



**AGC**  
THE CONSTRUCTION  
ASSOCIATION

**March 20, 2020**

# **The Latest Developments on the Coronavirus and What That Means for the Construction Industry**

The Associated General Contractors of America

**Steve Sandherr**

Chief Executive Officer



# Overview of the Latest Developments of COVID-19

- Responses to the COVID-19 from Washington DC
- AGC's efforts in advocating for members
- Information to shape public policy in this time of crisis

# Ken Simonson

Chief Economist



## AGC Members Coronavirus Survey Summary\*

- Owner or government agency ordered halt to current work: 28%
- Owner or government agency ordered halt to future work: 11%
- Have you experienced project delays or disruptions due to:
  - shortage of materials, equipment or parts: 16%
  - shortage of craftworkers (incl. subs): 11%
  - shortage of gov. workers (for approvals, inspections, etc.): 18%
  - info that an infected individual has potentially infected a jobsite: 8%
- Have suppliers sent notice that deliveries will be late or cancelled: 22%

\*909 Responses as of March 19

# Likely Short-Term Economic Impacts on Construction



## Negative Impacts

- Disruptions to current work due to missing deliveries, workers, government approvals/inspections/etc.
- Reduced/missed payments by financially distressed owners
- Owners deferring/cancelling scheduled projects
- Difficulty obtaining firm commitments for deliveries, workers, approvals for upcoming projects

## Positive Impacts

- + Selected new projects to respond to crisis (healthcare, mfg., lodging)
- + Substantial price reductions for fuel, other commodities

# Likely Long-Term Economic Impacts on Construction



## Negative Impacts

- Slower rebound than for other sectors as owners, consumers await certainty and repair of balance sheets
- Cutbacks in public budgets other than virus aftermath/preparedness work
- Reduction in number of construction firms due to reduced work, cash flow
- Possibly less demand than pre-crisis for offices, lodging, large sports and entertainment facilities

## Positive Impacts

- + Slow rebound in many commodity prices

# Jimmy Christianson

Vice President, Government Relations



## Updates on Coronavirus Legislation

- Summary of Paid Leave Mandates under the Families First Coronavirus Response Act, H.R. 6201
- AGC of America and its members set the stage for making some improvements to the enacted paid leave mandates and seeking additional means to protect construction businesses, jobs & markets

## AGC Taking Action

- Pushed/ing back against flaws in legislation that will hurt the construction industry
- Seeking to protect construction businesses, jobs and markets in continuing legislative and regulatory responses to the virus

# Federal Coronavirus Response & Relief



## Congressional Activity

- **Phase 1:** \$8.3B Emergency Spending Bill signed into law March 6
- **Phase 2:** \$105B Families First Coronavirus Relief Bill (includes paid sick leave & paid family & medical leave) signed into law March 18
- **Phase 3:** TDB (\$1 Trillion?) for business relief and federal government checks to individuals (Infrastructure/Pensions?)
- **Phase 4:** ? (Infrastructure/Pensions?)

# Phase 2: Families First Coronavirus Response Act, H.R. 6201



## New Federal Paid Sick Leave & Paid Family & Medical Leave

- Both apply to employers with fewer than 500 employees
- However, the Sec. of Labor may exempt small businesses with fewer than 50 employees from both provisions (to some extent)
- Both take effect on April 2, 2020
- Both sunset on December 31, 2020
- Both are “paid” for with tax credits
- Applicability on CBAs?



# Phase 2: Families First Coronavirus Response Act, Paid Sick Leave



	Covered Employers	Duration of Leave	Qualifying Reasons for Leave	Required Wage Replacement	Applicability of: Division G – Tax Credits for Paid Sick and Paid Family and Medical Leave
<p><b>Division E – Emergency Paid Sick Leave</b></p> <p>Effective 15 days after enactment.</p> <p>Expires 12/31/2020</p>	<p><u>Private sector employers with fewer than 500 employees.</u></p> <p>Public sector employers with 1 or more employees.</p> <p>Good cause exemption for employers with fewer than 50 employees. Applies to reason #5 only. (DOL Rule)</p>	<p><u>Employer must provide 2 weeks</u> of paid sick leave for full-time covered employees.</p> <p>Special rule for part-time employees.</p>	<ol style="list-style-type: none"> <li>Employee is subject to a Federal, state or local quarantine related to COVID-19.</li> <li>Employee has been advised by a health care provider to self-quarantine.</li> <li>Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.</li> <li>Employee is caring for an individual who is subject to quarantine pursuant to 1 and 2.</li> <li>To care for a child or children whose school or care provider is unavailable due to COVID-19.</li> <li>Employee is experiencing a similar condition as specified by HHS, DOL or Treasury.</li> </ol>	<p><u>Reasons #1-3:</u> Employee’s regular rate of pay. Capped at \$511/day and \$5,110 total.</p> <p><u>Reasons #4-6:</u> 2/3 of employee’s regular rate of pay. Capped at \$200/day and \$2,000 total.</p> <p>Special rule for part-time employees.</p>	<p>Private sector employers with fewer than 500 employees may obtain a credit for wage replacement:</p> <p><u>Employers receive 100% payroll tax credit (refundable as needed)</u> for required paid sick leave wages plus certain health care expenses of the employer.</p> <p>Special rule for self-employed.</p>

