



TOP TEN RECOMMENDATIONS FOR TRACKING IMPACTS TO YOUR PROJECT FROM THE COVID-19 PANDEMIC

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April 2020

The Centers for Disease Control and Prevention (CDC) is responding to a pandemic of respiratory disease spreading from person-to-person caused by a novel (new) coronavirus. The disease has been named “coronavirus disease 2019” (abbreviated “COVID-19”). The United States nationally is in the acceleration phase of the pandemic. The duration and severity of each pandemic phase can vary depending on the characteristics of the virus and the public health response. For the latest COVID-19 recommendations and details, visit <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

COVID-19 has significantly impacted the construction industry. Some supply chains have been affected, and the availability of some materials has become a concern. The typical working culture of construction sites has changed, as guidelines for social distancing and enhanced health and safety recommendations are implemented. We expect that the construction workforce may be reduced as a result of workers becoming ill, or being absent from the work site as they tend to family matters.

The COVID-19 pandemic brings multiple degrees of uncertainty to construction projects. Unlike other impacts such as a weather event, there is no reliable forecast, no reasonable expectation of the immediate effect, and no historic basis for what to expect afterward.

Among all this uncertainty, however, there are certainties:

- No one will come through this unaffected.
- There will be a lot of sorting out of who owes what, if anything, to whom.
- Recovery of damages will still be based on establishing liability, causation, and damages.

To help prepare for the inevitable disputes about the extent of impacts, accurate and detailed recordkeeping is essential. Although only a limited number of states have totally shut down construction, impacts to schedules and costs will be pervasive. The following are fundamental actions that are critical to making comprehensive and factual arguments and defenses for impacts from the COVID-19 pandemic.

- 1. Review the contract provisions** relative to Force Majeure (“superior force” or “Acts of God”), labor shortages, material shortages, government-ordered shutdowns, etc. With an eye on those provisions, associate each impact with the responsible party and that party’s rationale. For example, if the job is shut down, did the owner direct a shutdown in compliance with a government directive or was it simply out of an abundance of caution? If a subcontractor does not staff the job, was it because that subcontractor could not get enough workers or was it because that subcontractor was acting out of an abundance of caution? These examples obviously extend to all project participants.
- 2. Pay close attention to any notice requirements**, especially as they may apply to the above. This is important not just for notice going “upstream,” but also for notice going “downstream.” Don’t let a failure to give proper notice be an impediment to recovery or an opening for others to seek damages from you.
- 3. Create a pre-impact project schedule update** to serve as a baseline against which delays resulting from the COVID-19 pandemic can be appropriately measured. All aspects of the project (design, procurement, construction, and inspection) will be affected by this crisis and have the potential to impact schedule and costs. This pre-impact update should be comprehensive and include documentation to support progress for all critical and near critical path activities.
- 4. Keep detailed daily reports** during the affected period noting each contractor and subcontractor on the project, as well as their staffing levels. Include other relevant data such as owner’s representatives on site, deliveries made or missed, and, of course, the quantity of work performed. Always keep in mind, however, that if your job remains active, all other appropriate information such as weather, equipment issues, differing site conditions, and any other project/progress relevant information must still be tracked.

5. **Track and status the schedule often.** Ideally, all work recorded on the daily reports should be coded to an activity on the project schedule to allow the creation of a daily as-built schedule. In the absence of this detailed recordkeeping, the schedule may benefit from more frequent updating than the typical monthly update cycle; an update every two weeks, or even weekly updating, may be prudent.
6. **Manage and track the supply chain.** Note any impacts caused by supplier issues, such as steel that cannot be delivered when needed or major equipment that cannot be supplied on time. Importantly, segregate those impacts related to the COVID-19 pandemic to those stemming from typical supply chain impacts such as fabrication blunders, design changes, etc.
7. **Photograph and take video of your jobsites** to document the state of the work - not just if, or when, a shutdown is ordered, but as close as possible to the time that impacts start to be experienced, for example, the first day a subcontractor cannot adequately staff the project. Keep a running photographic record in this regard documenting each new effect.
8. **Secure the site.** If your job does get shut down or you feel it is prudent to temporarily shut down operations, make sure that the site is well secured and take inventory of any materials and equipment left on site. Pictures and video may be helpful. Once the shutdown is over, documenting the remobilization and startup is just as important as documenting the shutdown.
9. **Consult with experts as appropriate,** including attorneys and professional construction consultants. As stated above, recovery of damages in this and all situations requires demonstrating liability, causation, and damages. There are many areas of potential impact due to this crisis and engaging outside objective perspectives will increase the potential for maximizing recovery of valid impacts. An attorney should be consulted to ensure appropriate legal and contractual measures are being taken. Professionals experienced in performing and demonstrating schedule impacts and labor inefficiencies can bolster the likelihood of relief from effects of a delay. Insurance professionals can provide guidance on whether existing coverage provides protection and avenues for recovery of impact costs.
10. **Maintain a filing system** (electronic and/or physical) dedicated to the COVID-19 pandemic and keep files for all of the individual problems and impacts that this outbreak and response thereto causes (changes in means and methods, shortened or increased work hours, manpower shortages, material shortages, late deliveries, schedule impacts, wage and material escalation costs due to shortages and/or schedule delays, changed/extended insurance coverages, etc.).

By following these recommendations, your road to recovering damages owed to you or evaluating claims for monies being sought from you will be greatly facilitated and hopefully allow you to get back to business as usual as quickly as possible.



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