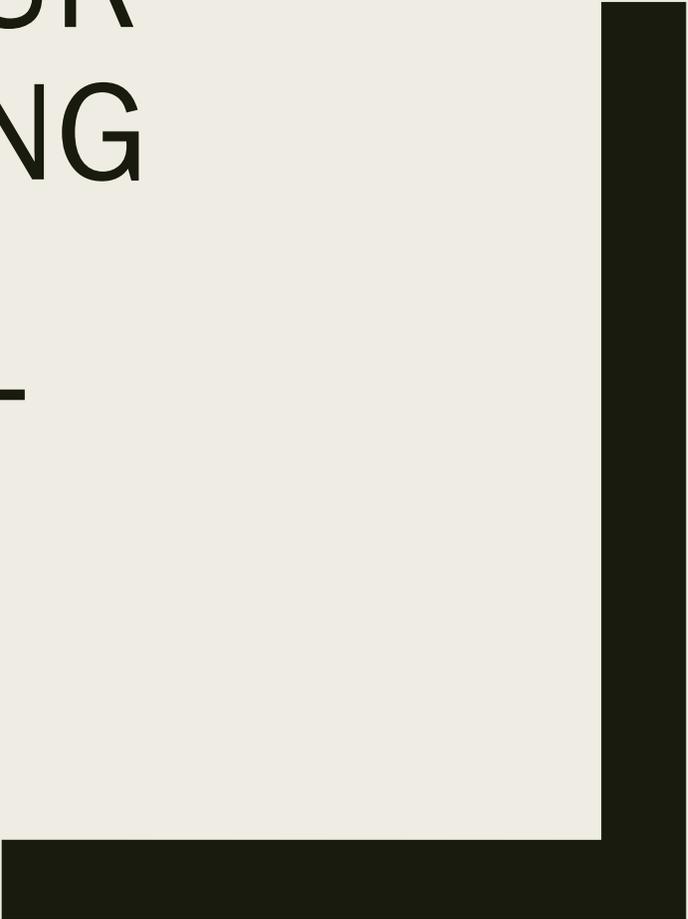


RE-OPENING YOUR BUSINESS DURING COVID-19: SAFE & SMART

Vandenack Weaver LLC

April 29, 2020



Mike Weaver

Michael J. Weaver is a managing member of **Vandenack Weaver LLC** in Omaha, Nebraska, a tax and business boutique.

Mike's practice focuses on providing experienced counsel to businesses and individuals. His areas of expertise include corporate and business law, real estate transactions, federal and state taxation and tax planning, estate, retirement and financial planning, and trust administration and probate. In his practice, Mike represents a wide variety of business interests on tax, corporate, contract, real estate, and financial matters, including sole proprietorships, partnerships, limited liability companies and corporations of all sizes. Mike especially enjoys working with closely held businesses. He helps them reach their goals by providing practical advice that minimizes risk while navigating complex legal issues associated throughout the life-cycles of their business. Mike represents individuals in all stages of life on their estate, retirement and financial planning, be it a newly married couple establishing their first estate plan or a business owner working on complex business succession issues.



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LEGAL | TAX | BUSINESS COUNSEL

Monte Schatz

Monte L. Schatz is a managing member of **Vandenack Weaver LLC** in Omaha, Nebraska, a tax and business boutique.

Monte offers clients a wealth of experience in practice areas vital to business and finance. His expertise includes trust administration, probate, estate planning, tax, securities, corporate and employer-employee relations law. Schatz's client service is strengthened by a 30-year work history that includes key executive positions with national, regional and community bank corporations. Monte assists individuals and businesses with wealth strategies, trusts and estates, asset protection, tax planning/preparation, business, employer-employee issues, tax issues and risk management. Monte's wide scope of expertise also includes federal and state legal, tax, and regulatory compliance.



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Matt Dunning

Matthew G. Dunning is an attorney at **Vandenack Weaver LLC** in Omaha, Nebraska, a tax and business boutique.

Matt is an accomplished attorney with extensive risk management experience and more than two decades of legal experience. He brings strong analytical and problem-solving skills to complex business challenges. His ability to negotiate and resolve intricate disputes in fast changing, complex business environments has helped him effectively represent the interests of 501(c)(6) organizations as well as advise large non-profit organizations on employment compliance issues across 11 jurisdictions, including California, New York and the District of Columbia. Dunning has successfully litigated and mediated employment contract issues including for-cause terminations and non-competition and non-solicitation agreements. In his career, he had defended clients against discrimination and harassment claims in Iowa and Nebraska courts and in administrative proceedings in multiple states, including in the Eighth Circuit Court of Appeals.



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Jim Pieper

James S. Pieper is an attorney at **Vandenack Weaver LLC** in Omaha, Nebraska, a tax and business boutique.

Jim has more than 30 years of experience at the intersection of law, politics, public policy, business and finance. He specializes in the research and analysis of complex statutory, administrative, constitutional, political and financial issues to assist those facing compliance with regulatory and governmental issues. He also has extensive background in development projects involving public-private partnerships. Representative clients include employers, health care providers and nonprofits.

