



NEW YORK STATE  
RESTAURANT  
ASSOCIATION

# Responding to Coronavirus

*\*This content is up to date as of 3/17/20 at 7:00 pm.\**

Presented by

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David Scott Peters, Restaurant Expert & Speaker

This webinar will begin at 2:00 p.m.

**jackson|lewis**



David Scott Peters

## **Please note:**

**The purpose of this webinar is to provide attendees with up to date information regarding the impact of the pandemic on our industry. The information provided is not legal advice. We will not be able to provide individualized answers to an operator's particular circumstances. We urge our restaurant operators to consult with retained professionals to secure legal and tax compliance.**

## What we know now...

- Governor Cuomo announced restaurants must close by 8:00pm on 3/16, take out and delivery are okay. NJ and CT issued the same order.
  - Will involve alcohol delivery, waiting for guidance and clarity on that.
  - NYC had already shut down dining.
- Gatherings of 50 people or more are banned – public or private.
- NYSRA is working with National Restaurant Association on federal aid package.
  - Pushing back as current plan is not helpful enough to restaurant industry.
  - Federal SBA loans: we are trying to clarify/remove glitch on how to apply.
    - We are stressing that funds need to come through as quickly as possible – 0% interest and long time to pay back.
  - We are seeking anything that can be done to allow restaurants to pay late as needed.
  - NYSRA is talking with a range of state agencies to identify all areas for possible relief: DOL, Tax & Finance, SBA, Ag & Markets.

## How should I prepare for a major change in my business?

How do we go from dining room to carry out and delivery?

- Sign up for delivery apps immediately: Grubhub, Doordash, Uber Eats, Postmates
  - Grubhub deferring fees, Uber Eats waiving fees.
  - To have greatest reach with potential customers you should sign up with all four.
- Online Ordering
  - Contact your POS system rep and make sure your system already has easy integration with online ordering.
  - Update your website for online orders.
- Marketing
  - Send an email to all guests in your database, use email marketing services like Constant Contact.
  - Let guests know you are open and switching to take out and delivery via email and social platforms.
  - Communicate take out and delivery menu via Facebook, Instagram, Twitter – all platforms.
  - Explain what you are doing to ensure safety and sanitation for staff and guests, ServSafe training, etc.

## How should I prepare for a major change in my business?

How do we go from dining room to carry out and delivery?

- Proper Packaging
  - Identify menu items that will hold up well for delivery, easy to reheat if needed.
  - Determine if current packaging will keep food warm, edible (not soggy) for delivery.
  - Select the right takeout packaging products, sustainable if possible.
  - Create checklist so that every package has napkins, salt and pepper, all necessary utensils.
- Menus
  - Streamline menu to top 15-20 items
    - Reduce skus and you can buy smarter, reduce waste.
    - Get product off the shelves as needed.
- New menu options, for example, family of 4 meals-to-go.
  - Prepared meals, catering to go.

## How should I prepare for a major change in my business?

How do we go from dining room to carry out and delivery?

- Consider drop off catering.
  - Take temperature of product when it leaves and when you drop it off to show customer it is the right temperature.
  - Make sure you have a professionally dressed person delivering the food, maintain positive reputation.
  - If this is new to your business, watch webinars from experts on how to do this.
    - The Catering Coach.
- David Scott Peters and NYSRA are offering a 2 hour free budget training webinar.
  - This should help you to decide whether to stay open or close for now.
  - Will schedule in the next week.
  - David Scott Peters will also give his budget software tool to attendees for free.

## How should I prepare for a major change in my business?

- Budgets are crucial.
  - Create a 12 week budget, run scenarios based on current situation and predict for the next several weeks.
  - Review taxes due, sales tax, bills accrued.
  - Can you close doors or should you remain open?
    - Consult your professionals - accountant, attorney - get expert advice.

## How should I prepare for a major change in my business?

- What bills should I pay first?
  - Payroll taxes.
  - State sales tax.
  - Payroll to employees.
- Who can I work with?
  - Landlord to delay lease payments.
    - Have attorney review lease re: penalties for late payment, etc.
  - Vendors or Distributors on terms.
    - Review, can I push terms later?
    - Look at budget to determine what you can do now and what delayed payments may cost.
  - Credit cards can be paid later, check interest and penalty costs.
  - Anything on docket
    - Review agreement – can I push off 30 days?
    - Be wary of pushing out too far - 60 or 90 days.

