EPPS
&
COULSON, LLP
ATTORNEYS AT LAW

EMPLOYER OPTIONS

CORONAVIRUS

Date: March 31, 2020

Re: Cautions and Considerations for Employers re: RIFs, Layoffs, Leave, & Other Employment Actions in Light of COVID-19

Many employers are rightfully concerned with how best to manage the business and financial impact and implications of the COVID-19 outbreak and resulting closures and dislocations. Some are considering temporary furloughs of workers as an alternative to terminations or reductions in force ("RIFs"). Below, we provide a general overview of these employer options and laws that are implicated as a helpful tool in decision-making.

This communication is intended as a general discussion of these matters only and is not to be considered legal advice or relied upon without direct attorney guidance concerning any particular situation. This memorandum focuses on federal and California law, which are both evolving on a frequent if not daily basis. For more specific information or legal advice concerning your company's particular situation, please contact us directly.

1. **Furlough vs. RIF – The Basics:** A furlough is a temporary, unpaid leave of absence, with an expectation that an employee will return to his or her job at a specific time. A furlough may also include reduced work hours or days of work, or reduced work weeks. By contrast, an employee who is laid off may be recalled but has no expectation of future employment by the employer.
    a. **Health Coverage Benefits:** Many employers electing to furlough their employees may choose to continue employee health benefits during the furlough period. Whether this is possible depends on the company's benefit plans, so you should consult your company's plan documents and plan administrator concerning coverage options prior to triggering a furlough. By contrast, employees who are laid off will generally have their benefits terminated and be eligible for COBRA insurance continuation coverage.

b. **Check Your Company's Plans and Policies:** It is important to make sure your employees understand the impact of a furlough or lay-off on their health insurance coverage under the employer's benefit plans or COBRA. Your company's particular health plans and other benefit plan terms, as well as your company's employment policies, may address when such coverage ends and the extent to which reducing an employee's hours or pay—or a temporary lay-off—may be considered a triggering event for COBRA coverage.

c. **COBRA:** COBRA (which stands for the Consolidated Omnibus Budget Reconciliation Act) is the federal health insurance continuation statute which imposes a legal obligation on the part of the employer to notify its plan administrator within 30 days of a qualifying event (such as a lay-off or termination) that ends employee insurance coverage, so that the affected employees can receive COBRA notices, which will then allow them to continue the same coverage at their own expense (plus a small administrative fee) for the legally mandated period. If your company is considering reducing employees' hours, it would be wise also to consider whether such reduction will also change them to part-time status and render them ineligible for some benefits, which may in turn render them eligible for insurance continuation under COBRA.

d. **Determining Who to Furlough:** It is important that the furlough does not disproportionately affect employees in legally protected classes—e.g., race, color, alienage or citizenship status, national origin, pregnancy, sex, age, disability, sexual orientation, gender identity, religion, or veteran/active military status, or employees who have complained about working, health or safety conditions. (The range of "protected classes" varies based on the federal, state, city and local laws that apply.) Be careful to consider especially the correlation between higher levels of pay/seniority and age when determining who is to be included in the furlough or lay-off. For instance, choosing to furlough or lay off only workers with higher pay or greater seniority may make your company vulnerable to a disparate impact claim for age discrimination. Employers should make sure the choice of which workers to furlough or lay off and the reason for the action generally is made for a sound business reason, is applied to workers consistently, and is well-documented and communicated to staff.

2. **Termination and Severance:** Lay-offs may also trigger an employer's severance pay plan or policy. Employers are not generally required to pay for the terminated employee's insurance continuation, and that is often a negotiated term. If offering severance pay, employers generally should obtain a release of claims in a separation agreement in exchange for severance. While the conventional wisdom is that it is preferable to condition severance payments on obtaining a release of claims, as a practical matter, especially in these times, employers should consider whether this is warranted in all cases. Releases are usually lengthy legal agreements and can be subject to invalidation if an employee entered into the agreement due to, among other things, duress or unconscionability. As the Coronavirus global pandemic is a dynamic, changing situation, it is unclear what impact the current events may have on future courts and the way they examine contracts entered into during this time. Employers that do not closely examine their settlement agreements for terms that might be "unconscionable" today may end up on the losing end of an unconscionability defense tomorrow. Additionally, requiring a separation agreement with a release of claims as a condition for providing severance pay may complicate terminations by delaying receipt of severance benefits, imply the existence of potential legal claims, and/or generate unwarranted antagonism between the employer and the employee. Finally, the terms that are/are

not acceptable for inclusion in severance agreement vary in different states. Please consider using legal counsel to review and update your severance, claim waivers, or other agreements to ensure that your documents are complaint with current law before presenting them to employees.

