

Dentons COVID-19 general legal checklist for non-profit managers

The checklist below sets out key factors that any non-profit manager should take into consideration given the worldwide outbreak of COVID 19. This information is of a general nature (not jurisdiction specific). This information is not intended as formal legal advice. Non-profits facing legal issues should consult in more specific detail with pro bono legal counsel.

A. HANDLING EMPLOYEES

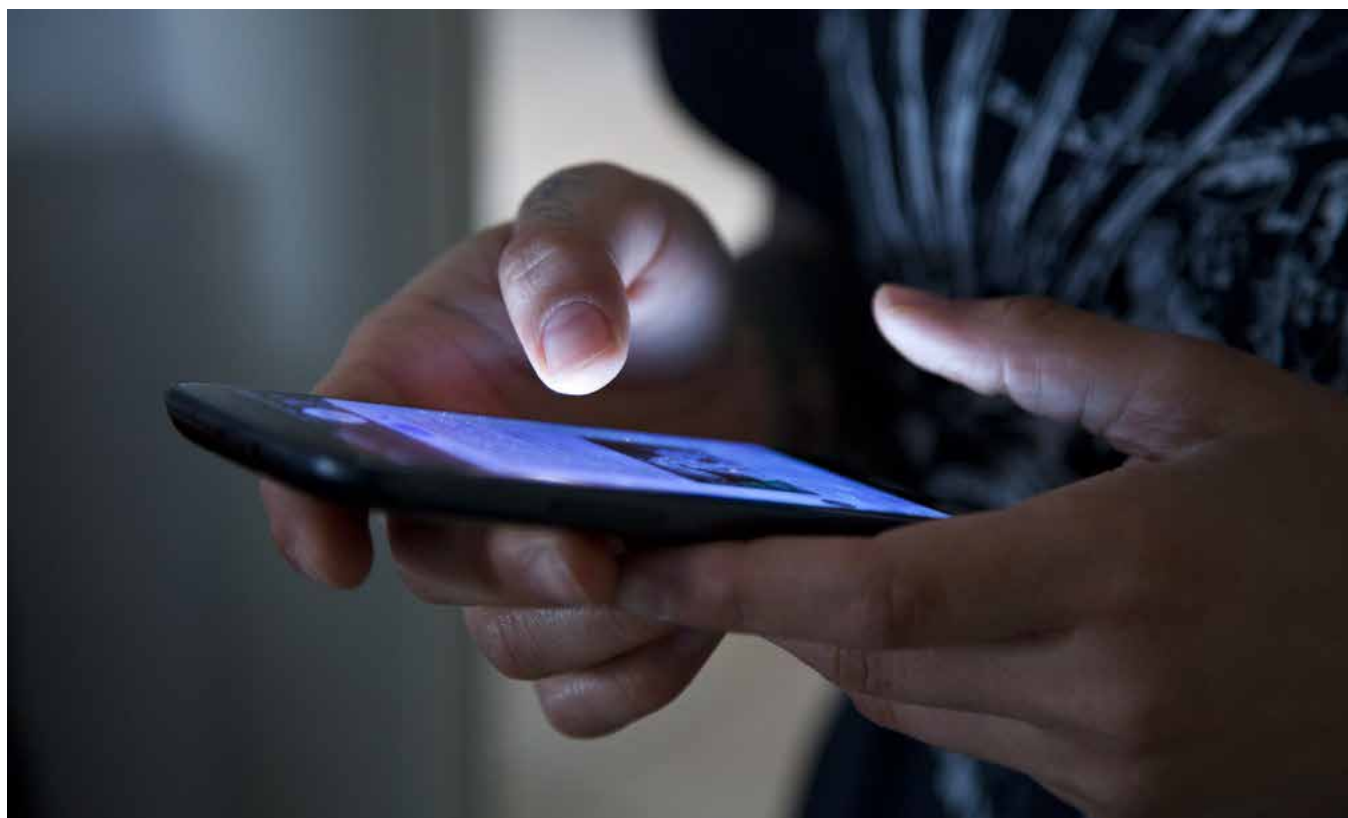
The outbreak of COVID-19 has resulted in a range of changes to working practices that are of relevance to non-profit employers: employees taking sick leave, employees working from home, employees having to look after young children who are not in school. As an employer, it is critical that you consider what your legal obligations are and ensure that you are acting in a way that is in the best interest of your employees and the long-term survival of your organization. This may be especially relevant where your organization is providing critical, front-line services to the vulnerable in your communities. As a starting point, we suggest considering the following legal issues:

