STRATEGIES FOR BUSINESS OWNERS TO NAVIGATE THE IMPACTS OF COVID-19 (INCLUDING COMMERCIAL INSURANCE, GOVERNMENTAL ASSISTANCE, AND OTHER SMALL BUSINESS RESOURCES)

Due to the spread of COVID-19, businesses, small and large, are facing massive interruptions; employee and customer safety concerns; and government regulations, restrictions, and shutdowns, all of which will likely cause widespread and long-lasting economic damages. Business and economic disruptions caused by the COVID-19 pandemic have led to (i) reduced demand for products and services due to social distancing measures; (ii) supply chain disruptions; and (iii) loss of income from mandatory or voluntary closures, which will induce most businesses to seek help.

COMMERCIAL PROPERTY INSURANCE
Fortunately, most businesses carry some form of commercial insurance, which is designed to provide coverage for damage to property, contents, and, in some cases, sustained loss of income resulting from property damage or suspension of the business operations. Generally, however, the suspension of business must be related to a “covered cause,” which results in direct physical damage to the property and/or a loss of business income.

Unfortunately, in the face of this pandemic, many insurers have taken the position that claims related to COVID-19 are not designated perils that are covered under a standard commercial insurance policy, either because there has been no physical damage to the property or because the policy expressly excluded coverage for viral contamination and/or infectious diseases. Therefore, Business Owners need to closely examine their business insurance policies to determine whether they contain some exclusionary language that does not explicitly reference “viruses,” which might actually help with claims associated with physical property damage related to the COVID-19 outbreak.

There are some insurance policies that include coverage for Interruption by Communicable Disease; however, notwithstanding the very name of the coverage, some policies will seek to exclude contamination due to a pathogenic organism, bacteria, virus, or disease. These exclusions were added after previous health crises, where many insurance policies were revised or updated to include explicit exclusions of coverage for loss or damage resulting from any virus or microorganism, which induces physical distress, illness, or disease. In addition, in 2006, the Insurance Services Office introduced an exclusion for loss due to virus or bacteria that applies to property damage to buildings or personal property and endorsements that cover business income, extra expense, or action of civil authority.

In situations where the business does not have coverage for Interruption by Communicable Disease, while it may be potentially more challenging, there may be other provisions under the insurance policy that do not contain the communicable disease...
coverage limits. However, in order to trigger a business interruption claim, the Business Owner will be required to prove physical loss or damage.

Many policies include language and restrictions related to actions of civil and/or military authorities. Therefore, where a governmental entity requires a business to close, *Business Interruption Coverage* may be available. Generally, while actions such as a declaration of a state of emergency do not change policy terms, if a civil authority requires the Business Owner to clean or disinfect the property, then the damage to the physical property may be more easily supported.

**CIVIL AUTHORITY COVERAGE**

Civil Authority Coverage relates to losses sustained by a Business Owner when a civil authority prohibits, impairs, or restricts access to the Business Owner’s premises. Unfortunately, some Courts have rejected coverage for losses sustained as a result of civil authority orders that were designed to prevent future damage rather than address existing property damage, such as evacuation in advance of a hurricane. A lawsuit filed in Louisiana is seeking a judicial determination that the State’s public gathering restrictions related to COVID-19 trigger the civil authority provision in their all-risks policy. Generally, there are one of two standards of measurement that the Courts will seek to apply when determining a policyholder’s business interruption loss, following the devastation that occurs after a wide-impact catastrophe, like a hurricane, but more particularly here, COVID-19. The “Economy Ignored Approach” looks backward and measures the policyholder’s loss only against pre-catastrophe business levels and does not take into consideration the impact of actual post-catastrophe conditions on the economy, market, or demand, which seeks to preclude a policyholder from obtaining a “windfall,” as a result of a catastrophe. Conversely, the “Economy Considered Approach” seeks to place the policyholder in the position that it would have occupied post-catastrophe, had it been able to continue its operations, which thereby avoids the insurance company from obtaining a “windfall.”

**PHYSICAL LOSS OR DAMAGE REQUIREMENT**

Relatively few insurance policies specifically outline coverage for pandemic outbreaks of disease. Most insurance policies are either too vague or include no relatable language. Therefore, for policies without an exclusion for viruses, the determination of coverage related to the COVID-19 pandemic may turn on the definition of physical damage. Insurance companies will argue that if a business remains habitable but has been closed as part of a mandatory or voluntary closure to protect against contamination, then the business has probably not sustained a direct physical loss. However, if a property has become physically contaminated and uninhabitable due to COVID-19, there may be a basis to claim that a direct physical loss has occurred. Some Orders, like that issued by New York Mayor Bill de Blasio, have specifically cited property damage from COVID-19 as one of the underlying reasons for business shutdowns. Resultantly, certain case law may support arguments that direct physical loss, although not structural, includes damage caused by COVID-19, which physically infects and stays on the surface of materials for
days, thereby contaminating the premises, making it unfit for occupancy, and qualifying for a direct physical loss requiring remediation.

