

## The Coronavirus (COVID-19) Quarantine as a Force Majeure Event

*Hinckley Allen Construction & Public Contracts*

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Quarantines stemming from the 2019 Novel Coronavirus (COVID-19) are resulting in disruption in the supply chain for manufacturing, storing, transporting, and importing construction materials and construction equipment. Do such quarantines constitute grounds to trigger the force majeure clause in a construction contract or purchase order?

“Force majeure” translates from French as “superior force,” and is defined by Black’s Law Dictionary as “an event or effect that can be neither anticipated nor controlled.” A force majeure event prevents a contractual party from fulfilling its obligations under the contract and does not excuse a party’s non-performance, but rather suspends it for the duration of the event.

Contractual definitions of force majeure events commonly include war, strike, riot, or an event described as an act of God, such as hurricane, earthquake, flood, or volcanic eruption. More robust contractual definitions may specifically include quarantine. It remains to be seen how courts, arbitration panels, and other tribunals will resolve the issue of whether, and how, the Coronavirus quarantine may constitute a force majeure event.

In light of the recent delays in imported materials and equipment caused by the Coronavirus quarantine, it is recommended that construction contractors and material suppliers take the following steps:

- **Step One:** Assess the degree to which your existing construction projects rely on imported materials and equipment.
- **Step Two:** Review your existing construction contracts and purchase orders in order to ascertain whether delays in the delivery of materials and equipment caused by quarantine constitute a force majeure event. Even if quarantine is not specifically included in a particular contractual definition of a force majeure event, the remaining provisions of the definition might still be broad enough to encompass a quarantine. For example, most standard definitions of a force majeure event include circumstances that are beyond a party’s reasonable control – supply chain disruptions would logically fall within the scope of such a definition.
- **Step Three:** If you conclude that a force majeure event might impact your construction project, review the remaining provisions of your construction contracts and purchase orders, and determine whether you need to seek a change order or provide written notice of a possible claim. When in doubt, send a timely contractual notice.
- **Step Four:** Even if your construction project does not rely on imported materials or equipment, ascertain whether the price of the domestic materials you must purchase, such as steel, may increase as a result of the decreased availability of imported goods. Review your contracts’ escalation clauses.

In sum, appropriate risk mitigation mandates that construction contractors get ahead of this issue and make a plan. If you have questions or need advice, contact your attorneys.

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