



SANDY ALERT: FREQUENTLY ASKED QUESTIONS

Many businesses and individuals throughout the Northeast have suffered losses due to Hurricane Sandy and now face the challenges of rebuilding and resuming operations in the wake of such an historic storm. We hope that you and your families are safe and secure with full recovery from the storm well on the way. Herrick has the resources and experience to advise on the many issues that arise in the context of disaster recovery - from maximizing the benefit from government relief, to business insurance, to tax abatement programs and employment practices. Please see below for a summary of key issues to consider across a range of these areas. Our interdepartmental recovery assistance team stands at the ready to advise and assist you in any way that we can. Please feel free to contact us with your questions and concerns.

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SANDY ALERT: FREQUENTLY ASKED QUESTIONS

I. How to Obtain Disaster Relief

Federal Disaster Relief

How do I file a claim with FEMA and SBA? What benefits are available through FEMA and SBA?

Federal Emergency Management Agency (FEMA)

- Victims of the storm must first register with FEMA in order to apply for disaster assistance and should be prepared to provide the following information at the time of registration: name, permanent address, telephone number, and insurance coverage. After registration, a claims adjuster will visit on-site within 48 hours.
- Disaster assistance applicants may register through FEMA by telephone at 1.800.621.FEMA (3362), online at www.DisasterAssistance.gov, or by web-enabled mobile device at m.fema.gov.
- Disaster assistance applicants who have a speech disability or hearing loss and use TTY should call 1.800.462.7585 directly; those who use 711 or Video Relay Service (VRS) should call 1.800.621.FEMA (3362).
- FEMA assistance includes, but is not limited to: (1) rental payments for temporary housing; (2) grants for home repairs and replacement of essential household items; (3) unemployment payments up to 26 weeks for workers who temporarily lost jobs because of the disaster and who do not qualify for state benefits; (4) low-interest loans to cover residential losses not fully compensated by insurance (up to \$200,000 for private residence and \$40,000 for personal property, including renter losses); (5) loans up to \$2 million for business property losses not fully compensated by insurance; and (6) loans up to \$2 million for small businesses and most private, non-profit organizations of all sizes that have suffered disaster-related economic losses and need funds for working capital to recover from the disaster's adverse economic impact.

U.S. Small Business Administration (SBA)

- The U.S. Small Business Administration (SBA) provides low interest disaster loans to homeowners, renters, businesses of all sizes, and private, nonprofit organizations to repair or replace real estate, personal property, machinery and equipment, and inventory and business assets that have been damaged or destroyed in a declared disaster.
- Information about low interest disaster loans provided by SBA is available by telephone at 1.800.659.2955 and online at: www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/disaster-loans.

FEMA Disaster Relief Limitations

Are there any limitations on FEMA relief?

- FEMA will not award grants for damage to second homes.
- FEMA will not duplicate benefits paid by private insurance. Homeowners must settle all private insurance claims before FEMA will conduct an evaluation.
- FEMA grants to individuals are capped at \$31,900.
- FEMA relief awards are not uniform—assistance is awarded based upon a hierarchy of victim need.

New York City Disaster Relief

What disaster recovery assistance programs are available in NYC? How do I contact those programs?

- Small to mid-sized businesses that have experienced business interruption may be entitled to an emergency loan capped at \$10,000. Information about this loan may be obtained by contacting a NYC Business Solutions Account Manager at www.nyc.gov/html/sbs/nycbiz/html/contact/manager.shtml or by calling 311 and asking for a NYC Business Emergency Loan.
- Mid to large-sized businesses that need to undertake rebuilding may be able to obtain an emergency tax letter from the NYC City Industrial Development Authority (IDA) that will allow businesses to avoid payment of NYC and New York State sale taxes on materials purchased for rebuilding for projects that cost \$500,000 or more. Please contact Shin Mitsugi at smitsugi@nycedc.com for further information on this program.
- Any business that is temporarily displaced from its space may occupy short-term “swing” office space at Brooklyn Army Terminal, available free of charge, for the next 30 days. Information about occupying a portion of the 40,000 square feet of available space may be obtained by contacting a NYC Business Solutions Account Manager at www.nyc.gov/html/sbs/nycbiz/html/contact/manager.shtml or by telephoning 311 and asking for NYC Business Solutions.
- For any business in need of other emergency assistance, the SBS Outreach Team and Emergency Response Unit’s Large Scale Response Team has been deployed to help all impacted small businesses. Information about these emergency assistance services may be obtained by contacting a NYC Business Solutions Account Manager at www.nyc.gov/html/sbs/nycbiz/html/contact/manager.shtml or by telephoning 311 and asking for a NYC Business Solutions.

New Jersey Business Recovery Assistance Services

Are there any business recovery assistance services available in New Jersey for those affected by the storm?

