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RETAIL ALERT | NIXON PEABODY LLP

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## Retailing in the age of Coronavirus IV

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As the coronavirus (COVID-19) outbreak continues to take and upend lives, retailers are on the front-lines of commercial fallout from the virus. While many have been forced to close all of their physical locations due to stay-at-home or shelter-in-place orders, others that are deemed “essential” are in a pitched battle to keep their stores supplied, staffed, and safe for the public. We have been tracking a few trends in how our retail clients are coping with the disruption.

### Store security

As the reality that the physical closure of stores will likely be for weeks or months, not days, retailers are now taking more aggressive measures to secure their operations. Many are not just locking their doors, but also boarding up their locations and taking other measures to keep their fixtures, inventory, and improvements safe. Some retailers have removed their inventory; however, the logistics of shipping, storing, and processing this inventory is complicated. Traditional and social media have been full of reports of fashionable shopping areas with unsightly plywood over the facades of most storefronts. Unfortunately, would-be thieves view empty streets and stores as opportunities for crime, especially with many police forces either impacted directly by COVID-19 illnesses or having their activities re-directed to support the response efforts.

### Make sure you are essential

States, counties, and cities are being more aggressive at enforcing closures for non-essential businesses. Some retailers are staying open or re-opening despite being classified as non-essential. The arts-and-crafts retailer Hobby Lobby kept the doors open in many of their locations in states and other locales where they were ordered to be closed. However, authorities in many areas cracked down, including Colorado where the attorney general issued a cease-and-desist order on April 2—“For the avoidance of doubt, and as you have been previously notified, Hobby Lobby is not a critical business. You are directed to immediately close all Hobby Lobby locations within the State of Colorado.” Hobby Lobby has now closed all of their physical locations. Most of the closure orders include other remedies like fines and even jail time for violators. While the application of these against businesses and citizens has been rare, retailers must be careful to abide by these orders. In addition to these legal remedies, there are public relations repercussions that could impact brands.

## **Headcount issues**

Retailers are struggling with the reality that their brick-and-mortar operations will be shuttered for an extended period of time by law and, perhaps, consumer behavior may curtail in-person shopping for non-essential products for some time to come. Therefore, many of them are now deciding that the only way to survive is to reduce employee headcount. Retailers are either laying off or furloughing hundreds of thousands of employees in the U.S. There is a difference between a layoff and a furlough as our Nixon Peabody colleagues discussed in this [Alert](#). The U.S. government has also put into place programs through the Small Business Administration (SBA) to provide funds to businesses with under 500 employees. These loans, with a 1% interest rate, can be forgiven if employers maintain or rehire workers prior to June 30, 2020. Read more about this program [here](#). Since many “essential” retailers are still struggling to find workers to support their operations, these companies are hoping that these newly separated workers may be a good source of talent. However, the U.S. has also increased unemployment compensation and will be providing direct payments to low- and middle-income Americans. Essential retailers are increasing pay and providing other financial and non-financial perks to existing workers and to recruit new ones, but even with that, some report challenges in staffing as workers fear working outside of the home.

## **Safety in stores**

Retailers who remain open are employing a raft of new safety features to assure both their workers and their customers remain healthy while shopping. Some retailers are doing temperature checks for employees before coming to work and/or providing masks and gloves for workers. Many stores have changed store hours to allow for deep-cleaning activity and to provide the first one or two hours for older or other shoppers with underlying health conditions to purchase essential products. Retailers are also limiting the number of shoppers in their stores at any one time, designating a direction for traffic within a shopping aisle, enforcing physical distance at checkout, and placing Plexiglas screens between shoppers and employees.

## **Being creative**

Retailers continue to be creative in adapting and evolving their business to the current environment. Restaurants are embracing food delivery, pick-up, and other contactless models to keep their kitchens and cash registers busy. Some are even attempting to become more traditional grocery retailers. For example, California Pizza Kitchen is rolling out CPK Market, which will provide both make-your-own meal kits and also sell “35-plus individual food and beverage choices, including beer and wine.” This is a good example of retailers thinking outside the box to stay relevant to their customers.

## **Sending the right message**

Retailers also have increasingly customized their messaging and outreach to their customers. The most successful outreach is that which reflects understanding of the impact of the health crisis but does not seem to seek to directly profit from the crisis. Since many retailers have closed their stores and websites, they are finding innovative ways to engage with their customers such as sharing recipes and pictures of pets as well as offering free classes and workshops in hopes of maintaining or even building brand loyalty over this difficult time.

For more information on the content of this alert, please contact our [Coronavirus Response team](#), your Nixon Peabody attorney, or:

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