



IFA LEGAL SYMPOSIUM

To Terminate or Not to Terminate, That is the Question: Enforcing System Standards in a Post-Covid World

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Speakers

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Franchise System Standards

- What are they?
- Typical (pre-COVID) Methods of Enforcement
 - Investigating and discovering deviations from system standards
 - Addressing deviations from system standards

The COVID-19 Pandemic

- Impact on Franchise Systems
 - As of the end of August 2020, just 26 percent of franchises resumed their normal operations or faced only minimal effects from the COVID-19 pandemic.
 - As of September 2020, on average franchisees experienced a 19.3 percent decline in revenue since the start of the COVID-19 pandemic.
 - As of September 2020, of the 1.4 million employees in the franchise industry who lost their jobs, it is estimated that 40 percent lost their jobs permanently.
 - The hospitality and restaurant industries have been most heavily impacted by the COVID-19 crisis, followed by personal services and retail.
 - Franchisees in the Northeast and West Coast states have experienced the greatest impacts from the COVID-19 pandemic, though all experienced impacts at various times during the pandemic.
 - The start of the COVID-19 crisis coincided with the first major drop in FRANData's Franchise Performance Index in more than four years.
 - The permanent business closures and job losses resulting from the COVID-19 crisis are expected to lead to, "a large percentage of unemployed workers choosing to invest in franchises."

Varying Effects on Different Franchise Segments

Little Caesars' COVID Success Could Lead to Growth Boom

The brand is looking to hire thousands of workers to handle increased volumes.

WEB EXCLUSIVES | DECEMBER 11, 2020 | BEN COLEY



(QSR Magazine, Dec. 11, 2020)

FEATURED

Detroit's Little Caesar's franchise winning America's pandemic pizza war

By Gina Joseph gjoseph@medianewsgroup.com; @ginaljoseph on Twitter Aug 27, 2020 Comments

(Macomb Daily, Aug. 27, 2020)

Coronavirus Pandemic Sets Hotel Industry Back 10 Years, Report Finds

The American Hotel and Lodging Association estimates that the COVID-19 pandemic has eliminated more than 10 years of job growth in the accommodations sector.

(US News, Jan. 27, 2021)

‘Tsunami’ of hotel closures is coming, experts warn



CORONAVIRUS, VAC

(Los Angeles Times, Sept. 19, 2020)

Addressing System Standards in the COVID Era

- How should franchisors handle the enforcement of system standards in times of crisis?
- Temporarily suspended or waived?
- Flexible approach on franchisee-by-franchisee basis, or consistent, strict enforcement?

Guiding Principles

- The nature and locality of the system
- The lifecycle of the crisis
- Consistency versus triage response
- Legal risk

Waiving, Modifying, Changing, and Implementing New System Standards

- Key considerations
 - What system standards are essential to the franchise system?
 - Minimum standards related to the health and safety of employees and customers should never be waived.
 - Reputational risk
 - Legal risk
 - The specific nature of the pandemic and its effect on the specific franchise system

Waiving, Modifying, Changing, and Implementing New System Standards

- Implementing new system standards
 - Reimagined and reinvigorated health and safety standards
 - Best practices developed by the franchisor / best practices developed by franchisees, vetted by franchisors, and introduced to system
 - Legal rights and mechanisms for implementing and monitoring system changes
 - Robust legal documentation of waivers, modifications, changed and new system standards

Waiving, Modifying, Changing, and Implementing New System Standards

- Example of implementing new system standard in response to pandemic: **Hilton CleanStay program**



Enforcing System Standards in the COVID Era

- Modified enforcement mechanisms
 - Suspension of in-person inspections except where physical inspection was critical
 - Virtual inspections via online video sessions / photographs / online checklists
 - Documentary inspections

Enforcing System Standards in the COVID Era

- Enhanced enforcement and termination considerations
 - New / additional potential legal defenses excusing a failure to meet brand standards
 - Force majeure
 - Material adverse event
 - Hardship
 - Impossibility of performance
 - Frustration of purpose

Emerging From the Pandemic

- Additional franchisee departures from franchise systems
- Business opportunities
- Fewer and fewer deviations from system standards will be attributable to the pandemic

Addressing System Standards Issues in Future Times of Uncertainty

- There are a number of important lessons that the franchise legal community can learn from the pandemic.
 - The importance of the in-person franchisor-franchisee relationship
 - Build resilient franchise systems
 - Strong crisis response planning

Questions?