Stay Informed and Stay Safe

In service to our clients and our communities, Hirschler lawyers are closely monitoring market and legislative developments related to the COVID-19 pandemic. Bookmark this page for insight and perspective that can help you prepare and protect your business as this global event evolves.

Want to stay informed? Sign up to receive our latest COVID-19 alerts.

Recovery

PPP Update: Treasury Clarifies 60% Loan Forgiveness Threshold and Other Matters

On June 11, the Treasury Department clarified a loan forgiveness provision of the Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010) (the PPPFA) in an interim final rule (IFR). The PPPFA adopts a number of significant changes to the Paycheck Protection Program (PPP) promulgated under the CARES Act, as outlined in an earlier Hirschler client alert. The SBA also published an updated application form for borrowers for loans made on or after June 5, 2020.

Date: 6/12/20

Authors: Andrew Lohmann, Jim Weinberg, Kevin Muldowney, Allie Casagrande, Charlie Payne

IRS Provides Relief for Qualified Opportunity Funds and Their Investors Due to Coronavirus

On June 4, 2020, the IRS issued additional guidance in Notice 2020-39 for Qualified Opportunity Funds (QOFs) in further response to the coronavirus pandemic. The Notice provides relief from certain requirements under the Internal Revenue Code of 1986, as amended (Code) and the regulations thereunder. The Notice provides some important flexibility and deadline extensions for taxpayers and QOFs.

Date: 6/5/20

Authors: Jamie Canup, Dave Lionberger

Senate Approves Important Expansion of Paycheck Protection Program Parameters: Key Changes to Know

On June 3, the U.S. Senate unanimously passed the Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010) (the “PPPFA”), which adopts a number of significant changes to the Paycheck Protection Program (PPP) promulgated under the CARES Act. The PPPFA was passed by the House of Representatives last week by a vote of 417-1. President Trump is expected to sign the PPPFA into law.
IRS Clarifies Federal Historic Tax Credit Rules

On May 22, the Internal Revenue Service released proposed amendments to Treasury Regulation 1.47-7 concerning the federal historic rehabilitation tax credit, including coordinating the new five-year period over which the credit may be claimed with other rules for the credit. The proposed regulations provide that, for qualified rehabilitated buildings that have not been owned or leased continuously from January 1, 2018 (QRB), the rehabilitation tax credit is properly determined in the year the QRB is placed in service (PIS) and is allocated ratably 20% per year over the 5-year period, starting with the PIS year.

Notable Provisions of the PPP Loan Forgiveness Application

The SBA released the application and instructions for Paycheck Protection Program (PPP) loan forgiveness. Although the application is generally consistent with previous guidance from the SBA, in this alert we highlight a few provisions of which borrowers should take particular note.

SBA Provides PPP Borrowers with Guidance on Certification of Need

On May 13, the SBA updated its Paycheck Protection Program Loans Frequently Asked Questions (FAQs) to provide PPP Borrowers with meaningful guidance on self-certification of need. This guidance comes one day prior to the May 14 date set by the SBA for borrowers to pay back PPP loans that may not have satisfied the certification of need standard.

The IRS Sets Forth Its Position on the Deductibility of Expenses Related to PPP Loans
On April 30, 2020, the Internal Revenue Service (IRS) released Notice 2020-32 regarding the
deductibility of certain expenses relating to the Paycheck Protection Program (PPP). Notice 2020-32 sets
forth the IRS' official position on the deductibility, for federal income tax purposes, of certain expenses
incurred in a taxpayer's trade or business when the taxpayer receives loan forgiveness pursuant to the
Paycheck Protection Program related to those trade or business expenses.

Date: 5/6/20

Authors: Kevin Muldowney, Jamie Canup, Dave Lionberger, Penn Rogers

Recovery Resource: Commercial Eviction Moratoriums by Locality

Many jurisdictions have implemented residential eviction moratoriums during the COVID-19 crisis, but
fewer have addressed commercial tenants. Hirschler's latest resource guide outlines current commercial
eviction moratoriums and/or orders limiting commercial evictions in Virginia, Maryland, District of
Columbia, New York, Los Angeles, San Francisco, and London. These orders are changing frequently
and should be checked for updates.

