



Veronica E. Rossitto  
Senior Associate  
[vrossitto@stibbsco.com](mailto:vrossitto@stibbsco.com)

**IMPORTANT INFORMATION FOR MEMBERS OF TSO, INC.  
COMMERCIAL LEASE & EMPLOYER CONSIDERATIONS IN LIGHT OF COVID-19**

This memorandum is being issued in light of recent circumstances concerning COVID-19. These circumstances are constantly changing on a daily basis. The information provided herein is based on the current information known at this time (March 20, 2020).

**What is a Force Majeure clause?**

A force majeure clause is a provision included in contracts to remove liability for natural or unavoidable catastrophes that interrupt or prevent a party from fulfilling his/her obligations under the contract. There is not one form/standard force majeure clause; that is to say, force majeure clauses vary from one contract to another.

**Why is this important?**

Almost all commercial leases contain a force majeure clause. As a tenant, you may be entitled to invoke your rights under the force majeure clause in your lease if there is a force majeure event that prevents you from being able to pay rent. Bear in mind, however, some landlords carve out a tenant's obligation to pay rent in the event of a force majeure, meaning some tenants may still be obligated to pay rent even if a force majeure event has occurred.

**Can I invoke force majeure now?**

It depends on what the language in the force majeure clause says. If you have decided to reduce the number of patients you are seeing, chosen to cut back office hours, or elected to take any other action to help prevent the spread of the virus but, in turn, results in a reduction in cash flow, these acts likely do not constitute a force majeure. This is because the CDC and other governmental authorities have only issued *recommendations* to help prevent the spread of COVID-19.

If, on the other hand, the federal or Texas state government authorities impose a mandatory "lockdown" or "shut in", if you yourself have been ordered by a medical professional to self-quarantine and cannot see patients, or if you have been diagnosed with COVID-19, these situations could constitute a force majeure event depending on what your lease says.

Note that the clause may also have steps which may be required to invoke the force majeure clause, such as providing written notice within a certain number of days after the force majeure event occurs.

**Should I approach my landlord now?**

Yes, you should approach your landlord now to request a temporary abatement of rent, especially if the force majeure clause in your lease has a carve out for rent payments. A 90-day abatement

would be ideal. In return, you as tenant could offer to extend your lease by 3 months (or longer) on the back end, thus creating an incentive for the landlord. Alternatively, you can attempt to negotiate a reduction in the rent amount. If you and your landlord come to an agreement, it is important to memorialize this agreement in writing to protect your legal interests.

**What issues could I face in approaching the landlord?**

When discussing rent issues with your landlord, be cognizant of what you put in writing. It is important not to imply that you will soon be unable to pay rent or that you plan to stop paying rent, as these statements could be construed as an anticipatory breach on your part. To avoid this potential problem, it is recommend that your initial contact with your landlord be made via phone rather than via email, so that the issues can be discussed verbally.

**Are there any other issues I should be aware of?**

A recent Bill was passed that expands employee protections under the FMLA and establishes a new Emergency Paid Sick Leave Act.

The FMLA expansion entitles employees to 12-weeks of job-protected **paid leave** to care for the employee's child whose school is closed or if the childcare provider is unavailable due to public health concerns. Whereas employers with less than 50 employees were previously exempt from the FMLA, **simply having less than 50 employees does not, on its own, exempt you from complying with this Bill.**

The Emergency Paid Sick Leave Act applies to **all employers with fewer than 500 employees.** Employees are entitled to **paid sick leave** under 6 qualifying circumstances related to COVID-19. How much pay an employee is entitled to depends on whether they are part-time or full-time. While there are caps on the amounts required to be paid, it could have a significant impact on small business.

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If you would like to discuss these issues further or want assistance in analyzing the force majeure clause in your lease or drawing up an agreement with your landlord, please don't hesitate to contact me. My firm also has employment lawyers on staff able to provide additional information on the recent Bill and its effect. I can be reached at [yrossitto@stibbsco.com](mailto:yrossitto@stibbsco.com) or via my mobile phone at 281-770-8646.