

Insights

U.S. COVID-19: NEW YORK CITY COUNCIL CONSIDERING LEGISLATION WITH RAMIFICATIONS FOR COMMERCIAL LEASES

Apr 27, 2020

On April 22, 2020, at its first-ever remote session, several bills addressing the COVID-19 crisis that could have broad impacts on commercial tenancies were introduced in the New York City Council.

Under one of the bills now under consideration, the current suspension on evictions contained in Governor Cuomo's Executive Order 202.8 would be extended in New York City. City marshals and sheriffs would be barred from claiming and restoring property or executing money judgments (*i.e.*, for rent arrears), effectively halting evictions and debt collection for both residential and commercial tenants, until the later of (i) September 30, 2020 or (ii) a month following the expiration of current state and federal eviction moratoriums.

Thereafter, city officials would remain precluded from collecting debts and carrying out evictions on certain City residents impacted by COVID-19. Under the proposed legislation, after September 30, 2020, or such later date after the expiration of current state and federal eviction moratoriums, evictions and execution on money judgments will remain suspended against those, including commercial tenants, who have "suffered a substantial loss of income because of COVID-19" until April 1, 2021 at the earliest.

Under the terms of the bill, a commercial entity has "suffered a substantial loss of income because of COVID-19" where: (i) a business was subject to seating, occupancy or on-premises service limitations pursuant to an executive order issued by the governor or mayor during the COVID-19 period, or (ii) its revenues for any three-month period between March 7, 2020 and September 30, 2020 (or later, depending on the expiration of federal and state moratoriums), inclusive, were less than 50 percent of its revenues for the same period in 2019 or less than 50 percent of its aggregate revenues for the months of December 2019, January 2020, and February 2020.

The bill also sets forth specific guidelines to be used to determine if an individual tenant has suffered substantial loss of income because of COVID-19, which, generally, includes when a person's employment has been impacted by the virus.

A second bill now under consideration by the City Council would prohibit the enforcement of guarantees and other “personal liability provisions” in commercial leases involving a COVID-19 impacted tenant through September 30, 2020 (or, if later, a month following the expiration of current state and federal eviction moratoriums) where the default or other trigger event happened during the COVID-19 state of emergency declared by the Governor. The bill includes the same definition for businesses impacted by COVID-19 as in the eviction and collection legislation and defines a “personal liability provision” to include, with respect to a commercial lease, a term that provides for an individual to become wholly or partially personally liable for an obligation of a business arising under a lease or agreement upon the occurrence of a default or other event.

This bill would also prohibit “commercial tenant harassment,” which is defined as any act or omission by or on behalf of a landlord that (i) would reasonably cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such covered property, and (ii) includes one or more of the following:

- using force against or making express or implied threats that force will be used against a commercial tenant or such tenant’s invitee;
- causing repeated interruptions or discontinuances of one or more essential services, or an interruption or discontinuation for an extended period of time or one that substantially interferes with a commercial tenant’s business;
- repeatedly commencing frivolous court proceedings against a commercial tenant;
- removing from a covered property any personal property belonging to a commercial tenant or such tenant’s invitee;
- removing a door at the entrance to a covered property occupied by a commercial tenant or changing locks, or otherwise preventing entry to the premises;
- substantially interfering with a commercial tenant’s business, including by commencing unnecessary construction or repairs on or near covered property;
- threatening a commercial 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 commercial tenant, an invitee of a commercial tenant or any person seeking entry to the covered property in order to patronize such commercial tenant;

- unreasonably refusing to cooperate with a tenant's permitted repairs or construction activities; or
- threatening to or implementing a unenforceable personal liability provisions.

A third bill is aimed specifically at commercial tenant harassment and would prohibit threatening a commercial tenant based on (i) 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, or status as a victim of sex offenses or stalking, or (ii) the commercial tenant's status as a person or business impacted by COVID-19, or the commercial tenant's receipt of a rent concession or forbearance for any rent owed during the COVID-19 period. This bill would impose fines between \$10,000 and \$50,000 for violations.

Each of the bills described above have several sponsors, and each is co-sponsored by Speaker Corey Johnson. Hearings on these bills are scheduled for the week of April 27, 2020.

Of note, also introduced in the City Council on April 22nd was a non-binding resolution calling upon the State legislature to pass, and for Governor Cuomo to sign, currently pending legislation that would suspend rent payments for certain residential and small business commercial tenants who have lost income and would suspend a portion of the mortgage payments for any "person or entity" who faces financial hardship as a result of being deprived of rent payments by the act. This bill and others related to rent relief have been under consideration in Albany since late March, and it appears that the City Council will make efforts to address leasing issues ostensibly within its control in the meantime. BCLP will continue to monitor this developing legislation and will provided updates as new information becomes available.

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