



Daily COVID-19 Bulletin

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April 6, 2020

To Our Clients and Colleagues:

Gibson Dunn's lawyers regularly counsel clients on issues raised by the COVID-19 pandemic, and we are working with many of our clients on their response to COVID-19. The following is a round-up of today's client alerts on this topic prepared by the Gibson Dunn team. Our lawyers are available to assist with any questions you may have regarding developments related to the outbreak. As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, or any member of the firm's **[Coronavirus \(COVID-19\) Response Team](#)**.

UNITED STATES

Fiduciary Duties and Board Options in a Time of Pandemic

The rapid spread of COVID-19, increasingly stringent government orders in response, and the profound effects on the global economy have raised concerns among corporate directors about how to adequately discharge their fiduciary duties.

First and foremost, directors can rest assured that the flexibility and protections afforded to them by the business judgment rule remain as vital today as they did before the COVID-19 pandemic. The COVID-19 pandemic does not alter the business judgment deference afforded to decisions made by a well-informed and non-conflicted board that acts in good faith towards what is best for the corporation and its stockholders.

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Important Considerations in Implementing Workforce Furloughs

In the current environment, many businesses have faced a precipitous drop in demand for their goods and services. At the same time, economic and public health circumstances continue to change and legal frameworks continue to evolve in response. In this rapidly changing environment, many employers are weighing employee furloughs as a means to conserve resources while remaining positioned for eventual recovery. Employee furloughs can, however, implicate a variety of considerations and employment law obligations, many of which are changing in response to the current crisis and can vary by jurisdiction and employer specifics. This Update highlights some of the common issues that employers must keep in mind when considering and implementing employee furloughs during the current health crisis.

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The PREP Act Provides Limited Liability Protection for Certain Coronavirus Countermeasures

On March 17, 2020, Alex Azar, Secretary of the Department of Health and Human Services (HHS), issued a Declaration activating the Public Readiness and Emergency Preparedness Act (“PREP Act”), 42 U.S.C. § 247d-6d. The Declaration extends immunity “from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from” administration or use of qualifying products used to combat or reduce the spread of COVID-19 (the “PREP Declaration”). Along with other recent FDA guidance relaxing regulatory oversight for certain COVID-19-fighting products, the PREP Declaration protects manufacturers, suppliers, distributors, and others helping to mitigate supply shortages during the current crisis. These protections are limited, however, and businesses should consider these limitations when evaluating whether the PREP Declaration protects their activities. The applicability of the PREP Declaration to activities involving products created for use by the general public to minimize the spread of coronavirus, such as face masks and hand sanitizer, creates particularly challenging questions.

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When Whistleblowers Call: Planning Today for Employee Complaints During and After the Covid-19 Crisis

The COVID-19 pandemic has caused unprecedented global economic turmoil and disruption. There are daily reports of massive employee layoffs across all segments of the economy, and millions of people are suddenly out of work. Federal and state governments

have stepped in with numerous new, patchwork and ill-defined programs, rules and regulations to address the unemployment crisis and related effects. This is all reminiscent of the days after 9/11 and the 2008 Great Recession. And if what's past is prologue, companies should expect that current and former employees will unleash an onslaught of allegations about company misconduct, both COVID-19-related and otherwise. Indeed, government regulators and the plaintiffs' bar are already publicizing various reporting mechanisms for disgruntled employees seeking to raise such claims.

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UNITED KINGDOM / EUROPE

COVID-19: The UK Financial Conduct Authority's Expectations under the Senior Managers and Certification Regime

On 3 April 2020, the UK Financial Conduct Authority ("FCA") published a statement setting out its expectations of FCA solo-regulated firms under the Senior Managers and Certification Regime ("SMCR") during the COVID-19 outbreak. This client alert provides FCA solo-regulated firms with an overview of the FCA's SMCR-related expectations.

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UK Government Schemes to Support Businesses during COVID-19 Disruption

The UK Government has announced a series of measures to support public services, people and businesses through this period of severe - but temporary - disruption caused by COVID-19. The Government's measures are a mixture of tax relief, financing and support towards the cost of employees. Further clarity on the Government's plans and practical processes for taking advantage of the support is expected to be provided as the days progress.

In this client alert we give a brief overview of the financial packages that have been made available to UK businesses. This is a very fluid situation where UK Government policy announcements are being made on an almost daily basis. The brief overview provided below presents the measures available as at 3 April 2020.

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