- What are the rules for sick leave due to isolation/contraction of COVID-19?
- What are the rules for paid and unpaid leave resulting from the spread of COVID-19?
- What are the rules related to reduced working hours/part-time work and flexible working hours?
- What are the rules for employees who have to take care of children under the age of 16?
- What are the rules regarding employees who have pre-existing health conditions or are over the pensionable age?
- What are the rules regarding the health and safety of employees (and volunteers)?
- What are the rules related to redundancy and the termination of employment relationships and how can you ensure that the interests of your employees are protected in relation to unemployment benefit?
- Are you eligible for any state support with respect to covering employee salaries? For example, are there any special tax credits or government contributions available where you retain employees rather than letting them go?
- Do any of your employees require immigration or consular assistance in order to return home to loved ones?

B. CANCELLED EVENTS, MEETINGS AND TRAVEL ARRANGEMENTS AND OBSTACLES TO PROVIDING FRONT-LINE COMMUNITY SERVICES


The outbreak of COVID-19 has also resulted in drastic changes to our way of life and specifically our ability to meet and engage with one another publicly. For non-profit organizations, this may be problematic for a variety of reasons: inability to provide front-line community services to those in-need, cancelled workshops, trainings and annual general meetings and the consequent cancelled travel plans. As a starting point, we suggest considering the following legal issues:

- Where a partial or full-lock-down is in place, are you required by law to stop all of your public (community based) activities or do you provide “essential services” making you eligible for exemption?
- What are your rights to refund in case a flight, train or other travel plans have been cancelled due to COVID-19?
- What are your rights to refund in case scheduled events have to be cancelled due to COVID-19 (e.g. from conference organizers or from hotels and event venues)?
- What are your obligations to attendees or franchisees and other partners in case you have to cancel a planned event due to COVID-19?
- For non-profit annual general meetings of members or meetings of the Board, is it permissible to send an electronic notice convening a meeting? Is it possible to attend a meeting by way of electronic communication? Is it possible to vote by way of electronic communication?



C. FUNDING, OPERATIONAL EXPENSES, INABILITY TO PERFORM CONTRACTS, SUPPLY CHAIN ISSUES AND GOVERNMENT SUPPORT

The outbreak of COVID-19 resulted in non-profits experiencing a range of operational issues such as overburdened financial resources, elevated financial obligations and costs, funding freezes, disrupted supply chains and, due to various restriction on public social activity, inability to deliver critical goods and services to those in need. There may be legal implications for each of these issues. As a starting point, we suggest considering the following legal issues:

- What are your rights and obligations under existing property-related agreements (e.g. rental agreements) and what is your position if you are no longer able to meet your obligations? Are any government schemes in place providing protection from eviction?
 - Do you have any outstanding fines, loans or other debts? In the event that you are unable to meet these obligations, what is your legal position? Does the government provide for any grace periods, loan forgiveness or other protective measures?
 - Do you have any outstanding tax obligations? In the event that you are unable to meet these obligations, what is your legal position? Does the government provide for any grace periods or other protective measures?
 - What are your rights and obligations under all existing purchasing agreements, franchise agreements? Can you re-negotiate or terminate these agreements should the need arise?
 - Are you able to deliver on all existing contracts for the provision of goods and services? What is your legal position in case you are unable to do so? Can you re-negotiate or terminate these agreements should the need arise?
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- Are there any export or import controls applying to goods you are sourcing or distributing (e.g. face masks, disinfectant or personal protective equipment)? How do these measures impact your operations and what is your liability in case you have fallen afoul of these rules?
 - Are there any government schemes providing special funding, loans or new funding opportunities for non-profits? Are you eligible to apply for those?
 - Are there any government schemes providing for special tax incentives for charitable donations which your organization may benefit from?

