

Tools for FBO Survival of COVID-19

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Thursday, April 9, 2020 3:00 pm Eastern

GoToMeeting Webinar



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Agenda

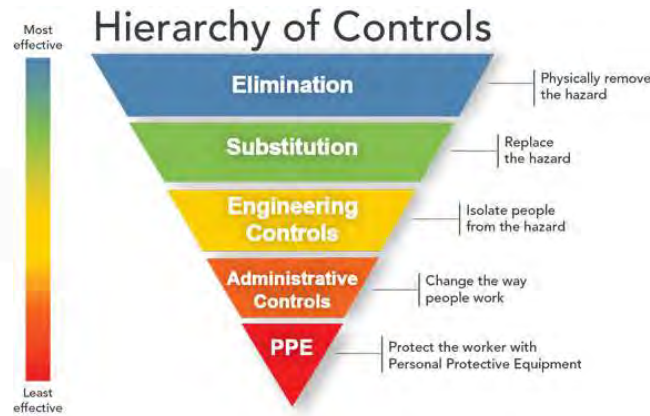
1. Keeping Employees Safe during the COVID-19 Outbreak
2. Benefits you Must Provide Employees Pursuant to the Families First Coronavirus Response Act
3. Force Majeure/Contractual Obligations Impacted by COVID-19
4. Rent Abatement/Airport Access Issues
5. CARES Act/ Other Relief

OSHA Regulations Applicable to COVID-19

- Compliance with OSHA health and safety requirements in this time is incredibly important to protect your employees from harm. They will also help protect visitor, vendors, suppliers, and the FBO itself.
- There is no specific OSHA standard covering COVID-19 or a pandemic more generally. However, relevant requirements include the following:
 - 1) [General Duty Clause](#) states “Each employer shall furnish to each of his employees employment and a place of employment which are **free from recognized hazards** that are causing or are **likely to cause death or serious physical harm** to his employees” (emphasis added).
 - 2) [Personal Protective Equipment \(PPE\)](#) standards requires using gloves, eye and face protection, and respiratory protection.
 - 3) [Bloodborne Pathogens](#) standard applies to occupational exposure to human blood and other potentially infectious materials.
 - 4) [General Environmental Controls](#) contain workplace sanitation requirements.

Control Measures: Engineering Controls

- Installing physical barriers, such as clear plastic shields at front counters.
- Installing high-efficiency air filters.
- Increasing ventilation rates in the work environment.
- Establishing a call-in services order process that eliminates need to enter lobby.
- Revise procedures that require handing paper to each other; for example, call fuel orders over radio instead of filling out fuel slip and submitting it to an LST.
- Consider discontinuing amenities that promote manual contact (e.g., magazines, popcorn, candy jars, TV remotes, car-parking, etc.).



Control Measures: Administrative Controls

- Promote frequent and thorough hand washing.
- Provide alcohol-based hand rubs containing at least 60% alcohol.
- Encourage workers to stay home if they are sick.
- Encourage respiratory etiquette, including covering coughs and sneezes.
- Assign LSTs sets of wands, chocks, tugs, fuel trucks, etc. for entire shift; sanitize all of them at shift change.
- Assign CSRs specific phones, computers, pens, workstations; sanitize all of them at shift change.
- Wipe down all surfaces after customer or employee contact.
- Mark floors with 6' set-backs from front counter.
- Remove furniture to promote physical distancing.
- Provide customers and the public with tissues and trash receptacles.
- Hold virtual meetings instead of in-person meetings.

Control Measures: PPE

- Personal Protective Equipment (PPE) is the “last line of defense” against health and safety hazards, including the coronavirus.
- Facemasks, gloves, face shields, and aprons all can protect against exposure to the virus.
- Use PPE hazard assessment process to determine required PPE.
- Ensure that employees know how to put it on, use/wear it, and take it off correctly, including in the context of their current and potential duties. Also, how to clean and store the PPE.
- Training material should be easy to understand and available in the appropriate language and literacy level for all workers.



Resources

- www.CDC.gov
 - Lead US federal government agency for public health

- www.WHO.int
 - Lead United Nations (UN) organization on international health response

- www.NATA.aero
 - Voice of aviation business service providers

- www.NBAA.org
 - Represents business aviation flight operators

- www.FBOPartners.com
 - Provides Safety Officer (OSO) program; free thru July

Questions and Answers



Families First Coronavirus Response Act (FFRC)

- Requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19
 - *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or*
 - *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition*
 - *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.*
- https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Tax Exemptions

- Private employers qualify for reimbursement through refundable tax credits as administered by the Department of Treasury for all qualifying paid sick leave wages and qualifying family and medical leave wages paid to an employee who takes leave under FFCRA
 - <https://www.irs.gov/forms-pubs/about-form-7200>
 - <https://www.irs.gov/pub/irs-drop/n-20-21.pdf>

Force Majeure - How does COVID-19 Impact Parties' Contractual Obligations?