Date: 4/9/20

Authors: Jeff Geiger, Justine Fitzgerald, Laura Lee Garrett, Larry Katz, Jack Kendall, Sarah Mikowski

**Freddie Mac Responds to COVID-19 with Borrower-Friendly Forbearance Agreement**

Owners of multifamily properties will see impacts from COVID-19 increase in April and subsequent
months. Freddie Mac Multifamily (Freddie Mac) has announced it will offer a [COVID-19 Forbearance
Agreement](https://www.freddiemac.com) for borrowers with Freddie Mac loans to obtain payment relief for three months.

Date: 4/4/20

Authors: Brandt Stitzer, Jeff Geiger, Rob Benaicha, Mike Terry

**Summary Comparison of COVID-19 EIDL and PPP Loan Programs**

The Small Business Administration (SBA) released on April 1, 2020 the Payroll Protection Program (PPP)
loan application form and an accompanying FAQ. Businesses may apply for a PPP loan beginning
Friday, April 3. Independent Contractors/Sole Proprietors may apply for a PPP loan beginning Friday,
April 10.

Date: 4/2/20
**Key Provisions of the New SBA Payroll Protection Program (PPP) Loan Application**

On Tuesday, March 31, the Small Business Administration (SBA) released the Payroll Protection Program (PPP) loan application and additional information for borrowers. The documents provide more details regarding the PPP loans. The PPP provides loans designed to provide a direct incentive for small businesses to keep their workers on the payroll. The SBA will forgive loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

Date: 4/1/20

**Tax Provisions in the Stimulus Act Designed to Enhance Cash Flow**

The *Coronavirus Aid, Relief, and Economic Security Act* (the Act) provides mechanisms for businesses to improve their cash flow over the short-term with the deferral of the payment of payroll taxes, ability to claim losses against taxable income and the acceleration of depreciation expenses.

Date: 3/30/20

**Loan Forgiveness Under the Stimulus Act: Is Now the Time To Apply for Your First SBA Loan? (And Other Loan Benefits of the CARES Act)**

With the passage of the *Coronavirus Aid, Relief, and Economic Security Act* (the Act) into law this afternoon and the attendant expansion of the SBA lending program, all businesses should be asking: *Is my business eligible to participate in the SBA lending programs under the Act? Should my business participate in these lending programs? Which is the best lending program for my business?* Under the Act, the definition of “eligible small business” has been expanded, and the terms of the lending programs are quite generous but only available for a limited time.

Date: 3/27/20
Employment

Marie Carter Explores Cost-Cutting Options for Plan Sponsors in the Wake of COVID-19, BenefitsPro

In an article published in BenefitsPro on July 27, Hirschler counsel Marie Carter offers considerations for employers and plan sponsors looking to suspend or reduce retirement plan contributions in the wake of COVID-19.

Date: 8/12/20
Authors: Marie Carter

Ten Tips for Getting Back to Work

As many stay-at-home orders and other government restrictions are set to expire in the coming days or weeks, companies should be planning now for their employees to return to work. Developing sound policies and procedures for work in the midst of the on-going threat of COVID-19 is essential not only for maintaining the safety and morale of the workforce, but also for reducing the company’s exposure to liability. Below are ten tips for getting back to work in a responsible and productive manner.

Date: 5/4/20
Authors: Andy Sherrod, Liz Burneson

Age Discrimination Concerns When Instituting Layoffs: Special Considerations For Drafting a Valid Release

With the economic uncertainty caused by COVID-19, many companies will be faced with the difficult decision to impose layoffs, and older employees could be included among those who unfortunately lose their jobs. Employers seeking a release of age discrimination claims from laid-off employees should be aware of the special requirements imposed by the federal Age Discrimination in Employment Act.

Date: 4/20/20
Authors: Liz Burneson, Sarah Mikowski, Andy Sherrod, Andrew Lohmann

Healthcare Employer Obligations Under the Families First Coronavirus Response Act

New leave provisions in the FFCRA provide that covered employers may exclude employees who qualify as “health care providers” from taking paid leave. The Department of Labor subsequently issued regulations clarifying who qualifies as a health care provider under the FFCRA and can therefore be exempted from the new requirements.
New DOL Regulation on Paid Leave under the Families First Coronavirus Response Act: Top Five Takeaways for Employers

Since the Families First Coronavirus Response Act (“FFCRA”) was signed into law on March 18, 2020, the Department of Labor has issued a flurry of guidance to help employers implement the emergency sick leave and emergency family and medical leave requirements of the new law. In a previous post, we explained essential aspects of the DOL guidance for employers attempting to navigate the FFCRA leave requirements.