## How should I prepare for a major change in my business?

- Two options really: Close or become delivery and takeout only.
  - Either decision will most likely result in layoffs.
  - You must issue a notice to employees when laying them off per NYS Labor Law Section 195, Paragraph 6.
    - Termination letter: Notify temporary or permanent employees date lay off is effective.
    - Notify of any health insurance changes, COBRA notice as needed.
    - The above steps allow employees to apply for unemployment insurance
      - Governor has waived waiting period for unemployment to begin.
    - Wages: pay all outstanding wages as of last day of employment, must be paid on time per NY Labor Law. Payroll should be weekly as required by NYS.
      - Statutory paid sick leave is to be used for sick time only, which likely precludes payment of accrued and unused sick leave; but check your policy to determine whether the venue has obligations to pay accrued sick leave, but can offer severance or pay for banked vacation. However, with no waiting period for unemployment it's best not to do these things as they will delay unemployment benefits.
- Look at your insurance plan, if it's COBRA qualifying employee must receive notice. You may have for coverage for the month of March. You will need to review the plan document and speak with your broker.

## How should I prepare for a major change in my business?

- For larger businesses – you may need to provide notice of layoffs to comply with Worker Adjustment and Retraining Notification (WARN) Law.
  - Legal synopsis of WARN law is available [here](#).
  - Link to NYS DOL WARN portal [here](#).
- NY WARN Law requires 90 days advance notice of a plant closing or mass layoff.
  - You didn't have notice of this closure, unforeseeable business circumstances exception would seem to cover this crisis.
  - A layoff of less than 6 months is not under WARN.
  - **Review the WARN synopsis and read NYS requirements at the links above.**

## Q+A

Can employees work part time and collect unemployment?

- Probably not. It depends on the number of hours they work and their earnings.
- Are we going to be penalized (rate increase) on unemployment insurance?
  - Typically an increase in claims will increase an employer's costs.
  - NYSRA is asking the state to do something like reduce the rate as this closure was forced by the state.

## Q+A

Please explain which businesses fall under WARN Law.

- The NY State WARN law applies to employers who have 50 or more full time employees that work at a single site, in the aggregate of 2000 hours/week.
- Excludes part-time, employed less than 6 months or have worked fewer than 20 hours on average prior to the layoffs.
- You may need to create a spreadsheet and look at start/end dates and hours and determine if your business is covered by the NY or federal WARN statutes.
- Only if 25 or more people are laid off, and for longer than 6 months, then WARN notice must be provided.
- Notice must be sent in order to avail preserve the right to argue that one of the exceptions applies.

We recommend that you read the WARN Law [synopsis](#) and go to the NYS DOL [website](#) for full WARN Law information. Consult with your attorney as well.

## Q+A

Can layoff/termination notice requirements possibly be waived?

- Not at this point. No indication state or federal DOL will waive requirements. However, if layoff less than 6 months then not under WARN.
- S-195 Notice must be provided for layoff/termination, download sample notice [here](#).
  - NY Labor Law 196, Sec 6 explains what has to be in the notice, it's fairly straightforward.
  - Must be sent within 5 days of layoff/termination.
  - Best practice is email or send to individual employees.
    - Email you will have evidence it was sent, can also mail to home or include with paycheck if mailed.

## Q+A

### Handling Layoffs and Terminations.

- If you employ people here on visas, for example an O-1 visa for a chef.
  - If laid off the chef's eligibility to be in the country could be an issue.
  - Very important to talk to immigration counsel about what that means for the individual before layoff/termination.
- A manager can't be exempt from overtime unless they perform supervisory duties and are paid at least \$1,125/week.
- You may need to cut shifts or re-deploy managers to non-management positions and change compensation.
  - Will need to provide a new wage notice (S-195).
    - You can change salary, not every week, but under reasonable circumstances.

## Q+A

- Example: If a manager makes at least \$1,500/week then moves from 6 days/week to 3 days/ week a salary of \$750 per week does not meet the salary requirements.
  - You will need to pay the manager hourly and have them clock in and out as other hourly staff does.
  - Reissue wage notice and pay overtime if they work more than 40 hours.
- Note, if a manager moves to hourly pay structure that manager must still be engaged in supervisory not line duties.

## Q+A

How do I implement/decide who to layoff?

- Establish a criteria: length of service or quality of work are typical.
  - However you decide, you will want to be able to clearly explain the decision making process in the event your decisions are later challenged.
- Wages must be paid promptly. Individual owners can be personally liable for unpaid wages.

## Q+A

How do I keep my staff safe?

