

**Close, Survive or Thrive
The Small Business Challenge Today**

**Legal Challenges for Small Businesses
in the age of COVID-19**

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Presented in Partnership with
SBA South Florida District
and
SCORE Southwest Florida District



*Funded in part through a Cooperative Agreement
with the U.S. Small Business Administration.*

Webinar

- You have all been muted.
- This is one in a series of six webinars.
- Questions can be typed into the “Q&A” feature.
- We will answer as many questions as we can after this presentation.
- A link to this webinar will be sent to each registrant.
- In the event you are having a problem with your audio, local phone link is (929) 205-6099, webinar ID 935 9906 3794.



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Agenda – Reopening and Beyond

- Reopening Guidelines - Can I reopen? If so, how much?
- What do I need to do to protect my business, employees and customers?
- What if something goes wrong?
- What if someone tests positive? What if someone is symptomatic?
- Who do I have to pay?
- When, who and how can I test?
- When do I need to close?
- Commercial lease issues
- Liability Considerations

DISCLAIMER

CAUTION: THIS AREA OF LAW IS IN A STATE OF CONSTANT CHANGE. CHECK WITH LOCAL COUNSEL BEFORE ACTING.

Reopening your Business Guidelines

Now Phase 3

Still good sources of reference:

- CDC – Florida Department Of Health – Best practices
 - <https://floridahealthcovid19.gov/>
- CDC FAQ Page
 - <https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>
- Florida Covid-19 Resource Homepage
 - <https://www.flgov.com/covid-19>
- SHRM FAQs on Paid Leave
 - <https://www.shrm.org/ResourcesAndTools/tools-and-samples/exreq/Pages/Details.aspx?Erid=1563>

Reopening your Business Guidelines – Phase 3 (continued)

- Executive Order 20-244, Effective September 25, 2020
 - Eliminated all restrictions imposed by Executive Orders – 20-112, 20-123, 20-139, 20-192, 20-214 and 20-223.
- Unclear if it suspends all the Responsible Individual Behavior Guidelines in 20-112
- Essentially, no Covid-19 based restrictions exist in Florida, however, there are still CDC and Florida based Guidelines

Reopening your Business Guidelines

- Liability concerns will be important
- Recommended that each business follow guidelines as set out by State and CDC, even if not mandatory
- Best practices are a tool to prevent liability
- Liability releases are no guaranty of protection, but if used:
 - Should state who the parties are
 - What type of activity the parties are being released from
 - Whether there is liability release for all future action, only known actions, or from some specific liability
 - The release must be signed by all parties. It should state that the parties signing the release agree to its terms and intend to be bound by it.

What do I need to do to protect my business, employees and customers?

- Follow published guidelines – CDC, NIH, Florida Dept. of Health, DBPR
 - Create a formal plan
 - Hygiene – cleaning and personal hygiene
 - Social Distancing
 - Modify operations
 - Training on best practices
 - Face masks
 - Taking temperatures
- Employee screening protocols for restaurants appear to be eliminated by EO-244

What policies should I have in place?

- Attendance
- Vacation and/or PTO
- Remote Work
- Work hours
- Timekeeping
- Leave policies, including sick leave
- Travel Policies
- Information technology and usage, especially for remote workers

What if Something Goes Wrong?

Monitoring Employees

- If sick, stay home
- Routine daily health checks – specific questions
- Flexible leave policies, complying with Families First COVID Relief Act policies, if required
- Action plan if a positive test
- Emergency communication channels to and from employees
- Monitor federal, state and local government policies, rules and statutes

When, How and Who can I test?

- You can take employees temperature
- You can ask pertinent questions, e.g.
 - Are you experiencing symptoms of COVID-19?
 - Have you been tested for COVID-19 and not reported the results to your employer?
 - Have you been in close contact with someone who has tested positive for COVID-19 or who is awaiting test results?

What if Someone Tests Positive?