Several businesses have already filed lawsuits seeking declarations that they are entitled to recover business losses resulting from the COVID-19 pandemic. These lawsuits generally allege that a civil authority, either a county or state official, ordered the business to cease normal operations to contain the spread of COVID-19, and that potential COVID-19 contamination constitutes physical damage or loss, which is either expressly covered by the policy or is not expressly excluded by the policy.

Insurance policies are contracts and, thus, are interpreted as such. A business whose policy expressly covers viral contamination or a pandemic is more likely to succeed on a claim for coverage than a business whose policy expressly excludes coverage for viruses. Given the variances in policy language, whether an insurance policy will provide coverage will depend upon the type of insurance policy, the actual language contained in the policy, and the specific circumstances giving rise to the claim.

**BUSINESS INTERRUPTION INSURANCE COVERAGE**

Business Interruption Insurance can be either an add-on to a commercial insurance policy or a stand-alone policy, which covers loss of income, and possibly losses due to actions by civil authorities. The general purpose of Business Interruption Insurance is to make the Business Owner (insured party) whole from the damaging event. Business Interruption Insurance typically covers business losses directly or indirectly caused by a covered peril—loss of profits, fixed costs (operating expenses and other costs still being incurred), cost of actions taken to mitigate the loss, and reasonable expenses to allow the business to continue operating. However, events that are not listed on, or not described in, the policy are typically not covered. Therefore, it is important to review the policy exclusions, coverage limits, and applicable deductibles. In addition, the Business Owner should determine if the policy requires the business interruption to last for a certain time period before the business is entitled to any policy benefits.

**CONTINGENT BUSINESS INTERRUPTION**

Business Owners should review their policy to determine their rights and whether it includes Contingent Business Interruption coverage, which is designed to address a Business Owner’s losses resulting from damage or destruction of property owned by others, if the underlying cause of damage to the supplier or customer is of the type covered by the insured’s own property policy. For example, if a windstorm were to damage a supplier’s factory and prevent it from producing component parts essential to an insured business’ operation, the business would be able to submit a claim under Contingent Business Interruption Insurance. Here, in the face of the current pandemic, the Business Owner would need to demonstrate that COVID-19 caused damage to a major supplier, and the Business might be covered for business losses (interruption) stemming from that supply chain disruption. More particularly, where COVID-19 has forced the closure of a meat packing company, which traditionally supplied the business with product, then the losses sustained by Business Owner of the local meat store that is
unable to secure meat deliveries, should be covered under the Contingent Business Interruption Insurance.

LEGISLATIVE ACTIONS RELATED TO BUSINESS INTERRUPTION INSURANCE

Fortunately, a bipartisan group of Legislators, from New York, New Jersey, Pennsylvania, Ohio, Louisiana, and other States, has proposed legislation that would require insurers to provide some coverage for losses stemming from COVID-19, retroactively. However, the congressional requests and proposed legislation have met resistance from the insurers, who have argued that forcing them to cover such claims could lead to collective insolvency of the insurance companies. Specifically, four insurance industry trade groups and the National Association of Insurance Commissioners (the NAIC), which is comprised of the insurance regulators of the fifty (50) States and the District of Columbia, have urged Congress not to take action recommended by the Legislators, which could require insurers to cover COVID-19 business interruption claims, even where the policy excludes coverage for communicable diseases. NAIC and the insurance industry at large assert that the potential cost of covering Business Interruption Insurance claims could aggregate between $110 billion and $290 billion, on a monthly basis.

Conversely, however, certain insurance trade groups are considering an option whereby businesses would be permitted to submit claims to their insurers as if Business Interruption Insurance resulting from COVID-19 were covered. Thereafter, the insurance companies would adjust those claims as normal and determine the appropriate claims payment, which would be funded by the Government. This approach would resemble the existing mechanism used for the National Flood Insurance Program.

