

## WHAT A LANDLORD OR TENANT SHOULD EXPECT WHEN IT IS EXPECTING A COVID-19 OUTBREAK IN ITS AREA

When landlords and tenants negotiated their leases, they probably did not have COVID-19 in mind. They could not have reasonably anticipated that a global pandemic could bring the global economy (as well as toilet paper inventory) to a grinding halt, reshaping how businesses operate for at least the near future. As a result, there are probably not explicit provisions in any lease that specifically guide leasing parties' relationship while COVID-19 continues to significantly affect day-to-day life.

Parties to a lease should, therefore, carefully review their leases as the COVID-19 situation continues to unfold to determine the extent of each party's rights and obligations, as normal business operations might not begin again for several weeks, if not months. A few of those considerations are listed below:

### RESTRICTING ACCESS TO FACILITY

- What rights, if any, does the lease afford the landlord to restrict access to the facility?
- What areas of a building is the landlord permitted to restrict access to (e.g., the entire facility or only the common areas)?
- What persons can the landlord limit or prohibit access to?
  - A tenant's visitors and licensees?
  - A tenant's employees?
  - All except essential personnel?
  - Everyone?
- What standards guide when such restrictions are triggered (e.g., what is an emergency condition)?
- Must these restrictions be applied uniformly in a non-discriminatory manner to each building tenant (e.g., restricting access to all tenants)?

### FULFILLING LEASE OBLIGATIONS

- If the landlord does not restrict access, does the lease contain a continuous operation covenant that might be violated by a tenant's ceasing operations within the facility for some period of time or from not being "fully staffed"?
- Does the lease require the tenant to obtain business interruption insurance, such that it will be able to maintain its rental and other payment obligations until the COVID-19 outbreak subsides?
- Does the lease contain a force majeure clause that could potentially excuse either party's performance of certain obligations under the lease (e.g., provision of services)?
- For medical facilities, does the lease contain a use restriction or non-competition clause that would inhibit a tenant providing medical services from treating those who test positive for COVID-19?

### CHANGES IN LAWS

- Does the lease incorporate federal, state and local laws, regulations and ordinances passed in response to the COVID-19 outbreak that implicate the lease?
- Have any federal, state or local governmental entities restricted a commercial landlord's ability to retake possession of the leased premises in the event of a tenant's default?
- Does the lease incorporate OSHA standards as to COVID-19 from the Department of Labor as to the cleaning and maintenance of the

premises or facility by either the landlord or the tenant?

- Will a federal or state tax holiday interrupt the mechanics of setting operating expenses in a net lease?

#### **IF AN OCCUPANT TESTS POSITIVE**

- Does the lease require a tenant to disclose to their landlord that a person working at or visiting the premises tested positive for COVID-19?
- In a multi-tenant building, must a landlord disclose to all tenants that a person working at or visiting the premises tested positive for the disease?
- In the event a person tests positive, who bears the cost of cleaning or disinfecting the premises and, more generally, the building and common areas?

We continue to learn more about COVID-19 and the impact it will have on our communities. Please refer to Hall Render's [COVID-19 resource center webpage](#) and hotline at 317-429-3900 for any questions, as well as up-to-date information regarding the virus. Additionally, if you have any questions about the information contained herein, please contact:

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