

New Jersey Governor to be Authorized to Provide Distressed Small Businesses Emergency Rent Suspension

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The New Jersey Legislature has passed a bill that authorizes the Governor to provide distressed small businesses the ability to invoke an “emergency rent suspension” during the COVID-19 pandemic.

If signed into law, the bill would permit the Governor to issue an Executive Order providing certain defined distressed small businesses temporary relief from rent payments and limit the ability of landlords to initiate eviction actions.

Executive Order

Any possible Executive Order providing distressed small businesses with the “emergency rent suspension” option, at a minimum, must include the following terms:

- The permissible length of an emergency rent suspension (not to exceed three months) that would take effect upon notification to the landlord or landlord’s agent;
- The acceptable method for delivery of the emergency rent suspension notification to the landlord; and
- A repayment schedule (over a six- to nine-month period) beginning on the first day of the second month after the end of both the state of emergency and public health emergency.

The Executive Order should direct departments and agencies to provide notice and materials to New Jersey’s small businesses and commercial real estate industry.

Prohibited Eviction Actions

The bill prohibits landlords from evicting distressed small business owners that invoke emergency rent suspension protection. Additionally, the Governor may designate the following as unlawful practices under the New Jersey Consumer Fraud Act:

- An eviction action filed by a landlord for rent that the tenant leaves unpaid in accordance with the tenant’s assertion of an emergency rent suspension; and
- An intentional misrepresentation by a tenant of their economic circumstances made in an attempt to obtain a rent suspension.

The legislation appears to provide the Executive branch the discretion to fashion or declare specific actions in violation of an existing state statute.

“Distressed Small Business” Definition

The bill provides the Governor with the ability to adjust or define the term “distressed small business” in any such Executive Order.

The legislation, however, defines an eligible entity as any business that:

1. Employed no more than 50 employees on February 10, 2020;
2. Leases real property for non-residential purposes; and
3. As a result of COVID-19, does not have monthly revenue that exceeds 80 percent of the tenant’s reasonable expectations of monthly revenue during the same season prior to the pandemic.

The bill appears to provide the Executive branch with considerable discretion and authority in defining

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the terms of the emergency rent suspension program. Further detail likely would be provided in any Executive Order implementing the emergency rent suspension program.

Jackson Lewis attorneys will provide you with further updates, including information on the issuance of any Executive Order implementing the emergency rent suspension program.

Please contact a Jackson Lewis attorney with any questions.

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