What Employers Need To Know Now About Paid Leave Under The Families First Coronavirus Response Act

The Department of Labor has issued a series of guidance documents for employers on how to apply the FFCRA leave provisions. In light of this new information and the upcoming April compliance deadline, we answer key questions for private employers about how to manage the leave requirements under the FFCRA.

What Companies Should Know About Unemployment Insurance Under the CARES Act

The COVID-19 pandemic has many companies evaluating whether employee furloughs or layoffs will be necessary to reduce payroll expense. While the recently enacted Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") provides a number of options for eligible companies to consider to avoid layoffs, the new law also grants enhanced unemployment benefits for workers who do suffer job loss as a result of the coronavirus outbreak.
Many Companies Will Need to Reduce Employee Payroll Costs Due to COVID-19- What’s the Difference Between a Furlough and Layoff?

As the COVID-19 pandemic continues to wreak havoc on the economy, and states across the country issue “stay at home” orders or require “non-essential” businesses to close, many employers will need to consider reducing the payroll costs associated with their workforces. Employers should consider whether a furlough or a layoff is more appropriate for their circumstances.

Date: 3/24/20

Authors: Andy Sherrod, Liz Burneson, Sarah Mikowski

Protecting Employee Confidential Medical Information In The Wake of COVID-19

With the COVID-19 threat at pandemic levels, employers are concerned about their ability to inquire about an employee’s potential virus exposure and health status. Employers should be cautious with these inquiries. Given the international scope of the virus and directives from national, state and local governments, it is reasonable for employers to make more than the usual inquiries of their workforce and to consider what actions may be taken to ensure workplace safety.

Date: 3/20/20

Authors: Andy Sherrod, Brian Jackson

What Employers Need to Know About Paid Leave Under The Families First Coronavirus Response Act

On March 18, 2020, the President signed into law the Families First Coronavirus Response Act ("FFCRA"). This new legislation contains a number of components designed to address the current COVID-19 pandemic, but two aspects of the FFCRA related to emergency sick leave and emergency family and medical leave will be of immediate concern to many employers. Below are answers to key questions for private employers about the FFCRA leave requirements. For specific applications of these new requirements to your workforce, when in doubt, consult experienced employment law counsel.

Date: 3/20/20

Authors: Andy Sherrod, Dave Lionberger
Bankruptcy and Restructuring

Remote Mediation – The Times They Are A-Changin’

The novel coronavirus and the need for social distancing have taught us that we are capable of learning new ways to transact business. Even those of us in the legal profession. We are telecommuting, attending hearings remotely, and Zooming (with or without commensurate grooming). The need to practice law in a virtual environment has given rise to another recent technological fix – remote mediation.

Date: 8/3/20

Authors: Larry Katz, Robbie Westermann, David Swan, Steve Leach, Kristen Burgers, Britt Falabella

Larry Katz Shares Insight on Chapter 11 Bankruptcy, The Washington Post

As retailers across the country continue to file for bankruptcy in light of the impact COVID-19 is having on the already-struggling industry, Larry Katz lent insight to a July 23, 2020 article in The Washington Post explaining Chapter 11 bankruptcy as retailers frequently seek its protections in recent months.

Date: 7/24/20

Authors: Larry Katz

In Bow to Pandemic, Court Authorizes Debtor’s Suspension of Rent Payments in Chapter 11 Case

In the not-so-long-ago days before COVID-19, when a business filed for bankruptcy under chapter 11, it was expected to pay the post-petition rent due to each of its landlords until the bankruptcy case ended or the debtor “rejected” a particular lease. The Bankruptcy Code is unambiguous that a debtor must “timely perform all the obligations . . . under any unexpired lease of nonresidential real property.” But this seemingly inflexible rule is starting to bend in the face of the unprecedented economic realities resulting from the coronavirus pandemic. In particular, some bankruptcy courts have recently been willing to let debtors temporarily suspend rent payments in the exercise of the debtor’s business judgment.

