

March 2020

Client Advisory

COVID-19 Legal Digest: Tax Deadlines; Business Contracts in Light of the COVID-19 Crisis; New Jersey Passes Law Concerning Family Leave & Disability Benefits During Epidemic Related Emergencies; Governor Murphy Announces Mortgage Relief

Tax Deadlines

There are several important “April 15-related” tax deadlines of which everyone should be aware:

- The deadline for filing most individual refund claims for 2016 is April 15. That date was not extended to July 15.
- If you’re involved in a like kind exchange, note that the requirements to identify (45 days) and close (180 days) on the replacement property have not been extended.
- The due date for filing federal 2019 gift tax returns and paying 2019 gift taxes has been extended to July 15.
- Still no word on whether New Jersey will extend the due date for filing 2019 tax returns or the payment due date for 2019 tax balances or 2020 estimated taxes.
- An individual may make a contribution for the 2019 tax year to an IRA, an HSA and/or an MSA up to July 15, 2020. Presumably, this is also available to the employees of an employer who maintained a SEP-IRA for 2019. Any contribution made to an IRA, HSA or MSA during 2020, which is intended to be treated as a 2019 contribution, must be designated as such at the time of the contribution.

If you have any questions, please contact [Gordon Moore](#), who heads up Archer’s [Tax Group](#), at 856- 354-3087 or gmoore@archerlaw.com, or any of your contacts here at Archer.

Business Contracts in Light of the COVID-19 Crisis

The COVID-19 (coronavirus) pandemic and its practical business consequences have given rise to many issues affecting contract enforcement, breach, negotiation and drafting, that impose several legal concerns and risks to parties to contracts.

These matters can come up in an unlimited number of contexts and business sectors, and the choices made to address them can have significant consequences. Some of the questions that our lawyers have been asked are:

- Can I cancel a contract or delay performance due to the impact of the COVID-19 pandemic on my workforce? Due to government restrictions on my business or employees? Because my employees or contractors are unavailable due to health conditions or their generalized concerns? If so, how and when do I go about it?
- What should I do if my suppliers claim that they cannot provide me with the materials or services that I need to fulfill contracts with my customers?
- How should I respond to a notice I received from the other party to my contract that it was delaying performance or

cancelling the contract?

- Does my inability to supply customers or make payments that are due raise notice obligations, such as the requirement in many financial agreements that notice be provided of any material adverse change affecting the business?
- Can I get my deposit back if I canceled an event due to the COVID-19 pandemic? Do I have to pay a cancellation fee?
- How should I address the COVID-19 situation in contracts that I make in the future, including modifications to existing contracts that may need to be made because of the pandemic?

The choice of the best strategy in these and other scenarios requires an analysis of the contract language and many potentially applicable contract law principles. For example, many contracts have a clause, known as a “force majeure” clause (sometimes called an “Act of God” provision), that may postpone or excuse performance if unforeseen circumstances prevent one of the contracting parties from fulfilling its obligations. They vary in listing the events that permit the parties to postpone or excuse performance and in the timing of the notice that they may allow. Other contract laws may allow a party to avoid its contractual duties where performance has become literally impossible or at least significantly more difficult; where an unforeseen event occurs that destroys the underlying reasons and principal purpose for performing the contract; or where the other party commits a material breach of the contract.

How the law applies and the strategic choices to be made depend upon a number of factors that are unique to each individual case including, as a starting point, the language of the contract. The wrong decision on how to proceed can have unintended legal consequences. For example, an enterprise that is unable to perform its contract because the government has ordered it to close would be in a stronger position to delay or terminate performance than one who is permitted to remain in operation but decides to shut down to avoid increased costs of continuing operation. Furthermore, a party that gives notice that it is voiding a contract opens up the possibility that, if it is wrong in its legal assessment or provides a notice that has not been properly drafted and analyzed, it is waiving important rights or committing a material breach of the contract for which it may be liable for damages. A party that receives a termination notice from another party to its contract faces similar issues and consequences. Finally, now sensitized to the devastating effects that a pandemic can have on the economy and individual enterprises, businesses will face more frequent

negotiations over the inclusion and scope of force majeure clauses in their contracts.

As a full-service law firm, Archer stands ready and able to help you navigate these issues in the ever-changing legal landscape brought on by the COVID-19 pandemic. But, it is important that you contact us BEFORE you make a decision or take a position when you face any of these circumstances.

For assistance, please contact any Archer attorney with whom you regularly work. Alternatively, for matters involving existing contracts affected by the COVID-19 pandemic, contact [Mark Oberstaedt](mailto:moberstaedt@archerlaw.com) at 856-354-3072 or moberstaedt@archerlaw.com or [Robert Egan](mailto:regan@archerlaw.com) at 856-354-3079 or regan@archerlaw.com. For assistance with negotiating and drafting contracts, contact [Mark Sever](mailto:msever@archerlaw.com) at 856-354-3045 or msever@archerlaw.com. All three are members of Archer's COVID-19 Task Force. And, as always, we wish you the best of health.

Legislative Update

New Jersey Passes New Law Concerning Family Leave & Disability Benefits During Epidemic Related Emergencies

This bill is designed to assure that workers impacted by epidemics of communicable diseases have access to leave needed to care for themselves or for effected members of their families. The bill expands the scope of the State's temporary disability insurance (TDI) law, so that workers may obtain TDI or family leave insurance (FLI) benefits by expanding that law's definition of a "serious health condition" for which a worker may obtain the benefits, either for the worker's own condition in the case of TDI benefits, or for the condition of a family member of the worker cared for by the worker in the case of FLI benefits.

The bill expands the definition of "serious health condition" to include an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease.

The current law allows for the payment of eighty-five percent (85%) of wages, with a cap of \$859, made available after a 7 day waiting period. This benefit will now be made available to people who have to self-quarantine or absent themselves from work to care for others. The waiting period is omitted for absences related to epidemic/communicable diseases.

Governor Murphy Announces Mortgage Payment Relief, Financial Protections for New Jerseyans Facing Economic Hardship as a Result of COVID-19

Read more about the Governor's announcement here:
<https://nj.gov/governor/news/news/562020/approved/20200328c.shtml>

Contact Us

Please reach out to your Archer contact or any member of [Archer's COVID-19 Task Force](#) with any questions you may have.

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