

Construction Labor Agreements When Implementing COVID-19 Plans, Policies, Practices

By Brian P. Lundgren

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As construction continues and resumes during the COVID-19 pandemic, unionized construction employers must be mindful of the terms of their collective bargaining agreements (CBAs) when implementing workplace responses to COVID-19.

Because of the COVID-19 pandemic, construction employers must create comprehensive COVID-19 exposure control plans. These plans typically include many new workplace safety practices, such as social distancing, facial coverings, daily temperature and symptom screening, personal hygiene and handwashing, workplace sanitation, and employee COVID-19 safety training. Employers also are subject to a host of new laws, proclamations, and guidance for responding to employees who test positive, have been exposed or are at “high risk” for COVID-19. These COVID-19 issues may affect workers’ terms of employment, including staffing, leave rights, and scheduling.

An employer’s ability to unilaterally adopt changes without notice and bargaining with a union will largely turn on the National Labor Relations Act’s (NLRA) contract coverage standard. The National Labor Relations Board (NLRB) adopted the contract coverage standard in September 2019 in *MV Transportation, Inc.*, 368 NLRB No. 66.

Under the contract coverage standard, the NLRB would examine the plain language of the CBA to determine whether the employer’s action fell under language granting the employer the right to act unilaterally. For example, if the language broadly grants the employer the right to implement new rules and policies or to revise existing ones, the employer would not violate the NLRA by unilaterally implementing or revising rules and policies without notice and bargaining with the union.

Employers can avoid potential NLRA issues at the outset by examining the language of their CBAs before making COVID-19-related changes to existing policies and practices.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 Team](#).

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