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Identifying and Managing Construction Risks During the Coronavirus Pandemic



Richard Reizen



Matthew Spinner

Construction

In addition to the typical risks in every construction project, the current and lasting impacts of the COVID-19 pandemic have created a whole new set of risks that would have been unimaginable only a few short weeks ago. Moreover, owners and contractors alike must identify and manage these risks while navigating the patchwork of constantly changing and often inconsistent state, county and city orders, which limit or even halt construction projects. (*A summary of these various state orders can be found [here](#).*)

In planning and constructing a project, management teams should consider the following risks in the wake of the Coronavirus pandemic:

- Financial impacts of the pandemic;
- Site safety (including your employees and those under your control);
- Site security;
- Disruptions in supply chains;
- Labor shortages; and
- Unanticipated project delays associated with temporary shutdowns, governmental orders, permit delays, or reduced crew size to comply with social distancing requirements.

Although the complete nature and duration of risks associated with the pandemic cannot be fully known, the following best practices can act as a guide for your risk management team when navigating this new construction landscape.

Pre-Construction/Design Development Planning

Pre-construction has become increasingly important for a variety of reasons, including to develop more accurate budgets, identify cost savings, develop better and more detailed plans before bidding, identify potential design and materials issues, properly vet contractors, and allow general contractors to buy pricing from subcontractors. Arguably, pre-construction has never been more important than in the age of the COVID-19 pandemic.

Regardless of whether your state has ordered construction work to cease, these crucial pre-construction services do not necessarily have to stop. In fact, value can still be realized while you await the green light to proceed with construction. Many pre-construction services such as pre-planning meetings, team member selection, schematic design, scheduling/scope considerations and budgeting can be performed remotely and in accordance with social distancing guidelines. Further, this work can easily be set aside for future use without much need for modification in the event the project proceeds at a later date. By continuing to hone project scope,

schedule and design issues early, your construction team will be able to proceed more efficiently with the construction phase once social distancing mandates are eased. It is even possible to begin permit discussions with the governmental authority to correct and avoid problems.

In addition, by continuing with design development, your team can address potential design impacts the novel coronavirus may have on consumer preferences. Issues your team may want to consider include:

- Changes to building HVAC to create a healthier environment for occupants
- Open floor plan vs. individual office spaces
- Necessity for remote employee office space
- Touchless features such as faucets, doors, etc.
- Changes to materials that may be less resistant to the transmission of certain viruses
- Materials that are climate resilient, climate friendly and energy efficient

Detailing a Site Safety Plan

Implementation of additional safety measures or sanitation procedures necessary to help in preventing further spread of the virus is another way to mitigate risk. Although this may seem minor, preventive measures such as increasing sanitation stations or limiting travel for certain employees reduce the likelihood of your workforce contracting the virus and can be an easy and cost-effective step in limiting potential delays caused by a sick workforce. This applies to the offices of owners and contractors alike, as well as to the actual construction sites. Generally speaking, a plan should consider the health and safety of the workforce, comply with government rules and advisory opinions, and maintain adequate flexibility to adapt to future changes and clarifications to any governmental issued order, including a future shutdown.

Specific plans may detail additional requirements relating to:

- Increased monitoring of the site and employees (i.e. temperature checks, logs of tasks performed and/or deliveries, etc.);
- Requiring a dedicated safety employee whose task is to document health and safety issues and monitor revised government guidelines;
- Posting of notices relating to safety onsite, as well as updated safety procedures relating to limiting the spread of the virus;
- Integration of various safety plans of all project team members for conformance; and
- Actions to be taken in response to a potential outbreak (i.e. who should be notified, review of task logs for employee interaction with the sick individual, suspension of work in impacted area(s) and subsequent disinfection procedures to be taken).

Site Security

During this pandemic, project sites may be shut down by governmental order, infected workers or for other reasons. The shutdowns may last days or months. Often, the project team will have only a matter of days or even hours to shut down and secure the project site. To minimize risk, the project team should be familiar with the terms of the applicable builder's risk insurance regarding site security and should have a plan in place to comply with those requirements.

