



Insights: Alerts

Indian Tribes and COVID-19

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic is dynamic and continues to develop. Please monitor this site and/or your email for updates.

Tribal governments and Tribal businesses are starting to feel the impact of the novel-coronavirus disease (COVID-19). Already, one Tribal Casino in Oregon has been forced to temporarily close due to potential contamination and many other Tribal business are seeing event cancellations and fewer customers. Now is the time for Indian tribal governments and Tribal Casino executive teams to take proactive steps to protect tribal members, employees, and properties. Here are **five things** Tribal leaders can do now:

Be Mindful of Federal Employment Laws

Tribal employers have a legal obligation under the Occupational Safety and Health Act (OSHA) – which is considered to be a law of general applicability that applies to Tribes – to take affirmative steps to protect the health of employees. The duty to protect employees includes protecting those traveling to COVID-19 affected areas on business. While OSHA does not specifically address risks associated with COVID-19, its “General Duty Clause” requires employers to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” 29 U.S.C. § 654(a)(1). Although the parameters of the obligation have not been litigated in the context of a pandemic, Tribal employers should keep this general duty obligation in mind. Other federal laws may also be implicated by employee health-related absences.

Proactively Exercise Constitutional Powers to Protect Members

Most Tribal governments have either an expressly reserved or an implied power to declare states of emergency and act in the best interests of Tribal members' well-being. Using these Constitutional powers, Tribal governments should take immediate steps to declare states of emergency related to COVID-19 to protect the most vulnerable members in their communities (Elders and those with underlying health conditions) by limiting meetings, facilitating vote-by-mail as needed to conduct General Council business, and providing tax-free emergency benefits under Tribal General Welfare Programs.

Evaluate Business Interruption Insurance Policies

Facing a casino closure for cleaning or loss of revenue from a significant event calculation? Most insurance policies require there to be a direct physical loss in order to trigger business interruption insurance and, generally speaking, infectious diseases arising from human-to-human transmission generally do not qualify as

property damage. However, no two policies are alike and Tribes with casinos and hotel operations should immediately review their policies to determine what options might be available.

Review Your Force Majeure

Force Majeure is a contract provision that defines occurrences that are outside and beyond the control of the parties (acts of God, war, famine, and plague), and allows relief for non-performance in the event that such an occurrence is triggered. As COVID-19 continues to spread, Tribal parties should be aware of what may trigger a Force Majeure event under their contracts. For contracts still under negotiation, Tribes will want to limit their exposure to schedule delays and cost increases. For executed contracts, Tribes should review the Force Majeure language to see if and when an event could be triggered, and what the implications might be on Tribal business.

Take Advantage of Federal Legislation

Indian tribes are eligible to some of the grants available through the Coronavirus Supplemental, which was passed by Congress and signed by the President last week to mitigate the economic impact of COVID-19. The Centers for Disease Control and Prevention (CDC) has not released information on all of the grants that were funded by the legislation. Tribes should also keep an eye out for future opportunities to seek support for their businesses through any coronavirus stimulus package worked on by Congress and the Administration in the coming weeks, including any stimulus funding for the travel and hospitality industries, as well as for fisheries and tribal treaty fishers.

Related People



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