

Legal Update Article

Construction Contractors Coping with COVID-19

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In response to the coronavirus (COVID-19) pandemic, many states and cities have issued their own “stay-at-home” orders, each with its own list of “essential” businesses and operations allowed to continue. These lists generally include construction, at least construction related to healthcare, infrastructure, and other critical functions.

Delays

For many contractors, that means “business as usual,” unless a project owner or government official requires a project to be put on hold. Still, more than a quarter of contractors have been hit by delays.

According to an Associated General Contractors of America [survey of contractors](#) on the impact the COVID-19 pandemic has had on projects, 28 percent reported that a project owner or government agency or official has directed them to halt or delay work on active projects or projects that are expected to start within the next 30 days.

Project delays can jeopardize the ability of some contractors and subcontractors to remain solvent. In addition, some contractors are also facing supply-chain issues, especially with respect to materials coming in from overseas, and shortages of personal protective equipment. [Other contractors](#) are anticipating more significant shortages in the coming weeks and months.

Government Resources

Managing employee concerns relating to COVID-19 is another issue facing contractors.

For example, an airport construction project in New Jersey has continued despite a [statewide “stay-at-home” order](#), which [reportedly](#) has some employees on the project concerned about their risk of infection or exposure to COVID-19. That project requires the work of approximately 250 ironworkers, plumbers, electrical workers, and pipefitters.

Concerns raised by employees regarding unsafe or unhealthy working conditions can implicate many laws, including the Occupational Safety and Health Acts (OSH Act). Under the OSH Act, employers have a general duty to provide workplaces that are “free from recognized hazards.” The Occupational Safety and Health Administration (OSHA), which enforces the OSH Act, has [released advisory guidance](#) giving recommendations to employers on how they may provide safe and healthful working conditions during the pandemic. The [Centers for Disease Control and Prevention](#), [World Health Organization](#), and [Equal Employment Opportunity Commission](#) have also weighed in on best practices for avoiding or mitigating the spread of COVID-19.

These guidelines, along with states and localities’ executive orders, mean contractors (especially those working in multiple jurisdictions) must be familiar with a patchwork of rapidly evolving rules regarding the pandemic.

Industry groups like the [Associated General Contractors of America](#) and the [National Association of Home Builders](#) also have issued their own guidance and recommendations.

Employers should closely monitor developments and work with counsel to safely and lawfully maintain essential operations.

Jackson Lewis attorneys and the dedicated [COVID-19 Task Force](#) are ready to assist and answer any questions.

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