The plan should include:

- Fencing or barriers (if feasible);
- Electronic security (making certain that systems are working, including wi-fi and cellular); and
- Guard services.

In addition to those security measures, materials stored on the site, often for longer periods than originally contemplated, need to be secured and protected from the elements. Finally, consideration should be given to fire prevention measures while the project is shut

down.

Supply Chain Disruptions

With widespread shutdowns here in the United States and abroad, supply chain disruptions are likely if the pandemic continues. To mitigate risk associated with supply chain disruptions, a full understanding of where materials are being sourced from is necessary. In the event the procurement of necessary materials may be impacted, your team may consider seeking materials from American companies or areas that have seen less impact from the coronavirus pandemic.

If alternative materials are more expensive or aesthetically less pleasing, but readily available, and that alternative is raised early in the process, owners can make educated decisions as to whether completing the project faster, at a higher cost or without some of the planned design features, is worth accepting. In any event, it is imperative that potential project materials be tracked, their availability continually monitored and possible alternatives considered. _

Changes to Workforce and Impacts on Scheduling

Undoubtedly, workforce availability will be impacted by the coronavirus for the near future. These reductions, whether mandated by governmental orders, or caused by the virus itself, will cause disruptions to project schedules. One method of handling potential scheduling impacts involves minimizing workforce interaction as much as possible. Parties should consider:

- Ensuring the workforce is practicing safe social distancing;
- Staggering trades onsite and using video conferencing when possible;
- Increased sanitation to prevent the possibility of trades becoming sick;
- Allowing overtime to counteract delays caused by social distancing requirements; and
- Relaxing rules on “work hours” for construction so trades can work more freely while maintaining distance.

By incorporating one or a variety of these measures into your project, parties can mitigate risk associated with workplace disruptions.

As expected, labor shortages and other unknown delays caused by the coronavirus pandemic pose a threat to your project being completed on time. The first step with dealing with inevitable coronavirus-related delays is to be reasonable with team members' requests. This includes not only scheduling issues, but also substantial completion dates and liquidated damages. There is also anecdotal evidence emerging of permit delays as government employees work remotely. By being reasonable and accepting the reality of everyone's current situation, parties can effectively reduce associated delays.

Likewise, precise and detailed recordkeeping is crucial to managing risk, given these likely delays. The parties should document delays and their impacts, as well as any attempts to mitigate these delays.

Force Majeure

Usually, an event of force majeure is an unforeseeable event that prevents fulfillment of contractual duties. Although pandemics will likely be considered an event of force majeure under common boilerplate language, clear provisions that specifically define “epidemics and pandemics” as a qualified “event” are key.

When drafting provisions, first look at the contractual language to ensure that it specifically defines what is included, or excluded, from a force majeure “event” and clarify as necessary. Additionally, parties should consider that, depending on the time of contracting, a pandemic related to the coronavirus may no longer be considered “unforeseeable.” Thus, parties may wish to consider adding language that specifically addresses how contract time and price may be impacted in the event of a coronavirus-related event.

Similarly, parties must give consideration to how the contract addresses risk. Not only are clear force majeure provisions helpful, but conformance with notice requirements, in the event of a force majeure-related event (or otherwise), is equally important. Notice requirements are typically specific and, if not properly followed, can lead to possible waiver of claims.

Finally, since an event of force majeure will likely cause delays and increased costs for your project, it is important that suspension and termination provisions are reviewed. Depending on how these provisions are drafted, short periods of suspension may delay contractor requests for additional costs. In the case of termination, if a contractor is unable to perform, termination provisions may limit the potential for future cost overruns with the hope of hiring a suitable replacement contractor who may be in a better position to complete your project. Similarly, when deciding whether to suspend or terminate, it is imperative that contractual notice provisions be understood and properly exercised.

Collaboration Is Key

In addition to these risk mitigation practices, collaboration is more important than ever. With a variety of unknowns relating to labor supply, material availability and governmental requirements, project delays and cost overruns can quickly increase. By dealing with these issues as early as possible and through effective teamwork, all parties can aid in limiting the potential impact of the coronavirus pandemic on your project.

If you have questions about these matters or want more information, please don't hesitate to contact one of the members of our [Construction Practice](#).