a. **Special points to consider- Older Workers Benefit Protection Act (OWBPA):**
    i. **Impact on claims waivers:** For any agreement that includes language asking an employee age 40 or older to waive claims arising under the ADEA, an employer must ensure that the waiver language is written so that the employee is making a "knowing and voluntary" waiver of their claims. Employers should consult legal counsel to ensure that their claims waiver language meets the specifications laid out under OWBPA or, alternatively, consider *removing* any language waiving ADEA claims and *adding* language making it clear that any general claims waiver does not include ADEA claims.
    OWBPA also requires that the employee be given 21 days to consider the agreement and 7 days to revoke it after signing. Note that while an employee may take the full 21 days to consider signing the agreement, the employee can also choose to sign the agreement at any point during that 21-day period. However, the employer and employee must wait out the full 7-day revocation period before the agreement is valid, thus any settlement/severance payment will effectively be delayed by a week after signing.
    ii. **Impact on RIFs:** The OWBPA imposes additional requirements on employers when the release is sought in connection with a RIF of two or more employees who are 40 years old or older. First, the time period that a worker must be given to consider the agreement increases from 21 to 45 days. Second, the employer must provide the age 40 or older employee with specific, detailed information about the RIF in writing. We recommend that employers engage legal counsel to help navigate through RIF requirements, especially when older employees are included in the RIF.

3. **<u>Unemployment Insurance:</u>** Whether employees are entitled or able to collect unemployment insurance during a furlough or following a lay-off will depend on their particular state's unemployment insurance laws and standards.
    a. **California Unemployment Insurance Requirements:** In California, unemployment insurance is available to employees who earn a minimum amount of wages during their "base period" of employment; lose their jobs through no fault of their own; are ready, willing and able to work; and are actively looking for work during each week in which they are claiming benefits. Some states, such as Connecticut, have eliminated the "work search" requirement during this public health emergency. In California, workers who are temporarily unemployed due to COVID-19 and expected to return to work with their employer within a few weeks are not required to actively seek work each week. However, they must remain able and available and ready to work during their unemployment for each week of benefits claimed and meet all other eligibility criteria.
    b. **Waiting Period – Waived in Some States like California:** Many states require a "waiting period" before unemployment benefits commence. California, for example has required a one-week waiting period before unemployment benefits are received. However, unemployment insurance requirements are evolving given the current public health crisis,

and in order to accelerate the receipt of funds, California has now waived its one-week "waiting period" for unemployment benefits (see Executive Order N-25-20).

4. **Vacation Pay /Paid Time Off ("PTO"):** Employers may want to permit or require employees to use their accrued but unused vacation time and accrued vacation pay during a furlough. Employees using accrued but unused vacation pay would postpone the commencement of unemployment benefits, rendering an additional benefit to the employer.
    a. **California:** Under California law, employers are not required to provide their employees with paid time off for vacation at all, paid or unpaid, or personal days at all, paid or unpaid.
        i. **Policies:** Even though vacation time or other PTO is not required to be provided to private employees under California law, a company is bound by the terms of its own policy; so California employers should consult their company's policies to determine what is and is not articulated and permitted under them. Because vacation is discretionary with private employers, employers have latitude in what they can require. For example, an employer may cap the amount of vacation leave which an employee may accrue over time. However, an employer is required to pay out accrued but unused vacation time upon the employee's separation from employment.
        ii. **Advancing Vacation - Caution:** Additionally, employers should be careful if considering advancing vacation time that has not yet accrued to their employees. While this is permissible, if the employee then leaves the company or is terminated before the time accrues, thus resulting in a negative accrual, the company cannot deduct the advanced PTO from a final paycheck. The California courts have noted on a number of occasions that an advance on wages, as with any other debt owed (either to the employer or a third party), is subject to the provisions of the attachment law. However, since wages are exempt from prejudgment attachment, neither the employer nor any third party can recover the debt by way of attachment of the employee's final pay, as to do so would violate the public policy considerations underlying the wage exemption statutes.
        iii. **Note re Exempt Employees:** Employers should also note, if an exempt employee (meaning, an employee exempt from overtime) works any amount of time during a given week, he or she must be paid for the entire week.
        iv. **Other States:** Employers with offices or workers in other states should consult those states' laws regarding accrual and use of PTO to ensure compliance, particularly in the current legislative environment.
5. **Lay-Off Notice Requirements:** "Mass lay-offs" may trigger a 60-day or longer notice requirement under federal and/or state worker notice laws, known as WARN (Worker Adjustment and Retraining Notification) Acts. Whether such requirements are triggered and whether your situation is exempted from such requirements will depend on several factors, including the number of employees laid off, employer size, the states where the employees work, and the conditions triggering the lay-off. Regardless of your obligation to provide notice under the applicable WARN laws, it is good company practice to provide employees with sufficient advance notice in order to allow them to ask questions, get answers, and prepare.
    a. **Worker Adjustment and Retraining Notification Act(s) ("WARN") (under federal and state laws):** As the acronym suggests, WARN provides for workers to receive advance notice of group employment reductions. When WARN is triggered, bar some exception

