

**COVID-19**  
**CONSIDERING ALTERNATIVE BUSINESS MODELS**

**I. What do I need to consider if I can continue to operate my business, subject to certain adjustments?**

**A. Legal Considerations**

Employment / Labor Matters

- Consider employment and labor law implications of COVID-19, including issues related to workplace safety, healthcare / HIPAA, wage and hour, employee leave / ADA, workers' compensation, and immigration.
- Closely monitor legislative changes and new legislation related to COVID-19, and ensure compliance with updated / new legislation (*e.g.*, Families First Coronavirus Response Act).
- Review and, if necessary, update internal HR policies in response to COVID-19 (*e.g.*, employee safety policies, leave policies, and remote work policies and best practices).
- [OSHA's COVID-19 site](#) and [California's Employment Development Department COVID-19 site](#) provide additional guidance for employers and employees.

Contractual Matters

- Perform a systematic review of all key contracts (including leases) to determine how COVID-19 impacts your legal obligations and your counterparties' obligations to you.
- Focus in particular on the following provisions:
  - Force majeure clauses
  - Contingency and extension of time clauses
  - Indemnification provisions, including limitations on liability
  - Termination provisions

Permitting / Regulatory Matters

- Assess the need for additional permits due to operational adjustments (*e.g.*, if a restaurant starts selling food and other inventory wholesale, it may need to apply for a grocer's permit).
- Consider whether additional regulatory requirements apply (*e.g.*, a healthcare provider may be subject to specific HIPAA guidelines if it provides telemedicine services; local regulations may dictate whether and how restaurants can deliver alcohol).

Insurance Matters

- Perform a comprehensive review of your business insurance policies: (a) regarding coverage for losses resulting from pandemic events; and (b) to ensure relevant risks are covered and policy terms (*e.g.*, limits, deductibles) are adequate in light of any operational adjustments (*e.g.*, an increase in remote work could present new opportunities for cyber adversaries and make organizations more susceptible to cyber-attacks).
- Stay in contact with insurance and claims advisors.

## B. Operational Matters

- Social Distancing: Follow social distancing best practices and consider implementing policies to assist vulnerable populations, such as offering exclusive hours or limiting capacity.
  - See the [CDC's guidance](#) for additional information.
- IT Systems and Security: Consider the impact of remote working on existing IT systems and assess whether enhancements to IT capabilities are required, and ensure continued maintenance of IT security (e.g., install software patches and security updates as available).
- Access to Capital: Determine your capital needs and whether loans or small business grants might be available. Evaluate the financial terms and other conditions of such funds (e.g., the Payroll Protection Program requires businesses to maintain certain staff / payroll levels).

## C. Other Considerations

- Cleaning / Maintenance: Implement routine maintenance, cleaning and disinfection practices.
- Travel / Meetings: Assess the travel needs of employees and the need for in-person meetings and conferences.
- Communications: Analyze external and internal communication strategies. Prepare a communications plan in the event someone in close contact with your business tests positive for COVID-19, taking into account privacy considerations.

## II. What do I need to consider if I cannot operate my business as usual and need to change my business model?

### A. Legal Considerations

#### General Corporate Matters

- Consider whether a new business model can be operated through an existing legal entity or whether you should establish a new legal entity.
- If a new legal entity is necessary, consider which entity form (e.g., corporation, limited liability company) is appropriate from a legal and tax perspective. Determine how the new entity can be integrated into the existing business structure (e.g., subsidiary or "sister company").

#### Employment / Labor Matters

- Consider whether a new business model requires compliance with additional or different employment / labor laws (e.g., the transition to a remote work model requires employers to determine which employment laws apply to remote employees, as employers must comply with the state and local laws where their remote employees are located).
- Closely monitor legislative changes and new legislation related to COVID-19 that is applicable to the new business model and ensure compliance with updated / new legislation (e.g., Families First Coronavirus Response Act).
- Review and, if necessary, update internal HR policies and recordkeeping practices to reflect the new business model (e.g., evaluate overtime and expense reimbursement policies in light of a remote work environment).

### Contract Matters

- Consider whether the new business model is covered by, and permitted under, existing contractual arrangements (*e.g.*, non-competition clauses may prohibit certain activities or activities in certain markets).
- If additional contractual arrangements are required, specifically consider an approach to negotiating provisions that are implicated by COVID-19 (*e.g.*, force majeure provisions, termination provisions).

### Permitting / Regulatory Matters

- Evaluate whether the new business model is covered by existing permits or whether additional permits are needed.
- Consider whether the new business model is subject to additional regulatory requirements (*e.g.*, online businesses may be subject to the CAN-SPAM Act and other FTC regulations around online marketing).

### Data Privacy Matters

- Evaluate data handling policies and compliance with data privacy laws that may be applicable to the new business model (*e.g.*, handling personally identifiable information online in compliance with the California Consumer Protection Act).
- Review privacy policies and terms of use for websites, and determine if updates are necessary.

### Intellectual Property Matters

- Evaluate intellectual property law implications of the new business model, including acquisition of relevant licenses for any intellectual property used online (*e.g.*, music licenses for livestreams).
- Consider seeking protection for new intellectual property (*e.g.*, registering trademarks).

## **B. Operational Matters**

- IT Systems and Security: Implement practices to address data security concerns (*e.g.*, secure wifi, VPNs, two-factor authentication).
  - See the [National Cyber Security Alliance](#) for additional resources.
- Payroll / Recordkeeping: Evaluate whether you need to adjust any payroll or recordkeeping practices in light of the new business model (*e.g.*, determine how to coordinate access to key records while working remotely, while implementing appropriate measures to preserve confidentiality).

## **C. Other Considerations**

- Alternative Revenue Generation: Consider whether gift cards or crowdfunding would be appropriate for your business. If so, review the terms of service for any third-party service providers and develop appropriate recordkeeping practices (*e.g.*, for tax purposes).
- Collaborations: Determine whether you can work with another business (*e.g.*, shared delivery services and cross-promotions) and document any agreements, keeping in mind the need for flexibility and the parties' respective policies (*e.g.*, return and refund policies).

### III. Resources

The following is a list of select resources that contain additional information for small businesses responding to COVID-19:

- U.S. Small Business Association's [Small Business Guidance & Loan Resources](#)
- U.S. Chamber of Commerce's [Coronavirus Small Business Guide](#)
- California Governor's Office of Business and Economic Development's [COVID-19 Resources](#)
- California Labor & Workforce Development Agency's [COVID-19 Resources for Employers and Workers](#)
- California Department of Industrial Relations' [Cal/OSHA Safety Guidance on COVID-19](#)
- City of Los Angeles' [Resilience Toolkit for Los Angeles Businesses](#)
- Oyster Sunday's [COVID-19 Resources](#) (focused on restaurants)