

# COVID-19: Cannabis Industry Resources

March 30, 2020

## Topics Discussed:

- [Real Estate and Leasing](#)
- [Insurance](#)
- [Employment](#)
- [Supply Chain](#)
- [Lending](#)
- [Washington Regulatory](#)
- [Oregon Regulatory](#)
- [California Regulatory](#)

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## REAL ESTATE AND LEASING

Most cannabis businesses have thus far avoided government compelled closures impacting other industries. While Oregon, Washington, and California have thus far not closed cannabis businesses, some cities have considered mandating cannabis closures and some businesses have closed for health and safety reasons. Businesses forced to close leased spaces should review their leases for force majeure provisions that may grant relief in the context of epidemics or similar circumstances. Tenants forced to close should also seek counsel regarding common law doctrines of frustration of purpose, impossibility, and impracticability. Depending on lease terms, the jurisdiction, and specific circumstances compelling closure, these doctrines may result in lawful rent abatement. For additional resources on force majeure events and other legal avenues that excuse performance in uncertain times, please see [our COVID-19 resource library](#).

## INSURANCE

Many cannabis businesses are wondering whether their insurance will cover COVID-related losses. A business that carries business interruption insurance may, but its rights may depend on the exact terms of the policy and what kinds of impacts the pandemic has had on the business. Here are some materials that provide additional guidance on these topics:

- [Five Things To Do Now to Protect Your Business Interruption Insurance Claim](#): A blog post on the top five things to do to protect a business's right to collect on its business interruption insurance. (March 23, 2020)
- [Insurance Recovery for COVID-19 Losses](#): A blog post that addresses COVID-19 insurance recovery issues affecting businesses. (March 13, 2020)

## EMPLOYMENT

Cannabis employers are encountering significant and unprecedented challenges in the midst of the COVID-19 pandemic. In addition to adjusting to rapidly evolving laws impacting payroll taxes, paid leave, and unemployment benefits, employers are also navigating new "stay at home" mandates and revising remote-work and social-distancing policies. For those employers deemed to be "essential businesses" or otherwise exempt from closure orders, staffing shortages have presented particular challenges. To help employers navigate this "new normal," Miller Nash Graham & Dunn's Employment Law and Labor Relations team has prepared the following set of resources:

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- [DOL Issues Mandatory Poster and FAQ's Addressing the New Paid Federal Leaves](#): *Guidance on the Department of Labor's mandatory poster and new paid leaves under the Families First Coronavirus Response Act (FFCRA).* (March 26, 2020)
- [Comparison of Emergency FMLA and Emergency Paid Sick Leave Provisions](#): *A helpful chart comparison of Emergency FMLA and the Emergency Paid Sick Leave provisions under FFCRA.* (March 19, 2020)
- [COVID-19 FAQs for Employers](#): *Frequently asked questions (FAQs) and responsive information for our clients in Washington, Oregon, and California.* (March 10, 2020)

## SUPPLY CHAIN

Supply contracts with vendors for essential products and services to keep cannabis businesses running may be impacted by government-ordered shutdowns. Although cannabis businesses are deemed “essential” or not ordered closed in Washington, Oregon, and California, not all suppliers may qualify. Thus, cannabis businesses may have their operations impacted by disruptions in the supply chain for products or services. To the extent that written contracts exist, licensees should evaluate the provisions to see whether the contracts provide any relief, or whether force majeure provisions (which allow for nonperformance of obligations in some circumstances when there are unforeseen or uncontrollable events) preclude a recovery. For information on force majeure events and other legal avenues that excuse performance of contractual obligations in uncertain times, here is an additional resource:

- [COVID-19: Delays and Force Majeure in Construction Contracts](#): *A Q&A blog post clarifying force majeure in construction contracts amid the coronavirus crisis.* (March 24, 2020)

## LENDING

The U.S. Small Business Administration (SBA) announced on March 23, 2020, that it would offer low-interest loans for working capital to small businesses suffering economic fallout from COVID-19. More information about SBA's economic injury disaster loan program can be [found here](#). Potential applicants can also call SBA's Customer Service Center at (800) 659-2955 or email [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov) for more information on SBA disaster assistance. Please note that the deadline to apply for an economic injury disaster loan is December 16, 2020.

Unfortunately, the SBA has indicated that cannabis businesses are not eligible for its programs. But lobbying is still underway by the cannabis industry to change that in further stimulus bills. Further, noncannabis businesses in the supply chain may very well qualify.

## WASHINGTON REGULATORY

Washington producers, processors, and retailers are permitted to stay open during Governor Jay Inslee's "[Stay Home, Stay Healthy](#)" order as essential businesses.

In response to COVID-19, the Washington State Liquor and Cannabis Board (WSLCB) has offered guidance regarding temporary modifications to cannabis businesses as well as other mandatory social-distancing measures to limit contact between customers and employees.

To help limit contact, WSLCB will temporarily permit retail licensees to conduct curbside delivery. To do so, each licensee must:

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- Check the ID of every person in the vehicle—no one in the car may be under 21 years of age.
- Designate and physically identify the curbside sales area on the property, preferably as close to the licensed premises as possible. Physical designations include:
  - » Taped or painted parking spots.
  - » Cones or signage.
- When possible, use video cameras to monitor and record the curbside sales area.
- Not allow outdoor sales of cannabis products from a temporary structure such as a tent or kiosk or the use of a drive-thru window.

WSLCB has also mandated that certain social-distancing measures be employed by licensees, including: (1) encouraging older adults and those with increased risk of COVID-19 to not shop or come to work, or considering implementing dedicated times to exclusively serve high-risk populations; (2) limiting physical distance between customers and/or employees to greater than six feet and for less than ten minutes; (3) daily screening of employees for COVID-19 symptoms; (4) making proper hand hygiene and sanitation available to all customers and employees; and (5) disinfecting high-touch surfaces within the premises daily (at a minimum). Please note that we have been made aware that WSLCB may be increasing enforcement patrols to ensure that these social-distancing measures are being met by licensees.