under law, an employer is required to give employees specific notice 60 days in advance of the termination/layoff (or sometimes furlough). WARN is usually triggered by terminations or layoffs of 30 or more employees during a 30-day period; however, a furlough can also trigger WARN. While federal law considers a furlough that lasts longer than six months to be a triggering event for WARN purposes, a California Court of Appeal held that a mere three-week furlough triggered WARN notification requirements. Failure to provide WARN notices can result in liability for back pay and/or additional penalties. Other states have WARN laws as well, so for workers outside of California, an employer with offices or workers outside California should consult those states' laws. As WARN laws can be complicated and requirements are rapidly changing in light of COVID-19, we recommend that employers consult legal counsel to discuss whether upcoming layoffs or furloughs trigger WARN.

b. **Caveats:** The federal WARN Act has an exemption to its notice requirements if the closure or lay-off was due to "unforeseeable business circumstances" or "natural disaster." California's WARN Act does not have this exemption; however, California's Executive Order N-31-20 temporarily suspends the 60-day notice requirement in the WARN Act if the event is caused by COVID-19-related business circumstances that were not reasonably foreseeable as of the time that notice would have been required. Employers are still required to give written WARN notices as soon as is practicable and must include specific language regarding the availability of Unemployment Insurance.

c. **Other States:** Other states' WARN Acts may have similar exemptions/exceptions, and the precise application of these exemptions/exceptions to closures resulting from the current public health crisis is evolving. The requirements of WARN are complex and should be consulted carefully before any group or mass lay-off or furlough in order to ensure compliance.

6. **Notices of Termination:** Some states, such as California, also require written notices of termination. Employers in California must give immediate, written notice to employees of their discharge, layoff, leave of absence, or change in employment status. There are some limited exceptions where written notice is not required (for example, written notice is not required if it is a voluntary quit). California employers must also provide certain pamphlets and notices at the time of termination. While we always recommend consulting legal counsel before terminating employees due to the many legal requirements and complications that can arise from a poorly planned termination, employers can also find some additional guidance regarding termination on edd.ca.gov.
7. **Wages Due Upon Termination in California:** At the time of termination, the employer must pay its employee all wages due at the time of discharge (including accrued but unused vacation). An employee who resigns must be paid within 72 hours of his or her resignation.
8. **Employees on Leave:** Employers should also consider whether a planned furlough or RIF would affect any employees already on leave from the company. Beware of selecting employees for furlough or lay-off in any way that could be deemed discriminatory based on, for example, their pregnancy, caregiver status, health issues or injuries, or other protected categories, or that could be deemed as retaliation for taking job-protected leave, such as Family and Medical Leave Act ("FMLA") leave or leave pursuant to state or local law. Decisions regarding whether to furlough employees on leave or following return from leave are nuanced and should be made with legal guidance to limit the possibility of employer liability or the appearance of bias.

a. **New Employee Rights under the Family First Coronavirus Response Act (effective April 1, 2020):** This new federal law has two components, the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act. Covered employers will be able to use payroll tax credits to cover the cost of wages paid to employees under these new programs, including dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA (wages paid up to the appropriate per diem and aggregate payment caps). Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.

   i. **Emergency Family and Medical Leave Expansion Act**:

