

# Considerations for Office Tenants: Part I - Delivery and Rent Commencement

Article By:

Julia Kreyskop

---

As companies struggle to adjust to the quickly changing business landscape during the novel coronavirus pandemic, those office tenants that continue letter of intent (LOI) and lease negotiations should pay particular attention to issues of timing. The challenges created by the novel coronavirus pandemic make it particularly imperative that tenants understand the interplay between delivery, construction, and rent commencement as they negotiate their leases.

## Delivery of New Space

- If you plan to take delivery of the space soon, consider the ramifications of landlord being unable to timely deliver the space to you due to the pandemic. For example, would it leave you in holdover in your current space?
- All tenants with fast approaching expiration dates should review their leases and understand what happens if they fail to surrender the space on time. While lease holdover provisions vary, in virtually all cases, tenants pay hefty penalties for remaining in their existing space beyond the lease expiration date.
- To reduce your exposure to such penalties under your *existing* lease, discuss potential remedies for late delivery under the *new* lease you're negotiating. Such remedies can take the form of rent abatements or indemnification for existing lease penalties from the new landlord.
- It might be possible for the new landlord to provide temporary space in case delivery of the new space is delayed. Such arrangements might be easier to structure at this time, when most employees are teleworking and won't need physical space.
- In all events, have a conversation with your existing landlord about the potential of doing a short term or month-to-month extension in case new space isn't timely delivered.
- Tenants are often surprised to learn that many lease forms require tenants to pay holdover penalties *even if* their landlord *agrees* to allow them to stay in place after expiration. As a result, the best practice if your landlord agrees to let you stay in your current space after

expiration, is to execute an amendment memorializing the extension *and* confirming that you will not be paying holdover penalties.

## Rent Commencement

- Rent commencement should in most instances be tied to the delivery of the premises to a tenant. The specific mechanics of how rent commencement is tied to delivery will differ based on who is doing the work and timing expectations related to construction.
- The simplest rent commencement arrangements are those involving office space that is already vacant, delivered as-is, and without any work to be performed by a tenant. The pandemic, however, should make tenants think twice about how to structure rent commencement even in these simplest of scenarios.
  - For example, if the plan is to deliver and accept the space promptly after lease execution, tenants should consider whether they truly intend to pay full rent for space that they are unlikely to use for some period of time due to teleworking employees. If the space is unlikely to be utilized in any material respect during the pandemic, it is advisable to negotiate abatements or rent reductions for some period after delivery to account for such reduced use.
- Structuring rent commencement when buildout work is performed is a more complicated undertaking and Part II of this series discusses issues to take into account. However, in all events, tenants should expressly delay the rent commencement for periods that the building is closed (due to governmental order or the decision of the landlord) prior to completion of any buildout.

## Force Majeure

Much has been written lately about force majeure provisions in leases, and while the application of those provisions during this pandemic is as novel as the virus itself, such provisions typically exempt rent payments from their application. As a result, it is best to address expectations about rent abatements head-on during LOI and lease negotiations. Consider expressly stating that if landlord closes the building (on its own initiative or due to governmental order) during this or subsequent waves of any pandemic, all rent will be abated. To avoid future disagreements, be explicit that a pandemic is a force majeure event and be sure to always state which deadlines and obligations will be extended or delayed (e.g., rent commencement, etc.) due to force majeure.

Copyright © 2025 Womble Bond Dickinson (US) LLP All Rights Reserved.

---

National Law Review, Volume X, Number 91

Source URL: <https://natlawreview.com/article/considerations-office-tenants-part-i-delivery-and-rent-commencement>