



PREPARING
YOUR CONSTRUCTION PROJECT FOR
COVID-19

Bachara Construction Law Group is carefully monitoring official orders affecting the construction industry as they are issued around the country.

While Florida has not gone as far as some states in restricting people from leaving their homes to go to work, we highly recommend that you be prepared, as the orders to date have generally given citizens only a few hours' notice.

Edicts around the country have excluded the majority of construction projects from shutdown orders, classifying them as essential functions. However, it is still likely that your project will eventually be impacted in some way by the coronavirus.

The following are just a few of the issues that need to be addressed by our Owner, Contractor, and Trade Contractor clients:

I. Review your Construction Contract and Be Prepared to Issue a Written Notice

- A. Force Majeure.** Review your contract to determine whether a significant loss in workforce or a government shutdown falls within the scope of a Force Majeure event. If so, make sure you understand which party or parties bear the risk of loss for such an event.
- B. Notice of Claims.** Review the notice provisions to determine the deadline for making a claim. Most contracts require written notice within 21 days of the event. Courts may determine that a party had knowledge of an event resulting in a reduction of workforce earlier than the actual impact. ***Be sure to send your notice sooner rather than later.***
- C. Termination.** Review the contract for termination provisions to determine who may terminate the contract and whether the events arising out of the coronavirus epidemic fall within any of the categories for termination. If so, be sure that all recoverable costs associated with such a termination are thoroughly documented.
- D. Recoverable Costs.** If your project is shut down, determine who will be responsible for demobilization and remobilization as well as increased or decreased labor and material costs.
- E. Differing Site Conditions.** Determine whether the coronavirus's impacts on your ability to work at or manage the project constitutes a differing site condition. While this is certainly not the typical differing site condition, if you are working in a healthcare facility and are suddenly required to take significant additional precautions to protect the residents, then that may be deemed a differing site condition resulting in an appropriate change order.

II. Review your Insurance Policies with your Insurance Agent to determine whether any of your policies provide business interruption coverage.

III. Make sure you comply with employment reports for paid leave, termination, etc. of your employees. While we do not handle employment claims, we can connect you with excellent legal professionals to assist in these matters.

To help you prepare, we have reviewed most standard form contracts and drafted preliminary notice letters for our clients' use. We are on call to review your contract to let you know who may be at risk and what options you may have.

Please do not hesitate to call us at (904) 562-1060 for assistance. Do not delay, as time is of the essence in nearly every construction contract, and your failure to provide notice may result in an inability to recover damages. We are here for you at this challenging time!

Prepared for the exclusive use of Bachara Construction Law Group clients.