In addition to his background in private practice, Pieper served as legal counsel to the Speaker of the Nebraska Unicameral Legislature and the Chair of the Judiciary Committee for nearly 12 years. During that same period, and subsequently, Jim worked in private legal practice on corporate and public-private transactions, representation of nonprofit entities and research and analysis of statutory, administrative and constitutional issues. His experience includes major financing and development transactions, analysis and preparation of compliance policies, and a variety of other administrative and governmental matters.



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Alex Rainville

Alex B. Rainville is an attorney at **Vandenack Weaver LLC** in Omaha, Nebraska, a tax and business boutique.

Alex works to help business owners develop, grow, protect, and, if the time comes, sell the business. He provides business-minded counsel during all stages of various corporate transactions, but specializes in helping companies protect its intellectual property and brand, including resolving trademark disputes, registering copyrights, and protecting trade secrets. Alex frequently assists businesses that need expertise to comply with state and federal data security and privacy rules, and often assists these clients with technology and intellectual property licensing matters. He also works with clients to secure adequate funding for their businesses, whether through equity or debt based capital raises. Alex will frequently work closely with businesses, in an outside general counsel capacity, to assist clients with formation, re-structuring, day to day agreements, and various corporate governance matters. His goal is to ensure that you receive the most effective business-minded counsel for your company.



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Ryan Coufal

Ryan J. Coufal is an associate at **Vandenack Weaver LLC** in Omaha, Nebraska, a tax and business boutique.

Ryan Coufal joined the firm as an attorney in 2019. A 2019 graduate and appointee to the Order of the Barristers, a national honors society recognizing students who have excelled in litigation and advocacy, Coufal brings energy and a legal expertise to individuals and businesses.



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PRACTICAL STEPS
FOR SAFE & SMART
RE-OPENING

PRACTICAL STEPS FOR SAFE & SMART RE-OPENING

- Evaluate the risk for employees and customers based on the industry.
 - *Very high risk and high-risk businesses include healthcare providers, senior care service providers, and other in-home care service providers. This includes dental, home health, and senior care facilities.*
 - *Medium risk businesses are those that require frequent or close contact between employees or customers. This includes food processing and food service companies, as well as in-home service providers.*
 - *Low risk businesses are those that can provide the product or services with little employee or customer contact.*

PRACTICAL STEPS FOR SAFE & SMART RE-OPENING

- Create physical controls.
 - *For the healthcare industry, face masks, gloves, and other equipment should be used. Personal protective equipment should only be used in situations where, under normal circumstances, such equipment would be used.*
 - Those providing home care or appointment-based health services, the businesses should require that each patient disclose any known health risks, limit the flow of traffic and interaction between patients, and use isolation rooms as much as possible.
 - Increase sanitization and cleaning of all rooms and environments.
 - Ensure proper ventilation and air handling systems are installed.
 - *Decrease need to use high-touch surface areas, such as doors, knobs, handles.*
 - *Create and post signs regarding all protocols, policies, and procedures that address the physical safeguards.*

PRACTICAL STEPS FOR SAFE & SMART RE-OPENING

- Creative administrative controls.
 - *Create policies and protocols that address the risk level of the business.*
 - For healthcare providers and senior care facilities, understand the level of risk involved with the patients and services being provided. Craft policies that address that level of risk, such as separation of appointments, requirement that administrative tasks by patient be completed remotely, separation protocols for high-traffic areas.
 - For food service and food processing companies, consider policies that limit employee interaction, such as augmented shifts, as well as employee/customer interaction, such as fewer employees in customer facing locations.
 - *Employee absenteeism.*
 - Be prepared and expect employee absenteeism, as well as increased employee stress and emotional distress. Consider specific policies to address such absenteeism and employee stress.
 - Have a strict policy that employees do not report to work when sick.

PRACTICAL STEPS FOR SAFE & SMART RE-OPENING

- Creative administrative controls.
 - *Waivers.*
 - Consider limited use of waivers with employees and clients.
 - *Employee waivers should consider employment law matters and what can be waived.*
 - *For those in certain industries, such as healthcare and senior care service providers, understand the scope of what you can request patients to waive.*
 - Waivers should be used in conjunction with physical and administrative safeguards, to avoid negative repercussions from trying to simply waive potential liability.
 - *Vendors and Suppliers.*
 - Prepare for vendors and suppliers to be closed or unable to provide requested items and services.
 - Source other vendors and suppliers, conduct due diligence, and ensure any replacement meets quality standards.