- Do not let them come to work
- Self isolation of employees who worked in close proximity for 14 days
- Do not disclose their name except to authorized personnel (possible privacy issues)
- Disinfect the workplace – via CDC or Florida Department of Health guidelines.

What Causes a Closure?

- Governmental Action – EO 20-244 prohibits local restrictions on any establishment with a food service license to below 50%. If limited to less than 100%, the order must quantify economic effect and why it is necessary for public health.
- Risk management – Employee tests positive or is symptomatic, temporary closure to clean
- Financial – Cannot afford to operate at reduced capacity, should no longer be an issue, but may be a result of long term problem.

Who do I Have to Pay, for How Long?



U.S. Small Business
Administration

- **VERY COMPLEX** issue. Confluence of
 - Families First Coronavirus Relief Act (FFCRA)
 - Emergency Paid Sick Leave (EPSL)
 - Emergency Family Medical Leave Act (EFMLA)
- FFCRA applies to employers with under 500 employees.
- Employers with fewer than 50 employees may seek an exemption if economic viability would be jeopardized by complying with the new category of leave.
- FFCRA – may require up to two weeks (10 work days) of EPSL.
- **MUST PROVIDE NOTICE** – Posters, email, direct mail and/or notice on employee website.
- FFCRA effective through 12-31-20.

What Factors Require Payment of EPSL?

- Employee subject to a federal, state or local quarantine or isolation order related to Covid-19
- Employee advised to self quarantine by a health care provider
- Experiencing symptoms of COVID-19 and seeking diagnosis
- Caring for an individual subject to a quarantine or isolation order
- Caring for an individual who has been advised to self quarantine
- Caring for a child whose school or daycare is closed due to COVID-19
- “Experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretary of Treasury and Secretary of Labor”

What Factors Require Payment of EFMLA Compensation?

- Complex formulas and requirements – <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#12> – 97 FAQs.
- Employee must have been employed for 30 or more of the previous 60 calendar days
- May be available for employee whose child's school or place of care is closed or unavailable because of the COVID-19 pandemic. There are two components to EFMLA: (1) two weeks of unpaid leave and (2) ten weeks of EFMLA paid at 2/3 of the employee's regular rate.
- Laid off or terminated after March 1, 2020 and rehired on or before December 31, 2020.
- Summer program such as camp may be considered place of care.

Commercial Lease Considerations

- No moratorium on evictions at state or federal level
- Rent continues to come due, unless otherwise agreed by landlord
- May be able to negotiate better terms with landlord – this is made more difficult by EO 20-244 which opens all businesses up fully.

Liability Considerations

- Minimize risk by following published guidelines
- Minimize risk by having written procedures
- Minimize risk by limiting possible exposure
- Document your mitigation actions
- Follow your procedures

Resources

- SCORE has created a comprehensive resource portal to help you find the specific information, government resources and financial support you need when you need it most.
<https://www.score.org/recovery/small-business-resilience-resource-portal>
- SBA Programs: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>
- The CDC has guidance for businesses:
<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
- If you live in Lee County, check out help for businesses on <https://leeflcares.com/>
- Bill Gross – The Single Biggest Reason Why Startups Succeed
<https://www.youtube.com/watch?v=bNpx7gpSqBY>
- Legal Issues for Small Businesses: <https://www.nfib.com/content/legal-compliance/healthcare/small-business-faqs-on-covid-19/>

SBA Resources

- Locate a local SBA Office & Resource Partners:
 - <https://www.sba.gov/local-assistance/find/>
- Sign up for SBA newsletters and events:
 - <https://www.sba.gov/updates>
- SBA Disaster Program Information – Economic Injury Disaster Loans
 - <https://www.sba.gov/disaster>
- Twitter:
 - @SBA_SouthFL
- YouTube:
 - <https://www.youtube.com/c/SBASouthFloridaDistrictOffice/>

Questions and Answers

