




COVID-19

FAQS FROM TENANTS DURING THIS UNPRECEDENTED TIME

CBRE Tech & Media Practice Group

CBRE



As advisors to companies of all sizes across the globe, we in the CBRE Tech and Media Practice Group are hearing similar questions and concerns from our clients during this unprecedented time of business and school closures, stay-at-home orders, and social distancing. Most of our clients have had their office hours reduced or denied and replaced with work from home programs.

While we hope you find the information provided in our [Frequently Asked Questions](#) overview beneficial, we recommend you engage your CBRE advisor to discuss your specific situation and develop a strategy to solve for any real estate concerns that this situation has created.



Am I entitled to rent relief?

Perhaps the most common question that we have received from our clients are questions about whether companies are entitled to any rent relief.

Most commercial leases include a force majeure provision that excuses a party's performance for any period when performance is delayed because of strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, civil commotions, fire or other casualty, and other causes beyond a landlord's reasonable control. In some cases, the force majeure provision also covers governmental actions and/or an inability to obtain services, labor, or materials.

In most cases, however, there is an exception in the force majeure provision for the payment of rent or other amounts owed under the lease; in other words, most commercial tenants do not have the right to delay paying rent even when their business is shutdown or severely restricted due to factors outside of their control.

Interruption of Essential Services. The "Services" article of a commercial lease typically lists the essential services to be provided by a landlord and may give the tenant a right to rent abatement if those services are not provided for a period of time. This clause should be reviewed carefully to see if it includes access as an essential service since that may be disrupted during the COVID-19 pandemic. Many leases do not specifically list access as a service and, as a result, it is open to debate whether access would be considered an implied essential service. The provisions and remedies relating to a stoppage of services often have different outcomes based on the cause of the interruption of services. For example, if there is a stoppage of essential services for reasons within a landlord's control, many leases provide for rent abatement after a limited period of time. If there is a stoppage of essential services for reasons outside a landlord's control (e.g., due to force majeure as described below), some leases may provide for rent abatement after a longer period of time. Legal notice provisions related to a stoppage of services should be closely reviewed.

Casualty. Casualty clauses govern what happens if there is damage to the building that makes it inaccessible or unusable in whole or in part. While these clauses may result in a reduction of rent or other remedy in favor of the tenant, these clauses are generally confined to circumstances in which the premises are physically damaged or destroyed. While atypical, in some instances lack of access may be tied to a casualty event and the tenant



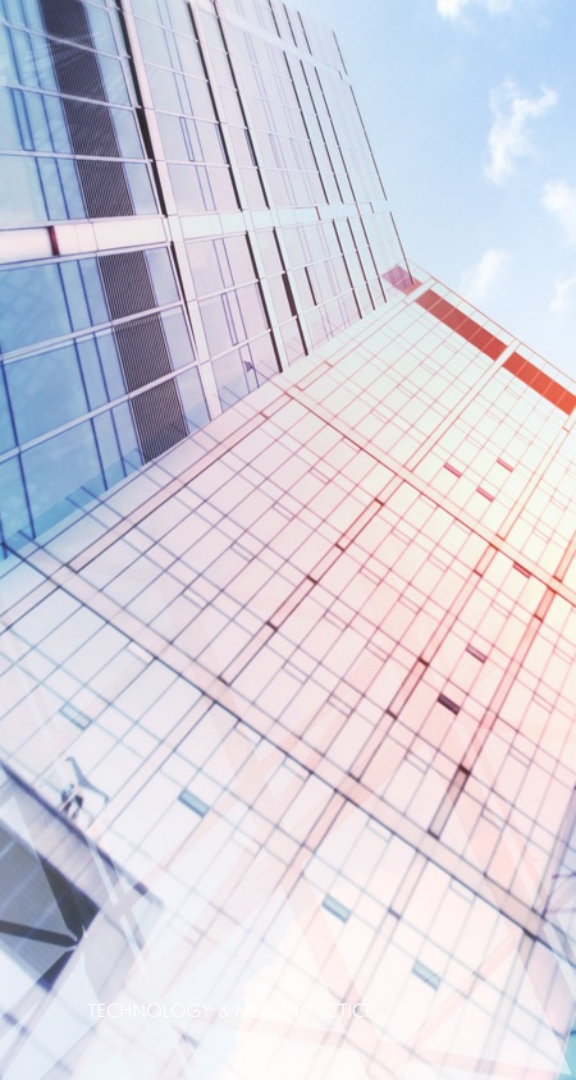
Am I entitled to rent relief? (cont.)

may be entitled to rent abatement. Since this is a novel circumstance, it has not yet been determined whether contamination constitutes physical damage.

Condemnation. Condemnation clauses address what happens if the government takes control of the premises in some way. If the government mandated a building closure, the language describing the government's actions should be carefully read to see if it is broad enough to cover closures due to COVID-19. In most instances, however, this would, at best, be considered a temporary taking. In such instances, most leases would not provide for rent abatement and require a tenant to look to the government for any compensation.

Force Majeure. Force majeure clauses cover situations where a party's obligations may be delayed or excused because of circumstances beyond that party's control. Force majeure clauses typically include a list of items that are agreed to be outside the control of the parties, such as government restrictions and regulations. In most cases, force majeure does not relieve a tenant from paying rent.

In many cases, the tenant's only resort is to make a claim under their business interruption insurance policies. We encourage you to review your lease with an attorney who can provide legal advice and strategy. Your CBRE professional can also provide case studies or local market knowledge on how companies are handling similar situations.