Date: 5/12/20

Authors: Kristen Burgers, Robbie Westermann, Larry Katz, Steve Leach, Britt Falabella

Hair Cuttery Files for Chapter 11 Bankruptcy Relief: A Sign of Things to Come

Creative Hairdressers, Inc. (the “Company”), the parent company to 800 hair salons operating around the country as Hair Cuttery, Bubbles, and Cielo salons, filed for relief under chapter 11 of the Bankruptcy Code. While the Company had experienced financial troubles prior to 2020, the COVID-19 pandemic...
presented an insurmountable hurdle to a business that was already in distress. As a “non-essential” business, each of the salons was forced to close as states issued stay-at-home orders, leaving the Company unable to meet rent obligations.

Date: 4/30/20

Authors: Kristen Burgers, Robbie Westermann, Larry Katz, Steve Leach, Britt Falabella

CARES Act Raises Small Business Bankruptcy Limits

Last year Congress enacted the Small Business Reorganization Act of 2019 (SBRA), which created a streamlined process for small, financially distressed business to reorganize. The simplified reorganization process was, however, limited to businesses with less than $2,725,625 in debt, rendering thousands of small businesses ineligible to take advantage of the SBRA. Importantly, the CARES Act increases the debt limit under the SBRA to $7,500,000 for the next year. This nearly three-fold increase means that many thousands of additional businesses can take advantage of SBRA's benefits.

Date: 4/2/20

Authors: Kristen Burgers, Robbie Westermann, Larry Katz, Steve Leach, Britt Falabella

We’re All in This Together: Key Considerations for Lenders, Investors and Tenants in the Wake of COVID-19

Memories of the prolonged real estate down-cycle precipitated by the 2008 credit crisis are all too fresh. The lessons learned during that turbulent time should inform future discussions between lenders, investors, and tenants, as each group navigates these uncertain economic waters over the coming months. The short-term imperative is clear: the three tiers of the real estate pyramid must work together to mitigate this market disruption and ensure a soft landing once the crisis has passed and aggregate demand returns to pre-virus levels.

Date: 3/27/20

Authors: Jeff Geiger, Rob Benaicha, Larry Katz, Brandt Stitzer, Mike Terry, Robbie Westermann

A Restructuring Team to Help You Weather the COVID-19 Economic Storm

The COVID-19 pandemic has generated not just a health crisis of global proportions, but an economic crisis as well. We are all painfully aware of the toll that it has taken on individuals and businesses throughout the nation, particularly small to mid-sized companies and those that were experiencing financial distress even before the pandemic. Just today, it was reported that the amount of distressed debt in the United States has doubled to $500 billion in just the past two weeks. Layoffs, shutdowns, and
closings are the new norm.

Date: 3/20/20

Authors: Larry Katz, Kristen Burgers, Britt Falabella, Steve Leach, Robbie Westermann

**Business Contracts**

**Understanding Your Contractual Obligations During a Global Pandemic**

Many business owners are concerned about the impact of the coronavirus pandemic on contracts that they have in place, including purchase and sale agreements, leases, construction contracts and other contracts requiring performance within a certain time frame. For any contract, the first task is to determine which state law applies (including choice of law provisions) so that the analysis can be tailored accordingly.

Date: 3/19/20

Authors: Justine Fitzgerald, Nate Story, Andrew Lohmann, Evan Clarke, Sarah Mikowksi

**Workplace Safety**

Brent Ashley Publishes 7 Steps To Ensure Director Oversight, *D&O Diary*

A 2019 decision by the Delaware Supreme Court elaborated on the standard of conduct required by a director under her duty of oversight when it found that Blue Bell Creameries USA, Inc. failed to try to implement a reasonable system to oversee issues "intrinsically critical to the company's business operation," noting the Blue Bell board minutes reflected "no board-level discussion" of contamination reports on its products. This ruling provides a standard for oversight that there must be board-level efforts to have oversight of mission critical issues in mind. To help meet this standard, Ashley provides a 7-step checklist for directors.

Date: 6/5/20

Authors: Brent Ashley

**Pandemic Leads to New Guidance on Workplace Safety**

In response to the evolving COVID-19 outbreak, EPA and OSHA have issued guidance to assist employers as they take steps to ensure a safe workplace environment for their employees. Likewise, many consultants are standing by to help employers prepare and implement or update Health and Safety Plans (HASPs) and specific cleaning protocols.
Ten Tips for Addressing Coronavirus Concerns in Your Workplace

As cases of COVID-19 multiply across the country, with new restrictions being handed down from all levels of government on a daily and hourly basis, companies large and small face a variety of challenges in keeping their employees safe while at the same time maintaining business operations. While seeking good employment law counsel is critical as questions arise, below are ten tips for addressing personnel issues in your workplace.

