

Renegotiating Payment Terms on Existing Contracts

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Dental practices will feel the impacts of the COVID-19 pandemic on many levels and for quite some time. This resource is intended to provide guidance to support you as you address some of the financial realities you're facing because of the pandemic.

The pandemic is making it difficult for my practice to meet many of its financial obligations. Can I contact my suppliers to renegotiate contracts and/or payment terms until the practice is open and profitable again?

Certain unforeseeable events, like a pandemic, can make it difficult for any business, regardless of the industry, to meet its financial obligations to lenders, staff and supplier. Many dental practices, as small businesses, are already facing limited cash flow because of the pandemic and recommendations or mandates to postpone elective procedures.

Practice owners who are concerned about meeting their financial obligations may want to consider asking certain suppliers (e.g. landlord, marketing company, software supplier) to extend payment due dates in light of the pandemic. Since many supplier contracts allow the supplier to charge interest on overdue payments (often 1.5% per month), be sure to stipulate that any payment extension will be an interest-free one.

Before making those calls, do your due diligence. Investing in a little advance research can help you be better informed about any potential opportunities to negotiate. Two things to consider are:

1. Reviewing Contracts and Understanding Your Contractual Rights

- It's a good idea to check your contract first, before even making the initial call. This will help you understand your rights, and your obligations, under the contract. It may also help you determine whether the pandemic may qualify as a *force majeure* event (discussed below) for delaying payments (or performance, such as accepting goods or services).
- Some of the things you should look for include:
 - Finding out whether it includes language giving you the right to give notice to cancel or terminate the contract and, if it does, what requirements have to be met.
 - Some contracts might include language allowing you to delay payment due to a *force majeure* event. The language of the *force majeure* provision is important. For example, while governmental action might be listed as being a *force majeure* event, it's possible that a pandemic may not. For a more detailed discussion of *force majeure*, see the resource titled *Contract Obligations during COVID-19 and "Force Majeure"* that's available as an ADA resource relating to COVID-19.
 - Be aware that some agreements that include language allowing non-performance (non-payment) due to a *force majeure* event will specifically state that payment of amounts due will not be suspended due to a *force majeure* event.
- Review your contract before contacting any suppliers so you know your rights. It's also a good rule of thumb to have your own attorney review the contract since he/she will be able to advise you more fully

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regarding your rights and what you might – or might not – be able to expect before contacting any supplier.

2. Negotiation Towards an Accommodation

- In situations where a contract's language doesn't offer you the legal right to extend or suspend payment, it's possible that you may be able to seek some other type of accommodation from the supplier.
- Again, do some homework before making the initial call. Consider and identify both your goals and the likely goals of the other party. For example, you might want an extension of payment terms, or a lower (even a zero) interest rate for a period of time. The other party may not agree. Your leverage will vary depending on factors such as their need and desire to retain you as a customer (as a rule of thumb, the greater the likelihood you can easily find another supplier, the more they may want to accommodate you).
- For example:
 - If there are a lot of substitute products, and the supplier knows that it's easy for you to transition, the supplier may be more open to extending the payment terms to keep you as their customer. As any dentist knows, it's easier to keep a customer than to develop a new one. This may be especially true in cases where you're a long-term customer.
 - Especially if your agreement with the supplier is nearing the end of the term, the supplier may be willing to work something out with you if you are willing to extend the term of the contract. Be sure you consider both the short-term and the long-term impacts of that decision, but this can be a "win-win" for both parties.
- Each situation is different and so is each client/supplier relationship. DO your homework up front, think it through, and remember that it's always prudent to involve your own attorney in any contractual process.
- Finally, while you may feel uncomfortable asking for an accommodation, know that you're not alone: many small business owners are experiencing similar challenges. Stay calm, focused on your goals, and recognize that negotiations often involve a little give and take from both parties.

Disclaimer

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