Resources for the Construction Industry  
In the age of COVID-19  
March 25, 2020  
By  
Brian J. Trowbridge

The world is facing a unique and profound crisis as a result of the COVID-19 pandemic. The safety and wellbeing of all people is incredibly important at this time. Additionally, limiting the financial impact of this virus is important as well. This brief article will summarize some of the challenges facing the construction industry, its customers, employees, and the general public, and provide links to resources that may be helpful at this time. The guidance, regulations, and best practices relating to the pandemic will continue to evolve and change, so please keep in mind that this information could be out of date soon.

**Who can work?**

Obviously, if a person is able to perform their job duties or continue their business from home, they are allowed to continue such work whether or not they are in an essential business or part of a Critical Infrastructure Sector (CIS). However, all work that can be performed from home should be performed at home for the safety of the individual and the public. For example, there will be certain employees (office employees, administrators, etc.) within essential businesses/CIS who can perform most, if not all, of their job functions from home, and they should do so.

The governor of California has issued Executive Order N-33-20 to try to limit inconsistencies between localities in California. It is essentially a “stay home” order for the entire State, with certain exceptions. It identifies the businesses that can continue to operate outside of residences as the Critical Infrastructure Sector (CIS) jobs identified by the federal government. California issued additional guidance on CIS work and workers, which can be found here. Additional California Executive Orders are likely to be issued as this situation develops and most likely can be found here.

Many local jurisdictions have issued their own orders, which you can see by clicking on the county name link. These include San Francisco County, Alameda County, and Contra Costa County. These orders are essentially the same. They all allow for Minimum Basic Operations of a business to continue, provided that social distancing is followed. These local orders also allow businesses that provide shelter and other necessities of life to continue as exempt from the stay-at-home order.

Specifically, these three local orders approve of plumbers, electricians, exterminators, and “other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses.” This is still vague for many businesses, but clearly allows for certain construction activities to continue. Construction related businesses will have to assess different projects and aspects of its business in light of the less than ideal guidance. Projects that are underway and need to be
finished so that households and businesses can function properly probably can continue. However, new projects that do not fall within a specific exemption are probably subject to the stay-at-home order.

It is unclear whether the State Executive Order is meant to preempt the local orders or complement them. Further guidance on this issue may develop. It is also possible that the CIS guidance from the federal government may change. Unfortunately, there is still ambiguity at this time about who can work and what types of businesses may continue. I recommend continuing to monitor these issues if they are applicable to your business. It would not be a bad idea to consult an attorney to discuss specific scenarios.

**Safety Policies for Continuing Operations.**

If a business is going to continue any operations that are not performed at home, it is a good idea to have clear safety policies in place for all those employees. In order to protect employees and the public, it is a good idea to provide guidance on maintaining social distancing whenever possible, hygiene, care for and use of protective equipment, staying home when sick, reporting illnesses, etc. General advice on preventative measures is available at the Center for Disease Control website. It is also not a bad idea to provide notice to customers of the protective measures the business is taking and inform customers of any procedures they need to follow to ensure their own, and the employees’ safety. Customers will likely appreciate that the business is taking this public health risk seriously and is addressing it in a proactive and professional manner.

The National Association of the Remodeling Industry, Diablo Valley Chapter, in coordination with others, put together some forms with policies and procedures that could be used by businesses in the construction industry (a link will be added as soon as it becomes available).

Again, you may want to consult an attorney about specific questions relating to policies and procedures for employees and customers.

**Employment Matters.**

Many businesses have been temporarily closed or are at least operating at much lower volume. Layoffs, reduced hours, and reduced compensation are all real concerns for employees and employers. I recommend consulting an attorney before making these types of changes. There is available public guidance on wage and hour issues relating to furloughs and hour reduction issues at the U.S. Department of Labor website. There is also updated guidance on the Family Medical Leave Act (FMLA) here. Lastly, the California Labor and Workforce Development Agency has California specific information and resources for employers and employees related to COVID-19 on its website here. Employers should be aware that employees working remotely may incur reimbursable reasonable business expenses that they wouldn’t typically incur.
Miscellaneous Information.

Other issues that businesses may face include project/work stoppages, contract modifications, loans or deferments, or even cancellations or breaches of contract. The good news is that there is a lot of talk about coming together to help each other out in this unprecedented time. However, it is a good idea to try to get ahead of any problems by addressing issues and modifications as early as possible and in writing. Again, it is a good idea to consult with a lawyer before making any major decisions that affect existing contracts.

Another government aid package is expected to be approved any time now. Information on small business assistance can be found at the U.S. Small Business Administration Coronavirus page, amongst many other places.

Essential Business Notice for Employees.

Employees that will continue to travel and work outside of their home could be stopped by authorities. It is not a bad idea to prepare them for this possibility. You could create your own form with your business logo that would provide a statement to authorities about the nature of the work and who they could contact to verify. Here is an example:

I [insert name of employee] am employed by [insert name of employer], and am engaged in a construction project [insert description of project] located in [insert City or area where the project is located], California. This work is exempt from shelter-in-place under the [insert applicable county] public health order and State Executive Order N-33-20.

You may contact [insert name of contact person] at [insert name of business] if you have any questions.

This article is meant to provide general information and links to resources. I hope it is informative, but it is not legal advice as each scenario is different and the information and regulations are changing constantly. This article will not be updated over time. Please consult with a lawyer if you have legal questions.

***************

Brian J. Trowbridge of Trowbridge Law Office practices construction law, business law, succession and estate planning, employment and personal injury law, and other litigation in the San Francisco Bay Area.

Questions? Feel free to contact Brian via website at www.trowbridgelawoffice.com or you can email him at btrowbridge@trowbridgelawoffice.com.

For previous articles, please visit SFBA NARI’s website and click on the link “In the News/Newsletter” under “For the Trade.” They are also available on Trowbridge Law Office’s website under “Publications.”