



## **Webinar: Emerging Legal Issues in COVID-19 Era**

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**Presented By**

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- Not Legal Advice and No Attorney-Client Relationship is Created
- Confer with your attorney or engage an attorney if you foresee issues arising

- **Do Not Panic**

- Everyone else is experiencing this too
- Contract Partners, vendors, suppliers, landlords may really be ignoring your requests
  - They may not have answers either.

- **Gather Your Documents**

- Leases
- In-process contracts
- Insurance policies
- Employee agreements

- Contract issues
- Insurance issues
- Employment issues

- Real property – Commercial Lease
- Large Scale Projects
- Small Scale – One-Off Projects

- **A contractual clause that excuses contract performance (excuses a breach)**
  - If you have a contract with a party where a breach may occur as a result of coronavirus, it is important to know how any contractual force majeure clause will affect the interaction.
  - Who is the breaching party?

- Types of **enumerated** events often include: fire, storm, flood, war, rebellion, riot, strike, etc.
- Sometimes events include: supply chain disruptions, terrorist threats or acts, government orders, epidemics
- **“Act of God”** is often an enumerated event.

- “caused directly and exclusively by the violence of nature, without human intervention or cause, and could not have been prevented by reasonable foresight or care.”
- Under current law, the breach must be exclusively caused by the act of god. Therefore, if a contracting party couldn't get a spare part needed because of a supply chain disruption with a Chinese supplier, it should likely try to get a different supplier. The breach occurred because of the supply chain disruption, not the virus's effects on Chinese factories.
- It is possible that, because of the extraordinary systemic effects of this virus, this definition of “act of God” may be reinterpreted  
COVID 19

- Event must be “unforeseeable”
- Pandemics are now foreseeable

If either Party is materially delayed, hindered, or otherwise unable to perform its duties under this Agreement, in whole or in part, due to any event that is not reasonable under its control including, but not limited to, Acts of God, fires, floods, earthquakes, accidents, strikes, riots, national emergencies, acts, directives by governmental authorities (whether by order, declaration, proclamation, regulation, restriction or closure related thereto or the like), natural disaster, inclement weather, labor or material shortage, labor strike, work stoppage, war, civil unrest, riots, act of terrorism, or other reason of a like nature and other such force majeure events, then any duty so impacted will be suspended during such event, effective immediately upon notice of the event to the other Party. If either Party's inability to perform exceeds 120 days, then either Party may terminate this Agreement by written notice, effective upon receipt.

**Without limitation on the foregoing, it is agreed that the current outbreak of the Coronavirus (COVID-19), which was identified by the World Health Organization as a Public Health Emergency of International Concern on January 30, 2020 (the "COVID-19 Outbreak"), shall be considered an event not reasonably under PROVIDER'S control under this Agreement and triggers this Article 11 for such period, that the COVID-19 Outbreak (including governmental proclamations, regulations, restrictions or closures related thereto) materially delays, hinders or prevents PROVIDER from performing its obligations under this Agreement.**

- **Review contract for timing**
- **X days from triggering event**
  - What's the triggering event?

- *Important steps to take immediately:*
  - Identify the contours of the claim you need to make
  - Identify the loss or damage sustained.
  - Consider all available policies to try and identify applicable policies.
  
- Assemble copies of your commercial property, general liability and any unique policies such as pollution legal liability policies. ***Forms vary greatly. Which form you have can impact your ability to succeed in successfully making a claim.***

- **Business Interruption**
  - Events
  - Injuries
  - Exclusions
- **Comprehensive General Liability**
  - Bodily Injury
  - Property Damage
- **Property Policy**
- **Event Cancellation**
- **Workers' Compensation**

- **Bacteria and Fungi**
  
- **Pollution**
  
- **Exclusion of Loss due to Virus or Bacteria**
  - Some policies include the following exclusion: “We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” The exclusion does not apply to “pandemics”

- **Families First Coronavirus Response Act**
  - Passed March 18, 2020
  - **Effective** April 1, 2020

- Now Extended to companies of less than 500 employees
- Requires coverage for employees, including—after an initial unpaid period of 10 days of leave:
  - 2/3 or employee's regular rate of pay for remainder of leave.
    - Max: \$200/day or \$10,000 in aggregate
- Reason – illness or self or another employee cares for; OR if school closed and employee must care for child
- Job Restoration upon return

- Requires employers not previously required to provide sick leave to provide it.
- Includes all employers with less than 500 employees.
- Applies to every employee, regardless of length of employment.
- Full time employees: up to 80 hours of sick leave; Part time determined based on prior work schedules.
- Amounts: Regular rate of pay capped at \$511/day and \$5,100 in aggregate FOR SELF CARE
  - \$200/day and \$2,000 aggregate for *care of another individual*.

The Act provides a quarterly tax credit to employers (and certain self-employed individuals) to offset the cost of paid family leave and paid sick leave. Specifically, employers are eligible for a refundable tax credit of 100% of qualified family leave wages paid and sick leave wages paid against their employer-side payroll tax liability. If the credit value exceeds the employer's quarterly tax liability, the Act provides that the excess will be treated as an overpayment and refunded. Only effective to Q2 through 4. No effect for Q1 and any sick or FMLA leave granted therein.



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Munsch Hardt Kopf & Harr, PC is a Texas mid-size law firm with offices in Houston, Dallas, and Austin. Munsch Hardt prides itself on being a four-quadrants firm here to assist clients with commercial litigation, real estate, corporate, bankruptcy, environmental, transactional, oil & gas, and other concerns. Munsch Hardt is an inaugural member of the Greater Houston LGBT Chamber and a Silver Sponsor of the Houston HRC Gala.