Tips to Help Navigate Business Interruption Insurance and Other Commercial Insurance Claims:

1. **Review Policy Closely.** Obtain a copy of the insurance policy and declaration page and review closely to determine (a) what are the covered causes of loss, exclusions, and limitations; and (b) whether a “contingent business interruption” exists for specific business types. Notably, certain industries such as healthcare, hospitality, and travel, may have specific coverage for diseases like COVID-19. Policy wording is vital, as this type of insurance is typically triggered when there is a “direct physical loss of or damage to” the Business Owner’s property.

2. **Time is of the Essence.** Business Owners need to make note of the insurance company’s stated deadline to report the claim (i.e., within 30, 60, 90, or 180 days). The clock starts running as of the date of damage (loss); therefore, the Business Owner should call its insurance company as soon as possible to report the claim; and, immediately thereafter, send a follow-up email or fax to the insurance company representative to memorialize what was discussed during the call.
3. **Document All Loss.** The Business Owner will be required to substantiate how the business has been impacted or negatively affected by the damage, here COVID-19. This will require that the Business Owner provide detailed documentation related to its loss of sales, customers, payroll, products, rent, and replacement inventory to shorten period of restoration, as well as hard costs incurred relating to legal and accounting fees. The Business Owner will need to document sales trends and business cycles before and after COVID-19 to show the related losses. The type of financial documents that the Business Owner must assemble and provide to the insurance company, in support of the Business Interruption Insurance Claim, includes, but may not be limited to, the following:
   
   a. Description of the Business Operations;
   b. Description of Products Sold or Services Offered;
   c. Detailed Sales Records (customers, purchases, and inventory amounts) (up to 5 years);
   d. Monthly Profit & Loss (P&L) Statements (up to 5 years);
   e. Annual Balance Sheets (up to 5 years);
   f. Detailed General Ledger (up to 5 years);
   g. Audited Financial Statements (up to 5 years);
   h. Payroll Records (up to 2 years);
   i. Federal and State Tax Returns (with schedules) (up to 5 years);
   j. Depreciation Schedules;
   k. Budgets or Forecasts (up to 2 years);
   l. Business Plan;
   m. Industry Trade Data (inclusive of geographical region) (if possible); and
   n. Listing of additional Costs/Receipts associated with/relating to Insurance Claim.

4. **Document Expenses Incurred as a Result of the Loss.** These expenses should include, but are not limited to, payroll, inventory, utilities, and accounting and legal fees.

5. **Identify Preliminary Estimated Period of Restoration.** The period of restoration begins on the first date and time of loss, and it ends when the business’ income (inventory or production levels) returns to normal.

6. **Mitigate Losses.** Business Owners need to mitigate their losses, where possible or permitted, by continuing their business operations (if possible) and/or by limiting the period of business restoration.

7. **Maintain Frequent Communication.** Business Owners should maintain frequent and ongoing communication with the insurance adjuster to address expected timelines for how losses and potential expenses will be handled by the insurance company. In addition, Business Owners should maintain communication with their
accountants and attorneys, who may be able to assist in providing documentation and/or verification of the business’ losses, including, but not limited to, tax returns, financial statements, sales forecasts, invoices, receipts, and/or contracts.

8. **Important Reminder: Memorialize.** Business Owners should remember to memorialize and document all verbal correspondence that they engage in with every person or entity in relation to seeking insurance coverage or governmental assistance, due to the COVID-19 pandemic. This includes sending a follow-up email, fax, or handwritten/typed letter (where electronic services are unavailable), which documents the Business Owners’ understanding of the communication, agreements, and/or directives given.

**GOVERNMENTAL ASSISTANCE**
The Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted on March 27, 2020, and includes several programs aimed at assisting small businesses, such as:

**PAYCHECK PROTECTION PROGRAM – (PPP)**
Included in the CARES Act is the Paycheck Protection Program (PPP), which was implemented by the United States Small Business Administration (SBA) and designed to provide small businesses with support, by authorizing up to $349 billion toward workforce job retention and certain other expenses, to continue to keep their workers on the payroll. Small Businesses and eligible Nonprofit Organizations, Veterans Organizations, and Tribal Businesses described in the SBA, as well as individuals who are self-employed or are independent contractors, are eligible, if they also meet program size standards. The SBA will guarantee loans of up to $10 million to eligible businesses, and the loans will be provided by lenders, including banks and credit unions. PPP loans can be forgiven, if businesses maintain payroll for eight (8) weeks at employees’ normal salary levels and use the loan proceeds for qualifying expenses.

SBA has delegated authority to SBA-certified lenders, federally insured depository institutions, credit unions, and Farm Credit System institutions, that have been approved as lenders, to process applications from small businesses under the PPP.

