

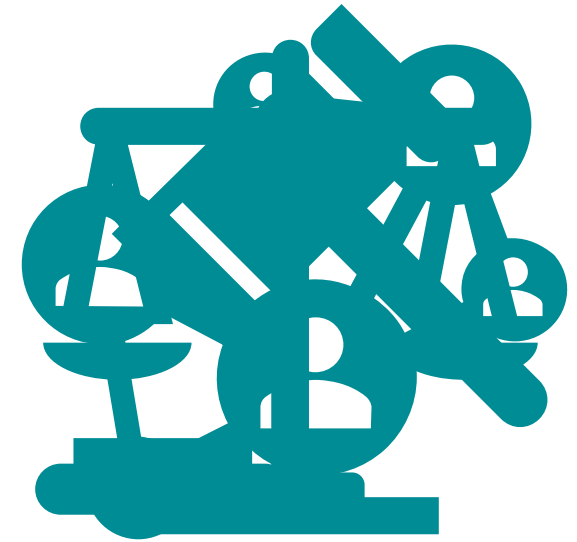
The Impact of COVID-19 on Construction Contract Issues and Obligations

Presented by

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THE CORONAVIRUS AND CONSTRUCTION PROJECTS GENERALLY

- **Effects Generally**
- **Effects Unique to Federal Contracts**
- **Effects on the Courts**



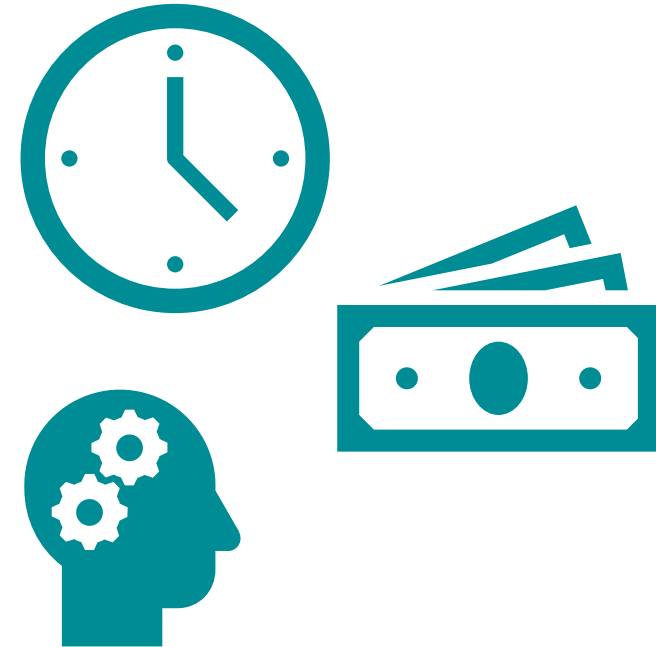
HAS MY PROJECT BEEN AFFECTED BY THE CORONAVIRUS: ESTABLISHING CAUSATION?

- **Labor?**
 - **Mine?**
 - **Others?**
- **Material/Equipment Vendor?**
 - **UCC**
 - **Common Law**
 - **FAR**
- **Subcontractor(s)?**



WHAT IS THE EFFECT ON MY PROJECT CAUSED BY THE CORONAVIRUS: ESTABLISHING DAMAGES?

- **Time?**
- **Cost?**
- **Productivity?**
- **Mitigation?**



WHAT DOES YOUR CONTRACT SAY?

- **Force Majeure**
- **Changes**
 - **Cardinal Change**
 - **Constructive Change**
- **Suspension of Work**
- **Termination**
- **Implied Duty of Good Faith and Fair Dealing**

The background is a solid red color with a faint, embossed circular seal. The seal features a central emblem, possibly a crest or a religious symbol, surrounded by text in a circular arrangement. The overall texture is slightly grainy, typical of a scanned book cover.

WHAT LAW APPLIES?

PRESERVING YOUR RIGHT TO PAYMENT

- **Tracking Costs**
- **Mechanic's Liens**
- **Insurance**



SO, WHAT SHOULD I DO?

- **The Takeaways**

Families First Coronavirus Response Act (FFCRA)

Emergency Paid Sick Leave

Generally, the Act provides that covered employers must provide to **all employees**:

- *Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

Expanded Family & Medical Leave

- A covered employer must provide to **employees that it has employed for at least 30 days**:
- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay* where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Families First Coronavirus Response Act (FFCRA)

Qualifying Reasons for Leave:

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for **expanded family leave** if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

FFCRA: Tax Credits & Exemptions

Tax Credits

- Effective Dates: April 1 through the end of 2020
- Credit for costs related to giving employees paid leave
- Can retain and access funds would otherwise pay to the IRS in payroll taxes
- If an employer is paying out more in FFCRA paid leave than its payroll tax liability, the employer can file for a refund on forms that the IRS will issue

Exemptions

- **Small Business Exemption** – You employ fewer than 50 employees
- **Health Care Provider/First Responder Exemption** – Very Broad; includes entities that contract with HCP to provide services or to maintain the operation of the facility

QUESTIONS?



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