

Practice Update

What to Do When a Worker on Your Construction Site is Diagnosed with Coronavirus

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As the country scrambles to address the ongoing coronavirus (COVID-19) pandemic, Governors and local officials have enacted emergency orders requiring individuals to stay in their homes except for certain essential activities, and ordering “non-essential” businesses to shut down. Nearly all of these orders exempt or except the construction industry and its employees from these shutdown and stay-at-home measures. In the midst of all of this, on March 26, 2020, a homebuilding company shut down its own construction site after two workers at the project tested positive for coronavirus.^[1]

In light of this, Project owners, contractors, subcontractors, and consultants need to review their processes and procedures for protecting their project sites from infectious disease, including coronavirus. These parties also need to consider and plan for a situation where onsite workers are diagnosed with coronavirus. Project participants should consider these recommendations for protecting their project sites and preparing for a possible outbreak onsite.

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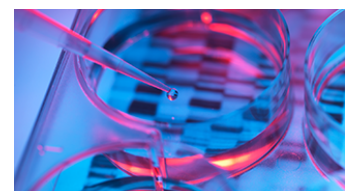
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Protecting the Project Site Before an Outbreak

1. Ensure that all individuals onsite are aware of and are following all available health and safety guidance available from sources such as the Centers for Disease Control and Prevention (CDC) [2], the Associated Builders and Contractors[3], the Associated General Contractors of America[4], the National Association of Home Builders[5], and OSHA.[6] This guidance includes staying home when you are sick, isolating infected individuals, washing hands or using hand sanitizer frequently, cleaning equipment and the worksite regularly, and following social distancing guidelines. Consider having a superintendent or safety manager specifically observe workers onsite to ensure all guidance is followed.
2. Clean your project site regularly. This includes disinfecting frequently-used surfaces, tools, and equipment at least on a daily basis, and minimizing sharing of tools and related hand-held devices. It also means having your project site properly ventilated.
3. Limit the number of workers onsite at any given time to only those necessary to maintain the project schedule. Consider ways to adjust the project schedule to take into account the need for social distancing, including having working teams onsite at different times.
4. Review your contract now. Get familiar with provisions of your contract relating to delay, cost increases, force majeure, labor or material supply disruptions, emergencies, insurance, and termination. The AIA A-201 (2007 and 2017) General Conditions of the Contract for Construction contemplates the existence of an “emergency” and infers that the contractor may be entitled to additional compensation or an extension of time in the event of an “emergency.” The same recommendation applies to insurance policies, loan agreements, and joint venture agreements. Determine whether any applicable insurance policies may provide business interruption insurance, and whether any other policies – specifically builders’ risk – would cover

costs arising from an outbreak of coronavirus, including the cost to sanitize the project site. Understand your rights and obligations now, so that you can better form an action plan. Do not wait until an outbreak occurs.

5. Consider preparing notices in advance. This includes letters notifying all parties of a shutdown (including a suspension or termination, if necessary), notifying workers that they may have been exposed to the virus, and notifying an insurer or lender of a potential claim or impact.
6. Form a plan and course of action for what your organization will do in the event an onsite worker is diagnosed with coronavirus. Answer questions such as who has the responsibility for which obligations within your organization, what steps need to occur before the site will reopen, which parties need to receive notices, and what would a shutdown mean for your continuing ability to complete the project.

What to do when an Onsite Worker is Diagnosed with Coronavirus

1. Isolate the worker and any person who worked in close proximity to the infected individual, and ensure implementation of appropriate quarantine arrangements. Evaluate the potential need to shut down the site immediately under applicable guidelines and local health department or similar governmental mandates from the CDC and local health department or similar governmental mandates, as well as send any communications to co-workers that are necessary regarding possible exposure to the infected employee. Construction sites involve many individuals frequently working closely together and touching the same surfaces, tools, and equipment. If one worker is diagnosed with coronavirus, there is a probability that others may have been infected as well. Identify further measures needed to maintain a safe workplace, including the possible suspension of all non-essential site activity.

2. Hire a professional cleaner to sanitize affected areas of the project site, and ensure that the cleaner is familiar with and complying with any guidelines or requirements from CDC or other parties, including any governmental health or safety agencies with jurisdiction over the project.
3. Consider engaging with any governmental health or safety agencies with jurisdiction over the project. Ask for their advice, safety/health requirements, and any available financial or other assistance.
4. Provide notices to any applicable party, including for delay, additional costs, suspension, or termination. To the extent you have not already, review your insurance policies, and provide any notices of claim. Also review your loan agreement and determine whether any steps are needed with respect to your lender or other project stakeholders.
5. Work with your contractor, subcontractors, consultants, and suppliers to determine the best methods to adjust and mitigate damages. Most project participants will be in a similar situation at this point: delayed, potentially out of work, and possibly not getting paid. Form a prudent and reasonable plan to get back on track and salvage the project. Work with these parties to learn from the past and institute additional steps to prevent further outbreaks.

[1] *Construction site shut down after workers test positive for coronavirus*, South Florida Business Journal (March 26, 2020), available at <https://www.bizjournals.com/southflorida/news/2020/03/26/construction-site-shut-down-after-workers-contract.html>.

[2] <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

[3] <https://abc.org/coronavirus>.

[4] <https://www.agc.org/coronavirus-covid-19>.

[5] [https://www.nahb.org/Advocacy/Industry-Issues/Emergency-Preparedness-and-Response/Coronavirus-Preparedness/Protect-Your-Business/Construction-Jobsite-Safety-Recommendations?](https://www.nahb.org/Advocacy/Industry-Issues/Emergency-Preparedness-and-Response/Coronavirus-Preparedness/Protect-Your-Business/Construction-Jobsite-Safety-Recommendations?_ga=2.251995660.448258268.1585162298-2032246404.1584720737)
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[6] <https://www.osha.gov/SLTC/covid-19/>.

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