Due to the exhaustion of the initial funding appropriated by the CARES Act, the SBA is no longer accepting new applications for the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan (EIDL). However, applicants who have already submitted their applications will continue to be processed by the SBA and their lenders on a first-come, first-served basis.

**NEW UPDATE FOR ADDITIONAL FUNDING**
Reported on April 19, 2020, by Steven Mnuchin, the Treasury Secretary, and confirmed by Sen. Chuck Schumer, extensive discussions are currently underway to make certain corrections to and provide the next wave of funding for the CARES Act. Specifically, amendments will be made to address the inability of Small Business Owners to receive expedited loan approval, as efficiently as larger businesses which had previously established regular banking relationships. It is anticipated that the Senate will vote on
Tuesday, April 21, 2020; the House will vote on Wednesday, April 22, 2020; and subsequent to signature, presumably on Thursday, April 23, 2020, additional SBA/PPP funding of $310 billion under the CARES Act will be available for Small Business Owners. In an effort to increase the availability and processing speed for PPP Loans, certain online companies, non-federally insured banks, credit unions, bank service providers, finance companies, and non-bank institutions have been approved to issue PPP Loans, subject to meeting certain Bank Secrecy Act (BSA) obligations. These non-traditional lending entities include, but are not limited to, the following:

- Fintech Companies
- Intuit Aid Assistance
- Square Capital

**ECONOMIC INJURY DISASTER LOAN – (EIDL)**
The CARES Act expands the SBA’s longstanding Economic Injury Disaster Loan (EIDL) Program, which was created to assist businesses, renters, and homeowners located in regions affected by declared disasters. Even in those instances when the business is denied a loan, the business owner can still access an EIDL Emergency Grant. In summary, as part of its disaster assistance program, the SBA is providing working capital loans of up to $2 million to small businesses and nonprofits affected by the coronavirus. These loans carry an interest rate of 3.75% for small businesses and 2.75% for nonprofits. Loan repayment terms vary by applicant, up to a maximum of 30 years. The CARES Act updated the program, so that sole proprietors and businesses with fewer than 500 employees qualify, and applicants don’t need to provide a personal guarantee on loans under $200,000. Payments can also be deferred for up to four years. Details of the EIDL include:

- A low-interest, fixed rate loan up to $2 million.
- Can be used to pay immediate expenses during an emergency (payroll, bills, A/P, and fixed debts).
- Advance of up to $10,000 awarded within three days of application, which can be used to keep employees on payroll, pay for sick leave, meet increased production costs, or pay business obligations.

The SBA has issued guidance that it will provide initial EIDL loan disbursements of up to $15,000, in addition to the advance of up to $10,000 detailed in the guide below. The U.S. Chamber is working to ensure Congress replenishes the funds to meet demand from small businesses. For assistance, questions, or an application, email: DisasterCustomerService@sba.gov.
Who is ELIGIBLE for an EIDL?
In general, all entities that have suffered substantial economic injury caused by a disaster, provided they were in existence on January 31, 2020, including:

- Businesses with fewer than 500 employees
- Cooperatives, ESOPs, and tribal small businesses with fewer than 500 employees
- Sole proprietors
- Independent contractors
- Most private nonprofits

What are the LOAN PARAMETERS under EIDL?
The maximum EIDL is a $2 million working capital loan at a rate of 3.75% for businesses and 2.75% for nonprofits with up to a 30-year term.

- Payments on Coronavirus EIDL loans are deferred for one year.
- Up to $200,000 can be approved without a personal guarantee.
- Approval can be based on a credit score, and no first-year tax returns are required.
- Borrowers do not have to prove they could not get credit elsewhere.
- No collateral is required for loans of $25,000 or less. For loans of more than $25,000, general security interest in business assets will be used for collateral instead of real estate.
- The borrowers must allow the SBA to review its tax records.

How Can Business Owners Access an EIDL - EMERGENCY $10,000 GRANT?
- Eligible applicants for an EIDL can receive a $10,000 emergency grant within three days of application (through December 31, 2020).
- There is no obligation to repay the grant. To receive the $10,000 emergency grant, it is not necessary to have an approved EIDL loan. However, if the Business Owner is able to secure a PPP loan, the $10,000 grant will be subtracted from the forgiveness amount.
- NOTE: The PPP prohibits borrowers from taking out two (2) loans for the same purpose.

How do Business Owners APPLY for an EIDL?
- The SBA administers the EIDL program; therefore, apply online at www.SBA.gov/disaster.

