



News & Types: Client Advisories

Could the COVID-19 Pandemic Cause a Long-Term Shift in Lease Strategy and Opportunities?

7/16/2020

By: Timothy J. Hammersmith

Practices: Real Estate

The COVID-19 pandemic may very well change the outlook on the long-term use and configuration of office space in the United States. The same shift may also apply to production areas as well. Just as the trend was moving toward fewer interior offices, more open work stations and collaboration pods, the need for social distancing has become not only more apparent but formally mandated in order to hopefully stop the spread of COVID-19. Furthermore, some employees have found a new positive in working from home and will lobby for permanent implementation of a long-term work-from-home policy. This wave could change the face of not only office leases but all types of production and work space. Warehouse and logistics space, at this time at least, appears to be one market looking toward significant growth.

The above circumstances certainly have companies re-thinking their short-term and long-term lease strategies. Companies may also want to adjust their office (or even production area) use strategies even though they may currently be in a long-term lease. In addition, some companies may be finding it hard to meet their rent obligations, as a result of the COVID-19 pandemic and its effect on the economy. So, what strategies can a company look to under the foregoing circumstances?

REVIEW THE TERMS OF YOUR LEASE FOR POSSIBLE NEW STRATEGIES FOR RENT RELIEF:

If the company is having trouble meeting its current rent obligations, it is questionable whether any provision of their lease will help. However, a review of the *force majeure* provisions is recommended with legal counsel to determine if any relief may be available on that basis. As *force majeure* provisions in leases can vary greatly and there is no “one size fits all” type provision, such review is prudent. If there is no relief due to the economic climate under the *force majeure* provisions, companies may approach their landlord, as an alternative, to renegotiate on a short-term basis the payment of a portion of the rent. Companies could propose to pay a reduced rent for a certain period of time (the anticipated period for economic recovery) and make up the difference at a later date in monthly installments, with an interest bonus to the landlord. Although companies do not want to fail in meeting their obligations under their lease, sometimes the economic realities dictate that alternative measures be considered during an unpredictable period of time.

REVIEW THE TERMS OF YOUR LEASE FOR POSSIBLE LONG-TERM STRATEGIES:

The company's lease may provide some guidance for a change in long-term lease strategy. Companies looking to either reduce the term of their lease or reduce the amount of their leased space may recall that they had negotiated an "option to terminate early" or an "option to give back space." In either case, these options may be helpful to negotiate a new configuration of a smaller "foot print" or shorter term and will provide an opening to approach the landlord with a new lease strategy. At least in theory, and under the current environment and possible shift in usage of rental space, tenants should understand that there may be provisions in their current lease that invite a renewed lease strategy conversation with their landlord. Consultation with legal counsel on the terms of the lease may provide an opportunity for a new lease strategy and negotiations with the landlord.

The current economic environment is different than prior economic uncertainty as today several factors come into play as it concerns leased space, such as: (i) social distancing and health concerns; (ii) the "work-from-home" lobby gaining momentum; and (iii) basic fundamentals of how much working space will a company really need in the future? The shift was already moving toward smaller spaces but with a higher concentration of people. The desire for smaller space, with the need for social distancing, seems counterintuitive to the general proposition that most companies probably want the majority of their employees back in the office. As always, supply and demand will dictate the market. How that shift plays out remains to be seen.