WSLCB is also relaxing enforcement of certain violations involving minors present on the premises of licensed producers and processors in order to accommodate families that have been impacted by school closures. A minor must be under 16, must be related to the licensee, must not engage in any work or act of employment, and must not possess any cannabis. Enforcement of these violations will be suspended until April 30, 2020. For more information, [click here](#).

Governor Inslee's proclamation also permits WSLCB to waive penalties for failure to make timely tax payments to WSLCB until April 22, 2020 (tax payments are still due, but WSLCB may waive the late fee for deferred payments). The waiver of the late fee is retroactively effective beginning on February 29, 2020. To be eligible for deferred payment of taxes without penalty, a licensee must: (1) continue to submit sales reports on time; and (2) submit a request via e mail to defer payment and have the penalties waived to: [marijuanataxes@lcb.wa.gov](mailto:marijuanataxes@lcb.wa.gov). Payment may be made via e-check through third-party vendor, or by check or money order by mail to WSLCB.

## OREGON REGULATORY

On Monday, March 23, 2020, Oregon Governor Kate Brown issued an updated stay-at-home order ([Executive Order 20-12](#)). This order requires additional social distancing to slow the spread of COVID-19. The "Stay Home, Save Lives" campaign directs everyone in Oregon to stay at home to the maximum extent possible. Because cannabis retailers, processors, and producers are not identified on the list, Oregon Liquor Control Commission (OLCC) marijuana licensees may continue to operate at this time so long as their operations comply with the order's guidelines. Specifically, retailers must designate an employee or officer to "establish, implement and enforce social distancing policies consistent with [guidelines from the Oregon Health Authority](#)." All other businesses must facilitate telework and work-at-home options to the maximum extent possible. When these options are not available, a business must designate an employee or officer to establish, implement, and enforce social-distancing policies consistent with guidelines from the Oregon Health Authority ("OHA"). Such policies must also address how the business will maintain social-distancing protocols for business-critical visitors. Do note that the order gives OHA, subject to the Governor's approval, the authority to determine whether additional business closures are necessary, and businesses should prepare for this contingency. The Governor's

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Office has a [website dedicated to the COVID-19 response](#) with general guidance on social distancing and health information, specific public health information for employers and employees, and other resources. Certain local jurisdictions have issued supplemental orders. After contemplating a forced closure of local marijuana dispensaries, the Ontario City Council voted on Tuesday, March 24, to allow dispensaries to remain open if they adhere to directives in Gov. Brown's Order aimed at curbing the spread of coronavirus. See the article in a local publication, [Malheur Enterprise](#).

In response to the COVID-19 virus outbreak, the OLCC has allowed (by temporary rule) a retail licensee to take orders and deliver product from the retail store to a person who is outside the store and within 150 feet of the retailer's licensed premises, as long as certain requirements are met as outlined in temporary rule [845-025-2885](#) and the [OLCC guidance](#). But only retailers with the delivery endorsement may engage in home delivery. A business can apply for the home-delivery endorsement by submitting the [Home Delivery Registration](#) and emailing it to [marijuana.licensing@oregon.gov](mailto:marijuana.licensing@oregon.gov). The temporary rule additionally increases the amount of flower that OMMP cardholders and caregivers can purchase to 24 ounces per day and no more than 32 ounces per month.

The OLCC has produced a "living" [FAQ document](#) to address questions about the temporary rules allowing "curbside delivery" and other operational concerns and questions that licensees have been asking about. The OLCC also has a [general COVID 19 and OLCC FAQ](#). The OLCC has closed its offices to the general public, and OLCC staff will be following the social-distancing measures prescribed by Governor Brown's order. But businesses can contact OLCC staff via e mail addresses provided on the [OLCC COVID-19 Business Continuity Page](#). From our personal experience, the OLCC staff has been responsive to inquiries, and the OLCC itself is interested in working with marijuana licensees so that these businesses can survive this challenging time.

## CALIFORNIA REGULATORY

On Thursday, March 19, 2020, California Governor Gavin Newsom issued a [Stay-At-Home Order](#) to slow the spread of COVID-19. The State's order, which is in place until further notice, identifies certain services as essential, including food, prescriptions, and healthcare. These services can continue with certain restrictions despite the State's order. Because cannabis is an essential medicine for many California residents, recreational and medicinal [retail, cultivation](#), and [manufacturing](#) licensees may continue to operate at this time so long as their operations comply with local rules and regulations, implement social-distancing and anti-congregating measures, and follow the [CDC's Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease](#) at all times.

Certain localities, including but not limited to the [County of Los Angeles](#), [City of Los Angeles](#), [City of Long Beach](#), and the [City and County of San Francisco](#), have issued similar, but often conflicting, stay-at-home orders. For example, the County of Los Angeles and City of Long Beach's orders both exempt "cannabis dispensaries with a medicinal cannabis license" and "businesses that supply other Essential Businesses with the support or supplies necessary to operate," while the City of Los Angeles exempts both medicinal and recreational "cannabis dispensaries, or any related and/or ancillary healthcare services." The City and County of San Francisco initially ordered all cannabis dispensaries closed until reversing course and declaring ([via tweet](#)) that recreational and medicinal cannabis dispensaries and "businesses that supply other Essential Businesses with the support or supplies necessary to operate" may continue to operate.

For more information about ongoing developments related to COVID-19, visit [Miller Nash Graham & Dunn's resource library](#).

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