FEDERAL INCOME TAX FILING AND PAYMENT DEADLINE EXTENSION
The Federal Tax Return filing deadline is now July 15, 2020. For tax payments of up to $10 million, the IRS has also extended the deadline for both individuals and businesses

Business Owners should check with their State tax agency to find out if their business has more time to file or pay State and Local taxes this year, as a result of COVID-19, and whether there will be a waiver or reduction of penalties on late tax payments.

NYC SMALL BUSINESS CONTINUITY FUND
Application intake for the New York City Small Business Continuity Fund, which provided up to $75,000 in interest-free loans from New York City to cover revenue losses, has been paused. However, businesses can still complete an online interest form to learn about new Local and State programs, as they become available.

Note: The NYC Employee Retention Grant Program is currently no longer accepting applications.

SBA EXPRESS BRIDGE LOAN
- Businesses with existing relationships with an SBA Express Lender can access up to $25,000 quickly. This loan can be used while applying for the EIDL loan.
- This loan must be repaid in full or in part by proceeds from the EIDL loan.

SBA DEBT RELIEF
- As part of SBA’s debt relief efforts, the SBA will automatically pay the principal, interest, and fees of current 7(a), 504, and microloans for a period of six months.
- The SBA will also automatically pay the principal, interest, and fees of new 7(a), 504, and microloans issued prior to September 27, 2020.

Business Owners should note that scammers are targeting businesses with loan and grant fraud. Please be aware of phishing emails and robocalls, and double check any web addresses to make sure they are associated with the correct government agency.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT – (FFCRA)
The Families First Coronavirus Response Act (FFCRA) was established to help those Business Owners and their employees who are drastically impacted and affected by the COVID-19 pandemic. FFCRA went into effect on April 1, 2020, and it will remain in effect until December 31, 2020.
While the full legislative package includes many provisions, including free coronavirus testing, food assistance, and medical services budget increases, only four aspects of the law apply chiefly to businesses. These broad changes include requiring some employers to provide paid sick leave, paid family and medical leave, along with tax credits for the paid leave, and expansion of unemployment insurance.

Most importantly, the paid leave provisions apply only to businesses with fewer than five hundred (500) employees. According to the U.S. Department of Labor, if a Business has fewer than fifty (50) employees, the Business Owner may be able to apply for an
exemption from the Secretary of Labor, if providing either of the types of paid leave could “jeopardize the viability” of its business.

**EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT**

The first section of the FFCRA that applies to businesses pertains to an expansion of the U.S. Family and Medical Leave Act (FMLA). Until the end of 2020, employers with fewer than five hundred (500) employees will now be required to provide employees with up to ten (10) weeks of paid FMLA. The first two (2) weeks of the normal twelve- (12) week FMLA leave may be provided unpaid, but an employee may be able to be paid through the paid sick leave provision or other paid leave the employee has available.

**Which Employees are Eligible Under the Emergency FMLA?**

- Paid FMLA will be available to any employee who has been employed for at least thirty (30) days and must care for children whose schools have closed due to the coronavirus health emergency. The eligible employee must not be able to work (or work remotely) while caring for children.

**How are Employees Paid During This Time?**

- Business Owners are required to offer employees unpaid leave (or accrued paid leave or paid vacation) for 10 days. After this, paid leave kicks in, and employees are compensated at two-thirds (2/3) of their regular rate. Paid leave cannot exceed $200 per day and $10,000 total for the full 10 weeks.

**Are There Exemptions to the Emergency FMLA?**

- As indicated, businesses with fewer than fifty (50) employees may be exempt from all of these requirements, if they can prove that providing the leave would risk them going out of business. Other provisions of note include:
  - Businesses with fewer than twenty-five (25) employees are not required to reinstate an employee to their position after they return from leave, but all businesses with more than twenty-five (25) employees must do this.
  - Businesses with fewer than fifty (50) employees are exempt from civil actions brought by employees for violations regarding emergency paid FMLA.
  - Healthcare and emergency response organizations may exclude employees from paid FMLA expansion due to the coronavirus crisis.

**EMERGENCY PAID SICK LEAVE ACT**

The second provision of the FFCRA that affects Businesses is emergency paid sick leave. Until the end of 2020, Business Owners with fewer than five hundred (500) employees must offer paid sick leave to those who meet criteria associated with the public health emergency.

**Which Employees are Eligible for Emergency Paid Sick Leave?**

The new FFCRA paid sick leave is available to any employee, if they are unable to work (in-house or remotely) because they:
• Are subject to federal, state, or local quarantine or isolation related to COVID-19;
• Have been advised by their doctor to self-quarantine due to COVID-19;
• Are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
• Are caring for a family member, subject to a quarantine order or self-quarantine;
• Are caring for children, if schools are closed or their caregiver is unavailable, because of the COVID-19 health emergency; or
• Are experiencing substantially similar conditions, as specified by the Secretary of Health and Human Services.

