

ALERT

May 2020

New York City Council Passed Unprecedented Legislation Affecting Commercial Leases & Guaranty Agreements in New York City

By: Jennifer Ecker

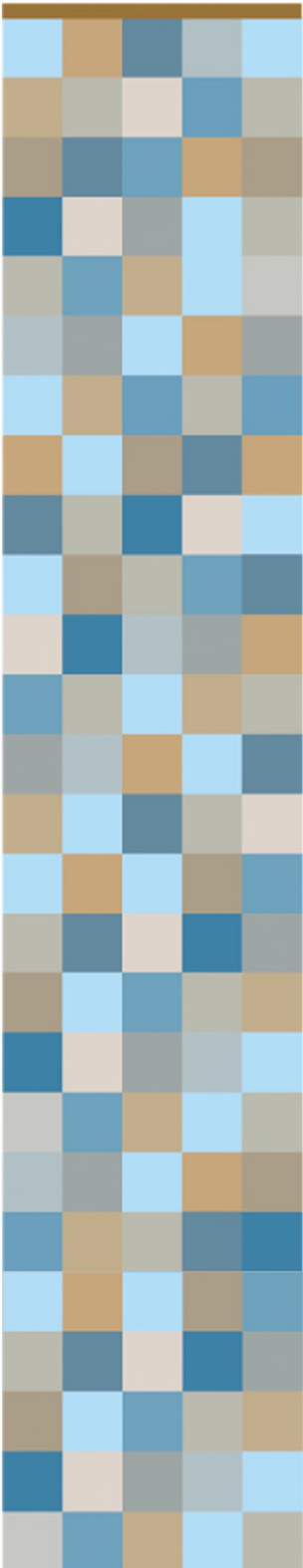
UPDATE: As anticipated, on May 26, 2020, this legislation was enacted into law and takes effect immediately.

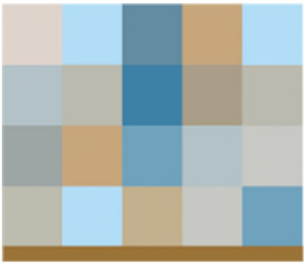
On May 13, 2020, the New York City Council unanimously passed a COVID-19 Relief Package that may temporarily prohibit the enforcement of personal liability provisions (a/k/a personal guaranty provisions) in commercial leases involving COVID-19 impacted tenants. If the COVID-19 Relief Package becomes law, which is expected to occur within 30 days, it will amend the Administrative Code of the City of New York and take effect immediately. It will apply to businesses in New York City impacted by mandated closures and service limitations in the Governor's Executive Orders.

The COVID-19 Relief Package was presented to Mayor Bill de Blasio. The Mayor has 30 days to sign it into law, veto it, or take no action. If the Mayor vetoes the bills that make up the COVID-19 Relief Package, the COVID-19 Relief Package will be sent back to the City Council. If this occurs, the City Council may override the veto. However, if within 30 days, the Mayor does not sign the bills or vetoes the bills, the bills become law. Once a bill is signed by the Mayor, or a bill's veto is overridden by the City Council, the bill is then added to the Administrative Code.

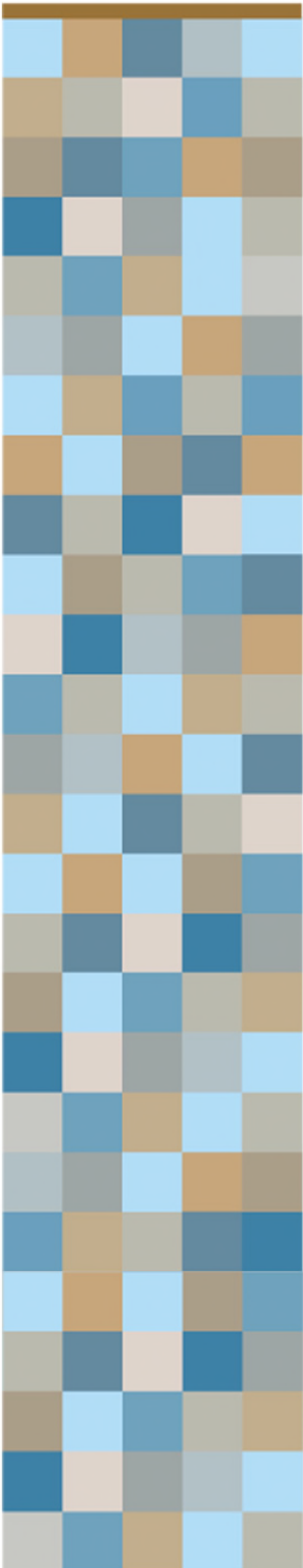
According to the COVID-19 Relief Package, the "COVID-19 period" covers the time period of March 7, 2020 through *at least* September 30, 2020, and includes guidelines for extensions of the period.

