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COVID-19 & the Construction Industry: Operational, Employment & Other Considerations



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Disclaimer & Introductory Info.

- **Disclaimer:** Due to limitations and the nature of this program please understand that printed material and oral presentations or other data presented are not intended to be a definitive analysis of the subjects discussed. Users are cautioned that situations involving healthcare and employment law questions are unique to each individual circumstance, and the facts of each situation will dictate a different set of considerations and varying results. Material contained in this presentation or listed as a reference is a general review of the issues, and must not be considered as a substitute for advice from your attorney on your own situations.
- **Factually specific questions.** Our answer may not apply to your situation.
- **Rapidly changing, fluid situation** in terms of laws, regulations, and facts.
- **Agenda:** Go through PowerPoint presentation (incl. advanced questions), and then we will answer questions submitted during webinar at the end.
- **Resources:** PowerPoint presentation, and recording, will be distributed.
- **[Davis Brown's Online COVID-19 Resource Center](#)**

The Big Picture

- As of now, in Iowa and elsewhere, most construction operations continue, including due to formal or informal classification of the industry in the “essential services” category. Subject to change.
- Currently, no shelter-in-place / shut down order in Iowa.
- Instead, Iowa has implemented a phased approach to closing categories of businesses. As of now, neither construction nor real estate activities have been included in the category of businesses that must close.
- Other states, with shelter-in-place / shut down orders, generally shut down businesses that are not “essential services.”
- In such states, the goal is to have construction categorized as an essential service, i.e., necessary to maintain safety, sanitation, and essential operation of residences, essential activities/infrastructure, and essential businesses.

The Big Picture

- Reasons for classification are numerous, but include the various national and state lobbying and industry organizations emphasizing: adherence to OSHA, IDPH, and CDC guidelines; social distancing; use of PPE; and monitoring of all who enter the job site, all of which create a safer environment than exists in other industries.
- Safety has been, and should continue to be, top priority on projects.
- **Q (Jodie):** “Explain the language of the letter sent to the Governor on which trades are essential-does it include everyone?”
- **Q (Jo Ellen)** What if an employee does not feel comfortable coming into office even though workplace is an essential service and in compliance with CDC and IDPH guidelines? Liability for making employees continue to work?

State and Federal Guidance

- [Centers for Disease Control](#)
 - CDC: [Interim Guidance for Businesses & Employers RE COVID-19.](#)
 - CDC [one-page quick reference poster](#) with recommendations for keeping workplaces safe
- [OSHA](#)
 - OSHA: [Guidance for Preparing Workplaces for COVID-19.](#)
- [Department of Labor](#)
- [Iowa Department of Public Health](#)
- [Local Public Health Agencies](#)

Safety & Precautions in Office Setting

- ✓ All employees who can work remotely, should work remotely.
 - ✓ For remaining employees in the office, social distancing of 6 feet between employees should be observed.
 - ✓ Increased cleaning and sanitation of the office (frequently touched surfaces)
 - ✓ Employee / Visitor Screening (on later slide)
 - ✓ In-person meetings:
 - ✓ (1) In-person meetings of any size, even when abiding by the above noted social distancing protocols, should be **avoided whenever possible**; and
 - ✓ (2) per CDC, in-person meetings of 10 or more people should **not occur**.
 - ✓ Visitor/client office meetings should be switched to virtual meetings when possible, and otherwise should generally be by appointment only.
 - ✓ Post COVID-19 Notice on front door office (on next slide)
 - ✓ **TRAIN EMPLOYEES ON THESE PRECAUTIONS**
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Sample Notice

Coronavirus/COVID-19 Notice

If you have respiratory symptoms such as a cough or shortness of breath, have had a fever within the past 24-72 hours, have recently been in close contact with someone with any of the aforementioned symptoms, or have traveled to a known Coronavirus (COVID-19) affected area, please call us at _____ to reschedule your appointment. You may be asked to postpone your appointment for fourteen (14) days.

For those visiting the office, please remember to practice social distancing and good infection control habits.

Safety & Precautions on Job Site

- General Best Practices:
 - ✓ TRAIN EMPLOYEES ON ALL PRECAUTIONS
 - ✓ Employee/Subcontractor screening (later slide)
 - ✓ Maintain social distancing/increase personal space of 6 feet whenever possible
 - ✓ Limit people on site and in one area at any given time (rotation of crews).
 - ✓ Do not congregate in common areas, job trailers, lunch area
 - ✓ Separate trucks for crew people
 - ✓ No shared tools, or sanitize between workers
 - ✓ No shared PPE (or sanitize reusable PPE if appropriate per man. specs)
 - ✓ Wear gloves at all times even when not typically required, & cleaning of gloves
 - ✓ Wear eye protection at all times even when not typically required
 - ✓ CDC currently not recommending that healthy people wear face masks