How Are Employees Paid During This Time?
• Full-time employees can receive up to eighty (80) hours of paid sick leave, while part-time employees can receive pay based on the number of hours they would work during an average two- (2) week period. If an employee qualifies based on the first three (3) reasons above, they receive sick leave at their regular rate with pay capped at $511 per day and $5,110 total. If an employee qualifies based on the second three (3) reasons above, they receive sick leave at two-thirds (2/3) of their regular rate of pay with amounts not exceeding $200 per day and $2,000 total.

How Does This Impact Standard Sick Leave Provisions Offered by Employers?
• Emergency paid sick leave is offered, in addition to any existing sick leave and/or paid time off that is already offered by a Business Owner.

Are There Exemptions to Emergency Paid Sick Leave?
• Businesses with fewer than fifty (50) employees may be exempt from all of these provisions, if providing the leave could “jeopardize the viability” of the Business.
• Healthcare and emergency response organizations may exclude employees from paid FMLA expansion due to the COVID-19 crisis.

TAX CREDITS FOR PAID SICK LEAVE AND PAID FMLA
To help Business Owners afford the new paid sick leave and paid FMLA benefits, companies can seek reimbursement through tax credits.

Each quarter, private companies are entitled to fully refundable tax credits for both paid sick leave and paid FMLA. The tax credits are applied against an employer’s already-owed Social Security taxes. However, if that offset is not enough to cover these payouts to employees, then the Treasury Department is authorized to help cover the rest with cash payouts. In addition, the Treasury is directed to issue regulations to waive penalties for businesses not submitting their payroll taxes, if they do so in anticipation of a refund under the new law. In addition, the Treasury Department has said it will soon be releasing a form for small businesses to request an expedited advance on their refunds.
Additionally, an employer’s tax credit is increased by the amount the employer pays to maintain healthcare related to new sick leave and FMLA benefits. This will allow a Business Owner to maintain healthcare benefits while the employee is on leave.

**EMERGENCY UNEMPLOYMENT INSURANCE STABILIZATION & ACCESS ACT**

Finally, the FFCRA also allocates $1 billion in funds for State Unemployment Programs and gives State Governments new flexibility when it comes to workers needing unemployment insurance. The FFCRA eliminates the need for employees to wait a week before they are eligible for Unemployment Insurance (UI) and eases work search requirements, meaning employees will be able to apply for UI more quickly. The law also provides more money to states to fund their UI programs.

These new rules may inform how businesses make decisions about their employees, especially those companies considering layoffs or staff changes, in light of the coronavirus crisis.

**EMPLOYEE RETENTION TAX CREDIT – (ERTC)**

The CARES Act created a new Employee Retention Tax Credit (ERTC) for employers who are closed, partially closed, or experiencing significant revenue losses, as a result of COVID-19. An ERTC may prove valuable for those Business Owners who are not eligible for or opting out of the PPP loan.

Who is ELIGIBLE for an ERTC?

- Private employers, including nonprofits, carrying on a trade or business in 2020 that (a) have operations partially or fully suspended, as a result of orders from a governmental authority due to COVID-19; or (b) experience a decline in gross receipts by more than fifty (50%) percent in a quarter, compared to the same quarter in 2019 (eligibility ends when gross receipts in a quarter exceed eighty (80%) percent compared to the same 2019 quarter).
- With respect to tax-exempt organizations under 501(c) of the Tax Code, the requirement to be partially or fully suspended applies to all operations of the organization.
- Employers who receive a PPP loan are not eligible for an ERTC.

How Much is the ERTC?

- This new ERTC is a fifty (50%) percent tax credit for the first $10,000 of compensation, including the employer portion of health benefits, for each eligible employee.
- Compensation does not include paid sick or family leave for which the employer is reimbursed under the Families First Coronavirus Response Act.
- The credit only applies to wages paid after March 12, 2020, and before January 1, 2021.
Which Employees Count Toward Eligibility under the ERTC?

- For Business Owners with more than one hundred (100) employees: Full-time employees who are (i) being paid but (ii) not providing service, due to either a full or partial shutdown or a reduction in gross receipts, count toward eligibility.
- For Business Owners with one hundred (100) or fewer full-time employees: All employees, regardless of whether those employees are providing service, count toward eligibility.
- Business Owners may not claim the same employee for this credit and the Work Opportunity Tax Credit for the same period. In addition, Business Owners may not claim the same wages for an employee under this credit and the employer credit in section 45S for FMLA.