Additionally, the COVID-19 Relief Package provides that landlords may not harass commercial tenants. Commercial tenant harassment is an act or omission by a landlord that would reasonably cause a commercial tenant to vacate covered



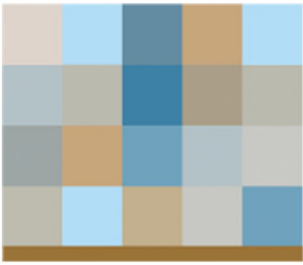


ALERT



property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such property. It includes:

- using force or making threats that force will be used against a tenant or its invitees
- causing repeated interruptions or discontinuances of essential services
- causing an interruption or discontinuance of an essential service for an extended time period
- causing an interruption or discontinuance of an essential service where such substantially interferes with the tenant's business
- repeatedly commencing frivolous court proceedings
- removing personal property belonging to the tenant or the tenant's invitees
- removing the door at the entrance to a commercial property occupied by a tenant; removing, plugging or otherwise rendering the lock on an entrance door inoperable; or changing the lock on the entrance door without supplying a key
- preventing a tenant or the tenant's invitee from entering the property occupied by the tenant
- substantially interfering with a tenant's business by commencing unnecessary construction or repairs on or near the property
- engaging in any other repeated or enduring acts or omissions that substantially interfere with the operation of a tenant's business
- threatening a tenant based on such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence, status as a victim of sex offenses or stalking
- requesting identifying documentation that would disclose the citizenship status of a tenant, an invitee of a tenant or any person seeking entry to the property in order to patronize the tenant
- unreasonably refusing to cooperate with a tenant's permitted repairs or construction activities



ALERT



Moritt Hock & Hamroff LLP is a broad based commercial law firm with more than 75 lawyers and a staff of patent agents and paralegals. The firm's practice areas include: business succession planning; commercial foreclosure; commercial lending & finance; construction; copyrights, trademarks & licensing; corporate & securities; creditors' rights & bankruptcy; cybersecurity; privacy & technology; dispute resolution; employment; healthcare; landlord & tenant; litigation; marketing, advertising & promotions; mergers, acquisitions & private equity; not-for-profit; patents; real estate; secured lending, equipment & transportation finance; tax; and trusts & estates.

Jennifer Ecker, a partner of the firm, concentrates her practice in the area of landlord and tenant law, real estate law, commercial property leasing, and commercial litigation. She has over two decades of experiences representing landlords, owners, developers, managing agents, and commercial tenants.

- threatening to or implementing a personal liability provision that is not enforceable

If enacted into law, the COVID-19 Relief Package will likely be challenged as unconstitutional. However, the legal battle may be challenging as the U.S. Supreme Court previously determined that state and local governments have the power and authority to amend contracts during emergency situations.

It is recommended that commercial landlords and tenants in New York City contact experienced legal counsel that specializes in landlord and tenant law to answer specific questions regarding the legislation and how it affects the rights and remedies of parties.

Any issues raised in this Alert may be addressed to Jennifer Ecker who can be reached at (516) 880-7223 or by email at jecker@moritthock.com

For additional information regarding the rapidly evolving legal and regulatory landscape for businesses, please visit: [MHH Covid-19 Resources](#)



This Alert is published solely for the interests of friends and clients of Moritt Hock & Hamroff LLP for informational purposes only and should in no way be relied upon or construed as legal advice.

©2020 Moritt Hock & Hamroff LLP

