

# Lockton Construction & Design Practice Update

*COVID - 19 Construction Project Impact*

---

March 2020



Dear Clients,

While the Coronavirus (COVID-19) situation remains very fluid and seems to evolve on a daily (or even hourly) basis, we at Lockton's Construction & Design Practice wanted to take a moment to address the stresses that you might begin to see on your projects.

Please take a moment to review the potential impacts below as well as some recommendations that we have put together for our General Contractor and Subcontractor clients.

Potential Impacts:

**SUPPLY CHAIN DISRUPTION:** From electronic components to glazing materials and metal fabrications, the shutdown of manufacturing in China will have an impact to our clients' projects. Additionally, many finishes are fabricated in Europe (specifically Italy), which is seeing a significant impact from Coronavirus. While we don't yet know the extent to which the travel restrictions and government-mandated quarantines abroad will affect our clients' supply chains, we already have had clients reach out regarding delays in obtaining elevator controllers, cabinetry, tile/stone and other products.

**LABOR AVAILABILITY:** In the event that authorities establish "containment zones" similar to what New York State did with an area of New Rochelle, NY, we may see reduced labor availability on jobsites as the labor force deals with school closings (as of 3/13 5 states have announced state-wide K-12 school closures commencing on March 16, 2020), transit issues, care for others, illness/self-quarantine, etc. These reduced workforces could result in project delays and schedule slippage.

**FINANCIAL IMPACT/CREDIT AVAILABILITY:** The financial impact of the Coronavirus outbreak is still unknown. However, we have all seen the wide swings in the markets over the last few days. As contractors are heavily (if not entirely) dependent on billing for work in place, if work on jobsites is slowed or stopped, Owners will not be processing requisition payments. Contractors or subcontractors might need to utilize their credit facilities to meet any financial obligations (labor, material and equipment payments) and keep their operations moving during any shutdowns. At the same time, financial institutions are monitoring the situation and are forecasting negative impacts to business credit in the future. If credit is tightened, we could see contractors and subcontractors begin to default on their loans and ultimately their contracts.

**WORKER SAFETY:** Construction sites can have labor forces in the hundreds, or even thousands, of tradespeople on any given day. Contractors need to be paying special attention to providing sanitary facilities on sites that allow for the government's recommended hygiene regimen in order to limit the spread of COVID-19. This includes handwashing stations, availability of hand sanitizer, cleanliness of jobsite trailers, breakrooms and restroom facilities.

The effects of the above impacts will be felt by all levels of our clients from Owners to GCs/CMs to Subcontractors. For our Subcontract Default Insurance clients, who have significant financial interests in ensuring their subcontractors fulfill the obligations of their subcontract agreements, disruptions to supply chains, labor availability and liquidity could be catastrophic. **We believe it is in our clients' best interest to take steps now that can build the file for potential delay claims resulting from the Coronavirus outbreak.** The standard A201-2017 General Conditions contain several sections that could be pertinent:

- **SECTION §8.3.1 [DELAYS AND EXTENSIONS OF TIME]** states, “If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, **unusual delay in deliveries**, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, **or other causes beyond the Contractor's control**; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.”
- **SECTION §10.4 [EMERGENCIES]** continues, “In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.”
- **SECTION §14.1 [TERMINATION BY THE CONTRACTOR]** provides:  
**[§14.1.1]** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons: ...
  - **SECTION [§14.1.1.2]** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;...”
- **ARTICLE 15 [CLAIMS AND DISPUTES]** outlines the requirements for contractors to notify the Owner of their intent to file a claim. In summary, the Contractor must notify the owner of the claim as soon as “the condition giving rise to the Claim is first discovered.”

---

**In order for Contractors to assert their claim with the Owner for potential delays resulting from Coronavirus, it is recommended that they put their Owner on notice now and open a change order in their project management tracking system in order to track time and cost associated with any potential delay.**

---

By creating a change order now and documenting the file early and often throughout the potential delay, the Contractor can prepare themselves for a well-documented claim with the owner once the situation improves.

Additionally, Contractors should create a discussion point in their weekly Architect, Owner & Contractor (AOC) meetings so that the topic is discussed and issues and resolutions are documented. Frequent open communication now is the best way to be on top of these issues once the current situation begins to settle down.

Subcontractor clients can also file claims for delays with the General Contractor/Construction Manager and follow the same best practices of creating a change file and beginning to document any additional costs or time associated with delays resulting from the Coronavirus situation.

We would be more than happy to answer any questions you may have regarding the above and would also be happy to participate in any calls with any clients where they have questions around this topic.

Regards,

Lockton Construction & Design

## Other helpful resources

[Lockton Coronavirus advisory page](#)

[Peckar & Abramson — COVID-19 Guidance for Contractors](#)

[AGC National Advisory Page](#)

[CFMA COVID-19 Resource Center](#)



**LOCKTON®**

---

UNCOMMONLY INDEPENDENT