

MANAGING IMPACTS OF THE CORONAVIRUS IN THE CONSTRUCTION INDUSTRY

The coronavirus pandemic has impacted every industry and will continue to drain resources until the crisis ends or we find a cure. Thousands of businesses have been required to shut down during the past eight months and are slow to reopen. However, there were several industries deemed “essential” by government officials that have remained open and avoided a significant portion of the impact. Although the construction industry is considered essential and remained open in most states, the challenges caused by the pandemic will have a long-term impact from an operational and economic standpoint.

Many construction companies are now preparing for a slowdown in adding new projects to their inventory causing internal pressure regarding how to manage the workforce. Developers are forced to evaluate how the ripple effect of the pandemic will impact the owner's decision to move forward with projects that have been in the pipeline for several years. In addition, new safety guidelines limiting the number of workers per shift impacts productivity, scheduling and closing out projects during this new normal.

In early 2020, it was unimaginable that by August there would be such a precipitous drop off in the construction industry workforce, which in comparison to the great depression, is scary. In many states work that was originally scheduled, bid and mobilized by the industry was put on hold and/or the flow of projects was delayed due to the inability to apply for and secure permits because of mandated skeleton levels of employees in state and local offices. Lenders held off on loan approvals ultimately causing projects to be rescheduled or cancelled, as well. This trickle-down effect greatly impacted general contractors who were forced to lay off workers and retrench.

Supply chains for materials have been greatly impacted causing contractors to scramble and find alternate sources of materials, typically at higher prices that, as a result, reduces profitability. Firms relying on China as a major source of materials such as steel, concrete and plumbing fixtures has created another paralysis. The impact on the construction industry will not be short term and it will necessitate changes in the approach to regain some of the losses incurred.

The risk of infection by the coronavirus exists at every workplace, which means that the industry must collectively take steps to implement new mandatory safety precautions so that they can retain workers and continue to recruit. The measures that must be taken include wearing face masks and washing tools and equipment frequently, as well as limiting workers sharing these items.



Much of the change will be mandated by state and local officials; however, as a general proposition, the new normal will include strict safety protocols similar for all businesses. Each construction company will be required to develop and implement a coronavirus safety plan that must be strictly followed by all workers, including subcontractors. The end result will be that OSHA standards will become the minimum for safety, which, more than likely, will find their way into contract negotiations.

The construction industry is always bracing for a potential recession due to the unpredictability of the supply chain; however, the shut-down by factories in China caused a sharp decline in the availability of essential construction materials. The response to this dynamic will include bringing back manufacturing to the United States and the need for the construction industry to diversify its approach to the supply chain. Contract negotiations will intensify and it is likely that the standard clauses will be adjusted to increase back-up sources for materials in order to prevent what occurred in 2020. All of the above will result in longer time frames to complete projects and require significant cost adjustments all around.

In order to survive, the construction industry will have to be prepared for more of the same. Examining insurance policies and making certain that business interruption coverage is in place and enforceable will be critical. Some contractors may be contractually responsible for cost increases or delays on current projects due to “substantial completion” clauses. It is advisable to make certain that your legal counsel reviews and revises contracts to specify whether the coronavirus pandemic qualifies as a force majeure event. Contractors should work with their attorneys to examine force majeure provisions in their current contracts and understand what needs to be included in future contracts to be covered for crises that cause projects to be delayed or cancelled. If you have questions about any of the issues raised or would like assistance with your business, please contact PLDO Principal Gary R. Pannone at 401-824-5100 or email gpannone@pldolaw.com.



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