

CLIENT ADVISORY

APRIL 2020

GANFER SHORE LEEDS & ZAUDERER CONTINUES TO SERVE OUR CLIENTS

Ganfer Shore Leeds & Zauderer LLP extends its best wishes for health and wellness to our clients and friends during this difficult time. We remain available and continue to address our clients' legal needs.

GOVERNMENT ASSISTANCE IS AVAILABLE TO HELP BUSINESSES AND INDIVIDUALS

Almost all business entities and organizations are suffering financial losses from the coronavirus pandemic. All levels of government have adopted legislation to help address these economic harms. We are monitoring the new laws and regulations and can advise clients of all types as to their options. Please bear in mind that these laws and regulations are new and we anticipate further developments in the upcoming weeks.

On March 27, 2020, the *Coronavirus Aid, Relief, and Economic Security Act* ("CARES Act") was enacted. This Act includes a new forgivable loan program, Paycheck Protection Loans ("PPL"), to help small businesses retain their workforces. This program authorizes most business entities, as well as individual proprietors and 501(c)(3) non-profits, to obtain federally guaranteed forgivable loans payable over two years at 0.5% interest. The loan can be up to 250% of the business's average total monthly payroll costs over the preceding year (but not more than \$10 million). Any annual salary amounts in excess of \$100,000 per employee are excluded from this calculation. The proceeds may be used to cover payroll costs (including health insurance premiums), lease payments, mortgage interest, and utilities. The loans are nonrecourse and some requirements applicable to other Small Business Administration loans are waived. PPL loans will be forgiven if all of the loan proceeds are applied to any of the above-listed expenses incurred or paid in the eight-week period after origination, with at least 75% of them applied to payroll. The forgiveness will not be treated as taxable income. The forgiveness amount will be reduced if the business reduces the size of its workforce or their salaries. For businesses, application forms for the loans are now available. Banks may start processing applications on April 3, 2020.

The CARES Act also updates the Small Business Administration's Economic Interest Disaster Loan ("EIDL") program to give businesses hit by the current crisis with ready access to funds and provides for advance \$10,000 grants. It also provides for employee retention tax credits, subsidies covering six months of payments due on eligible SBA loans, accelerated depreciation of business property improvements, a temporary increase in deductible interest expense, and deferral of payment of some employer payroll taxes.

New York City is also offering a Small Business Continuity Loans program, which is making zero-interest loans of up to \$75,000 available to smaller businesses that have fewer than 100 employees and have lost more than 25% of their revenue due to the coronavirus. Especially because participating in some programs may preclude or reduce eligibility for others, businesses and employers should consult with their counsel and accountants to assess the various programs' suitability for their needs.

NEW SICK LEAVE PROTECTIONS FOR EMPLOYEES

Congress and the New York State Legislature have also enacted significant new employment-related legislation. At the federal level, the Families First Coronavirus Response Act expands many employees' rights under the Family and Medical Leave Act (FMLA). It also enacts a new Emergency Paid Sick Leave Act which

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grants paid sick leave to workers who are unable to work due to the coronavirus, such as those who must self-isolate or stay home to take care of children whose schools or childcare are unavailable. Employers are required to provide employees with notice of the new sick leave laws. If the workplace is closed so that a poster on the wall would be ineffective, the notice can be disseminated by other means such as e-mail. Employers may be able to obtain tax credits for salaries and health benefits paid for employees taking leave.

New York State has also enacted sick-leave and job protections for employees who miss work due to coronavirus. We have prepared a question-and-answer fact sheet summarizing both the federal and New York employment legislation. If you have not already received a copy, please ask your contact at the firm for one.

For those employees who have lost their jobs, the CARES Act provides federal funding to increase unemployment benefits for workers who lose their jobs. Many such employees will be eligible to receive benefits for up to 39 weeks instead of the usual 26 weeks, and an additional \$600 per week of unemployment benefits during the four-month period from April to July 2020.

NEW YORK STATE AND CITY ADDRESS THE CORONAVIRUS OUTBREAK

Everyone is affected by other actions that have been taken to address the emergency. Non-essential businesses have been closed and employees of all businesses must work from home to the maximum extent possible. Non-essential construction work has also been halted. The New York State courts currently are not processing civil matters except for certain narrowly defined essential matters. Effective March 19, 2020, there will be no commercial or residential evictions or foreclosures in New York City for 90 days. Evictions and foreclosures for non-payment by landlords participating in many federal programs are also temporarily barred. An Executive Order issued by Governor Cuomo declares it to be an “unsafe and unsound business practice” under the Banking Law for state-regulated banks to refuse 90 days’ forbearance to those affected by the coronavirus crisis.

BOARDS SHOULD CONTINUE TO DOCUMENT THEIR DECISION-MAKING

Cooperative and condominium boards are being faced with important decisions. Among other things, boards may decide to suspend certain services, close facilities, postpone move-ins and move-outs, and take other actions that are designed to safeguard everyone’s health but may inconvenience some residents. Board decisions made in good faith for the benefit of the shareholders or unit owners will ordinarily be protected by the Business Judgment Rule.

To maximize the chances of such protection, however, the board should be sure to properly document its decision-making. This is ordinarily done in the board minutes. In addition to face-to-face meetings that are not practicable at this time, boards may also meet by telephone or video conference, provided that proper advance notice of the meeting is given to (or waived by) all board members. Such a telephonic meeting is equally effective as an in-person meeting and meeting minutes should be prepared just as for any other type of meeting.

An Executive Order also authorizes certain corporate actions to be taken by electronic means, such as e-mail, during the emergency (currently through April 19, 2020, but likely to be extended). Where the nature of the action calls for board approval, the documents should reflect that approval was obtained at a telephonic board meeting.

Another issue confronting many boards is the scheduling of annual shareholder or unit owner meetings, since many by-laws provide for the annual meeting to take place in May or June. It would be inappropriate to schedule an annual meeting to be held in person while the Executive Order prohibiting public gatherings remains in force, and perhaps even thereafter. Another Executive Order temporarily suspends the requirement that shareholder meetings be held in a physical location. This could permit such meetings to be held by conference call, which might be practicable for relatively small buildings but unfeasible for larger ones. If a board decides that it would be impossible or impracticable to hold the annual meeting around the time specified in the by-laws, it should consult with counsel.