

COVID-19 Continues: Returning to Work/Restarting a Project

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No doubt, your design firm has suffered the effects of the COVID-19 pandemic and the project delays, suspensions and terminations that have resulted. According to a March 2020 survey, 29% of members of Associated General Contractors of America (AGC) reported that they had halted or delayed work on projects due to COVID-19. That number represents a significant impact on the financial well being of design firms, contractors and clients.

Damages caused to a design firm by a client who suspends a project, for whatever reason, can be substantial and far-reaching. Having to stop and start services one or more times on a project is almost guaranteed to bring added expenses. Design staff will have to be rescheduled and possibly laid off or furloughed. The suspended project's schedule will need to be revised, probably extending the completion date. Project suspensions that go beyond 30 days usually result in a loss of continuity among all parties and require additional meetings between the client, contractor and design staff to ensure everyone is still on the same page.

Add in the losses caused specifically by having



to deal with health and safety issues related to a long-term pandemic, and the business survival of the client, the contractor and the design firm can come into question.

When It's Time to Return to Work

Today, a few months after the start of the COVID-19 pandemic in North America, shelter-in-place and other COVID-19 related restrictions are being slowly lifted. In turn, many of the design and construction projects that were suspended are now being restarted. That leaves design firms with the task of preparing their employees, their offices and their projects for life during an ongoing pandemic.

State/province and local departments of public health, as well as organizations such as the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the Canadian Centre

for Occupational Health and Safety (CCOHS) have developed new guidelines for conducting business during the ongoing COVID-19 pandemic. From those guidelines, we have gleaned a list of recommendations to consider in order to successfully and safely return to work:

- Appoint a team leader to manage all COVID-19 related responsibilities and tasks, and develop a company-specific safety and health plan that meets the requirements of public health inspectors. This team leader would preferably be a member of top management (perhaps a senior human resource manager) who can bring the appropriate urgency and authority to get things done.
- Develop a communication plan to explain to employees the health and safety recommendations and orders in effect. In many locales, these health and safety orders are changing on an almost weekly basis.
- Develop a return-to-work program designed to create an organized, possibly phased approach to employees returning to work. Work-at-home arrangements will likely continue to be an important part of your plan, especially if shelter-in-place and similar requirements continue, or employees are hesitant to return to the company office.
- Institute company training programs to keep employees safe during the pandemic and post notices to encourage compliance with your health and safety plan. Give employees a formal feedback channel to raise their concerns and ask questions regarding the pandemic and how it affects their jobs.
- Set rules for employee self-quarantines. For instance require employees who have traveled to high-risk foreign countries or who live with someone who has tested positive for the Coronavirus to remain at home for at least 14

days. Also develop protocols in the event an employee starts showing symptoms of COVID-19 while at work.

- Create a company approach to health screening. Work with local health providers. Screening requirements might include taking employees' temperatures daily as they enter the workplace, and requiring COVID-19 testing as recommended by the CDC.
- Encourage all employees who feel ill to stay at home. It is recommended that your sick leave policies enable ill employees to stay home without an immediate loss of income.
- Develop a cleaning and disinfecting regimen for



your offices and equipment. Conduct a review of ventilation and filtration systems and adjust as necessary to improve airflow and air quality.

- Rearrange offices and direct foot traffic to accommodate social distancing. Limit in-person meetings and large company gatherings. Use video conferencing options to replace face-to-face employee meetings when possible.
- Set up adequate hygiene stations in the office and encourage employees to wash their hands regularly and avoid touching their faces.



- Supply personal protective equipment such as face coverings or masks, gloves, goggles and sneeze shields. This is an important step to help avoid the spread of the virus.
- Limit visitors to your offices. Again, use video conferencing to replace face-to-face meetings with clients, potential clients, vendors and other business partners.
- Make sure you are prepared to comply with OSHA regulations and other illness recording and reporting requirements.

Get a legal review of your COVID-19 policies before implementation.

Restarting a Suspended Project

There will likely come a time when the majority of design and construction projects suspended due to the COVID-19 pandemic will be restarted. Typically the owner of the suspended project will contact the lead designer and contractor who originally worked on the project and ask them to restart their services.

This decision to restart is almost always received as good news by the designer and contractor. Still, design firms need to be extremely careful before agreeing to resume the project.

First, you should ask the client to provide you

with written confirmation and they can legally proceed with the project. If this is considered a nonessential project, you should do your own investigation to determine if such projects can be restarted in the jurisdiction in which they are located. Without this assurance that government authorities have been notified of and provide approval for the project restart, you should not proceed.

