CDC and OSHA. The direction to follow such protocols, and those additional protocols listed below in this section, is guidance and not enforceable under section 252.47, Florida Statutes.
- A. Senior citizens and individuals with a significant underlying medical condition are strongly encouraged to avoid crowds and take measures to limit the risk of exposure to COVID-19.
- B. All persons in Florida are encouraged to avoid congregating in groups larger than 50 persons.
- C. All persons who work in long-term care facilities should be tested for COVID-19 on a routine basis.
- D. In-store retail businesses, including gyms and fitness centers, should maintain appropriate social distancing and sanitation protocols.

- **Requirement added by Executive Order 20-192:**

- The Department of Business and Professional Regulation shall ensure all restaurants implement employee screening protocols pursuant to guidance developed by the Centers for Disease Control and Prevention.



# Reopening your Business Guidelines

- Liability concerns will be important
- Recommended that each business follow guidelines as set out by State and CDC, even if not mandatory
- Best practices are a tool to prevent liability
- Liability releases are no guaranty of protection, but if used:
  - Should state who the parties are
  - What type of activity the parties are being released from
  - Whether there is liability release for all future action, only known actions, or from some specific liability
  - The release must be signed by all parties. It should state that the parties signing the release agree to its terms and intend to be bound by it.

# What do I need to do to protect my business, employees and customers?

- Follow published guidelines – CDC, NIH, Florida Dept. of Health, DBPR
  - Create a formal plan
  - Hygiene – cleaning and personal hygiene
  - Social Distancing
  - Modify operations
  - Training on best practices
  - Face masks
  - Taking temperatures

# What policies should I have in place?

- Attendance
- Vacation and/or PTO
- Remote Work
- Work hours
- Timekeeping
- Leave policies, including sick leave
- Travel Policies
- Information technology and usage, especially for remote workers

# What if Something Goes Wrong?

## Monitoring Employees

- If sick, stay home
- Routine daily health checks – specific questions
- Flexible leave policies, complying with Families First COVID Relief Act policies, if required
- Action plan if a positive test
- Emergency communication channels to and from employees
- Monitor federal, state and local government policies, rules and statutes

# When, How and Who can I test?

- You can take employees temperature
- You can ask pertinent questions, e.g.
  - Are you experiencing symptoms of COVID-19?
  - Have you been tested for COVID-19 and not reported the results to your employer?
  - Have you been in close contact with someone who has tested positive for COVID-19 or who is awaiting test results?

# What if Someone Tests Positive?

- Do not let them come to work
- Self isolation of employees who worked in close proximity for 14 days
- Do not disclose their name except to authorized personnel (possible privacy issues)
- Disinfect the workplace – via CDC or Florida Department of Health guidelines.

# What Causes a Closure?

- Governmental Action – Florida DBPR closed bars, etc.
- Risk management – Employee tests positive or is symptomatic, temporary closure to clean
- Financial – Cannot afford to operate at reduced capacity

# Who do I Have to Pay, for How Long?

- **VERY COMPLEX** issue. Confluence of
  - Families First Coronavirus Relief Act (FFCRA)
  - Emergency Paid Sick Leave (EPSL)
  - Emergency Family Medical Leave Act (EFMLA)
- FFCRA applies to employers with under 500 employees.
- Employers with fewer than 50 employees may seek an exemption if economic viability would be jeopardized by complying with the new category of leave.
- FFCRA – may require up to two weeks (10 work days) of EPSL.
- **MUST PROVIDE NOTICE** – Posters, email, direct mail and/or notice on employee website.



# What Factors Require Payment of EPSL?

- Employee subject to a federal, state or local quarantine or isolation order related to Covid-19
- Employee advised to self quarantine by a health care provider
- Experiencing symptoms of COVID-19 and seeking diagnosis
- Caring for an individual subject to a quarantine or isolation order
- Caring for an individual who has been advised to self quarantine
- Caring for a child whose school or daycare is closed due to COVID-19
- “Experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretary of Treasury and Secretary of Labor”

# What Factors Require Payment of EFMLA Compensation?

- Complex formulas and requirements – <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#12> – 97 FAQs.
- Employee must have been employed for 30 or more of the previous 60 calendar days
- May be available for employee whose child's school or place of care is closed or unavailable because of the COVID-19 pandemic. There are two components to EFMLA: (1) two weeks of unpaid leave and (2) ten weeks of EFMLA paid at 2/3 of the employee's regular rate.
- Laid off or terminated after March 1, 2020 and rehired on or before December 31, 2020.
- Summer program such as camp may be considered place of care.

# Commercial Lease Considerations

- No moratorium on evictions at state or federal level
- Rent continues to come due, unless otherwise agreed by landlord
- May be able to negotiate better terms with landlord

# Liability Considerations

- Minimize risk by following published guidelines
- Minimize risk by having written procedures
- Minimize risk by limiting possible exposure
- Document your mitigation actions
- Follow your procedures

# Resources

- SCORE has created a comprehensive resource portal to help you find the specific information, government resources and financial support you need when you need it most.

<https://www.score.org/recovery/small-business-resilience-resource-portal>

- SBA Programs: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>
- The CDC has guidance for businesses: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
- If you live in Lee County, check out help for businesses on <https://leeflcares.com/>
- Legal Issues for Small Businesses: <https://www.nfib.com/content/legal-compliance/healthcare/small-business-faqs-on-covid-19/>

# Questions and Answers



# THANK YOU FOR YOUR TIME AND ATTENTION!

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