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# COVID-19 Advisory



## Impact of COVID-19 on Construction Projects: Does Work Stop and Who Pays?

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On March 16, 2020, seven counties (Alameda, Contra Costa, Marin, Santa Clara, Santa Cruz, San Francisco, and San Mateo) issued shelter in place orders to slow the spread of the COVID-19 pandemic. This is a rapidly developing and changing circumstance but - among the many critical issues raised by these orders - school and community college districts in these counties should consider the impact of shelter in place restrictions on their active construction projects. Districts throughout the State may similarly be affected by required or recommended social distancing practices and will need to prepare for possible disruption of ongoing and scheduled construction projects.

COVID-19 and related shelter in place restrictions present a number of challenges for construction projects, including whether the contractor's work can continue and, if not, whether the district must grant the contractor an extension of time to complete the project instead of assessing liquidated damages. A time extension under these circumstances, however, may not be determinative of whether the contractor is entitled to additional compensation for the extended duration of the project. Contractors may also try to claim costs related to protecting/closing-up the work or demobilizing/remobilizing. Recognizing these questions now could help keep a project on track and minimize or avoid costly disputes over responsibility for delays and costs later on.

The current shelter in place orders include a carve-out for "public works construction," which includes school and community college district construction projects. The orders deem these projects "Essential Infrastructure," and individuals may leave their residences to provide services or perform work necessary to the operations and maintenance of "Essential Infrastructure." The orders require contractors to carry out the services or work in compliance with social distancing requirements "to the extent possible." The social distancing requirements include maintaining at least a six-foot distance from other individuals. Therefore, depending on the nature and location of the project, the contractor should be able to continue work in compliance with the order.

Districts will also need to look at the specific language of their construction contract. Contracts often contain terms intended to address unforeseen and unavoidable events that prevent a party from performing under the contract. Thus, your construction contract may already provide the parties with language that addresses many of the project questions posed by this health crisis.

This is an evolving, complex area, but districts should engage in early analysis and action to control the potential impact on their construction projects - rather than waiting and being caught off guard if a contractor later presents an expensive dispute or claim. If you need more information about how to address the impact of shelter in place orders or similar restrictions on your construction project, please contact an attorney in our Construction practice group.

We hope this guidance is helpful in this time of uncertainty. DWK will continue to provide guidance as information becomes available. For more information regarding the impact of COVID-19 on your district, please visit our COVID-19 Resources page at <https://www.dwkesq.com/covid-19-resources-page/>.

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