How is the ERTC PAID?

- The refundable credit is applied against the employer portion of payroll taxes. The Treasury Department will develop a process for employers to receive an advance payment of the tax credit.
- The Internal Revenue Service (IRS) will issue further guidance and manage the ERTC process. Please contact the IRS with specific questions.

OTHER RESOURCES FOR SMALL BUSINESSES

SAVE SMALL BUSINESS FUND
The U.S. Chamber of Commerce Foundation, with founding partner Vistaprint, launched the Save Small Business Fund, a grant program to provide assistance to Small Business Owners impacted by the COVID-19 pandemic. Funded by contributions from corporate and philanthropic partners, the Foundation will distribute $5,000 grants to small employers in economically vulnerable communities in the United States and its territories. The Save Small Business Fund is part of the U.S. Chamber of Commerce’s Save Small Business Initiative — a nationwide program to address small businesses’ immediate needs, mitigate closures and job losses, and mobilize support for long-term recovery. The Foundation is launching the fund with support from founding partner, Vistaprint, and additional donations from supporting partners, Merck, S&P Global Foundation, and Travelers. Grant applications will open on April 20, 2020.

COVID-19 SMALL BUSINESS REMOTE LEGAL CLINIC
Through its Neighborhood Entrepreneur Law Project (NELP), the City Bar Justice Center (CBJC)’s COVID-19 Small Business Remote Legal Clinic (the CV-19 Clinic) will offer pro bono legal consultations to help entrepreneurs in New York City determine the best path forward for their small businesses in these particularly challenging times.

New York City’s entrepreneurs and small businesses that have been impacted by the COVID-19 crisis can receive free, limited-scope legal advice. Topics include loans and grants, contracts and force majeure clauses, employment law matters, real estate and commercial leasing issues, and insurance matters.
FACEBOOK SMALL BUSINESS GRANTS PROGRAM

“We know that your business may be experiencing disruptions resulting from the global outbreak of COVID-19. We’ve heard that a little financial support can go a long way, so we are offering $100M in cash grants and ad credits to help during this challenging time.

How the program can help: keep your workforce going strong; with your rent costs; connect with more customers; and cover operational costs.

Who’s eligible? Up to 30,000 small businesses in more than 30 countries where we operate will be able to receive the grant. To be eligible to apply, you must:

• Be a for-profit company
• Have between two (2) and fifty (50) employees
• Have been in business for over a year
• Have experienced challenges from COVID-19
• Be in or near a location where Facebook operates

How do I apply? We’re proud to partner with Ureeka to administer our application process. If you meet the eligibility requirements above, you can apply when applications become available in your area.

Application Availability:

• Available now - New York City and Seattle
• April 20 - San Francisco Bay Area
• April 22 - All other eligible U.S. cities

For details about the Small Business Grants Program, you can view the program Terms and Conditions and Grant Privacy Policy. If you’d like to learn more before applying, visit our small business grants guide to understand the process and next steps.”

JAMES BEARD FOUNDATION FOOD AND BEVERAGE INDUSTRY RELIEF FUND

“The James Beard Foundation’s mission is to celebrate, nurture, and honor chefs and other leaders making America’s food culture more delicious, diverse, and sustainable for everyone. For more than 30 years, our 501(c)(3) nonprofit organization has highlighted the centrality of food culture in our daily lives. The James Beard Foundation recognizes the dire situation the food and beverage community is in, due to the COVID-19 pandemic. The purpose of the James Beard Foundation Food and Beverage Industry Relief Fund (the “Fund”) is to provide critical financial assistance to small, independent restaurants that, due to the COVID-19 (Coronavirus) national disaster, have an immediate need for funds to pay set operating expenses and keep from going out of business. Our goal is to

1 Source: Facebook.com/Business/Boots/Grants.
2 SOURCE: JamesBeard.org/Relief
do our part, along with federal, state, and local governments, to provide for workers, sustain local business, reduce the financial impact on communities, and otherwise mitigate the severe economic consequences of this global pandemic.

Restaurants, bars, and other independent food and beverage operations are strong economic drivers. For example, the culinary industry generates $1 trillion in revenue per year, or 4% of U.S. GDP. The food and beverage community also employs nearly 16% of the American workforce. These businesses support local economies and, according to some studies, restaurants pump as much as 60% of their money back into their local communities. They pay taxes, support municipal utilities, and bring life into underserved neighborhoods. Simply put, these businesses are essential. They are woven into the social and cultural fabric of our country, and it is our hope that the Fund will help bring them swift economic relief and assistance during this time.