- Good hygiene is critical
  - Handwashing
  - Gloves
  - Encourage staff to report to work ONLY if they feel well.
  - What happens if I find out someone has tested positive for coronavirus?
    - You will need to close your venue and clean thoroughly.
    - Privacy issues: do not make name of person public.
    - Let staff know right away. If they feel encounters with that person may have caused contamination they may want to self-quarantine.
    - Anyone in close contact with the person should self-quarantine for 14 days

## Q+A

- Can I take a staff person's temperature?
  - On March 17, 2020 the EEOC issued an alert that because the country is in the midst of a pandemic, employers may take a staff member's. All employees should be treated consistently and ideally supervisors should not be involved, a nurse (if possible) or HR professional should conduct the examination.
- Can I send someone home if they are visibly sick?
  - If you think someone is not well, they are sneezing, coughing, or if you believe an employee poses a threat to guests and staff, that is a reason to send them home.
  - Designate them as eligible for NY sick leave, if they have been eligible to accrue those benefits.
  - It's a judgement call, read guidelines on CDC website. Use good judgement before sending an employee or guest home.
  - Decision should be made by managers. They should be familiar with coronavirus symptoms and make an evenhanded decision.

## Q+A

- Any updates on rent abatement?
  - Not at this time. NYSRA reiterated need at state and city level today, asked if there's anything they can do that they step in.
  - We are asking for their help and leverage to encourage landlords to work with restaurants for delayed payment. We all need to share the impact of this.
- For just a bar, no food, so no takeout option, any advice?
  - If no kitchen at all, there is no option but to close for now, unless you can deliver liquor. (See updated guidance from SLA now)
- Is there a timeframe for closures?
  - Governor stated closures are indefinite, so no time limit at this point.
- NY sales and property taxes, any info on payments being delayed?
  - We have reached out to tax & finance and are trying to get a delay.
  - No firm answer yet but will update you as soon as we get information.

## Q+A

- An Insurance policy that covers loss of business, would this count?
  - Most policies have an exception for force majeure, an “Act of God” exception. You will need to consult with your broker to determine coverage.
- What is liability of turning waitstaff into delivery drivers?
  - They should not become independent contractors to do this.
  - May want to pay full minimum wage as tips will not be the same, and time serving is less.
  - If using their own vehicles will need to cover vehicle expense. Will also need to have your insurance set up properly for this.
  - This is why delivery apps may be a better and simpler option.
- Is it okay if we officially layoff staff but call them back to do projects at our restaurant?
  - Yes, but then they will lose unemployment. This may not be worth it to employee.

## Q+A

- Can I ask staff who would like to go on unemployment?
  - I would reject that, if you ask people to raise hands you may lose some of your best people if voluntary.
  - Keep best performers, voluntary may not be the best way.
  - Choose to meet your needs. Keep core best employees. When this ends, you want your core, best people still with you.
- Am I required to provide layoff/termination notice to part-time and seasonal employees?
  - Yes, notice to any part-time employee currently working for you.
  - Seasonal not currently working for you does not need a notice.
- If someone works less than 20 hours/week for me and all have other jobs are they eligible for unemployment?
  - They may not be eligible for unemployment.

## Q+A

- Can you clarify, if a staff cafeteria at a business office is this included in limiting numbers?
  - Yes, this would fall under limited gathering guidelines. No more than 50 people in the space at one time
- What about breaking commercial leases?
  - Consult a real estate attorney before breaking leases.
- If I have a private gathering of less than 50 people in my dining room and I cater the meals, is that okay?
  - No, cannot operate dining room.

## Q+A

- How will this be enforced?
  - Original limit on gatherings was being policed on various levels, anecdotal info NYSRA has received:
    - Police stopping in bars, health inspectors stopping in restaurants.
    - Liquor license could be pulled if in violation, SLA enforcement.
- Can I ask an employee if their family member has been sick?
  - You cannot ask if a family member has been sick, you can ask if a member of their household has been sick.
  - Don't ask just one staff person, ask all if you are going to ask one.
  - Tell staff that if a member of their household is diagnosed positive or have symptoms please come speak to me privately.
    - Again, must say member of household NOT family.

## Q+A

- Should letter of layoff/termination say temporary in this situation?
  - Yes, temporary, but note that we do not know for how long.
- For a party or reservations that I received a deposit, can I offer gift cards or credit to use at a later time instead of refund?  
Refunds could create a cashflow issue.
  - Maybe offer those as options, ask to give refund as a gift card or credit. But be prepared to return money if customer insists.
  - Could have negative long term impact if you refuse to return money. If they want money back you've got to give it to them.
  - Core value call, you could lose a future engagement with guest or risk negative online reviews if you refuse to return money if requested.
- If I have an event booked for less than 50 people, is that okay?
  - We need clarification before we can give a definitive answer. As soon as we can get the clarification from the state we will put that out.

**Thank you for joining us...**

**For further information or clarification please call  
800.452.5212 or email [info@nysra.org](mailto:info@nysra.org)**

**Thank you to our experts:**

**Melissa Fleischut, NYSRA President & CEO**

**Felice Ekelman, Principal, Jackson Lewis**

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