



Construction Contracts in the Time of COVID-19

The ongoing COVID-19 crisis has had widespread effect and the construction industry is no exception. Parties to construction contracts would do well to consider how current and evolving circumstances might bear on their contractual rights and obligations.

Critically, on March 18, 2020, New York State Governor Andrew Cuomo issued [Executive Order 202.6](#) exempting construction from in-person work restrictions necessitated by the COVID-19 pandemic. However, on March 30, 2020, Governor Cuomo clarified that order through [Executive Order 202.13](#), providing that only certain “essential” construction could continue.

As further clarified by New York City Department of Buildings [guidance and other related orders](#) “essential” construction has been [limited to, among other things](#), work on roads, bridges, transit facilities, hospitals, health care facilities, as well as work to correct certain habitability conditions in residential apartments. Further, projects deemed “essential” could only proceed to the extent that these projects could be done in keeping with social distancing and other COVID-19 [preventative guidelines](#).

The resulting shutdown or limitation of many construction projects may have significant ramifications for associated construction contracts, given the inevitable effect on project timelines, coordination, scheduling, staffing, equipment protection, and project safety. For instance, some contracts might require that contractors provide the general contractor or project owner with written notice of any delay within a specified time in order to be eligible for any delay-related time extension. Failure to provide such notice might preclude a contractor from obtaining an extension of the contract’s time of completion and might leave the contractor open to claims for delay-related damages.

Likewise, some contracts might require that contractors provide the general contractors or project owners with written notice setting forth any increased costs associated with implementing COVID-19 safety measures, including additional measures taken to safely shut down the project.

COVID-19 project shutdowns or restrictions might also permit invocation of rarely utilized “Force Majeure” provisions that are intended to protect contractors from unforeseen and

uncontrollable events, such as “Acts of God” that prevent performance of contract work. This is important because “Force Majeure” provisions are narrowly construed¹ and might excuse nonperformance under certain circumstances that could be applicable in light of COVID-19.²

In these uncertain times, familiarity with your contractual rights and obligations will put you in the best position to prevent avoidable costs and expenses arising from the COVID-19 crisis.

If you have any questions about how COVID-19 might affect your construction project or contract, please contact Jack Kannry and Maxwell Rubin of Warshaw Burstein’s Construction Law Department, or your regular Warshaw Burstein attorney who will provide assistance.

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¹*Reade v. Stoneybrook Realty, LLC*, 63 A.D.3d 433, 434 (1st Dep’t 2009)

²*Beardslee v. Inflection Energy, LLC*, 25 N.Y.3d 150, 154 (2015)

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