The majority of the culinary community businesses we work with and support each year are small- or medium-sized businesses with less than 100 employees who play an essential role in the communities they serve. To help bring swift economic relief to these essential businesses, the Foundation launched a fund that will be gathering support from corporate, foundation, and individual donors to provide micro-grants to independent food and beverage businesses in need. We know that swift action is needed to ensure there is a vibrant culinary and beverage community still standing, once we are on the other side of this pandemic.

Consequently, due to an overwhelming response within hours of opening, the Foundation has suspended the application for the JBF Food and Beverage Industry Relief Fund. We recognize the tremendous need from independent restaurants across the country and will continue to work to support you however best we can. We will notify our audiences if the application is going to reopen.

To date, the Fund has secured pledges of more than $4 million. As pledges are being realized in the Fund’s account, we have begun our grantmaking process. The first round of $15,000 grants was made last week to 36 grantees and totaled $540,000 (3 recipients in each of the 12 regions). Our next round of grants will be awarded the week of April 20 with a final round made the first week of May.”

**KIVA U.S. SMALL BUSINESS LOANS**

“Small businesses are already being negatively impacted by the spread of the COVID-19 Coronavirus in the United States, including many members of the Kiva community. Whether it’s your favorite neighborhood coffee shop, your best friend who owns a storefront, or a local grower you support at the farmer’s market, millions of American businesses will be disrupted when employees and customers must stay home, and supply chains break down. Many of those businesses and entrepreneurs are currently looking for financial relief to survive the next trying months … the Kiva community can help.

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3 SOURCE: Kiva.org.
Kiva lenders have shown their commitment to providing financial assistance to all by making 0% interest loans to entrepreneurs in the U.S. on Kiva.org for the last 10 years. In today’s difficult circumstances, we’d like to make it as easy and impactful as possible for small businesses in the U.S. to have access to affordable capital on the Kiva platform—capital that may be the difference between shutting down and keeping their doors open.

We recognize that the COVID-19 pandemic has global impact, and we’ll continue to explore ways to help as many people affected by this crisis as possible. Currently, the U.S. market is the place we have the most agility to deploy financial assistance.

Effective immediately, U.S. applicants for a Kiva loan will have access to the following:

- Expanded eligibility: More businesses in the U.S. will be eligible for a Kiva loan.
- Larger loans: The maximum loan on the Kiva platform will increase from $10,000 to $15,000.
- Grace period: New borrowers may access a grace period of up to six months for greater financial flexibility.

Small Business Owners who believe they can benefit from a Kiva loan should apply at kiva.org/borrow."

**OPPORTUNITY FUND COVID-19 SMALL BUSINESS RELIEF FUND**

“Opportunity Fund is committed to supporting existing and new small business customers who are financially struggling amidst the COVID-19 outbreak. If you are a small business owner whose business has been impacted, please contact us directly, so that we may better serve you.

Please keep in mind that our ability to provide financial assistance is based on eligibility guidelines and funding availability. Day by day, we are working with partners, investors, and the government to secure additional funds, so that we can support more business owners during this time. Existing customers should contact/call: 877-629-2709 or customercare@opportunityfund.org. Small Business Owners seeking new financing should call 888-720-3215 (888-648-7859 en español).

**Opportunity Fund Offers Informative Webinars**

- COVID Response Webinar Series is being offered on the Opportunity Fund website to keep entrepreneurs informed of their options, helpful resources, and best practices during this crisis.

**Past Webinar Recordings Opportunity Fund**

- Stay Connected to Your Customers
- SBA Economic Injury Disaster Loan Program
- Crisis Management for Small Businesses

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Leveraging Resources to Survive and Thrive – also available in Spanish
Managing Cash During an Emergency.

Other resources for small businesses
Include, but are not limited to, the following:

- Restaurant Workers Community Foundation COVID-19 Relief Fund
- The Main Street Initiative by Mainvest
- Verizon and LISC Small Business Recovery Fund
- WaFd Bank Small Business Lifeline

This material was prepared by Patricia Murrell, Esq., in 2020 with funds from NY City Councilmembers Adams, Cabrera, Cornegy, Deutsch, Diaz Sr., Dromm, Grodenchik, Kallos, Koo, Levine, Rose and NYS Sen. Ramos. Please note the information provided is intended to be helpful general material and should not be relied on as legal advice.