Assuming your client is indeed authorized to restart, you need to thoroughly reacquaint yourself with the project and determine what changes need to be made to get the project up and running while keeping all parties to the project safe. Review where the project stood at the time of the suspension. Read the contract and your project files thoroughly. Determine whether there are any clauses that address your rights and responsibilities related to project restarts, such as:

- Force Majeure (Act of God)
- Termination and Suspension of Services
- Changed Conditions
- Delays

Also, thoroughly review your scope of services, the project schedule and the construction budget. Likely, these will have to be readjusted. In fact, you and the contractor may need to renegotiate revised contracts with the client. At the very least, you'll need to adjust the schedule for your services and secure compensation for any additional costs associated with suspending and restarting the project.

It is a good idea to meet with the owner, the contractor and important suppliers and subs to ensure agreement on the plan going forward. You'll need to determine what laws, codes and regulations may have changed since the project was halted. Approvals and permits may need to be renewed, and studies and reports redone. The supply chain of specified equipment, systems and materials needs to be reaffirmed or readjusted and

project financing must be confirmed. Insurance is another consideration. Work with us to determine how the suspension and restart of services may affect your coverage limits and terms.

Besides all of these project details that would be issues with any restart, the COVID-19 pandemic creates its own set of challenges. Chief among them are ensuring the health and safety of all parties during project site visits.

If your scope of services includes construction observation or other duties that require visits to the job site, you'll need to be adamant that all health and safety protocols are strictly enforced on the site. Be crystal clear: *Jobsite safety, including reasonable protection from the Coronavirus, remains the sole responsibility of the contractor, not the designer.*

Still, the designer does have a duty to ensure all of its employees are safe at the jobsite. Let your client know that your ability to provide your construction observation services is contingent upon being provided with a safe work environment for your employees.

The contractor (or an owner representative) should be required to develop a comprehensive health and safety plan for the jobsite that meets the requirements of local health officials and satisfies the client and the lead designer. That likely includes providing a full supply of personal protection equipment (PPE), adequate ventilation and filtration throughout the jobsite, health screening, social-distancing protocols, quarantine rules and regulations, aggressive cleaning and maintenance routines, and safety training for all construction workers, design team members and client representatives.

Jobsite safety policies will likely need to include limitations on who can visit the site, restrictions on the total number of people who can be on the site at one time, and occupancy limitations on jobsite



trailers and constructed portions of the project. Once the contractor's health and safety plan is developed and approved, the design firm can then focus its attention on educating employees who visit the jobsite on properly executing the protocols. You should ensure employees are fully equipped with appropriate PPE and instruction on how to use them. They should also be trained to recognize the major symptoms of the COVID-19 virus.

Make it clear to all employees visiting the jobsite: If you see health and safety concerns on the jobsite, or have evidence that the project restart is illegal, leave immediately! Construction workers not wearing their mandated face masks? Cleaning stations inadequately equipped for hand washing and other personal hygiene? Social distancing not being practiced? A worker repeatedly coughing or sneezing and looking ill? Large groups congregating onsite during the lunch hour? Leave the jobsite and file a report to your superior. Distribute a report to the client and the contractor documenting the problem in words and pictures. Again, jobsite safety is the sole responsibility of the contractor. Report the problem, but don't try to impose the solution.

Employees traveling to and from the site are also a health and safety issue. You may consider mandating that employees travel separately to the jobsite. And again, video teleconferencing options may be a feasible alternative to avoid travel.

Investigate the possibility of having the contractor

conduct a site tour via video conferencing or some other electronic means. This is rarely as effective as a real-life site visit but could be used as a supplemental technique, between site visits to examine specific issues that are detailed to the contractor beforehand.

If you do rely upon a virtual jobsite observation conducted by the contractor or a client representative, note the limitations of these visits and include disclaimers in your reports. For instance, note that your observations are based solely on information provided by the contractor, owner's rep or other third party. Note that although you cannot visit the site to verify the observations' accuracy, you can count on the information provided in making your design decisions.

What About New Projects?

The COVID-19 pandemic is far from over. There is still no vaccine nor a tried and true treatment to ease its effects. While the first wave of the pandemic seems to have peaked in some areas of the United States and Canada, cases are increasing in other locales. And who knows when a second or possibly third wave hits North America and the rest of the world?

With that in mind, it is prudent to assume that pandemics, COVID-19 and others, will strike again. Draft your new and future contracts with that in mind. Negotiate contract clauses that address force majeure, project delays, changed conditions and termination or suspension of services in a way that protects you from liability for events, like pandemics, over which you have no control.

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventatives, from construction observation through the development and application of sound

human resources management policies and procedures. Please call on us for assistance. We're here to help.