The COVID-19 pandemic has had, and will continue to have, a wide impact on businesses in every sector of the worldwide economy. Changes in response to the virus are occurring by the minute, creating a number of legal and other issues (and in some cases opportunities) to which businesses will have to react and respond.

In order to assist businesses in identifying these issues, and then addressing and responding to them, we have provided the following summary of issues that businesses may face as a result of COVID-19.

OVERALL CORONAVIRUS RESPONSE

We suggest that businesses appoint or select one or more persons to identify, coordinate, and develop responses to any issues arising out of COVID-19 that may affect the business in any way. With the rapid changes occurring daily in response to the virus, it is important that businesses organize appropriately and establish leaders to guide the business forward. The role of such persons could include:

- Developing appropriate policies in response to COVID-19 issues;
- Making information available to and communicating with employees;
- Communicating with lenders, vendors, suppliers, landlords and other stakeholders;
- Serving as a point of contact for employees and others regarding any questions or concerns they have regarding COVID-19; and
- Ensuring that all messaging is timely, effective, and consistent.

EMPLOYMENT ISSUES

COVID-19 is forcing many businesses to make difficult and complicated decisions regarding their workforces. Businesses should assess their employment policies and employee handbooks and should consider employment law issues such as:

- Paid and unpaid leave policies (including documentation of leave hours taken) (for details on payment policies see Coronavirus and the Law: Paying Employees Properly Under the FLSA);
- OSHA laws and regulations (for a more detailed discussion see OSHA Issues Guidance on Preparing Workplaces For Covid-19);
- Wage and hour laws;
- Employee benefit issues (see below);
- Travel policies and restrictions, including quarantines for at-risk employees;
- Policies for flexible work schedules, at-home work and telecommuting;
- Identify essential jobs and functions and the performance of them;
- Union or collective-bargaining issues;
- WARN (federal) and mini-WARN (state) notices/compliance for layoffs/reductions in force; and
- Consequences from terminating or furloughing employees for payroll reduction or other purposes.

For additional information on potential employment issues arising from COVID-19 see Coronavirus and the Law: Workplace Response.

CONTRACT ISSUES

With such a wide range of business impacts caused by COVID-19, there are bound to be a number of issues with both existing and future contracts. For a more thorough discussion of potential contract issues see Coronavirus and the Law: Potential Effects on Virginia Contracts. Briefly, businesses should consider at least the following potential issues:

- Review and analyze contracts for any time limits or deadlines that could be impacted;
- Note force majeure (acts of God) and material adverse effect clauses in current contracts and prospective contracts. Determine whether the COVID-19 pandemic is covered in existing contracts and whether specific language should be included going forward;
- Analyze all contracts for potential breaches or inability to perform, on the part of your business or by the relevant other party(ies). (communicate with other parties to contract to resolve potential issues and negotiate any possible amendments or changes; look for

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opportunities to mitigate and lessen potential damages from possible breaches, explore alternative sources for performance of contracts that may be breached or not (timely) performed.

- Carefully and fully document in writing, all communications with other contracting parties, as well as facts and circumstances associated with potential or current contract issues. Use e-mail when possible.

**FINANCING AND CREDIT ISSUES**

Market volatility threatens availability of financing and credit sources. Businesses may require additional credit as compared with their typical use, and may be required to pursue alternative avenues to source such financing. Among the steps that businesses should take with regards to financing and credit issues are the following:

- Analyze and assess need for increased credit and financing as a result of COVID-19 issues (business downturn, increased supply and manufacturing demands, additional employment expenditures; working capital, etc.);
- Review current loan and credit documents (including leases) for potential problems or issues (loan covenants and financial ratios, material adverse effect default clauses, possible impacts on collateral and security (write-downs and write-offs, valuation impacts, bad debts and slow payment of receivables), guaranties);
- Look for re-financing opportunities to the extent more favorable terms can be obtained;
- Communicate with current lenders and other sources of credit regarding their and your concerns or issues;
- Analyze terms on which your business provides credit to customers and others, and amend applicable documents as necessary.

**EMPLOYEE BENEFITS ISSUES**

- COVID-19 has potential to dramatically impact employee benefit issues. Businesses need to remain aware of relevant regulatory and legislative requirements, as well as any of their own policies and contracts that may be triggered by COVID-19 impacts. We recommend that businesses take the following steps:
- Review and implement mandated leave policies required by COVID-19 relief legislation (for more details see Families First Coronavirus Response Act / Legislative Alert #1);
- Review group health and medical insurance and related benefits (health savings accounts (HSA), health reimbursement arrangements (HRA), flexible spending accounts (FSA)) for compliance, potential savings, and benefits provided (for a discussion on coverage of COVID-19 see Coronavirus and the Law: Essential Health Benefit Coverage; IRS Announces High-Deductible Health Plans Can Cover COVID-19 Costs; CMS Releases FAQs on COVID-19 Coverage under Catastrophic Health Insurance Plans);
- Review and analyze retirement plan documents for the ability to modify benefits, including changing the amount of any discretionary employer contributions to profit-sharing or other plans; see Coronavirus and the Law: Review Plan Documents and More if Changing Employer Contributions to a 401(k) Plan;
- Before deciding to terminate or furlough employees:
  - Consider application of ACA group health plan coverage penalties for failure to cover 95% of full-time employees;
  - Consider the application and consequences of any severance benefits;
  - Determine those cases in which COBRA requirements are triggered (e.g., termination, reduction in hours, etc.), thus requiring the provision of coverage and notices;
  - Review hardship distribution provisions of retirement and deferred compensation plans, triggering events for partial terminations of plans, and issues or obligations arising from terminations of employment or separations from service under plans.
- Review performance metrics or goals in incentive/deferred compensation packages and examine deferred compensation plans for ability to further defer benefits.

**TAX ISSUES**

As a result of COVID-19, the IRS has already issued significant guidance regarding tax practices. We expect that further changes may occur, and believe that businesses should take the following steps to navigate these deviations from common practice:

- Take advantage of federal and state tax benefits offered and provided in response to COVID-19, and develop policies to ensure required documentation for such benefits is properly maintained (for a discussion of potential tax benefits see Coronavirus and the Law: IRS Announces a Stop on Most Tax Collection Actions);
- Note legislative and regulatory extensions of tax filing and payment deadlines on both federal and state levels, and file all documents necessary to obtain any extensions (for more details see Coronavirus and the Law: IRS Delays Income Tax Payments);
- Consider whether it is advisable or necessary to adjust estimated tax payments (or withholdings, if applicable);
- Examine possibility of tax-favored employee disaster relief payments under IRC Sec. 139.

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The attorneys at Woods Rogers are continuously updating our legal blog with topics relating to the COVID-19 coronavirus outbreak. You can find these articles at woodsrogers.com/covid19.

In addition, Woods Rogers has created a Pandemic Response Group of attorneys who are available to answer any specific questions or concerns about your obligations or potential liabilities in a range of different practice areas, such as contract law, labor & employment, construction law, cybersecurity, and commercial litigation. We stand willing and able to assist you during these difficult times.