CONT'D: Precautions on Job Site

- ✓ Disinfect reusable supplies and equipment
 - ✓ Increased cleaning and sanitation of the jobsite, with a focus on frequently touched surfaces; job trailers; portable bathrooms.
 - ✓ Frequent crew hand-cleaning
 - ✓ No communal food (donuts, pizzas, etc.) and no common water cooler.
 - ✓ All people on the site should be tracked.
 - ✓ For interior work in occupied homes or structures, owner screening. (later slide)

 - **Q:** Question RE: disinfection/sanitation of materials delivered to owners?
 - **Q:** What are typical local building & inspection changes? Are inspections timely?
 - **A:** Varies, but most: P&Z/council meetings continue but virtual; permits/dev. processes continue but online; offices closed to public, but business by phone or online; inspections for projects continue, some virtual and some delays; inspections for rentals suspended.
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Other Operational Changes

- Suspend all non-emergency warranty work (particularly interior work) for a period of 30 days or other period of time.
- Change on-site walk throughs and site visits with clients to telephonic or virtual meetings whenever possible or reschedule for a later date. When that is not possible:
 - Meetings should be strictly limited to essential people only (and in no circumstance, should include 10 or more people per the CDC recommendation).
 - Maintain social distancing of six feet.
 - Ask screening questions/perform screening of the clients prior to those meetings and on-site visits as noted above, and cancel/reschedule meeting as necessary. (see later slide)
- Open Houses: One prospective purchaser/family at a time; others wait in car or garage; maintain social distancing; have cabinets/doors open; gloves available

Screening

*Jo Ellen to discuss

- Employee Screening: strongly encouraged
 - Screening questions
 - Taking temperatures (temporal, not orally; record on a log)
 - Sample self-screening questions on next slide
- Visitor/Client Screening:
 - Strongly encouraged. Note: Employers have general duty per OSHA to ensure employees are working in a safe workplace
- **Q: Subcontractor screening?** “What information should we be providing for our subcontractors or asking our subcontractors to be doing? Is there any legal documents that need to be signed?”
 - General contractors can and should ask their subcontractors if they, and/or require that they, perform daily employee screening & could have them attest in writing to compliance with their policy.

Screening Question Sample

*Jo Ellen to discuss

1. Have you washed your hands or used alcohol-based hand rub on entry?

2. Do you have any of the following respiratory symptoms?

Fever over 100.4 in the last 72 hours

Sore throat

Cough

New shortness of breath

If yes to fever you may not work.

3. Have you traveled within the last 14 days to any areas where COVID-19 cases have been confirmed? If yes, you may not work.

4. Have you been in any area or situation where you may have been exposed to COVID-19? If yes, you may not work.

COVID-19 in Office or Job Site

- **Q:** Despite precautions, someone in office becomes sick & tests positive for COVID-19, what do I do? Employer liable to other sick employees?
 - General notification to employees
 - Send everyone home for period of time (14 days)
 - Deep clean/sanitize office before anyone returns
- **Q:** Despite precautions, someone on job site (subcontractor or employee) becomes sick & tests positive for COVID-19, what do I do? Employer liable to sick owner?
 - Notify owner (verbal & written); notify others on job. (see next slide)
 - Suspend project for period of time (5 days) to deep clean/sanitize
 - Other crew in contact w/ person off job for period of time (14 days)

Sample Notice to Owner

Coronavirus/COVID-19 Notice

We are writing to notify you that a [crewperson/subcontractor] who was on the job site tested positive for COVID-19. This construction worker was working in the [unoccupied and/or occupied] areas of [list areas]. That worker and any other worker who came into contact with him are in self-quarantine for a minimum of 14 days. We have also temporarily suspended work on the job, and full cleaning procedures will be completed in the area(s) where work was being done before work recommences.

We cannot provide you with the name of the worker. If specific notification of any person is required, that is done by the Iowa Department of Public Health.

If you have any questions please contact us at [phone/email].

COVID-19 As Recordable Event?

- **Q: Is COVID-19 exposure a recordable event under OSHA?**
- A: Guidance at <https://www.osha.gov/SLTC/covid-19/standards.html>, below:

OSHA recordkeeping requirements at [29 CFR Part 1904](#) mandate covered employers record certain work-related injuries and illnesses on their OSHA 300 log.

A: COVID-19 recordable illness occurs if worker infected as result of performing work-related duties. Employers required to record cases of COVID-19 if all apply:

- The case is a confirmed case of COVID-19 (see [CDC information](#) on persons under investigation presumptive positive and laboratory-confirmed cases)
- The case is work-related, as defined by [29 CFR 1904.5](#); and
- The case involves 1 or more of the general recording criteria set forth in [29 CFR 1904.7](#) (e.g. medical treatment beyond first-aid, days away from work).

