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Novel Approaches to Novel Challenges Facing the Development and Construction Industries

The coronavirus pandemic has impacted every business and level of our society. The development and construction industry is no exception. While many projects may be able to continue operating because construction is deemed to be an essential or eligible business function, the construction industry is nonetheless required to modify certain on-site practices. These measures will promote worker safety and keep job sites operating.

Construction managers and general contractors are encouraged to leverage the guidance established by the Centers for Disease Control and Prevention (CDC), U.S. Department of Labor Occupational Safety and Health Administration (OSHA), and the World Health Organization (WHO) when implementing best practices and procedures both on and off of the construction site. These three entities have set forth their own sets of guidance regarding a response to COVID-19 in the workplace.^[1] Construction companies must also be mindful of the orders established by their state and local governments in determining what actions are appropriate and actions can they reasonably expect of their partners in the industry, including developers, owners, subcontractors and suppliers.

This article is intended to provide information regarding measures that construction companies and professionals should consider as they navigate the impact of COVID-19.

Job Site Practices

Construction companies are being challenged to modify their practices on the job site to promote the safety of their workers and communities. Most on-site construction workers would likely be categorized as having a “Medium Exposure Risk” under OSHA guidelines. Medium exposure risk jobs include those that require frequent and/or close contact (*i.e.*, within 6 feet of) with people who

may be infected with COVID-19, but who are not known or suspected COVID-19 patients.[\[2\]](#)

To help mitigate risk of infection and spreading, job sites should consider ways to enhance their sanitary measures, such as installing additional handwashing stations, sinks, hand sanitizing stations, and distributing cleaning supplies. In addition to traditional personal protective equipment (PPE), such as glasses and hard hats, workers should utilize additional PPE to the extent possible to reduce the spread of disease. This includes the use of gloves and masks. It is management's responsibility to educate and train employees how to practice the enhanced sanitary measures and to utilize the PPE.

Social distancing is another important consideration for job sites. Social distancing is generally understood to mean that there is always a six-foot distance between individuals. This is a challenge for the construction industry because, for many tasks, it is difficult to maintain a six-foot distance. In those instances where strict distancing is not possible, it is recommended that the participants take additional protection measures such as the use of gloves and facemasks.

In general, workers should do everything possible to limit close physical contact with others. This means limiting in-person meetings, staggering work shifts and taking breaks at different times to reduce the size of groups in one place at one time. Foremen and project managers should communicate these measures to the entire workforce.

Administrative Controls and Screening

There are also several administrative practices construction businesses can employ to enhance worker safety and job site continuity. These include:

- Encourage workers that are not feeling well to stay home from
- Limit out-of-office meetings and replace them with phone or online
- Establish alternating days or creating multiple staggered shifts that reduce the total number of employees on site at a given time

Project managers should also implement daily screening measures, including the required completion of a site access screening form. Managers should designate a representative from each project site to gather data and monitor for signs of illnesses in the workplace. Every worker should be given or have access to a thermometer and self-administer a temperature check prior to beginning work each day.

Screening can be handled most effectively with daily survey checks that screen workers for the most common symptoms of COVID-19. Such forms should be submitted to the construction manager and/or general contractor and reviewed carefully. Construction managers and subcontractors should develop a policy for when employees may return to work after having a COVID-19 symptom.

The CDC has issued guidance for how and when to discontinue home isolation. Individuals with COVID-19 who have stayed home (home-isolated) can stop isolation under the following conditions:

- If you have not had a test to determine if you are still contagious, you can leave home after these three things have happened:
 - You have had no fever for at least 72 hours (that is three full days of no fever without the use medicine that reduces fevers)
AND
 - other symptoms have improved (for example, when your cough or shortness of breath have improved)
AND
 - at least 7 days have passed since your symptoms first
- If you have had a test to determine if you are still contagious, you can leave home after these three things have happened:
 - You no longer have a fever (without the use medicine that reduces fevers)
AND
 - other symptoms have improved (for example, when your cough or shortness of breath have improved)
AND
 - you received two negative tests in a row, 24 hours apart

These advanced screening measures will assist in removing those workers at risk of contracting the virus, not only by identifying and removing the person who is showing symptoms, but also those workers who had contact with the infected employee during the prior days and weeks. Contact tracing is also a critical measure that should be implemented.

Procurement Measures

Construction managers and contractors should be proactively working to procure the necessary supplies to mitigate the spread of the virus. This includes procurement of protective masks, gloves, thermometers, hand sanitizer, soap, and portable wash sinks, as necessary. Many private companies and some governments are requiring employees to wear certain PPE. Construction companies should be prepared in case similar measures impact their job sites.

These are just some of the steps that can be taken to protect workers on and off site. If these best practices are followed, it will significantly reduce the likelihood that a job site will be shut down due to an illness.

If you have any questions, please contact [Thomas L. Gabelman](#) or any member of Frost Brown Todd's [Construction Practice Group](#).

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Resource Page](#). We have also convened a dedicated Coronavirus Response Team, with attorneys on hand to field questions concerning labor and employment matters, commercial contracts, litigation risks, as well as business succession, continuity and crisis response planning.

[1] U.S. Department of Labor, OSHA 3990-03 2020, *Guidance on Preparing Workplaces for COVID-19*; World Health Organization, *Getting your workplace ready for COVID-19*, released March 19, 2020; Centers for Disease Control, *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, released March 21, 2020.

[\[2\]](#) OSHA 3990-03 2020, *Guidance on Preparing Workplaces for COVID-19*; World Health Organization, *Getting your workplace ready for COVID-19*, page 20.

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