



## **The Covid Conundrum Isn't Going Away: Protect Your Company and its Values in Contracts with Venues**

**Commercial and Contracts**

**Insurance**

**Litigation and Dispute Resolution**

**Nonprofit Organizations**



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## **Cheat Sheet:**

- **The reality.** COVID and new laws are affecting venue plans for corporate events.
- **Be proactive.** In-house lawyers should anticipate issues and address them with stakeholders.
- **Adapt your contracts.** Devise contracts that allow for a wider scope of reasons to cancel.
- **Seek out experts.** Consider retaining outside counsel for expertise on writing event contracts.

As companies host more in-person meetings, it has become clear that after more than two years of COVID-related cancellations and delays, we are returning to a different world.

COVID has not gone away, and states and municipalities are still grappling with vaccines, masks, social distancing, and mandates that often vary from each other. Regardless of where you personally stand politically, states also often move in directions based on recent US Supreme Court decisions.

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I am just a lawyer, how do I manage this?

That means your CEO or board of directors may have ideas about where or whether to hold your next meeting or conference. How can you ensure that your events will be well-attended and successful while planning for attrition or cancellation issues?

## Caught in the culture wars

Your company's annual convention is coming up shortly in The Great State of Everyone-is-Welcome. The exhibits are packed and ready to go, the hotel contracts were negotiated well before COVID, the convention center space is primed and anticipating your arrival. Your members are already lighting up your social media with excitement about the meeting. Dinners, receptions, races, and hikes are being organized. Board members are excited to be together again and return to working together again in person.

As you are sitting at your desk perusing dinner venues to take your staff to or as possible gathering spots with old friends, the director of meetings and conventions frantically knocks on your door and asks to speak with you. You gladly wave her in and ask her to sit down. You are about to ask if she knows of any good restaurants when ...

Director: "Did you hear that the Great State of Everyone-is-Welcome just passed a controversial law?"

You: "Uhhhh, no, what do you mean?" you respond, flustered that your restaurant pick discussion is suddenly tabled.

Director: "Their new law is all over the news."

You: "Can you tell me a little more?"

Director: "The law goes into effect one month after the meeting, and it is counter to our mission and may make our members feel unwelcome and unsafe. (Pick the issue: Gay spouses cannot visit their partners in a hospital because they are not married and therefore not "family," , restrictions on access to women's healthcare/abortion clinics, all contraception is now illegal, or is legalized for everyone).

You: "That is bad, but there's not much we can do now. Have you heard from anyone yet on this? Anything on social media? What are your thoughts?"

## Talk with stakeholders

Before you know it, you are holding a management meeting followed by an emergency board meeting. Everyone is speaking up:

"How could they do this?"

"Will our members be safe?"

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“We must cancel the meeting!”

“We cannot support a state that does this!”

“What will our members/attendees think of us if we don’t cancel?”

“If we cancel, how much money will we lose?”

Ideas get batted around:

“Why don’t we go ahead anyway and bring in a truck of products that bring attention to the issue at hand, with our logo and hand them out?”

“Make donations to the cause?”

“Express our outrage with the state’s decision?”

Others express sympathy but remind everyone of the importance of the company’s work and the need to get people together again:

“Can we remain good stewards of the money if we cancel for this reason and incur substantial losses?”

One board member says that this is not our issue so why are we doing anything differently?

The dust settles. After consultation with membership, other similarly situated organizations, staff and the board, you make a decision. (We’ll let readers guess which one!).

One of the things you admire most about your CEO is their ability to remain engaged, calm, and thoughtful. They ask basic questions:

- “How can this be avoided in the future?”
- “What do we do about a state, county, or city that passes a law that is against our core values and mission, that upsets our members to the point of lowering attendance and thus activates penalties, that causes our members to feel unsafe or scared?”
- “What about a law that doesn’t affect us directly but that we and our members care about? Or should we care?”
- “Do we simply say that we will never agree on everything except the importance of having a great meeting and getting our business done, and then make a speech about the issue?”



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You are thinking the whole time — I am just a lawyer, how do I manage this?

First and foremost, the immediate issue may be a problem for you but might not be an issue for everyone: In other words, laws are passed everyday but which ones rise to the level of consternation? And how does your organization determine which ones will trigger a change in activity? By taking a side, do you risk alienating some members? And who ultimately pays for these decisions?

## Preparing for the future

Whether you have a convention and meetings division, an association management company, or you simply have a staff member making your meeting arrangements, being part of the discussion early is critical. More than likely, you won't be the point person initially negotiating the hotel or convention center business terms, or those in other ancillary agreements that support your meetings (e.g., restaurants, entertainment, catering, etc.). Regardless, you will be a part of the process at some point.

## Where you can make a difference

**Force Majeure:** This embattled clause seems to be expanded and then tightened each year based on the economy, individual circumstances, events that happened to other parties, etc. Hotels and convention centers are digging in more and more as words like “inadvisable” or “impractical” to hold the event are discussed between negotiating parties. One solution is to add a sentence that acts as a

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catch-all – “or any other event beyond our control that causes 25 percent or more of attendees to cancel.” The percentage can be moved up and down as necessary.

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[Attrition and Cancellation](#): In the best case scenario, you would have attempted to eliminate or reduce these provisions. But if you can tie this to force majeure, and a reduction in cancellation or attrition fees to this reduction of attendees, you can reduce your exposure.



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## **Consider a “Statement of Purpose”**

Consider including a statement about your values in your early conversations with the hotel, perhaps as part of the request for proposal (RFP) process.

In doing so, you place the venue on notice that should an event occur that causes your attendees to feel unsafe or unwelcome in the city (passing anti-LGBTQ legislation, for example), then they will reduce or eliminate any and all penalties. This could be handled either in the contract itself if the venue agrees, or with an accompanying letter.

If the venue refuses to obligate themselves that way in the contract, but you still want or need to hold your event there, then a letter or addendum is your next best option. In essence, you would be informing the hotel or convention center that you chose the city and venue that you did because of its

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reputation of welcoming attendees, but if the city, municipality, or state passes a law that is anathema to your mission and values between the time of signing the contract and the date of arrival, and this law causes attendees to cancel or want to cancel, the venue will waive all cancellation and or attrition penalties.

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If you have bargaining power and a good relationship with the city, perhaps the venue will agree to countersign the letter.

If not, at least the letter serves to put them on notice of your concerns.

## **Allyship**

If a hotel is unwilling to increase its obligations, consider softer language: “Hotel acknowledges that allyship with X cause is a fundamental value to the organization.” Or: “Hotel agrees not to discriminate against people with Y condition or in Z circumstance”? Or: “Organization chose Hotel because of its stance on Z and expects continued protection during the event and period in which guests stay there because of the event.”

## **Outside counsel**

Such challenges are not going away — and similar ones have occurred before. Raising the potential issues with your management team and board ahead of time will allow you to maximize your bargaining power and your spend with companies that align with your values.

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While none of these clauses or strategies are a guarantee that you will be able to cancel a contract without penalty or reduce attrition without pushback, they help initiate conversation and will put venues on notice regarding your organization’s position. You may consider bringing in outside counsel to review any messaging since they offer a breadth of experience across a wide client base and can advise based on that experience.

[Check out ACC?s Resource Library.](#)

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