



ASA COVID-19 Response: Reopening the Worksite Attorneys' Council Panel

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SUSPENSION OF WORK

More and more subcontractors have decided to suspend operations during the COVID-19 outbreak. What causes are acceptable to suspend work?

Is suspension due to economic contraction a valid reason?

How does that impact contract provisions?





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Issue #1 – What Causes are Acceptable to Suspend Work?

- By Owner
- By GC (Your Customer)
- By You
 - Nonpayment – Prompt Payment Statutes
 - Nonpayment – Contractual Rights
 - Unsafe work conditions/OSHA



Issue #2 – Is suspension due to economic contraction a valid reason?

- “Essential” activities as related to “construction” itself or *what is being constructed*?
- When the suspension notice is less than truthful
 - Documenting your position
 - Securing payment rights
 - PLUS – Don’t forget the contract!



Issue #3 – What is the impact of suspension on contract provisions?

- First, ALWAYS, read entire contract
- Clauses re: Notice of Claim
 - Time frame
 - Content
 - Recipient/manner of sending
- Clauses re: Allowable Claims
 - Demobilization/Remobilization
 - Delay/extended conditions
 - Advance liquidation of claims



Bonus Issue on Suspension: Watch for Suspension as a “Trigger”

- Example re: “Completion, Termination, or Abandonment”
- Miller Act



WORKER SAFETY

What are my obligations regarding the safe return of my workers to the job site?

Am I required to provide PPE?

Should I require a certification of need to leave for FMLA?





Dan McLennon
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ADMINISTRATIVE GUIDELINES

How do recent CDC guidance changes impact the construction workforce?

What administrative and engineering steps should my business take to meet our obligations under the general duty clause and to give us liability protection?





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I. How Do Recent CDC Guidance Changes Impact Your Workforce?

- May 21, 2020 CDC changed quarantine time frames
 - Symptom based strategy
 - 7 days to 10 days
 - Test based strategy
 - 7 days to 10 days
 - Persons in close contact
 - No specifics to 14 days after last exposure

I. How Do Recent CDC Guidance Changes Impact Your Workforce?

- Impact significant
 - Close contact
 - Conducting contact tracing
 - Prevalence of COVID-19 testing
- Close Contact
 - Less than 6 feet for prolonged period of time
 - Less than 6 feet for 15 minutes
 - Less than 6 feet for several minutes
 - May 23 – period of 15 or more minutes

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Engineering controls
 - Ventilation system
 - Analyze system
 - Use IH
 - Clean system
 - Increase air exchange - fresh air flow
 - HEPA filters
 - Change filters

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Install physical barriers
 - Reception area
- Apply social distancing markers
- Remove handles
- No touch faucets, doors
- Eliminate use of personal fans / heaters

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Administrative Controls
 - Maintain social distancing
 - 6 feet or more
 - Toolbox meetings, Stretch & Flex
 - Erect posters / signage
 - CDC, WHO, OSHA
 - Entrance at jobsite/trailers
 - Erect sanitation stations
 - Hand sanitizer
 - Disinfectant wipes

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Practice personal hygiene
 - Emphasize hand washing
 - Posters re reminder
 - Available facilities
- Segregate delivery area
 - Disinfect deliveries
 - Enhanced PPE
 - Enhanced cleaning / disinfecting
 - Specific hours for deliveries

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Rearrange office setting / furniture
 - Regularly disinfect
 - Social distance
 - remove tables and chairs
 - signage re limits in trailers
 - No congregating – lunch area, lunch trucks
 - Limit office equipment use
 - Limit vehicle / equipment use

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Discontinue common water containers
 - Individual water bottles
- Close certain parts of office
 - Drinking fountains
 - Lounge
 - Break rooms
 - Meeting rooms
 - Conference rooms

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Limited access
 - Onto the jobsite
 - Material lifts, elevators
 - Use stairs
- Cleaning products for employees
 - Disposable wipes
 - SDS
- Enhanced maintenance / facility cleaning
 - Periodic cleaning
 - High touch areas
 - Controlling contractor
 - Nightly cleaning

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Modify visitor / vendor / inspector access
 - Prohibit entrance by sick
 - Verify health status
 - By whom?
 - Temperature
 - Wellness check
 - PPE requirements
 - Hand sanitizer

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Establish workplace coordinator
 - COVID-19 compliance person
 - Confirm cleaning (site, facilities)
 - Random wellness checks
 - Confirmation being done
 - Verify health of visitors
 - Maintain tracing information
 - Inspect workplace
 - Presence of posters, signage
 - Available sanitizers
 - Enforcing use of face covering
 - Ensuring social distancing

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- Consider contact tracing of employees
 - Important in light of 14-day quarantine
 - Substantially limit movement
 - Maintain crew consistency
 - No roving employees
 - Questionnaire re daily movement

II. Proposed Actions to Take to Defend Yourself from OSHA Liability under COVID-19

- PPE Requirements
 - Gloves
 - Maintain usage when handrails/high touch areas
 - Safety glasses / splash cover
 - Understand respirator obligations
 - Face cover, surgical mask – no OSHA jurisdiction
 - Proper fit, cleaning
 - Dust mask, N95 respirator
 - Voluntary
 - Mandatory
 - Proper disposal of PPE
 - Know local PPE requirements

SUPPLY CHAIN ISSUES

What is your advice with regard to a potential break down in the supply chain for subcontractors?

From building supplies and equipment to the workforce, we face a number of supply chain obstacles directly related to the coronavirus crisis. What protections are there against owners insisting on completion of work despite those obstacles?

How should we approach workers not returning to the site because of more attractive unemployment benefits?





Courtney Little
ACE Glass
ASA Executive Committee
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Supply Chain Information

- Heavy hit material chains include PPE, technology, manufacturing equipment and supplies, and healthcare supplies
- There are imminent delays on imported materials
 - Supply chain interruptions in China and other countries
 - There are delays at the ports due to workforce shortages
- Domestic materials have been delayed too
 - Local shelter in place rules
 - Workforce shortages
 - Migrant worker issues have caused delays in border cities
 - Many domestic materials include foreign made parts



Recommendations as business reopens/increases:

- Start with a good attitude
- Review schedules and request adjustments
- Give timely notice of delays in supply chain
- Request price escalations where possible – equitable adjustment
- Seek alternate materials
 - Expensive and difficult do not necessarily mean impracticable
- Stockpile common parts if possible
- Review and revise outstanding bids
- Be sure to review and revise new contracts





Thank You Comments / Questions?

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