

# Managing the Commercial Impact of the Coronavirus: Implications for the Sports & Entertainment Industry

Article By:

Jonathan L. Israel

Andrew L. Lee

Bobby Sharma

Michael J. Wall

Ann Marie Uetz

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***“Caution is appropriate. Preparedness is appropriate. Panic is not.”*** (~ U.S. Surgeon General Dr. Jerome Adams, commenting on the coronavirus outbreak)

As the coronavirus outbreak continues to wreak havoc on markets and industries in the U.S. and around the world, businesses are now confronting significant and unique challenges. Successful navigation of these challenges will require thoughtful and comprehensive planning.

Indeed, in the past week, the inevitable impact of the coronavirus on the Sports & Entertainment Industry has landed with a stunning blow. Built on live competition or events, where large crowds come together to watch, professional and collegiate sports leagues in the U.S. and around the globe, in cascading effect, have canceled, suspended, or postponed ongoing or imminent seasons or events; and for good measure, Broadway shuttered its theaters for at least a month. In the longer term, summer events like the UEFA’s Euro 2020 and the Tokyo Olympics (and nearer-term qualifying events) now seem in jeopardy.

With these fast-breaking developments mirroring the exponential spread of the coronavirus, it is essential that stakeholders in the Sports & Entertainment Industry understand the various legal issues associated with the coronavirus outbreak. Those **stakeholders** include:

- Leagues/Teams
- Governing Bodies
- Arena, Stadium, and Venue Operators

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- Athletes/Entertainers
  - Team Physicians and Medical Staff
  - Vendors
  - Sponsors
  - Broadcasters/Media
  - Licensees and Manufacturers (Consumer Products)
  - Consumers/Fans
  - Industry Employees

Many of these stakeholders will likely confront issues relating to contracts, insurance, employment, health and safety, sales, and operations. **Effective planning** for any business will be critical and should involve the formation of a multi-disciplinary crisis management team that should include **personnel from ticket sales, sponsorship, marketing, finance, public relations, human resources, and legal**, who should be prepared to address a host of potential concerns, including the following:

## **Contracts**

A variety of agreements may be affected by event cancellations and other disruptions, including venue, sponsorship, vendor, broadcasting, manufacturing, ticketing, licensing, and team travel/charter agreements, as well as contracts with athletes or performers.

Numerous contractual provisions should be reviewed and considered, including:

- Force Majeure and Termination Rights
- Representations, Warranties, and Conditions
- Performance Thresholds and Milestones
- Grace Periods, Defaults and Remedies
- Notice Obligations
- Arbitration and Enforcement Rights

**Force Majeure** provisions, which may relieve a party of liability for non-performance due to circumstances beyond that party's control, deserve special attention as the coronavirus outbreak presents a somewhat unique situation that includes both a naturally occurring component (the virus itself) and a government action component (including quarantines, cancellations, and other measures put in place in response to the outbreak). For more information on **force majeure clause analysis**,

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please [click here](#).

**Event cancellations** raise a host of practical considerations, such as **potential refunds, exchanges, and contractual credits**, particularly in relation to interested parties like sponsors, broadcasters, and ticketholders who may have committed significant money to events now subject to cancellation due to the coronavirus. For more information concerning contract and other issues relating to event cancellation, please [click here](#).

## Insurance

Stakeholders should **review insurance policies** to determine possible coverage in the event of cancellations or other business disruptions and comply with all applicable notice requirements. Similar considerations also apply where events are held or operations continue notwithstanding the risk of coronavirus exposure. Relevant **insurance policies to review and consider** may include:

- Business Disruption (including contingent disruption policies)
- Event Cancellation
- Liability (Commercial General, Directors & Officers, and Errors & Omissions)
- Travel
- Civil Authority

## Employment

The challenges for any business facing coronavirus or other disease outbreak involve a multitude of conflicting legal obligations. Under the Occupational Safety and Health Act (OSHA) and similar state laws, **employers have a general duty and obligation to provide a safe and healthy work environment**, even when the work occurs outside the employer's physical premises. Furthermore, under these health and safety laws, employers must not place their employees in situations that are likely to cause serious physical harm or death. Conversely, overreacting by implementing broad-based bans and making business decisions about employees that are not based on statistical realities could get an employer sued under laws that prohibit discrimination based upon disability (perceived or real) and national origin, among others. Properly planning for and implementing plans to deal with the coronavirus is legally and operationally complex. This will likely include facilitating remote work options for employees, which requires careful consideration of data security concerns (which are more fully [addressed here](#)). For more information on specific action that industry stakeholders as employers should take, please [click here](#).

## Consumer Products

Maintaining sales and appropriate inventory of licensed consumer products may become critical to sustaining industry revenues during event and operational disruptions due to the coronavirus. Proactive communications among licensees, distributors, and manufacturers are advisable to ensure against supply disruptions and to establish alternative measures and relationships where any link in the supply chain may fail. Further, stakeholders should consider whether changes may be necessary

in the event certain goods or materials become limited or unavailable and, in each case, may be feasible from an operational, timing, and cost perspective.

## States of Emergency

New York and other states and localities have recently declared a state of emergency, which invariably includes **prohibitions against large public gatherings** that facilitate the spread of the coronavirus. More will likely follow. A careful analysis of the impacts of a state of emergency is critical. Many impacts are obvious, but some require in-depth analysis of what other laws may be implicated by a declaration of a state of emergency. For instance, a recently passed New York law prohibits unsolicited telemarketing calls during a state of emergency.<sup>1</sup>

## Operating and Business Continuity Plans

Planning for absenteeism, supply chain issues, event cancellations, and possible quarantines is an immediate need. Industry stakeholders should assemble their various teams to develop a comprehensive plan to address these issues and the short- and potentially long-term impacts of canceled events and suspended seasons, as well as what may be required to resume games or performances. Communicating with other stakeholders should be undertaken. Any plan should include advance coordination with state and local health officials and, with respect to ongoing and future operations and events, should contemplate the approach, products and materials, and personnel required for proper sanitization of any contaminated areas.

In sum, it is important for the **Sports & Entertainment Industry** to take additional steps now in order to mitigate risk and respond to impacts from the coronavirus. For more information about recommended steps, **please contact your Foley relationship partner**. For additional web-based resources available to assist you in monitoring the spread of the coronavirus on a global basis, you may wish to visit the [CDC](#) and the [World Health Organization](#).

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<sup>1</sup> NY Senate Bill 4020 prohibits telemarketers from knowingly placing unsolicited telemarketing sales calls during a state of emergency or disaster emergency.