Contact attorney for specifics and visit OSHA's [Injury and Illness Recordkeeping and Reporting Requirements page](#) for more information.

Contract / Legal Implications

- **Q: What if a contractor cannot fulfill contract due to COVID-19?**
- This is a case-specific and contract-specific analysis. Contact attorney for advice.
- Contractor may be able to declare a Force Majeure Event, which is:
 - =an event “neither anticipated nor controlled” (by contractor). FM Event must:
 - Be an exceptional occurrence outside of the control of the party
 - Make performance impossible or impractical (not just more difficult)
 - Be Unanticipated
- Look at contract (e.g., “event outside of control” of party; “unavoidable casualties”)
- Must give prompt notice (review contract for notice period or otherwise give asap)
- Result: (1) Equates to an excusable delay. (2) Contractor will be allowed reasonable extension of time. (3) No liability of contractor for LDs or other damages
- **Takeaway: *For pre-mid March 2020* executed contracts: The COVID-19 situation will likely be deemed a force majeure event, but it depends & proper notice crucial.**

Contract / Legal Implications

- **Post March-2020 Contracts:**
- Takeaway: Likely a different analysis regarding force majeure events, as COVID-19 delays are no longer unanticipated by the parties.
- Result: Look at your contracts & include specific language on COVID-19 as a reason for excusable delay. Contact attorney for specifics. Basic sample language below:
 - Excusable delay/extension provision in construction contracts/purchase agreements should include specific language including following as FM events:
 - Delay in work due to disease, epidemics, and/or pandemic (including COVID-19), or labor shortages caused by such events.
 - Delay in deliveries due to disease, epidemics, and/or pandemic (including COVID-19), or material shortages caused by such events.
 - Delays relating to government-mandated, government-recommended, or privately imposed, quarantines, restrictions on access, or restrictions in travel relating to disease, epidemics, and/or pandemic (including COVID-19).
- **Q:** What if owner submits contract/addenda w/ COVID-19 provision? Seek counsel.

Financial Relief/Assistance Information

- **Q:** What small business assistance is available? SBA loans available?
- **Summary below. Information will not be discussed in detail today.** Full details at Davis COVID-19 Resource Center at <https://www.davisbrownlaw.com/coronavirus-resources.aspx>
- **(1) SBA Loans:** SBA to give up to \$2 million loans to IA small businesses
 - Used to pay fixed debts, payroll, accounts payable, and other bills
 - Interest rates are: 3.75% for small businesses
 - Long-term repayments, up to a maximum of 30 years.
 - Applications can be submitted via the [SBA's website](#) and applicants can monitor the application status after it's submitted.
 - For questions, contact attorney or SBA disaster assistance customer service center at 1-800-659-2955 or disastercustomerservice@sba.gov.

Financial Relief/Assistance Information

- **(2) Iowa Small Business Relief Program:** Small Business Grant Program/IEDA will give up to \$4 million in grants to IA small businesses
 - Small grants from \$5,000-\$25,000 for employers w/ 2-25 employees.
 - An employer must show:
 - Business disruption due to the COVID-19 pandemic
 - Employed between 2-25 employees prior to March 17, 2020
 - Must have a physical location in Iowa
 - Used to maintain operations or reopen businesses following COVID-19 pandemic. **Cannot use to pay debts incurred prior to March 17th**
 - Considerations: level of COVID-19 impact, loss of revenue, loss employees. Contact attorney or accountant for best tracking/docs.
 - *Program is *not* first-come, first-serve
 - **The application deadline is Tuesday, March 31, at 12:00 p.m.**

Financial Relief/Assistance Information

- **(3) Targeted Small Business Grants RE: Single Owner-No Employees:** IEDA will give small grants for sole-owner business *without employees* who have or will be certificated as a Targeted Small Business.
 - Small grants from \$5,000-\$10,000 for businesses with no employees
 - To be eligible, business:
 - Must be certificated as a Targeted Small Business
 - Sole owner must be women, minorities, people with disabilities.
 - Must earn no more than \$4 million in annual gross income
 - Must have zero employees
 - Impacted by COVID-19 in revenues
 - **Apply by April 10th** at
 - <https://iowaeda.microsoftcrmportals.com/tsb-application-start/>

Financial Relief/Assistance Information

- **(4) Extension of Sales and Withholding Tax Deadlines**
 - IDOR will auto'ly extend sales and withholding tax deadlines for any business awarded Iowa Small Business Grant
 - IDOR also to consider extension for any business that applies for grants.
 - To be eligible for extension, an employer must apply and show:
 - Business disruption due to the COVID-19 pandemic
 - No employee minimum/maximum
 - Dual applications for SBRP grant approval and extension of sales and withholding tax will be available on the [IEDA website](#) beginning at 8:00 a.m. on Tuesday, March 24.
 - **The application deadline is Tuesday, March 31, at 12:00 p.m.**