Task Force Tips

Task Force Tip: Cybersecurity and Data Privacy

In this challenging environment, businesses with remote employees need to increase vigilance with respect to cybersecurity threats. Employees working from home present unique security risks that fraudsters, hackers and other bad digital actors are trying to exploit.

Task Force Tip: Review Your Estate Plan

As you evaluate your business’ financial strategy in the days ahead, remember also to revisit your personal estate plan. Members of the Hirschler estate planning team are standing by to review your current plan and to suggest changes that may be prudent in light of world events, your business needs and your personal circumstances.
**Mergers and Acquisitions**

Hedrick and Lohmann Share M&A Insights with *Corporate Board Member*

In an article published by Corporate Board Member, Andrew Lohmann and Lisa Hedrick discuss the current landscape of mergers and acquisitions as the economy recoils from COVID-19. Though transactions have dropped significantly since the beginning of the year, Lohmann and Hedrick offer strategies and considerations for businesses moving forward with deals now and into the future.

Date: 6/5/20

Authors: Lisa Hedrick, Andrew Lohmann

"Material Adverse Effect" Clauses in the Context of COVID-19 and Their Impact on Loan and Acquisition Agreements

In the wake of financial pressures that businesses across the country are facing, many have tapped unused lines of credit to provide extra liquidity. Yet, for certain companies the current pandemic may raise a question as to whether or not they, as borrowers, can permissibly draw down on available lines of credit. Putting aside for a moment the financial performance covenants and other metrics borrowers must regularly achieve under their loan agreements, the current situation also raises the question of whether COVID-19 has put certain businesses into automatic default under their existing loan agreements. Businesses should be cognizant of these provisions as they make business decisions that could impact their rights and obligations under their loan documents.

Date: 3/30/20

Authors: Lisa Hedrick, Allie Casagrande

**Investment Management**

Brian Farmer Published in *Private Equity Law Report*: Can a Fund Manager Use a Force Majeure Provision to Extend a Fund’s Investment Period During the Coronavirus Pandemic?

In an article published by *Private Equity Law Report*, investment management partner Brian Farmer evaluates different formulations of force majeure clauses in fund governing documents and what quantum of rights they afford fund managers to unilaterally extend a fund’s investment period to take advantage of opportunities during the pandemic.

Date: 7/21/20
SEC Proposes Significant Increase to Form 13F Reporting Threshold

On Friday, July 10, the U.S. Securities and Exchange Commission (SEC) released proposed modifications of the filing requirements for Form 13F, the quarterly report of holdings of public securities by institutional investors. The most important proposal in the SEC release is to raise the Form 13F reporting threshold from $100 million to $3.5 billion.

Date: 7/15/20

SEC Issues Risk Alert Discussing Deficiencies of Private Fund Managers

On June 23, 2020, the Office of Compliance Inspections and Examinations (OCIE) of the SEC issued a Risk Alert identifying its observations from examinations of investment advisers managing private equity funds and hedge funds.

Date: 7/6/20

Farmer and Daly Offer Strategies for Real Estate Fund Managers in the Wake of COVID-19, GlobeSt.

In an article published June 10, 2020 by GlobeSt., investment management lawyers Brian Farmer and Brian Daly outline strategies for real estate fund managers to consider when responding to the changing market dynamics related to COVID-19. Farmer and Daly detail several considerations for managers as they weigh three different strategies.

Date: 6/12/20

The Impact of Virginia’s Business Closure Order on the Investment Management Industry

On Monday afternoon, March 23, Virginia Governor Northam issued an Executive Order imposing sweeping restrictions on business activity in the Commonwealth in response to the growing COVID-19 health care crisis. The restrictions include mandatory business closures for many types of businesses, potentially impacting over a million workers. [source: NRF website calculating 1.05 million retail jobs in Virginia] The Executive Order goes into effect at the end of the day on Tuesday March 24 and continues in effect until April 23.
Date: 3/24/20

Authors: Brian Farmer, Ed Klees, Jim Van Horn

**SEC Provides Conditional Temporary Exemptions from Form ADV and Form PF Filing and Delivery Requirements**

On March 13, 2020, the U.S. Securities and Exchange Commission issued an Order under Section 206A of the Investment Advisers Act of 1940 providing a conditional, temporary exemption from certain requirements of the Advisers Act in response to challenges created by the outbreak of COVID-19. Our IM team discusses the Order and other challenges posed by the COVID-19 outbreak in our latest alert.

