

Updates

March 23, 2020

COVID-19 and Construction: Initial Steps for Contractors



COVID-19 is expected to have an impact on construction companies across the country.

[The city of Boston ordered a 14-day ban on all construction](#) activities effective March 17, 2020. [The city of San Francisco issued a public health order](#) (effective March 17, 2020) that prohibits work on construction projects that are not considered "Essential Infrastructure" or a healthcare facility, and otherwise mandates social distancing requirements for all construction projects that are permitted to continue. [The state of Illinois issued an order](#) (effective March 21, 2020) requiring companies engaged in construction activities to "take proactive measures to ensure compliance with" social distancing requirements.

These are just a few examples of government orders affecting construction activities. Construction professionals should expect these types of orders to affect their projects and potentially cause delays. Contractors that anticipate projects being affected by COVID-19 should consider taking the following initial steps:

1. Determine if the project is subject to a recent COVID-19 order. If it is, determine if the construction can continue. If construction can continue, consider whether compliance with social distancing and hygiene mandates are required.
2. Consider what prudent steps should be implemented now to stop the spread of COVID-19 among the labor force and visitors to the site. Even if the project is located in an area not yet subject to a city or state order affecting construction, the construction agreement with the owner may otherwise require maintaining the health and safety of the project site.
3. Review the construction agreement with the owner to determine notice obligations in the event an executive order or COVID-19 will cause delay and/or additional costs. It is common for an owner-contractor construction agreement to require prompt notice to the owner of these types of delays, commonly defined as "force majeure" delays.
4. Track and document the impacts caused by COVID-19. The project contract may entitle the contractor to an extension of time and delay-related costs. The contract will likely require proving such delays and

costs.

5. Consider the duty to mitigate the impact of COVID-19 on the progress of the project. Perhaps the contract requires development of a recovery schedule and/or development of a mitigation plan. Review the agreement to confirm if there are such obligations. In some states, the contractor may have a common-law duty to mitigate any such impacts.

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