      1. **Benefit:** Up to 12 weeks of "public health emergency" FMLA leave if the employee is unable to work (or telework) due to a need for leave to care for their son or daughter under 18 years of age if the child's school or place of care has been closed, or the child's child care provider is unavailable, due to a public health emergency with respect to COVID-19 declared by a federal, state, or local authority. Public health emergency leave is a new category of leave added to the already existing categories of leave under the FMLA.
      2. **Eligibility:** The employee must be employed by the employer for at least 30 calendar days to take public health emergency leave.
      3. **Paid and Unpaid Leave:** The first 10 days of public health emergency FMLA leave may be unpaid, but employees may elect to substitute accrued paid leave during this time, including paid sick leave pursuant to the Emergency Paid Sick Leave Act (discussed below). Following the first 10 days, employers will be required to provide paid leave of at least two-thirds of an employee's regular rate of pay (as defined under the Fair Labor Standards Act ("FLSA")) for the remainder of the period of public health emergency FMLA leave, up to 12 weeks (as needed). The total available amount of time for all FMLA reasons combined remains 12 weeks over a 12-month period (although employees eligible for public health emergency leave may not meet the eligibility criteria for other bases for FMLA leave).
      4. **Caps:** The two-thirds payment benefit is capped at $200 per day and $10,000 in the aggregate.
      5. **Job Protection:** Employees are entitled to be restored to their same or an equivalent position upon their timely return to work from leave.
         a. **Exceptions:**
            i. Employers with 500+ employees are not covered;
            ii. The Secretary of Labor can issue regulations excluding certain health care providers and emergency responders from coverage, as well as exempting certain employers with fewer than 50 employees from coverage if imposing such requirements would jeopardize the viability of such employers' businesses. The Department of Labor is expected to provide further regulations in this area sometime in April 2020. Until further guidance or regulations are issued, small employers would be wise to consult legal counsel if they have concerns that allowing employees to take leave under the new

requirements would "jeopardize the viability of the business as a going concern;

iii. Employers with fewer than 25 employees would not be required to comply with these job restoration requirements in connection with public health emergency FMLA leave, if the employee's position when they began leave does not then exist due to economic conditions or other changes in the employer's operating conditions that (1) affect employment and (2) are caused by a public health emergency during the leave period; and the employer makes reasonable efforts to restore the employee to a position equivalent to one they held when leave began (i.e., equivalent benefits, pay, terms and conditions of employment). If reinstatement is not required because the above conditions are met, an employer would be required to make reasonable efforts to contact the employee if an equivalent position becomes available during the one year period beginning on the earlier of: (i) the date on which the qualifying need related to public health emergency concludes, or (ii) the date that is 12 weeks after the date on which the employee's public health emergency FMLA leave commences.

ii. Emergency Paid Sick Leave Act:

1. **Benefit:** Full-time employees get up to 80 hours of paid leave and part-time employees get a number of hours of paid leave that would equal the hours that the employee works, on average, over a two-week period. The law is unclear as to whether the employer must provide sick leave that it already provided on top of the sick leave mandated by the new law, but it provides that "[a]n employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time under [the Act]."
2. **Eligibility:** Employees of employers with fewer than 500 employees are eligible regardless of how long they have been employed by the employer.
3. **Covered Reasons:** Employees may use this emergency paid sick leave for the following reasons, to the extent they are unable to work or telework:
    - **a.** if they are subject to a federal, state, or local quarantine or isolation order related to the Coronavirus (at employee's regular rate of pay as defined under the FLSA, up to a maximum of $511 per day and $5,110 in the aggregate);
    - **b.** if they have been advised by a heath care provider to self-quarantine due to concerns related to the Coronavirus (at employee's regular rate of pay as defined under the FLSA, up to a maximum of $511 per day and $5,110 in the aggregate)
    - **c.** if they are experiencing symptoms of the Coronavirus and are seeking a medical diagnosis (at employee's regular rate of pay as

defined under the FLSA, up to a maximum of $511 per day and $5,110 in the aggregate);

d. if they are caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to the Coronavirus, or who has been advised by a heath care provider to self-quarantine due to concerns related to the Coronavirus (at two-thirds of the employee's regular rate of pay, up to a maximum of $200 per day and $2,000 in the aggregate);

e. if the employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or their child care provider is unavailable, due to Coronavirus precautions (at two-thirds of the employee's regular rate of pay, up to a maximum of $200 per day and $2,000 in the aggregate); and/or

f. if they are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor (at two-thirds of the employee's regular rate of pay, up to a maximum of $200 per day and $2,000 in the aggregate).