- Governments are placing sweeping restrictions on business
- Companies are laying off employees
- People are avoiding public spaces
- In light of these unprecedented circumstances, what are parties' obligations to honor their contractual obligations when they become unable?
- If your contract has a Force Majeure clause, will that excuse your performance?

What is a Force Majeure Clause?

A Force Majeure clause is a clause in a contract that excuses or suspends a party's obligation to perform under the contract if a major event beyond a party's control renders them unable to perform

Sample Force Majeure Clause

An event of Force Majeure is defined as an act of God, fire, earthquake, hurricane, flood, terrorist act or threat, storm, washout, wind, lightning, landslide, explosion, epidemic, inability to obtain materials or supplies, or any occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not reasonably be prevented or overcome. Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure, or inability to perform under this agreement due to an event of Force Majeure.

Does the Force Majeure Clause in my Contract Excuse Performance Obligations in my Contract?

- It depends on the following: (1) the language of your Force Majeure clause; (2) the specific facts of your situation; and (3) your jurisdiction's laws.
- Factors a court will consider when determining applicability of a Force Majeure clause:
 - Does the clause specifically reference the event in question?
 - Was the event/risk of nonperformance foreseeable?
 - Is performance actually impossible or merely impractical/burdensome?
 - Can the nonperformance be mitigated?
- If the Force Majeure clause specifically references the event in question, courts generally will not focus on the foreseeability factor
- If the Force Majeure clause does not specifically reference the event in question, it will be a highly fact-dependent analysis whether the event qualifies under a broad catchall provision

Hypothetical Examples

- An FBO has an agreement with a landlord and: (1) the Force Majeure clause specifically references “pandemic” as an event; (2) the FBO’s revenue is down 50% due to COVID-19; and (3) the FBO qualifies for loans under the CARES Act. Does the Force Majeure clause apply to excuse the FBO’s rent payment obligations?
- Probably not. Why?
 - Although COVID-19 is a covered event, the FBO’s ability to pay rent is not impossible
 - If the FBO is still generating 50% of its revenue, paying rent will be a financial hardship, but not impossible
 - CARES Act funds mitigate the hardship

Hypothetical Examples - Continued

- An FBO has an agreement with a landlord and: (1) the Force Majeure clause does not reference “pandemic” as an event, but it has a catchall clause stating “any occurrence outside the reasonable control of the parties” is a qualifying event; (2) the federal government has issued an order closing all airports due to COVID-19; and (3) the FBO does not qualify for loans under the CARES Act. Does the Force Majeure clause apply to excuse the FBO’s rent payment obligations?
- Potentially yes. Why?
 - Although it is not a specifically covered event, a federal order shutting down all airports will qualify as a Force Majeure event (in certain jurisdictions) because it is outside the parties’ reasonable control
 - It can reasonably be argued that this event is unforeseeable
 - Without any (or next to no) revenue, and no CARES Act funds, payment likely will not be possible (as opposed to a mere hardship)

Hypothetical Examples - Continued

- An FBO has an agreement with a 3rd party company (“Company”) to provide taxi services and: (1) the Force Majeure clause specifically lists “pandemic” as an event; (2) every driver employed by the Company has COVID-19; and (3) there are other 3rd party taxi services in the area. Does the Force Majeure clause apply to excuse the Company’s obligation to provide taxi services?
- Probably not. Why?
 - Although COVID-19 is a covered event, the Company’s obligation to provide taxi services likely is not impossible
 - Given the fact that there are other 3rd party taxi services in the vicinity, the Company likely can subcontract with the 3rd party taxi services to perform the Company’s obligations
 - This may be a hardship and diminish the Company’s profits, but hardship does not equal impossibility

Additional Considerations Regarding Force Majeure Clauses

- Some Force Majeure clauses may only delay, and not excuse, performance obligations
- Some Force Majeure clauses may specifically exclude payment obligations
- Be aware of notice requirements – some Force Majeure clauses require you to notify the other party within a certain period of time

AIRPORTS MUST REMAIN OPEN DURING THE COVID-19 Pandemic

- March 16, 2020 – Compliance Guidance Letter from Kevin Willis, Director, Office of Airport Compliance and Management Analysis
 - Provided Airport Sponsors with guidance in the event that they received a proposal to close or restrict use of the airport for non-aeronautical purposes related to public health concerns.
 - Requested that they refer any request to the FAA Airport Compliance Office.

