



# Avoid Hiring a Lawyer in Response to the COVID-19 Crisis, Unless...

*April 9, 2020 / By Jeremy Waitzman*

You've probably already seen them... you know, those attorney advertisements on Facebook, LinkedIn or in your Google search results that pop up anytime COVID-19 is mentioned. They want to help you get "free government money," or they claim expertise to force the insurance companies to pay out on a claim of business interruption.

The truth is, for both of these items, hiring a lawyer isn't needed, because you can figure it out on your own. Or if you do need professional help, someone other than a lawyer is likely a better resource—think accountant or financial advisor in the case of the loans, or an insurance broker in the case of the business interruption claim.

The truth is, like most businesses these days, law firms are suffering, and so attorneys are getting creative in order to try to generate work. If you are smart enough to prepare your own taxes or have a finance person on your payroll, you may not actually need to hire an attorney to advise you through your preliminary COVID-19 response.

## **Why You Don't Need a Lawyer Yet...**

As a corporate attorney with many business clients affected by the COVID-19 crisis, I have taken it upon myself to become informed about the government programs, available benefits and general survival strategies. I have also read the main statutes passed by Congress known as the [Families First Coronavirus Response Act](#) and the [Coronavirus, Aid, Relief, and Economic Security \(CARES\) Act](#) cover to cover and authored a few articles with what I believe to be practical

advice. My general takeaway is that there is nothing you NEED to hire your attorney for today in response to the crisis.

That is, the most immediate needs of most businesses these days (i.e., obtaining capital and determining what to do with employees) do not require the input of an attorney. For example, the applications for available federal loans and grants are very streamlined (at least as far as government loans go) and are processed directly by the SBA for [Economic Injury Disaster Loans](#) or by an SBA lender (likely a bank) for a Payroll Protection Loan under the CARES Act. The guidance is that all loans will be made on identical terms and there is nothing to negotiate or that is negotiable (i.e., no need for an attorney).

Similarly, immediate decisions related to employees need to be taken on the basis of what is best for a business, not on how the government programs may lessen the burden on retaining those employees. If you happen to be the owner of an independent sit-down restaurant in a state that has imposed a stay-at-home order, and take out is not a viable option, unless you have a huge cash cushion from years of operations, you likely would have no choice but to furlough your staff. Granted, the possibility of loan forgiveness or employment tax credits and other similar benefits in the legislation could lessen the burden of retaining staff. But if there is no possibility of operating your business, then there really isn't a choice.

The above is not to say that hiring a lawyer would not be helpful; rather, it is not essential or may just involve a quick phone call to get you the advice you truly need. For example, there may absolutely be utility in discussing staffing reductions (and hopefully future re-hirings) with an attorney to make sure that applicable laws are complied with (e.g. WARN Act or "mini-Warn" Act state statutes) or that you haven't inadvertently breached an employment contract. Similarly, there may be circumstances where you would want guidance on applying for one or the other of the government loans or if you can/should apply for both (or fully understanding the terms of each if you find the terms of the loans confusing). Most likely these are quick conversations on finite issues. But taking these actions on your own will help to preserve much needed cash.

## **...And When to Hire a Lawyer**

Notwithstanding the above, there are circumstances where contacting your attorney does make sense in light of the current crisis. Here are four examples where hiring a lawyer is helpful:

### **Issues with your Landlord**

Negotiating with a landlord may be complicated. If your [conversations with your landlord go sideways](#), you will want legal assistance in order to preserve your rights and property and to have someone negotiate on your behalf. There may also be relevant state or local rules and ordinances applicable to real estate that your lawyer will be able to advise on and possibly use to your advantage (e.g. moratorium on evictions).

### **Issues with Your Primary Secured Lender**

Secured lenders are in protection mode as they fear a repeat of the Great Recession from 2008. As such, a lending attorney may have better success negotiating for a forbearance agreement or work out some other solution to help you get through the crisis as banks do not want to again get into the business of running companies.

### **Dispute Under a Contract or a Claim of Force Majeure**

If you are having a [problem with a contract or contract performance](#), a corporate attorney will be able to review the contract to make sure you take the appropriate steps, your rights are preserved and that all available remedies are utilized.

### **Your Business is Insolvent or has Entered into the “Zone of Insolvency”**

In these circumstances, your duties as a company owner, director or manager change, and your failure to act properly may result in personal liability, erode company value and/or impact your ability to continue to run the company.

Restructuring attorneys may be able to use federal or state laws to shed company debt, preserve value and allow you to either continue to operate your business or perhaps retain some of the value you have created in your business that is now at risk.

Given likely cash flow constraints caused by the current crisis, an examination of the circumstances is warranted before reaching into your pocket and hiring a

lawyer. If all you are doing is applying for a loan, or if you are in the unfortunate position that a staff layoff is a necessity, it probably makes the most sense to proceed on your own or to reach out to your attorney with finite questions. However, if matters are more complex or there are additional forces in play, then hiring good legal counsel with relevant expertise— here, knowledge of the COVID-19 applicable laws and regulations—is always worth the investment.

## About Jeremy Waitzman

Jeremy chairs the Corporate Group at the Sugar Law Firm (Sugar Felsenthal), a national boutique serving the affluent and the companies they own or otherwise control. He advises his clients on significant transactions and operational issues in their businesses. Described by clients as "an essential business advisor" and "a partner in the success of my business," Jeremy has substantial experience representing businesses of all types and sizes from inception, guiding them through significant growth, and often through ownership's exit. His clients include privately-held middle market and emerging growth companies, family offices/funds, investors, C-level executives, boards of directors, family-owned businesses and entrepreneurs. Jeremy counsels clients in the areas of corporate law, mergers & acquisitions, private placements, and general contract law. He represents individuals, closely held businesses, start-up companies and serves as outside counsel to several large corporations. His work with companies often includes strategies for the creation of enterprise value.

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