4. **Exceptions:** The Secretary of Labor may also issue regulations exempting employers with fewer than 50 employees from the need to provide emergency paid sick leave for an employee to care for a child if the child's school or child care provider is closed, where the imposition of such requirements would jeopardize the viability of the business. As noted above, further regulations relating to this exemption are expected in April.
5. **Notice Requirements:** Employers will be required to post a notice regarding employee rights under the law, and a model notice will have to be made available to its employees. If your employees are working remotely, it might be prudent to circulate a copy of the notice to all employees via email, and include language stating where the notice will be posted once normal operations resume.

b. Other Paid and Unpaid Leave: Employees in California may also qualify to take paid or unpaid leave under various other federal and state laws. The FMLA (federal) and California Family Rights Act ("CFRA") (state) are leave laws that allow employees to take unpaid leave from their jobs to care for themselves, family members who are ill, or children who are unable to take care of themselves. Paid Family Leave (PFL) is completely separate from FMLA and CFRA and provides up to six weeks of paid benefits to employees when they have a wage loss when taking time off work to care for a seriously ill family member or bond with a new child. As of July 1, 2020, California's PFL will extend the time period for paid benefits from 6 weeks up to eight weeks.

c. Disability Insurance benefits and Workers' Compensation coverage: If an employee contracts the new coronavirus and is unable to work, that employee may be eligible to receive benefits under either a state's Disability Insurance Program (for a non-work-related illness) or through Workers' Compensation (for a work-related illness). At the time of this memo, California is encouraging employees to file a claim for Disability Insurance it the

employee is unable to work due to being ill or due to a medical quarantine related to COVID-19.

It is not yet clear whether California employees who may have contracted COVID-19 while working will succeed in seeking benefits under Workers' Comp claims. This area is evolving and employers in California should be aware that their employees may have COIVD-19 related Workers' Comp claims. The California Labor & Workforce Development Agency is currently encouraging workers to file a Workers' Compensation claim if they are unable to do their usual job because they were exposed to and contracted COVID-19 during the regular course of their work.

9. **Other Options:** Before a furlough or RIF, employers may also want to consider less drastic measures like a hiring or promotion freeze, work sharing, or reduced salaries, if financially feasible. Most importantly, it is beneficial for employers to communicate with employees, early and often, regarding anticipated changes in employment. If an employer has concerns regarding the ability to keep staff on payroll, consider opening the discussion up to employees to suggest options that might enable the maximum number of individuals to continue working. Employees may be willing to take on reduced hours, furlough days, reduced salary, or even take an unpaid "sabbatical" if it will help the business continue to stay afloat and help their coworkers as well. Although it is natural to look out for one's own self-interest, when something comes up that causes widespread harm, such as the current pandemic, people tend to reach out to help each other (in both work communities and their personal communities). By reaching out and getting employees involved in decisions to help keep the business operational, employers strengthen team mentality and loyalty. Additionally, having employees personally involved in decisions (i.e. weighing in on multiple options to cut costs or suggesting options to cut costs) gives them an active, personal connection to the process, which in turn means that the employee is less likely to protest the new changes.
10. **Contracts, Collective Bargaining Agreements and Employee Handbooks:** Consult any employment contracts and review your company's Employee Handbook to understand whether there are any obligations or stated policies that would be triggered by a furlough. If there are unionized employees, consult collective bargaining agreements.
11. **Fair Labor Standards Act ("FLSA") and California's Wage and Hour Laws:** The FLSA and California wage and hour laws require that workers be paid at least minimum wage for all hours worked, and overtime for hours worked over 40 hours in a workweek, unless exempt from overtime requirements. (Other states may have additional wage and hour requirements.) Because the payment of wages and hours of work for employees in California is governed by a complex array of statutes, regulations, interpretations and precedents, which can vary in different areas of the state, employers are highly encouraged to seek legal counsel before making any changes that impact paying employees (including furloughs, reducing wages, etc.). At a minimum, employers should keep the following wage and hour considerations in mind when conducting furloughs:
    a. **For Hourly Workers:** Employers should make sure there is no off-the-clock work during the furlough period. They should also ensure that workers are instructed not to perform any work at all during the furlough period, and that if a supervisor nonetheless instructs them to work, they must record that time and notify HR promptly to ensure they are paid for time worked.
    b. **For Salaried, Exempt Workers:** Many employees are exempt from overtime under the so-called "white collar" exemptions. For these to apply under federal law, the employee must