April 4, 2020 – Information for Airport Sponsors Considering COVID-19 Restrictions of Accommodations

Issued by the FAA to address common issues raised by Airport Sponsors during COVID-19 outbreak

ALLOWED	NOT ALLOWED
Closing restaurants and retail in terminals	Closing Airport (unless approved by FAA)
Closing gates or sections of terminal due to reduced passenger loads	Prohibiting certain flights
Screening passengers/quarantining	Using runways for overflow parking (unless approved by FAA)
Using terminal to shelter people provided it does not interfere with airport operations	Prohibiting flights from “hot spot areas”
Reducing hours to the extent it is related to COVID-19 (consult FAA)	Using Airport Revenue for Health Screenings
Temporarily limiting recreational aeronautical activity consistent with public health measures of jurisdiction	

RENT ABATEMENTS

The FAA's April 4th Guidance provides:

Rent abatement should be tied to the changed circumstances caused by the public health emergency, and done in accordance with Grant Assurances 22 and 24, as well as related statutes.

See April 4th Guidance at:

<https://www.faa.gov/news/media/attachments/UPDATED%20Information%20for%20Airport%20Sponsors%20Considering%20COVID-19%20Restrictions%20or%20Accommodations.pdf>

RENT ABATEMENTS

Airport Sponsor's may be receptive to Rent Abatements because they may be receiving funds under the CARES Act.

Under the CARES Act, \$10 Billion is being set aside for Airports.

- \$500 Million is being set aside to increase the federal share of AIP Grants in 2020.
- At least \$7.4 Billion will go to Commercial Service Airports.
- Up to \$2 Billion is available for small, medium and large hub airports.
- \$100 Million is available for General Aviation Airports.

Funds can be used for any purpose that Airport Revenue may be used.

More information:

<https://www.faa.gov/news/media/attachments/CARES%20Act%20Airport%20Grants%20-%20Frequently%20Asked%20Questions.pdf>

RENT ABATEMENTS

- An Airport sponsor is not required to offer rent abatements or deferrals available to Airport Tenants
- If an Airport Sponsor offers rent abatements, it must make rent abatements available on fair and reasonable terms and without discrimination.
 - Offering a rent abatement to one tenant without making a similar accommodation for other similarly situated tenants may violate the Airport Sponsor's obligations under the Federal Grant Assurances it received when it accepted AIP Grant Funding.

WHERE RENT ABATEMENTS ARE NOT POSSIBLE CONSIDER RENT DEFERRAL

Some Airport Sponsor's may be precluded from offering Rent Abatements due to bonding or other obligations. In those situations consider Rent Deferral.

- Terms and interest rates must be fair and reasonable.

CARES Act PAYCHECK PROTECTION PROGRAM

- Available to businesses with fewer than 500 employees.
- Limited to lesser of 2.5 x Monthly Payroll (capped at \$100,000 per employee) or \$10 Million per business.
- Loan Forgiveness available if you maintain (or rehire) your workforce.
- Maybe used for rent mortgage, interest, utility (75% of the forgiven amount must be used for payroll).

More information & Application can be found at:

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp#section-header-3>

CARES Act: ECONOMIC INJURY DISASTER LOANS (EIDL)

- Designed to be low interest and provide Small Businesses with Working Capital (up to \$2 Million).
- No upfront fees.
- Available to Businesses of less than 500 employees.
- Can't take for the same purpose of the PPP.
- Streamlined process for advances of up to \$10,000.

For More Information:

<https://www.benefits.gov/benefit/1504>; and

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>

CARES Act: EMPLOYEE RETENTION TAX CREDIT

Available to Employers who have been required to suspend operations or have had a 50% reduction in revenue between March 12, 2020 and January 1, 2021.

- Not Available if you received a Paycheck Protection Loan.
- Does not apply to wages paid under the FFCRA.

Refundable tax credit of 50% of qualified wages capped at \$10,000 per employee.

CARES Act: Deferral of the 6.2% Employer Contribution of Social Security Tax

Allows for deferral of 6.2% Employer Contributions due between
March 27, 2020 and December 21, 2020

Repayment in 2 payments due on: December 31, 2021 and
December 21, 2022.

Resources

- U.S. Dept. of Labor
 - www.dol.gov/coronavirus
 - <https://www.dol.gov/agencies/whd/pandemic>
- Occupational Health and Safety Administration (“OSHA”)
 - <https://www.osha.gov/SLTC/covid-19/>
- OSHA: Preparing Workplaces for COVID-19
 - <https://www.osha.gov/Publications/OSHA3990.pdf>
- U.S. Equal Employment and Opportunity Commission
 - https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm
- CARES Act
 - <https://www.benefits.gov/benefit/1504>
 - <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>
 - <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp#section-header-3>
- Airports
 - <https://www.faa.gov/news/media/attachments/CARES%20Act%20Airport%20Grants%20-%20Frequently%20Asked%20Questions.pdf>
 - <https://www.faa.gov/news/media/attachments/UPDATED%20Information%20for%20Airport%20Sponsors%20Considering%20COVID-19%20Restrictions%20or%20Accommodations.pdf>
- IRS
 - <https://www.irs.gov/forms-pubs/about-form-7200>
 - <https://www.irs.gov/pub/irs-drop/n-20-21.pdf>

Further Questions?

Please feel free to reach out to us at:

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