PRACTICAL STEPS FOR SAFE & SMART RE-OPENING

- Educate employees and customers.
 - *Employee training.*
 - Pre-opening, discuss new administrative and physical controls.
 - Ensure employees understand and agree to abide by the administrative and physical controls.
 - *Customer training.*
 - Communicate with customers regarding applicable physical and administrative controls.
- Enforce and Monitor.
 - *Require employees to monitor and enforce administrative and physical controls.*
- Remember other rules and policies.
 - *Don't lose sight of other rules, policies, and procedures applicable to the business.*

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CALLING EMPLOYEES
BACK FOR
RE-OPENING

CALLING BACK EMPLOYEES FOR RE-OPENING

- Over the last several weeks employers have been forced to quickly make decisions regarding the following:
 - *What personnel are essential?*
 - Can these personnel perform their jobs remotely?
 - *Who can most efficiently work remotely?*
 - If not, can these personnel safely perform their jobs in the workplace?
 - *What personnel need to be laid off?*

CALLING BACK EMPLOYEES FOR RE-OPENING

- Given the potential for future stay at home or social distancing orders, does it make sense to bring back remote workers?
 - *What is the best timing?*
 - *Should essential workers only be brought back?*



CALLING BACK EMPLOYEES FOR RE-OPENING

- What are the critical considerations if an employer does decide to bring back personnel who are working remotely?
 - *If remote work has been efficient, is it in the employer's interest to continue those arrangements?*
 - What needs to be done to prepare the workplace for returning personnel?
 - *CDC Interim Guidance.*
 - *OSHA Guidance.*
 - What liability will employers face if a worker is infected with COVID-19?
 - What is the process for returning equipment or other materials that may have been exposed to COVID-19?
 - *What additional measures may be needed to continue remote work?*

CALLING BACK EMPLOYEES FOR RE-OPENING

- How should employers handle employees working remotely who refuse to return to work?
 - *Communication--are there individual risk factors that need to be addressed?*
 - *Identify any concerns.*
 - *Employers will face the decision of allowing remote work to continue, versus terminating the employee.*
 - *ADA issues--interactive process.*

CALLING BACK EMPLOYEES FOR RE-OPENING

- Limited exceptions for refusing to return to work:
 - *The employee has COVID-19, is seeking diagnosis or has been ordered to self-quarantine;*
 - *A member of the employee's household has COVID-19;*
 - *The employee cannot work in person due to being a primary caregiver of a school-age or younger child and such child's school or child care is closed as a result of COVID-19 and telework is not available;*
 - *The place of business cannot be reached due to a COVID-19 quarantine;*
 - *The place of business is closed due to an order related to COVID-19;*
 - *The employee "has to quit" the job "as a direct result of COVID-19."*

CALLING BACK EMPLOYEES FOR RE-OPENING

- Unemployment compensation
 - *Federal payments present a strong disincentive to return to work.*
 - *Disqualification for benefits.*
 - *Fraudulent application/certification for benefits.*
- Employees who refuse to return to work without a justification should be considered to have quit the job.



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MANAGING
FORGIVENESS OF YOUR
PAYCHECK PROTECTION
PROGRAM LOAN

MANAGING FORGIVENESS OF YOUR PPP LOAN

- Best Practices for PPP Compliance
 - *Segregate the funds upon receipt*
 - *Re-assess your “necessity” – May 7 amnesty*
 - *Plan for the best uses that will retain forgiveness*
 - 75 percent rule
 - *Payroll costs include only compensation, health insurance and retirement*
 - *\$100,000 per year limit*
 - Non-payroll costs
 - *Mortgage interest, rent, utilities (all in effect prior to 2/15/20)*
 - Interest on non-mortgage debt is allowed but not forgivable
 - If you cannot spend it all on allowable costs; segregate for repayment

MANAGING FORGIVENESS OF YOUR PPP LOAN

- Best Practices for PPP Compliance
 - *Amount of forgivable payroll costs will drive outcome*
 - Can strategize to maximize payroll or maximize non-payroll
 - *Maximize FTE count during period beginning April 27, 2020*
 - Non-returning employees can be replaced for FTE purposes
 - *Avoid reductions of compensation for less-highly-paid employees*
 - *Document all uses of PPP funds*
 - *Avoid instances of “double dipping”*

MANAGING FORGIVENESS OF YOUR PPP LOAN

- PPP Forgiveness Practicalities

- *Application will be made to the lender servicing the loan*

- Documentation of:

- *FTEs*

- *Pay rates*

- *Pay periods*

- *Payroll tax filings*

- *State income, payroll and unemployment insurance filings*

- *Verification of payments of mortgage interest, rent, utilities*

- Certification from authorized representative as to accuracy of documentation

MANAGING FORGIVENESS OF YOUR PPP LOAN

■ PPP Forgiveness Practicalities

- *Lender will make the determination of the forgiveness amount*
- *Lender must demonstrate that borrower submitted the required documentation*
- *Deadline for forgiveness application not set, but lender has 60 days after application to issue a decision*
- *Details such as appeal rights not yet announced*
- *There is a six-month deferral period for any non-forgiven principal*

MANAGING FORGIVENESS OF YOUR PPP LOAN

- PPP Forgiveness Tax Issues
 - *The cancellation of indebtedness, which would otherwise be taxable, is tax-free pursuant to the CARES Act.*
 - *PPP funds used for business expenses that are subsequently forgiven may not be deductible (guidance on that issue not yet provided)*
 - *Cannot mix with Employee Retention Tax Credit or Families First paid-leave tax credit*





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