



Potential Legal Issues Facing Small Business Owners Affected by the Boston Marathon Bombings

The Boston Bar Association is connecting individuals and small businesses affected by the Boston Marathon bombing to lawyers that can provide pro bono legal assistance. **To access these services, please call the Lawyer Referral Service intake line at 617-742-0625, or Toll Free: (800) 552-7046, or submit an online request [here: http://bostonbarlawyer.org/content/request-attorney](http://bostonbarlawyer.org/content/request-attorney).**

Below is a list of issues facing Marathon bombing victims and the ways a lawyer could be helpful with these many challenges. This list is meant to highlight the various concerns and is not meant as legal advice.

I. Sources of Potential Funds and Resources:

- a. Review the City of Boston's website (Recovery Resources Available for Marathon Site Businesses) at: <http://www.cityofboston.gov/oneboston/business/> or contact the Mayor's hotline at (617) 635-4500 for information regarding:
 - i. Procedures for obtaining federal low-interest economic injury disaster loans through the Small Business Administration (SBA) (through January 27, 2014) and/or loans and business credit cards through Citizens Bank for qualified businesses (through May 31, 2013);
 - ii. Listing of businesses donating work space;
 - iii. Employee assistance programs (EAPs);
 - iv. Employment and wage questions; and
 - v. Guidance for property owners and businesses.
- b. Evaluate whether small businesses should contact their current financial institution for financing options.
- c. Consider whether fundraising efforts such as partnering with local restaurants or businesses to raise money is appropriate.

II. Insurance Considerations:

- a. Examine current insurance policies for provisions related to disasters or similar events.
 - i. Examples of types of insurance may include:
 1. Business Interruption Insurance
 2. Terrorism Insurance
 3. Standard Commercial Property and Contents Insurance
 - ii. Examples of types of coverage may include:
 1. Lost income, services interruption and extra expense caused by forced closures (by order of Civil Authorities). The City of Boston can provide businesses with a Civil Authority letter upon request. To request a letter, email Christopher.satti@cityofboston.com.
 - iii. Examples of exclusions of coverage may include:
 1. Terrorism
 2. Intentional acts
 3. Civil commotion
- b. Evaluate bodily injury and personal property damage concerns by considering physical and mental consequences to employees of small businesses and/or third parties injured on or around the small business's premises. Small businesses may wish to consider the following (as applicable):
 - i. Health/Medical Insurance
 - ii. Workers' Compensation Insurance
 - iii. Short-Term/Long-Term Disability Insurance

- iv. Umbrella Insurance
- v. Individual Liability for Owner or other Agents of the business

III. Real Estate Considerations:

- a. Examine current leases for provisions related to disasters or similar events.
 - i. Review casualty provisions:
 - 1. Does the lease create an obligation to restore? If so, is restoration an obligation of landlord or tenant?
 - 2. Does the lease establish a time frame for completion of restoration? If so, does the tenant have a right to terminate if restoration is not completed within the designated time frame?
 - ii. Review provisions related to interruption of services:
 - 1. Does the lease provide for an abatement of rent (or eventual termination of the lease) if landlord cannot provide utility or other building services?
 - 2. Is terrorism within the lease's definition of "force majeure events," which would relieve landlord of its obligation to provide such services?
 - iii. Review provisions related to safe access:
 - 1. Does the lease include an obligation to maintain/repair entryways, sidewalks, etc.? If so, is maintenance/repair an obligation of landlord or tenant?
- b. Examine building services contracts (cleaning, management, security, etc.) for provisions related to disasters or similar events.
- c. Review loan documents for borrower's rights/obligations in the event of disasters or similar events affecting secured property.
- d. Examine applicable insurance policies for coverage of losses related to disasters or similar events.
 - i. Business interruption insurance (See II(a)(i)(1) above)
 - ii. Property damage insurance
 - iii. Liability insurance (including liability to third parties)
- e. Evaluate compliance with various regulatory requirements with respect to restoration and re-opening of business.
 - i. Examples include: zoning regulations, state and local building codes, state sanitary codes (housing and restaurants) and operating licenses
- f. Evaluate availability of alternative, temporary work sites (See I(a)(ii) above).
- g. Explore availability of pro bono architectural or construction services.