- New Jersey has implemented a set of business recovery assistance services that are designed to support businesses and workers who may be temporarily unable to perform their jobs due to the storm.
- These services include: (1) guarantees of up to \$500,000 for commercial lines of credit to businesses that need access to cash to improve their damaged property while awaiting insurance proceeds (please see www.njdea.com/disasterrelief for more information on this program); (2) grant awards for businesses to assist with on-the-job training costs for new workers hired specifically to assist in disaster-related activities; and (3) the availability of Disaster Unemployment Benefits to provide income security for those displaced workers suffering temporary storm-related job loss.
- Information for all services may be accessed through New Jersey’s Business Action Center (BAC) by calling 1-866-534-7789 or through the state’s business portal at www.newjerseybusiness.gov.

Contact Numbers

Who can I contact in New Jersey if I am having trouble filing an insurance claim or if I have been a victim of consumer fraud or price gouging by contractors or others post-storm?

- To file an insurance claim, if you cannot find the company or agent's number, call the NJ Department of Banking and Insurance at 1.800.446.7467 or go to www.dobi.nj.gov.
- To report complaints about insurance companies, call the NJ Department of Banking and Insurance at 1.800.446.7467.
- To report possible consumer fraud or price gouging by contractors or others, call the NJ Division of Consumer Affairs at 862.209.0130 or 973.220.3474.

Hurricanes and other disasters present obvious concerns to businesses in our region. Herrick's Government Relations Group has strong contacts throughout the local and federal government and an in-depth understanding of the legislative and administrative processes that will influence Hurricane recovery efforts across the Northeast. Herrick's team has served in elected and appointed public office at the federal, state and local levels and in senior executive capacities for a host of government agencies and includes Michael McMahon, former Congressman from Staten Island. Please contact Kevin Fullington at kfullington@herrick.com or 212.592.1442 and Michael McMahon at mmcmahon@herrick.com or 212.592.5996 for disaster relief advice.

Crisis communications and strategy have proven to be hot button issues during and after the storm, as many individuals and businesses could not conduct 'business as usual'. Ronald Levine, co-chair of Herrick's litigation department, regularly advises clients on crisis management strategies and the rapid growth and use of social media as a communication tool in times of crisis. Ron Levine can be reached at rlevine@herrick.com, 212.592.1424 or 609.452.3801.

II. Insurance

Business Interruption Losses

What is a business interruption loss? How can a business owner recover business interruption losses?

- Workplace disruptions caused by a natural disaster may result in "business interruption losses" that include lost profits and increased costs.
- Business interruption losses may be covered under business property insurance policies. Business owners are advised to engage experienced professionals to develop loss recoupment strategies and prepare damage analyses to support insurance claims.
- Preliminary steps towards recovering losses include: (1) contacting the insurance company to provide notice of claims; (2) consulting with legal counsel to determine the scope of insurance coverage; (3) identifying the types of losses that fall within insured coverage; and (4) beginning the process of documenting and quantifying insured losses.

Proper Management of Insurance Claims

How do I know if I am properly managing my Hurricane Sandy related insurance claim?

- Reviewing your insurance policy and identifying the scope of coverage are essential for the proper management of post-Hurricane Sandy insurance claims.

- Key inquiries include whether business interruption insurance applies for lost business income, whether certain supplemental business income coverages apply in the absence of physical damage to a business, identifying the applicable deductible, and determining if a “waiting period” applies.
- For a comprehensive discussion on the proper management of insurance claims, post-Hurricane Sandy, please see Herrick’s [“Top Ten Things You Can Do to Protect and Support Your Insurance Claims Following Hurricane Sandy”](#) Client Alert.

Picking up the pieces after this massive storm will be challenging. Herrick’s Insurance Group can assist you by reviewing your insurance policies, advising as to the scope of available coverage, and working closely with you throughout the insurance claim process to maximize your claim. We have significant experience in handling a myriad of insurance issues following catastrophes such as 9/11 and Hurricanes Katrina and Irene. Alan Lyons regularly represents policyholders in insurance coverage and recovery matters to efficiently and effectively seek recovery for their hurricane related losses and return to business as usual.

Please contact Alan Lyons at 212.592.1539 or alyons@herrick.com for further information.

III. Tax Relief

[Is tax relief available to those affected by the storm?](#)

Federal

- The Internal Revenue Service (IRS) has extended the deadline for filing tax returns and making payments due October 31 to November 7, 2012 for all taxpayers and preparers affected by the storm or otherwise impacted by the storm. The extended deadline is February 1, 2013. No action is required—this relief is automatic.
- Federal tax relief primarily applies to businesses whose payroll and excise tax returns and payments were normally due on October 31. The extension also applies to the fourth quarter individual estimated tax payments, normally due Jan. 15, 2013.
- Regular federal tax deposits are due according to current rules, but if you receive a penalty notice for this period, you can contact the IRS at the number on the notice to request penalty abatement due to the storm.
- The IRS expects to grant additional relief as qualifying disaster declarations are issued by FEMA. Details will be posted on the [“Tax Relief in Disaster Situations”](#) page on IRS.gov.

