

LEGAL UPDATES

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Service

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COVID-19 Considerations for Franchise Systems

As with all businesses, franchise systems are dealing with challenges from COVID-19 that are new and unexpected. Franchisors and franchisees will have to work together, communicate and support each other to overcome these challenges and allow their brands to survive and thrive in the future. Below are some key considerations for both franchisors and franchisees as they move forward into uncharted territory.

Importance of leadership and communication

Franchisors need to formulate a vision and proactive strategies to help franchisees address their day-to-day survival, as many franchisees will be forced to close their location or significantly modify their product and/or service offering to customers. In addition, franchisors that show empathy and provide transparency as part of an overall communication plan that includes frequent updates are more likely to have engaged franchisees that are willing to keep moving forward. It's also important for franchisors to be willing to consider ideas from franchisees that might help the entire franchise system. Franchisors may be able to work with their franchise advisory council or franchisee association to facilitate communications with franchisees.

Brand protection

As always, franchisors must protect the value of their brand by communicating with customers of the brand through social media and other outlets and by ensuring that its franchisees continue to uphold the brand standards. Fortunately, both the Lanham Act and most franchise agreements provide franchisors with the ability to protect their brand and trademarks by modifying their brand standards and specifications to adapt to these changing

and uncertain times.

Compliance with government requirements

As we all know, it is critical for franchisees to know and understand the public health and safety and other legal and governmental requirements associated with COVID-19, and these requirements are changing on almost a daily basis. Franchisors should be ready to provide assistance and resources to franchisees to help them comply with these requirements. Franchisors should also be ready to enforce the obligations of each franchisee to comply with these requirements in order to prevent adverse impacts on the brand related to non-compliant franchisees.

Additionally, because many of the important orders and directives are occurring at the state and local level, the operating environment for one franchisee could be very different from another simply by virtue of location. Franchisors need to be agile in their approach to compliance and stay up to date on a jurisdiction-by-jurisdiction basis. Husch Blackwell has developed a state-by-state resource center to help businesses—especially those that operate across multiple states—address the rapidly evolving regulatory and governmental situation.

Operations issues

Most franchisees face a whole new environment in operating their franchised businesses. Many of them are being forced to temporarily close their locations and may receive media inquiries or have other public relations issues related to those closures. Franchisors should be ready to assist franchisees and provide resources to help them address these issues.

Franchisees will also have employment-related issues that arise, and franchisors should be careful not to intervene in those employment relationships in a manner that creates additional risks of joint employer status or vicarious liability. The Final Rule regarding joint employer status released by the Department of Labor in January 2020 reduces some of these risks, but franchisors should still make it clear that they are not mandating any specific course of action with respect to the franchisee's employees and are instead providing general guidance. Franchisors should continue to encourage franchisees to seek counsel from their own attorneys on all employment matters especially since employment laws vary from state to state.

Unit economics

Franchisors must be ready to work with franchisees to help them address the new environment franchisees face in operating their franchised businesses, including cash flow constraints. Franchisees

will likely need relief from royalty payments and other franchise fees in the form of deferrals, waivers or reductions, and franchisors will need to balance the franchisee's unit economics with their own need for royalties and fees to continue to support the entire franchise system. Franchisees may also need relief from landlords and suppliers and may need help from franchisors understanding options and reviewing leases and contracts for force majeure and other similar provisions. Franchisee may also be eligible for various loan and government support programs, including those being developed by the SBA. The involvement of the franchisor will be critical in helping franchisees navigate these waters.

Contact us

Should you have further questions about how the COVID-19 public health crisis might impact franchise systems, please do not hesitate to contact John Moore or your Husch Blackwell attorney.

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others.