Date: 3/19/20

Authors: Investment Management Group

**Real Estate and Land Use**

**Henrico County’s New Policy for RPA Designations**

A DEQ-mandated change leading to larger Resource Protection Areas (RPAs) in Henrico will impact buildable area. The good news is that RPA determinations will not be mandatory, saving developers in Henrico from that associated expense.

Date: 7/21/20

Authors: Lisa Goodwin, Jeff Geiger

**COVID-19 Market Review: Commercial Leasing**

The COVID-19 pandemic has had a tremendous impact on commercial landlords and tenants due to widespread retail and office closures. For the most part, landlords and tenants are working together, and landlords' lenders are being flexible with their borrowers on mortgage payments. The great challenge of the pandemic is no one knows how long it will last or what the long-term impact may be.

Date: 4/29/20

Authors: Laura Lee Garrett, Justine Fitzgerald, Jeff Geiger

**Regional Roundup: Virtual Technology and Process Modifications Keep Rappahannock Area Projects Moving Forward in a Time of Uncertainty**
The economic development pipeline continues to move despite challenges arising from the coronavirus pandemic. Hirschler’s land use practice group continues to work with governments throughout the Rappahannock region to conduct public meetings and secure approvals.

Date: 4/22/20

Authors: Charlie Payne, Jeff Geiger, Rob Benaicha, Brian Jackson

Regional Roundup: Virtual Technology and Process Modifications Keep Richmond Area Economic Development Projects Moving Forward in a Time of Uncertainty

The economic development pipeline continues to move despite challenges arising from the coronavirus pandemic. Hirschler’s land use practice group continues to work with governments throughout the Richmond area to conduct public meetings and secure approvals.

Date: 4/21/20

Authors: Jeff Geiger, Rob Benaicha, Brian Jackson, Charlie Payne

CRE Must Be CAREful with the CARES Act

The Coronavirus Air, Relief and Economic Security (CARES) Act enacted last week does not treat all commercial real estate equally. Owners of multifamily properties may face new restrictions on their collection and eviction remedies. Others will see both direct and indirect financial support from the CARES Act.

Date: 3/30/20

Authors: Jeff Geiger, Rob Benaicha, Mike Terry

We’re All in This Together: Key Considerations for Lenders, Investors and Tenants in the Wake of COVID-19

Memories of the prolonged real estate down-cycle precipitated by the 2008 credit crisis are all too fresh. The lessons learned during that turbulent time should inform future discussions between lenders, investors, and tenants, as each group navigates these uncertain economic waters over the coming months. The short-term imperative is clear: the three tiers of the real estate pyramid must work together to mitigate this market disruption and ensure a soft landing once the crisis has passed and aggregate demand returns to pre-virus levels.
Date: 3/27/20

Authors: Rob Benaicha, Mike Terry, Jeff Geiger, Robbie Westermann, Larry Katz, Brandt Stitzer

**Land Use Alert: Moving the Ball Forward in the Wake of COVID-19**

The CDC’s recommendations on group gatherings and social distancing present a unique challenge for local governments and the development community that relies on government approvals to continue business. As the response to COVID-19 evolves in the days and weeks to come, Hirschler land use and real estate attorneys are committed to providing perspective and advice. Here are some things to keep in mind in this uncertain time.

Date: 3/17/20

Authors: Jeff Geiger, Rob Benaicha, Brian Jackson, Charlie Payne, Brandt Stitzer

**Construction**

Kelly Bundy and Liz Burneson Publish Article on Joint Employer Status in *Construction Executive*

The construction industry continues to face labor shortages and turn to staffing agencies and alternative employment arrangements. In an article published by *Construction Executive* on July 21, Hirschler construction lawyers Kelly Bundy and Liz Burneson examine a contractor’s potential liability for employee wages if the contractor is deemed a joint employer with its subcontractors and staffing agencies.