New York State

- New York State has extended most payments and filings due from October 26 through November 14 to November 14, 2012. This includes returns for personal income tax, corporate tax, sales tax, and any other taxes administered by the New York State Tax Department.
- Eligibility for relief is broad and includes: (1) storm victims who reside in or have a principal place of business in New York State; (2) any taxpayer whose records are unavailable due to the storm, including disruption of mail and private delivery services; (3) taxpayers whose tax practitioners were unable to meet deadlines due to the storm; and (4) workers assisting in the relief effort.
- Relief from filing deadlines does not apply to remittances of income tax withheld by employers and remittances of Metropolitan Commuter Transportation Mobility Tax made by employers using Prompt Tax.

New York City

- The NYC Department of Finance has tailored its relief to cover the same period as New York State.

New Jersey

- New Jersey has extended all returns and payments due on October 30 or 31 to November 7, 2012.
- Filings covered by the extension include Form NJ-927 (Employer's Quarterly Report), Form DSF-100 (Domestic Security Fee Quarterly Return), and Form TMF-10 (Transporter of Motor Fuels Report).
- Relief is available to businesses located in New Jersey, out-of-state businesses with operations in New Jersey, and taxpayers whose records are located in New Jersey.
- Taxpayers affected by the storm are also eligible for interest and penalty abatement.
- New Jersey law (N.J.S.A. 54:4-35.1) provides that, in the event of a major decrease in the value of any property resulting from a natural disaster that occurs after October 1 of any year, the assessment for real estate tax purposes may be reduced to take the damage into account.
- In order to have your property assessed with natural disaster damage taken into consideration, a notice must be sent to the Tax Assessor prior to January 10, 2013. You must contact your local Tax Assessor's office for the notice format and any related requirements.

Connecticut

- Connecticut has extended state tax deadlines for all filings that were due on October 31 to the end of business on November 7, 2012 for all those affected by the storm.
- The state tax deadline extensions include monthly and quarterly sales use and tax, income tax withholding, room occupancy tax, alcoholic beverage tax, admission and dues tax, electric generators tax, and other gross receipts based taxes.
- The state tax extension does not affect federal IRS tax deadlines.
- State commercial tax registration requirements have been waived for out-of-state fuel suppliers, storm contractors, and others coming into Connecticut on an emergency basis.

Pennsylvania

- Pennsylvania will follow the IRS rules extending federal tax deadlines to November 7, 2012 for businesses and individual taxpayers directly impacted by Hurricane Sandy.
- This extension generally applies to inheritance tax, employer withholding and motor carrier road tax filings, payments with due dates between October 29 and October 31, and unemployment compensation tax filings for third quarter 2012 that were due October 31.

For many of Hurricane Sandy's victims, reconstructing records for tax purposes will likely be a huge challenge. To maximize the business assistance services for those affected by the storm, states in the tri-state area are offering tax relief programs. There are nuances in the tax programs offered from each state as well as the federal tax relief program. Please contact Michael Kessel at mkessel@herrick.com or 212.592.1553 for advice on tax filing extensions and real estate tax assessments on property damaged by the storm.

IV. Employee and Employment Relations Matters

Workplace Safety Issues

How can an employer safeguard itself from liability for potentially hazardous workplace conditions that may exist as a result of the storm?

- Cleanup and recovery work presents a wide range of unfamiliar tasks and hazards that must be addressed by employers.
- Employers are advised to conduct a hazard assessment of every work area and cleanup activity before allowing or instructing employees to begin cleanup.
- Employers should ensure that proper protective measures are in place, such as consulting with local emergency management authorities, conducting task-specific hazard exposure monitoring where necessary, supplying and requiring appropriate personal protective equipment, and ensuring that proper hygiene procedures are in place.
- No cleanup activity should be permitted where the hazards are unknown and cannot be properly assessed.

Workplace Compensation Issues

How does the storm affect an employer's compensation obligations to its employees?

- Compensation issues may arise if an employee misses work on a day when an employer's business has been reopened after the storm or if an employee volunteers to perform cleanup duties at the workplace.
- It is necessary for employers to determine whether an employee is exempt or non-exempt from federal overtime requirements when calculating employee compensation for post-storm absences from work and volunteer cleanup efforts in the workplace.
- If a collective bargaining agreement (CBA) applies to an employee, the CBA may impose additional obligations regarding the employee's compensation.

The aftermath of Hurricane Sandy has left many businesses in the New York/New Jersey areas, and throughout the East Coast, facing interruption for business closures and extensive loss. Employers are faced with calculating employee compensation for post-storm absences and determining whether an employee is exempt or non-exempt under the applicable laws. We leverage our decades of experience to offer practical solutions for employee compensation and related employment issues and benefits resulting from the storm. Please contact the co-chairs of Herrick's employment group, Carol Goodman at cgoodman@herrick.com or 212.592.1465 and Mara Levin at mlevin@herrick.com or 212.592.1458, for all of your employment questions arising from the storm.