IV. Employment/Unemployment Considerations:

- a. Examine any leave of absence policies/accommodations:
 - i. Family and Medical Leave Act (FMLA) rights and responsibilities
 - ii. Americans with Disabilities Act (ADA)
 - iii. Policies providing for paid or unpaid leave of absence
 - iv. Loss of wages/income and employment questions from employees/contractors. (See I(a)(iv) above).
- b. Evaluate any issues relating to potential terminations of employees:
 - i. WARN Act
 - ii. Severance programs (Older Worker Benefit Protection Act; ADEA)
 - iii. Employment agreements – severance payment
 - iv. Wrongful discharge claims from employees
 - v. Unemployment Insurance claims and rising premiums
 - vi. COBRA
- c. Examine any payroll issues (Massachusetts Wage Act – timing of payment).
- d. Evaluate any potential liability to interns or independent contractors.
- e. Review any Short-Term Disability and Long-Term Disability Insurance.
- f. Evaluate any payments during company shutdown:
 - i. Exempt employees vs. non-exempt employees
 - ii. Company policies (handbook)

- g. Consider whether volunteering efforts by employees or non-employees to support small businesses post Boston Marathon bombings is permissible or whether small businesses may be required to pay such volunteers.
- h. Evaluate any potential negligence claims.
- i. Review OSHA guidelines.

V. Tax Considerations:

- a. Determine the deductibility of uninsured and unreimbursed casualty losses.
 - i. Link to IRS casualty loss workbook:
<http://www.irs.gov/pub/irs-pdf/p584b.pdf>
- b. Develop a plan to reconstruct damaged or destroyed records.
 - i. Records may need to be reconstructed to prove casualty loss and the amount of such loss.
 - ii. Link to IRS's website for helpful tips on reconstructing records:
<http://www.irs.gov/uac/Reconstructing-Your-Records>
- c. Consider whether insurance proceeds will be taxable.
 - i. Develop a plan to reinvest any insurance or other proceeds received from the destruction of property within two years to prevent gain recognition under Section 1033 of the Internal Revenue Code.
- d. Determine whether tax-filing and payment extensions apply.
 - i. Federal extension: three-month filing extension for individual taxpayers who live in Suffolk County (only applicable to those businesses operated as sole proprietorships).
 - ii. Massachusetts extension: three-month filing extension to file returns that were due April 16, 2013 for business and corporate taxpayers directly impacted by the Boston marathon bombings.
- e. Consider whether any donations made by business to relief funds are deductible as charitable gifts.
- f. Link to IRS Disaster Resource Guide for Individuals and Businesses:
<http://www.irs.gov/pub/irs-pdf/p2194.pdf>

VI. Bankruptcy Considerations:

- a. Evaluate whether the small business has been harmed to the point where it cannot continue to function and must cease operations.

VII. Non-Profit Considerations:

- a. Consider whether any of the issues described herein may differ if the small business is a non-profit and whether there may be additional resources for non-profits. Note that private non-profits may be eligible to apply for SBA loans (See I(a)(i) above).

VIII. Communications by Small Businesses:

- a. **Communicating with customers:**
 - i. Discuss communications with customers via company websites, e-mail, social media platforms and other forms of communication about informing customers about current status of business operations.
 - ii. Consider whether to advertise fundraising events to benefit small businesses affected by the Boston Marathon bombings on company website.
- b. **Communicating with vendors:**
 - i. Discuss communications with vendors via company websites, e-mail, social media platforms and other forms of communication about the current status of business operations and whether extended terms on current billing cycles may be possible.
- c. **Communicating with the media:**
 - i. Discuss communications with the media including statements to the press by small business owners and their employees.
 - ii. Consider whether small business should include a media/press policy in any company handbooks.

IX. Claims or Litigation:

- a. Consider potential claims or lawsuits concerning any wrongful denial of an insurance claim.
- b. Consider whether other claims or lawsuits against third parties are appropriate. Examples of claims may include:
 - i. Defamation claims: consider whether a cease and desist letter or other actions are appropriate for a negative portrayal of a small business by a third party suggesting false connection with the individuals responsible for the Boston marathon bombings.
- c. Discuss concerns by small business owners regarding potential involvement in investigation or other legal proceedings, e.g., responding to law enforcement inquiries, subpoenas, search of premises, warrants, depositions or other legal proceedings in connection with the Boston marathon bombings.

X. Planning for the Future:

- a. Consider developing and implementing business preparedness plans, emergency communications policies for small businesses and systems for the backup of computers/data and other valuable business records.
- b. Download mobile apps to help stay informed of news updates, evacuation routes shelter locations.
- c. Preparedness links:
 - i. Link to FEMA's website for disaster plans for businesses:
<http://www.fema.gov/protect-your-property-or-business-disaster>
 - ii. Link to Red Cross Ready Rating tool for businesses:
<http://www.readyrating.org/>
 - iii. Follow Red Cross and FEMA news and information on Facebook at: facebook.com/red cross and facebook.com/FEMA.