# Phase 2: Families First Coronavirus Response Act, Paid Family & Med. Leave



	Covered Employers	Duration of Leave	Qualifying Reasons for Leave	Required Wage Replacement	Applicability of: Division G – Tax Credits for Paid Sick and Paid Family and Medical Leave
<p><b>Division C – Emergency Family and Medical Leave</b></p> <p>Effective 15 days after enactment.</p> <p>Expires 12/31/2020</p>	<p><u>Private sector employers with fewer than 500 employees.</u></p> <p>Good cause exemption for employers with fewer than 50 employees. (DOL rule)</p>	<p><u>Employer must provide 10 weeks</u> of paid family and medical leave for employees (employed for at least 30 days).</p> <p>Special rule for part-time employees.</p>	<p>Employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age if the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency.</p>	<p><u>Not less than 2/3 of regular rate of pay</u> based on # of hours scheduled to work. Capped at \$200/day and \$10,000 total.</p> <p>Special rule for part-time employees.</p>	<p>Private sector employers with fewer than 500 employees may obtain a credit for wage replacement:</p> <p><u>Employers receive 100% payroll tax credit (refundable as needed)</u> for required paid family and medical leave wages plus certain health care expenses of the employer.</p> <p>Special rule for self-employed.</p>

# Phase 2: Families First Coronavirus Response Act, H.R. 6201



## Important Considerations

- Employer can also claim credit for qualified health plan expenses (can exceed \$511/\$200 salary cap)
- Employers can draw on any payroll escrow account to pay salary and benefits without penalty

### Causes for concern:

- Employers will wait to be reimbursed from Treasury, while still paying salary and benefits
- Will create cash flow issues
- Recordkeeping (is employee caring for themselves or family members?)

# AGC Advocacy Efforts – Setting the Stage

And Fighting Back. . .



## Some Improvements

- Allowing the Secretary of Labor to exempt employers of under 50 employees from providing **both** the FLMA paid leave benefits and the paid sick leave benefits;
- While the paid sick leave benefits are still to be provided in addition to whatever the employer may already be providing, an employer will now be able to adjust their current leave benefits after the bill is enacted; and
- Narrowed the expansive instances for employees to be eligible to use paid FMLA leave from three instances to one (to care for a child of an employee if the child's school or care is unavailable due to the COVID-19).

# AGC Advocacy Efforts – Need Your Voice!

In 3 Days, Over 22,000 Messages Sent to Congress . . . And counting



## March 19: Protect Construction Jobs & Markets NOW

[https://advocacy.agc.org/protect\\_construction](https://advocacy.agc.org/protect_construction)

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- Protect All Construction Employer Cash Flows So They Can Pay Workers and Maintain Operations
- Ensure Public Construction Markets Have Immediate-Term Access to Additional Funds to Build Critical Infrastructure
- Lay the Foundation for the Long-Term Recovery of the Construction Industry and its Markets

## March 17: Oppose House-Passed Paid Leave Proposal

- AGC of America opposed this regime of construction contractor-fronted paid leave mandates, as our members' cash-flows tighten, markets contract and uncertainty continues
- AGC called upon Congress to enable federally-backed agencies (such as the Social Security Administration) and/or programs (such as Unemployment Insurance (UI)) to provide such paid leave compensation



## **AGC Advocacy Efforts – We Need Your Data**

# Kevin Cannon

Senior Director, Safety & Health Services



## How is DOL/OSHA Responding to COVID-19

- Issued guidance on:
  - Recording workplace exposures to COVID-19
  - Preparing workplaces for COVID-19
- Created a Safety & Health Topics page on COVID-19

## AGC COVID-19 Resource Page

[www.agc.org/coronavirus-covid-19](http://www.agc.org/coronavirus-covid-19)

**Brian Perlberg**

Senior Counsel, Construction Law and Contracts



# Coronavirus Impacts on Construction Contracts: A Force Majeure Event



# How Contracts Handle Force Majeure

- Means “superior force” making performance impractical
- Unforeseeable event that neither party controls (no fault)
- Adjustment for Time
- Money?
- ConsensusDocs 6.3.1(j) specifically lists epidemics as an excused delay
- AIA A201 General Conditions only has a catch-all for acts beyond your control . . . as determined by the Architect.



## CD 200 Agreement & GCs. 6.3. DELAYS AND EXTENSIONS OF TIME

6.3.1 If Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Constructor, Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Constructor include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §11.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Constructor shall submit any requests for equitable extensions of Contract Time in accordance with ARTICLE 8.

# Proactive Steps to Take

- Give prompt written notice of delays
- What should the notice say?
- What should it not say?
- Marshal facts that support causation
- Review your contracts going forward
- Price escalation clause like the ConsensusDocs 200.1 helps address increases/decreases.

**Mike Kennedy**

General Counsel



# Navigating the Outbreak:

The Factors that Construction Companies Need to Consider, as  
They Strive for Business Continuity

# An Eight-Part Webinar Series

**The Factors that Construction Companies Need to Consider, as They Strive for Business Continuity**

**Part I:** Your Federal and State Legal Obligations to Provide **Paid and/or Unpaid Leave** to Your Employees - **Monday, March 23**

**Part II:** What the Federal and Many State **Labor and Employment Laws** Are Likely to Require of You Contingencies – **Tuesday, March 24**

**Part III:** The **Contractual and Related Legal Protections and Risks** for Construction Companies – **Wednesday March 25**

**Part IV:** How to **Protect Your People** and Your Projects – **Thursday, March 26**

**Part V:** The Components of a Comprehensive **Project Continuity** Plan – **Friday March 27**

**Part VI:** **Insurance Coverage** and Claims for Losses Resulting from the Outbreak – **Monday March 30**

**Part VII:** The Additional Pressure that the Outbreak Could be Putting on Your **Information Technology** – **Tuesday, March 31**

**Part VIII:** **What You Need to Watch**, as the Outbreak Continues to Unfold – **Wednesday, April 1**



# Q & A



For more coronavirus updates,  
please visit:

[www.agc.org/coronavirus-covid-19](http://www.agc.org/coronavirus-covid-19)