Employment / Wage & Hour Matters: Families First Coronavirus Response Act

- April 1 through December 31, 2020
- There are healthcare employee exemptions from the law

Emergency FMLA Expansion

- Employees who have been employed for a minimum of 30-calendar days with the employer
- Applies to employers with fewer than 500 employees
- Applies to school or childcare closures when an employee is unable to work or telework due to such events

Emergency FMLA Expansion

Businesses with fewer than 50 employees are exempt if they can show business necessity and economic hardship which would jeopardize the business “as an ongoing concern.”

Emergency FMLA Expansion

The first 10-day period is unpaid, but the employee can choose to substitute accrued PTO.

Emergency FMLA Expansion

- After the 10-day period employees meeting the conditions of the FMLA expansion will receive paid leave for the remainder of the covered time at a rate of 2/3 of their standard pay.
- Limits on the amount that will be required to be paid. Specifically, the total amount of leave paid pursuant to the statute “Shall not exceed \$200 per day or \$10,000 in the aggregate.”

- Job return will work the way it normally does under the FMLA unless you have fewer than 25 employees and then you have extra hoops to jump through

Emergency Paid Sick Leave

This applies to all employees who are
unable to work or telework

Emergency Paid Sick Leave

- Subject to a governmental quarantine
- Has been advised by a health care provider to self-quarantine
- Experiencing COVID-19 symptoms and is seeking medical diagnosis
- Caring for an individual who is subject to quarantine either due to governmental or medical order
- Caring for a son or daughter if there is a COVID-19 based school or childcare closure.
- Any other “substantially similar condition”

Employees Who Meet the Criteria Above Have the Right to

- Paid sick leave will be available to all employees in the amount of 80 hours for full time employees and a prorated amount based on average hours worked for part time employees over a two-week period
- Immediately available and is not based on length of service
- Leave does not carry over from year to year and is not used for other purposes other than to those cited above and related to the current pandemic
- Employers may not require that employees “find their own replacement” in order to qualify for this leave

Employees Who Meet the Criteria Above Have the Right to

- Employers may not require that employees first exhaust other paid sick time prior to using this mandated sick leave.
- Violations of this statute are wage hour violations
- In the event the need for leave is due to quarantine or personal illness the total dollar amount of leave is limited to \$511 per day and a total aggregate amount of \$5,110
- In the event the need for leave is due to care of another person or school/daycare closure the amount is limited to \$200 per day and a total aggregate amount of \$2,000

Notice

All employers are required to post on their premises a DOL notice about this leave.

The notice is available at dol.gov

Iowa Workforce Development / Job Service

- Amounts- weekly benefits \$87-\$591 based on previously paid employee wages and number of dependents
- Timing- Benefits available for a maximum of 26 weeks unless there are further changes to the law

Iowa Workforce Development / Job Service

Claimants that file will be eligible if they are out of work due to:

- Caring for a family member with COVID exposure/illness
- Loss of childcare or school closures
- Employer shut down (temporary layoffs have always qualified)
- Self-quarantine need
- Ill with COVID-19 and unable to work due to sickness or quarantine

Iowa Workforce Development / Job Service

- Work Search requirement is waived for these circumstances
- Employees will check COVID-19 on the benefit application form which will trigger this coverage
- New employees who would not otherwise qualify for job service due to lack of time worked will remain eligible for payment under the COVID-19 plan. IWD will look at the prior employer to determine payment rate. It appears that if an employee has worked for the minimum in qualifying wages in the last 18 months some benefits will be available.
- Employee eligibility is broad, but you do have to have been employed and earned wages in the last 18 months

IWD – Voluntary Shared Work Program

The VSW program works as follows:

- An affected employee's hours are reduced between 20-50% (the minimum reduction is 20% and the maximum is 50%)
- Affected employees are paid a percentage of their weekly unemployment insurance (UI) amount, based on the percentage their hours are reduced. For example, if the hours of employees in the affected work unit are reduced from 40 to 32, that is a 20% reduction, and the UI claim would pay them 20% of their weekly UI amount.

IWD – Voluntary Shared Work Program

Cost to Employer

Employer accounts will not be charged for benefits paid under the VSW Program directly or indirectly related to COVID-19

Important Resources

- Do you have a legal question relating to the coronavirus?
 - Email us your question: info@davisbrownlaw.com, subject line: Coronavirus
 - We'll publish updated blog posts and try to answer as many as we can

THANK YOU

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