Date: 8/10/20

Authors: Kelly Bundy, Liz Burneson

Kelly Bundy Authors Article for ABA Construction Law Forum’s “Under Construction” Series

Hirschler construction lawyer Kelly Bundy’s article on impossibility, impracticability and frustration of purpose in the Age of COVID-19 has been published as part of the ABA Construction Law Forum’s “Under Construction” series. The article tackles the issue of whether the pandemic might excuse performance under a contract or whether a contractor might be entitled to recourse for delays associated with labor shortages, supply chain issues, or governmental orders suspending work or imposing restrictions on construction.

Date: 8/4/20
Milled Act Notice More Than 90 Days Before A Subcontractor’s Final Day of Work Held Untimely

A recent federal case reinforces the need for strict compliance with Miller Act notice requirements to secure recovery on a payment bond.

Date: 7/8/20

Virginia Supreme Court Allows Sub-Sub Material Supplied To Recover Directly From General Contractor For Unpaid Material

Communications between a general contractor and sub-sub prove critical in enabling a sub-sub to recover directly from the general contractor in this new Virginia Supreme Court case.

Date: 6/16/20

New Virginia Law Can Make General Contractors Liable for Subcontractor’s Employee Wages

The General Assembly, in its 2020 session, passed new legislation (codified at new Virginia Code §11.4-6 and in amended and reenacted Virginia Code § 40.1-29) that makes Virginia general contractors jointly and severally liable for its subcontractors’ employee wages if the general contractor knew or should have known that the subcontractor was not paying its employees. The new law goes into effect on July 1, 2020.

Date: 6/1/20

OSHA Changes Course on COVID-19 Record-Keeping Requirements

In new guidance effective May 26, OSHA reverses course on reporting requirements and cases of COVID-19.

Date: 5/29/20
New OSHA Guidance Suspends Enforcement of Record-Keeping Requirements for COVID-19 Cases in Most Industries

Under new OSHA guidance most employers no longer need to make work-relatedness determinations for employee cases of COVID-19 in the absence of objective evidence of work-relatedness and can focus on increased sanitization and other practices to mitigate the spread of COVID-19.

Date: 4/17/20

Authors: Liz Burneson, Courtney Paulk, Webb Moore, Nate Story, Kelly Bundy


On March 30, 2020, Governor Ralph Northam issued Executive Order Number 55, titled “Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19).” States across the county have enacted Stay at Home Orders, each with varying degrees of restriction. The Virginia Stay at Home order is one of the least-restrictive Stay at Home Orders in the region.

Date: 3/30/20

Authors: Liz Burneson, Courtney Paulk, Webb Moore, Nate Story, Kelly Bundy

Construction Law Blog: Ten Tips for Addressing Coronavirus Concerns In Your Workplace

As cases of COVID-19 multiply across the country, with new restrictions being handed down from all levels of government on a daily and hourly basis, companies large and small face a variety of challenges in keeping their employees safe while at the same time maintaining business operations. While seeking good employment law counsel is critical as questions arise, below are ten tips for addressing personnel issues in your workplace.

Date: 3/25/20

Authors: Andy Sherrod, Liz Burneson, Courtney Paulk, Webb Moore, Nate Story, Kelly Bundy

Construction Law Blog: Closure of "Non-Essential Businesses" and "Stay at Home" Orders: What Do These Mean for the Construction Industry?

On March 23, 2020, Governor Ralph Northam announced that Virginia would be initiating new restrictions on Virginia businesses to mitigate the impact of COVID-19. This Executive Order most importantly, will not affect construction work, or the construction industry. Rather, the Order only closes certain recreational and entertainment establishments and places limits on customers in certain retail

On March 18, 2020, the President signed into law the Families First Coronavirus Response Act (“FFCRA”). This new legislation contains a number of components designed to address the current COVID-19 pandemic, but two aspects of the FFCRA related to emergency sick leave and emergency family and medical leave will be of immediate concern to many employers. Below are answers to key questions for private employers about the FFCRA leave requirements. For specific applications of these new requirements to your workforce, when in doubt, consult experienced counsel.


In the ever-changing environment of the COVID-19 pandemic, OSHA is offering new guidance for employers relating to workplace safety and reporting requirements. Our latest post provides readers with key takeaways from the new guidance.

Construction Law Blog: Addressing the Coronavirus on Construction Projects

Contractors are reporting that the coronavirus (COVID-19) is starting to impact local construction projects. Clients have observed (or may soon observe) the following impacts.