



# PLANNING FOR THE INCOMING WAVE OF COVID-19 LITIGATION

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**Experts are forecasting a dramatic rise in litigation due to the COVID-19 (coronavirus) crisis. Disruptions in the global supply chains put many businesses at risk. Careful considerations should be given so that your business does not wind up on the receiving end of litigation resulting from company actions taken to lessen the impact of COVID-19.**

Careful audit of the terms and conditions of your existing contracts and leases should be done to ensure your production / output / operational changes taken to address the impact of COVID-19 do not put you in default of material contract terms. And, in the event they may, consideration should be given to developing alternative business strategies or proactively entering into contract negotiations to address these issues. Special attention should be given to contracts or leases where one side may be looking for a reason to get out of it, separate from the COVID-19 crisis. An evaluation of the specific rights and remedies of those contracts may be helpful in discouraging parties from exploiting a crisis to get out of a binding agreement.

Contracts and leases should be reviewed for clauses which provide flexibility needed in times of crisis such as:

- *force majeure* clauses;
- material adverse event clauses;
- clauses related to changes in law (e.g., emergency declarations);

- notice/cure provisions;
- conditions precedent (e.g., conditions predicated performance under the contract may have changed); and
- dispute resolution provisions.

If no such clauses exist, updating your standard form contracts with such clauses may be prudent.

Likewise, where the impacts on your business partners are negatively impacting your business, or you envision that as an immediate threat, careful thought should be given to strategies for addressing that impact — including pre-litigation mediation or settlement negotiations, or strategic, streamlined litigation planning with budgeting guidelines.

Our attorneys are available to discuss any troublesome contracts and analyze potential litigation risks and strategies.

If you have additional questions or would like to discuss further, please contact Tammy Wood.

## Related Practices

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Litigation