



How does the Coronavirus Impact your Contracts?

Force Majeure Clauses, Excuses For Non-Performance, And Drafting Considerations

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In the last few weeks, there have been numerous global efforts to contain the spread of the 2019 novel coronavirus (COVID-19). SXSW, a large festival held in Austin each year, has been cancelled due to fears of the coronavirus. The NBA has suspended its season after a player tested positive for the coronavirus. Coachella has been postponed. And the list goes on.

The World Health Organization has declared that the coronavirus is a pandemic and Michigan has now seen its first confirmed cases. President Trump declared a national emergency on March 13, 2020 due to the coronavirus, which could certainly impact the performance of contracts. Due to the inevitable spread of the coronavirus, businesses are now looking to their contracts to determine if there is any excuse for non-performance of the contracts due to the coronavirus.

Can a Force Majeure Clause Excuse Non-Performance Due to the Coronavirus?

A typical boilerplate provision contained in a contract is a “force majeure” clause, which may operate to excuse a party’s non-performance of the contract. Force majeure clauses may be interpreted differently depending on how they are drafted and the law that applies. In general, however, a force majeure clause generally operates to excuse non-performance of a contract when there is an “Act of God, a strike, an act of war,” or another similar event that prevents a party from performing the contract.

Historically, the outbreak of an illness does not necessarily trigger a force majeure. However, the coronavirus outbreak may be treated differently by courts for purposes of force majeure clauses, given the sheer gravity of the situation.

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Depending upon the language contained in a force majeure clause in your contract, you may be able to rely on the force majeure clause as grounds to excuse non-performance of the contract. If you have a contract that you would like reviewed for determining if you may have an excuse for non-performance under a force majeure clause, our Foster Swift business attorneys are happy to discuss this with you and review your contracts.

Are There Other Grounds to Excuse Non-Performance of a Contract Due to the Coronavirus?

Even if your contract does not contain a force majeure clause, there are traditionally several excuses for non-performance of a contract recognized by courts. These excuses include: illegality, impossibility, impracticability, and frustration of purpose. Depending on the circumstances and the specific terms of your contract, one or more of these excuses could potentially be a legal basis for non-performance of a contract due to the coronavirus outbreak. If you would like to discuss any concerns related to performance of your contracts, our Foster Swift business attorneys would be happy to discuss this with you in greater detail.

Drafting Contracts Going Forward to Address the Coronavirus

Given the growing concern of how the coronavirus will impact contracts, you should consider including specific language in your future contracts that would identify a pandemic such as the coronavirus as a force majeure event. Our Foster Swift business attorneys are able to evaluate how your contracts can be drafted going forward to take the concerns raised by the coronavirus into consideration.