

COVID-19 CONSIDERATIONS FOR COMMERCIAL TENANTS QUÉBEC

Gowling WLG has been monitoring the development of COVID-19 closely and is continuously advising clients as more information becomes available. In the interest of helping **tenants** who lease commercial space manage the challenges created by the outbreak of COVID-19, Gowling WLG has prepared the following bulletin. Updates will be available as new information is released.

Health and safety of your staff: [Click here](#) to learn more from our employment and labour law professionals across the country.

Rent: Many tenants are asking us whether their rent obligation is deferred or forgiven as a consequence of the COVID-19 pandemic and state of emergency. The short answer is that it is very unlikely that the rent is suspended or abated.

- While every lease is different, most will include a ‘force majeure’ or ‘unavoidable delay’ provision that suspends the fulfillment of an obligation by an unavoidable occurrence. This clause is often written in favour of the landlord only, and if it extends to the tenant, invariably excludes the payment of rent, and often the surrender of the leased premises on the expiry of the lease. As such, even if there is an unavoidable delay clause in your lease, it most likely does not suspend the obligation to pay rent when due.
- Occasionally, the damage and destruction provisions of the lease are broadly enough stated to extend to a pandemic but the rent abatement provisions are generally tied to “damage” to the leased premises or the building. As such, while it is worth checking, these provisions are unlikely to suspend the payment of rent.

Business Interruption Insurance: While you should consult your insurance broker, it is unlikely that your business interruption insurance will protect you in the event of a pandemic.

Closures and Going Dark:

On March 13, 2020, the Gouvernement du Québec adopted an order in council (Order in Council number 177-2020) (hereinafter, the “Order”) that declares a health emergency throughout Québec’s territory in accordance with Section 118 of the *Public Health Act*. This exceptional measure empowers the government to implement an array of measures to protect the health of the population. The measures implemented by the Gouvernement du Québec as a result of the Order and its associated orders (mainly Ministerial Order number 2020-003 and Ministerial Order number 2020-004) include the closing of the following businesses, establishments and public spaces during the indicated period:

- From Monday, March 16 through Friday, March 27: educational institutions (elementary and secondary schools, vocational training and adult education centres, private schools, CEGEPs, colleges and universities);

- From Monday, March 16 through Friday, March 27: childcare centres, day care centres (subsidized, non-subsidized, family and non-regulated), home childcare services and school childcare services. However, childcare services must continue to be organized and provided for a child if one of the child's parents is employed by or exercises a profession in the health and social services network (including in private professional practice, community pharmacies and pre-hospital emergency services) or is a police officer, firefighter, ambulance technician, correctional services officer or special constable;
- Until March 30, 2020: places to which the public has admittance for cultural, educational, sports, recreation or entertainment purposes, including the following:
 - spas, saunas and swimming pools;
 - amusement parks and water parks;
 - recreational sites (including ski resorts, amusement parks, trampoline centres, skating rinks and ice rinks);
 - libraries;
 - fitness centres (including training gyms, dance halls and spinning, zumba and yoga centres);
 - sports centres (including indoor soccer arenas and outdoor recreation centres);
 - cinemas,
 - theatres,
 - museums;
 - arcades;
 - performance spaces;
 - dance halls;
 - zoos and aquariums;
 - all other similar facilities.
- Until March 30, 2020: bars, discotheques, restaurants offering buffet service and sugar shacks. Restaurants that do not offer buffet services are authorized to continue to operate provided they admit no more than one-half of the number of clients they can normally admit and provided they apply measures to distance clients from one another; they may also continue activities of the “drive-through” and “take-out” type. However, sample counters and booths in grocery and department stores are prohibited.

Further, gatherings of more than 250 people are prohibited. The state of public health emergency is declared for a period of 10 days starting March 13, 2020. On or prior to the expiry of this 10-day period, the situation will be reassessed and the public health emergency will be considered for renewal.

Many commercial leases require the tenant to stay open for business. A failure to do so may not only constitute an event of default but may also void other tenant rights such as options to renew, rights of first refusal, parking and signage rights etc. **Many tenants are asking, will my closure constitute an event of default under my lease?** Strictly speaking the answer may be yes if your lease mandates you to stay open and your lease does not include a force majeure/unavoidable delay clause in your favour or a compliance of law requirement (which may arguably supersede the operating covenant). That said, however, we expect that it is unlikely a court would enforce an operating covenant on the grounds that it is contrary to the public interest in light of the legally mandated closures.

Insurance Concerns: If you elect to work remotely or should you be legally mandated or elect to temporarily cease operations, we recommend that you both advise your landlord and your insurers. Most insurance policies will require you to notify the insurer of any material change in circumstances, and a failure to do so could void the insurer's obligation to pay out in the event of a claim. We also suggest that you thereafter arrange to have your premises monitored as required under the terms of your insurance policies, e.g. every 24-48 hours.

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Areas of expertise:

- Financial Institutions & Services
- Corporate Commercial
- Private Equity
- Real Estate
- Relocation Services

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