Can I be evicted if I can't pay April rent?

Often, your local government agencies and their decisions will impact a landlord's ability to evict a tenant. We are not expecting to see evictions, especially after just one missed rent payment, but you could be exposing yourself to late payment penalties, so it's important to review your lease and open a dialogue with your Landlord. Landlords are also being impacted by the national crisis and we have seen many be receptive to ideas of how to get through the near term while creating some long term stability in cases where there is actual business disruption due to Covid-19.

Each situation is different from a term/size/rent structure/landlord profile standpoint. That is why it is critical to consult with your CBRE professional to help understand your specific circumstances and craft an approach that best works for you and is also likely to be received by the landlord.

We haven't moved into our new offices yet. Can I delay the commencement date?

In a situation where the tenant is building out its tenant improvements, the tenant's ability to complete its tenant improvements in the premises may be delayed as many local governmental offices have temporarily closed their permit offices. If the Landlord is responsible for building out the space, or completing base building work prior to delivering the space to the Tenant and the Landlord is delayed in completing this work due to various circumstances associated with the current Pandemic, this would likely fall into their force majeure protection and therefore any penalties and/or critical dates would be delayed. In other cases, the buildout may depend on the availability of materials and supplies arriving from overseas or the availability of a general contractor or subcontractor. In these types of scenarios, whether the tenant can delay the commencement date or rent commencement date is highly dependent on the specific lease terms and the work letter agreement.

In most leases, the tenant's obligation to pay rent commences a certain number of days after the delivery of possession of the premises, or a certain number of days after the tenant obtains all permits for the buildout, whichever occurs first, so even if the tenant is delayed in obtaining required permits for a buildout, there is a date certain after which the tenant's obligation to pay rent kicks in.



My building was shutdown by the landlord. Am I entitled to rent abatement?

If the landlord elects to temporarily shut down a building in response to the COVID-19 outbreak, then it is most likely to be the case that the affected tenants will be excused from paying rent during the period of the shutdown. The reason that tenants are entitled to rent relief in this scenario (but typically not in other cases) is that the landlord's action has directly forced the tenant to not be able to operate within their leased premises, so the tenant's obligation to pay rent is excused under a legal doctrine of "constructive eviction" for the period when the building is closed. We recommend consulting your attorney and CBRE professional for further guidance.

Can I keep my premises closed and would that be a default under my lease?

Some tenants are going to be closing their businesses temporarily either due to a governmental mandate or because of an elevated health risk to employees.

Are tenants allowed to "go dark"? The answer depends on whether the lease includes vacating or abandoning the premises as a tenant event of default under the lease and how that provision is defined under the lease. Some leases – typically retail leases – have "continuous operation" covenants and specifically state that any closure for more than a specified number of days is a tenant default under the lease, while some leases only consider the tenant's closure an abandonment if the business is closed and the tenant fails to pay rent on time.

Even if the lease prohibits closures for a certain period of time, if a government order requires the tenant's business to be closed, then the tenant may rightfully have a defense of impossibility or impracticality to excuse its failure to comply with a continuous operation covenant. The tenant could either cite a force majeure provision that excuses performance in the case of governmental action or they could also argue that performance is either impossible or impractical due to the government order, this is why we believe it's critical to communicate with Landlords.



Can I cancel my co-working license agreement?

In most cases, license agreements are similar to commercial leases in that “force majeure” typically benefits the co-working provider and is not an impetus to terminate the agreement. Where there is flexibility in the term, i.e.-month-to-month, we expect that the majority of our clients will elect to provide notice to terminate their agreement or engage in conversations with their co-working landlord to provide immediate rent relief in lieu of terminating. Similar to institutional landlords, we expect that co-working providers will be open to discussing alternatives, and should be vetted prior to taking action.

What can I do during this time of uncertainty?

We are advising our clients to communicate with their CBRE professionals and devise a strategy that fits your unique needs. Most landlords are open to having conversations with their tenants about the impact to their businesses this pandemic has created. It is important to realize that Landlords are also affected during this time and that having a strong partnership with your Landlord can be beneficial. It is likely that Landlords are going to have conversations with a majority of their portfolio tenants and that deferring or abated rent across large percentages of their portfolios isn't likely.

In the case of a real hardship, be prepared to share your story and your current financials with your Landlord who will likely be looking at each situation on a case by case basis. For companies who were struggling before the crisis or don't have a positive outlook, Landlords not be as open to restructuring or deferring rent payments.

If a landlord elects to abate or defer rent, or waive any provision of the lease (such as the continuous operation covenant), it is important for the tenant and landlord to be very specific about the terms of the abatement or deferment and it is important to have the arrangement confirmed in writing. The writing should clearly state whether only the minimum rent is deferred or abated, or if the tenant is also permitted to defer taxes, insurance, and common area maintenance charges; the length of deferment; whether the length of the lease term is extended or not; and the agreement should be signed by both parties.

We will continue to monitor the market and advise you of any material updates or changes to the market that we think will impact your Lease.



ALEX HAMMERSTEIN

Senior Vice President
303 324 1660
alex.hammerstein@cbre.com

BRIAN MCCLENAHAN

Vice President
650 444 1258
brian.mcclenahan@cbre.com

MATT HARBERT

Vice President
720 401 0227
matt.harbert@cbre.com