be compensated on a salary basis of at least $684 per week. California has a higher salary basis requirement for certain exempt workers, which depends upon the size of the employer and location in the state. In California, in order to qualify as an exempt employee, an exempt employee must be paid a salary of no less than twice (2x) the California minimum wage based on a 40-hour workweek. (Other states may have their own salary thresholds that are higher than the federal threshold as well.) This means that if certain salaried, exempt employees perform any work in a workweek, the employer must pay their full weekly salary. As a result, it is advisable to furlough exempt employees for full workweeks. If considering requiring reduced hours at lower salaries, such a change should be prospective only and should be on a long-term basis, rather than fluctuating based on the employer's business needs, and the salary cannot go below $684/week (or the California or other relevant state law's salary basis threshold) or you will risk losing the exemption.

c. **Technology.** Consider disabling access to work email on electronic devices during the furlough period for those impacted or instructing employees they are not to work unless a supervisor calls them (and if so, to record their time). If any employees work during furlough, make sure they are paid for their time and reiterate the company's instruction not to work.

12. **Policies and Agreements Still in Effect:** Review any non-solicitation, confidentiality, or other policies/agreements that may be in effect, and advise employees who are bound by such policies/agreements as to whether their terms remain in effect during the furlough. Any employment or other relevant policy/agreement should be consulted prior to any furlough or lay-off, to avoid any possible breach.
13. **Foreign Workers or Students:** Your company may have an obligation to notify USCIS, other federal agencies, or your state's Department of Labor, of the change in the terms and conditions of employment for workers whose visas you sponsor or foreign students whom you are employing. Strict visa regulations and the current no-travel restrictions in effect may have a direct and possibly unique impact on the workers you seek to transition to furlough or termination.
    Hence it would be prudent as well as humane to explore the potential immigration impact of any adverse employment action on workers who may be in a protected class or more vulnerable category (such as unable to travel home to a country where such travel is restricted). It is not only good business practice, but humane at a time when humanity is being tested, to consider the practical impact on the individuals whom your company is considering including in a furlough or lay-off, and seek legal guidance before such decisions are made.
14. **Coronavirus Relief Bill and Possible Lending/Withdrawal From 401(k) Plans:** If you provide employees with 401(k) benefits, make sure to review the final version of the Coronavirus Relief Bill (once it passes) and consider providing your employees with an update. The most recent versions of the bill contained language allowing individuals with 401(k)s to take a coronavirus-related distribution of up to $100,000 from an individual's retirement plan or IRA without the 10% early withdrawal penalty if you're under the age 59½. Taxes must still be paid on any distributions; however, individuals may also be able to borrow a larger amount against their 401(k) savings (possibly up to $100,000). Borrowing, as opposed to taking a distribution, may help an employee avoid paying taxes that would otherwise be due when taking a distribution. Consider encouraging your employees to speak with a tax professional and/or arrange for your 401(k) plan advisor to set up a meeting with employees.

On a separate but related note, it is inevitable that the coronavirus pandemic will continue to impact businesses worldwide. While our government is currently putting together some assistance for business owners, the likelihood is that many business owners will suffer more losses than government assistance will cover. Now is the time for business owners to start keeping track of all the losses and costs that their business is suffering due to the impacts of this virus. Since it is highly likely that insurance companies will see a large waive of claims over the coming months and maybe even years, it is very important that business owners preserve documentation of losses now and implement a system to keep track of all loss-related information. Review insurance policies as soon as possible for any potential coverage for losses incurred due to this pandemic and make sure you are preserving the required documentation to support any future claims. While all policies differ, business owners can start by taking a look at the following policies and coverage areas: Business Interruption; Contingent Business Interruption; Civil Authority; Workers Compensation; Environmental/Pollution; Commercial General Liability; Commercial Property; Directors & Officers/Errors & Omissions; and Event Cancellation. This list is certainly not exhaustive and is only provided as a starting point.

We hope this discussion has been useful and welcome the opportunity to discuss any particular situation in light of this evolving COVID-19 landscape. Please note, this memorandum is intended as a general discussion of these matters and legal issues only and is not considered to be legal advice or relied upon in connection with any particular situation. Please feel free to contact Dawn at dcoulson@eppscoulson.com if we can be of assistance.

We wish you all continued success, safety and well-being in these challenging times, and are here to help.

Dawn M. Coulson, Esq.
Epps & Coulson, LLP
Attorneys admitted to practice
in California, New York, Colorado,
Texas, Oregon, and Hawaii
www.eppscoulson.com
213-929-2390