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WORKPLACE CONSIDERATIONS

EXITING THE COVID-19 STORM: CONSIDERATIONS FOR THE CONSTRUCTION INDUSTRY AS IT REBOUNDS FROM THE CORONAVIRUS

The coronavirus has impacted every industry and every person, creating challenges of every kind and every nature — short-term; long-term; economic; non-economic — the list is endless.

Of course, the key to handling any challenge is planning — a fact reflected and supported by Executive Order 2020-42 issued by Governor Whitmer on April 9, 2020, which requires certain businesses to prepare and develop certain COVID-19 Preparedness and Response Plans.

The construction industry has been no exception to the challenges created by COVID-19 — projects have been suspended and terminated; workers have been displaced and unemployed — again, the list is endless. Just as owners, architects, engineers, contractors, and suppliers had to plan and prepare as they entered the COVID-19 storm, they too need to plan and prepare as they exit it. As the industry exits it, the following are items for everyone in the industry to consider and address:

1. Operation Related Considerations

- Assess and manage the development and impact of COVID-19 related requirements and guidelines issued by federal, state, and local governing bodies and authorities and comply with the same.
- Analyze and request potential emergency and financial support and relief to address and mitigate financial hardships caused by COVID-19.
- Assess and manage assets, cash flow, and financial arrangements with lenders, owners, contractors, and suppliers.
- Develop and prepare contingency and response plans for dealing with COVID-19 related issues.
- Assess and manage supply chain interruptions and decreases in projects and sales.
- Identify and address data privacy risks and leaks.
- Assess essential functions and operations, analyze reliance on others for the same, and consider back-up arrangements and alternatives for the same.
- Assess and manage information-technology systems and cyber-security controls in anticipation of allowing or requiring employees to work remotely and changes in the means and methods of interacting and communicating in the office and in the field.

- Review and analyze insurance policies to assess potential claims and recoveries for damages caused by COVID-19 and identify and seek additional insurance related needs.
- Identify and contact downstream parties (e.g. subcontractors and suppliers) about the availability of workers, equipment, and supplies and address issues related to the same.

2. Employment Related Considerations

- Monitor and comply with guidelines and requirements related to the health and safety of employees.
- Review and analyze rights and obligations under employment and collective bargaining agreements and employment legislation.
- Introduce and implement policies to prevent the spread of COVID-19 and other infectious diseases and illnesses and consider updating agreements, policies, and handbooks related to the same.
- Provide employees with the necessary tools, equipment, and technology to work remotely and safely and operate properly and efficiently.
- Consider introducing flexible working policies or instructing or asking employees to stay home and not to come to work if they are experiencing any signs or symptoms of any illness (to the extent permissible under applicable law).
- Consider limiting or prohibiting business travel and discourage face-to-face meetings.
- Consider back-up arrangements and alternates for key personnel.
- Require notification of potential exposure to COVID-19 and other infectious diseases and illnesses (to the extent permissible under applicable law).
- Educate employees about how to reduce the spread of COVID-19 and other infectious diseases and illnesses.

3. Project Related Considerations

- Review and analyze potential projects and whether to bid on or pursue the same given status and stability following COVID-19.
- Review and analyze contracts and contractual arrangements to assess contractual rights and obligations and consult with attorneys about the same (e.g. breaches and events of default, notice and termination requirements, and applicability of force majeure provisions).
- Identify and address schedule and critical date related issues and extensions of the same.
- Analyze and address any potential delays and changes or claims related to the same.
- Identify and mitigate any potential supply chain and delivery disruptions caused by factory and facility closures, travel restrictions, or employee absences.
- Analyze and address any potential extra work costs and changes and claims related to the same.

- Analyze and address any acceleration costs and changes and claims related to the same.
- Identify and introduce alternative communication methods and channels in anticipation of or in response to COVID-19 related restrictions, absences, and impacts.
- Analyze and address material, equipment, labor, and trade shortages.
- Identify and communicate with project parties and personnel (and coordinate and cooperate with the same to the extent required or needed)
- Identify and address any potential need for additional forces or shifts to make-up time or overcome delays caused by COVID-19 related issues.
- Analyze and address concurrent work items and projects and the effect of the same on the availability of forces and equipment and the ability to properly and timely complete the same.
- Review and analyze construction, material, and means and methods related specifications and address issues related to the same.
- Identify and analyze increases and decreases in contract price and contract time and properly and timely submit notices and claims for the same.
- Analyze and address potential dispute and remedies for and resolutions of the same.

The foregoing considerations are not exhaustive. Rather, they are intended to get you to begin to think about everything impacted by COVID-19, whether it be operation, employment, or project related, and how the coronavirus has and will reshape the industry so you can take the appropriate steps to address those things.

If you have any questions or concerns about or need any assistance with handling any of the foregoing considerations or any COVID-19 related issues (e.g. developing and preparing a COVID-19 Preparedness and Response Plan), please contact any attorney in Butzel Long's Construction Law Practice Group.