D. WINDING-UP/ LIQUIDATION

Unfortunately, non-profits are not immune from the economic strain caused by the outbreak of COVID-19. Sadly, in some extreme cases, it may even be necessary to explore terminating and winding up/liquidating your non-profit organization. As a starting point, we suggest considering the following legal issues:

- What are your obligations in relation to paying creditors and debtors? Are you able to re-negotiate any of these contracts? How should you prioritise and structure payments? (Payments due in relation to social securities or to pension funds are particularly important as they can result in liability of non-profit directors or board members in some cases.)
- Who is liable in case the organization cannot meet its contractual obligations? Jurisdictions vary in terms of their liability arrangements. While some non-profit structures (particularly membership-based structures) will leave all members personally responsible for the debts and obligations of the organization, others may limit the liability, requiring that any claims have to be brought against the legal entity rather than the members themselves or against the directors or the board.
- Are there any special rules relating to directors' or board liability where inability or failure to meet contractual obligations results from the COVID-19 crisis?
- Are there any rules about how the financial assets of the non-profit are used upon the liquidation of the legal entity (e.g. do they need to be used for another non-profit organization with a similar purpose)?
- Do your by-laws or articles of association say anything about how your assets must be used in case of winding up?
- What are the obligations in terms of filings, publication of notices, cost, etc. when winding up your non-profit?
- Are your financial books and records up-to date? Are you up-to date on all financial filings? Are there any outstanding or special reporting requirements?



E. WORKING WITH VULNERABLE COMMUNITIES

Of course, non-profit organizations often work directly or indirectly with vulnerable populations within the community (the elderly, those with mental and physical disabilities, those on low incomes, those with insecure residence status and so on). During public health emergencies and economic crises, it is these vulnerable groups that are often most at risk. Non-profits should also be pro-actively thinking about legal issues related to these groups and stakeholders. As a starting point, we suggest considering the following legal issues:

Access to essential needs

- Are there any special rules or government measures related to the access to water and energy for vulnerable individuals and their families?
- Are there any rules or government measures providing for suspension of or easing of mortgage obligations and other financial obligations of vulnerable individuals and their family members?
- Are there any rules or government measures providing support to vulnerable persons who have lost their jobs or who are self-employed?

In case of sickness

- Are there any special rules or legal regimes in place for vulnerable persons vis-à-vis access to critical medicines and healthcare services?
- Are there any special rules or legal regimes in place for sick persons to bequeath without leaving their place of treatment and meeting in-person with civil law notary or solicitor?
- Are the health insurance policies of vulnerable individuals and their family members up-to-date?
- Are there any grace periods or special rules applying to those unable to pay insurance premiums due to unemployment or decline in income?

In case of death

- Do vulnerable individuals and their families have wills and succession-related documentation in order? How recently have these documents been updated and are they legally valid? Are power of attorneys likely to be required? What are the rules where there is a disagreement among heirs?
- What will happen to the family property on the death of a loved one?
- What are the rules in relation to inheritance tax?
- Have vulnerable individuals and their families taken out death insurance policies, and what are the terms of those policies in case of death?
- Can funeral expenses be deducted for the purpose of income or inheritance tax calculation?

Persons with insecure residence status or in state-run institutions

- What are the rights of those persons in detention (e.g. prisons, public care homes) and/or stranded (e.g. in migrant camps)? Are there legal sanctions for those violating travel bans?
- What legal recourse is there for persons who are affected by the suspension of asylum, resettlement and family reunification regimes?
- Are there any special rules applying to persons whose visas or residence permits are expiring?
- What are the rights of persons who are deported?

Legal issues resulting from quarantine

- What legal protections exist and which measures can be taken in relation to victims of domestic violence in the context of quarantine?
- What legal measures are in place to ensure equal access to education during quarantine (especially for children in vulnerable situations)?

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