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## Retailing in the Age of Coronavirus II

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The world seems to be changing on an hourly basis as local and state governments take action to combat the outbreak of coronavirus (COVID-19). Some states, like New York, California, and Ohio, have closed restaurants, movie theaters, and gyms. It is not hard to imagine that retail stores, malls, and other service providers (think hair salons, massage and other wellness establishments) will shortly follow. Nixon Peabody's Retail team is hearing from our retail clients about a few main areas of concern.

### Forced Closure

Establishments that are being forced to closed by government decree want to know if they still need to be paying rent. The answer will vary from state to state and sometimes lease by lease. It may also depend on the length of the forced closure, which is currently unknown. At this preliminary stage, the legal concepts of "impracticability" and "frustration," compared to force majeure, might be viable arguments, although equitable principles and, ultimately, negotiations, might provide the most relief. Given the current environment, some landlords and tenants are working together to plan their joint futures.

### Changes to Store Operations

If not part of a mandated closure, some businesses may still want to alter store operations in response, through reduced hours or changes in their business model. Under some leases, businesses can change their store operating hours, despite previous schedules. Be sure to post the new hours at each store location and online as applicable. Other strategies include going to a buy online/mobile and pickup in the store option. Try and use this as a customer engagement opportunity and an attempt to explore new buying habits.

### Customer Demand

Fulfilling customer demand in a timely manner continues to be an issue. Some organizations have had success in changing job responsibilities. For example, some are having servers assist in packaging food and handling deliveries. Others are having in-store sales associates use video messaging and live-streaming to assist customers ordering from home. Some states (and countries) allow more flexibility in re-deploying workers than others. These rules, and others, such as privacy or insurance requirements, need to be considered when considering alternative deployment

strategies. Some retailers, supplying staple products, are seeing a surge in demand and are looking to hire additional staff. While the employment market has been tight in many markets, given the current business disruptions, this may be an easier task than previously imagined. However, these workers are dealing with all of the complicating issues around the outbreak, including infected relatives, children out of school, and reduced transportation options.

## **Changes to Return Policies**

Businesses can extend return policies to make customers more comfortable buying online or trying curb-side pickup, despite previously posted policies. While most states have notice requirements when returns are limited or prohibited, making things easier to return is not heavily regulated. Be sure to post the new policies at the registers (if stores are still open), online, and on the receipt, if possible. Like with changes to store operations, try and use this as a customer engagement opportunity, and don't forget to update sales associates and customer service representatives.

## **More to Come**

The above are just some of the issues facing retail clients as a result of the COVID-19 outbreak. Our Nixon Peabody team will continue to provide updates on other issues facing global retailers and solutions to assist them navigate through these turbulent times.

For more information on the content of this alert, please contact our [Coronavirus Response team](#), your Nixon Peabody attorney, or:

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