WHAT'S NEXT?

What can the Construction Industry Expect as the Nation Re-Opens?

ABOUT US

- Full-service construction law firm dedicated to representing contractors and trades.
- Firm honors and awards include:
  - U.S. News & World Report – Best Law Firms, Construction Law
  - NRCA Gold Circle Award – Service to the Industry
  - Construction Executive – Top 50 Construction Law Firms
  - Legal Comprehensive Awards – OSHA Defense Law Firm of the Year
  - Law Firm 500 – Fastest Growing Law Firms
  - InterContinental Finance & Law – Leading U.S. Construction Law Firm of the Year
MEET YOUR SPEAKERS

Ashlee B. Poplin, Esq.
Licensed in North Carolina & South Carolina, Ashlee is based out of the firm’s Charlotte, North Carolina office. Her practice areas include contract review & drafting, lien law, bond law, insurance related matters, and civil litigation. Ashlee has been recognized for three consecutive years (2018-2020) as a Rising Star for Civil Litigation by North Carolina Super Lawyers.

Michael S. Litrenta
Michael began his legal career as a prosecutor practicing in the Florida Keys before transitioning into criminal defense. As his career progressed, Michael added to his litigation skills by practicing in administrative law, construction law, general and auto liability, immigration law, medical malpractice, and worker’s compensation. Michael has the skill set, experience, and personal knowledge to be an effective advocate for you in court.
North Carolina Phased Re-Opening

Follow the 3 W's:

1. Wear a face covering
2. Wash your hands
3. Wait six feet apart
North Carolina Phase 1

- As of May 8, 2020 at 5pm NC entered Phase 1
- Removes the distinction between essential and non-essential
- Retail business permitted to open at 50% capacity with social distancing, frequent cleanings, sanitizer provided, screening of employees
- People may leave their homes for commercial activity at any business that is open.
- Business that must remain closed: bars, personal care business (hair salons, nail salons, etc.), entertainment venues and gyms
- Restaurants may only conduct drive-through, take-out and delivery
- Gatherings of 10 people or less
- Childcare facilities can open and must follow strict cleaning protocols, summer day camps can operate in compliance with NC DHHS guidelines
- Worship services of more than ten people is permitted if held outdoors and socially distanced

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North Carolina Phase 2

- Modest start on May 22, 2020
- Stay-at-home order is lifted but vulnerable people should stay home; “safer at home”
- Restaurants and bars can re-open at 50% capacity
- Gatherings of no more than 10 people inside and 25 people outside
- Rules and restrictions remain at nursing homes, rehab centers and hospitals where visitors are banned
- Bars, gyms, playgrounds, movie theatres, bowling alleys remain closed
- Religious organizations exempt but recommendations provided

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North Carolina Phase 3

- Projected to start June 26, 2020 but only if cases remain level or decreasing
- Vulnerable people should avoid crowded places
- Larger groups permitted to gather
- All business may increase capacity
- Strict rules and restrictions remain in place at nursing homes, rehab centers and hospitals

South Carolina

- April 21, 2020- Beaches and non-essential businesses permitted to re-open
- May 4, 2020-Stay-at-home order lifted
- May 4, 2020- Restaurants may provide outdoor dining as well as take-out, curbside and delivery
- May 8, 2020- All boating restrictions lifted
- May 11, 2020- restaurants can be opened for limited dine-in services
- May 18, 2020- Close physical contact services will re-open
Virtual Meetings

- Convenient
- Cuts down on travel expenses
- Accomplish just as much in less time
- Likely to be a permanent business fixture now
- In-person interactions

Liability Fears

- Can I be sued by an employee who contracts COVID-19 after being on the jobsite?
  - Suits likely to be filed
    - OSHA General Duty Clause: 29 U.S.C. § 654, 5(a)1: Each employer shall furnish to each of his/her employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his/her employees.
OSHA Guidance

- COVID-19 Guidance for the Construction Workforce
  - When working in the construction industry, the following tips can help reduce the risk of exposure to the coronavirus:
    - Encourage workers to stay home if they are sick.
    - Allow workers to wear masks over their nose and mouth to prevent them from spreading the virus.
    - Continue to use other normal control measures, including personal protective equipment (PPE), necessary to protect workers from other job hazards associated with construction activities.
    - Advise workers to avoid physical contact with others and direct employees/contractors/visitors to increase personal space to at least six feet, where possible.
    - Where work trailers are used, all workers should maintain social distancing while inside the trailers.
    - Train workers how to properly put on, use/wear, and take off protective clothing and equipment.
    - Encourage respiratory etiquette, including covering coughs and sneezes.
    - Promote personal hygiene. If workers do not have immediate access to soap and water for handwashing, provide alcohol-based hand rubs containing at least 60 percent alcohol.
    - Use Environmental Protection Agency-approved cleaning chemicals from List N or that have label claims against the coronavirus.
    - To the extent tools or equipment must be shared, provide and instruct workers to use alcohol-based wipes to clean tools before and after use. When cleaning tools and equipment, workers should consult manufacturer recommendations for proper cleaning techniques and restrictions.
    - Keep in-person meetings (including toolbox talks and safety meetings) as short as possible, limit the number of workers in attendance, and use social distancing practices.
    - Clean and disinfect portable jobsite toilets regularly. Hand sanitizer dispensers should be filled regularly. Frequently-touched items (i.e., door pulls and toilet seats) should be disinfected.
    - Encourage workers to report any safety and health concerns.
  - For more information, visit www.osha.gov/coronavirus or call 1-800-321-OSHA (6742).

Temperature Checks

To help ensure that sick employees are not entering the jobsite and exposing others to infection. It is important to understand that although temperature checks are permitted, this virus has been shown to display itself differently in different individuals and not everyone with the virus will display a temperature. Taking temperatures of employees as they enter the jobsite can be helpful but is not guaranteed to prevent the spread of the virus. Some questions that can be asked of employees are:

- Have you been in contact with someone who has tested positive/is being tested for COVID-19?
- Have you travelled out of the state within the past two weeks? Where did you go?
- Have you or someone you have been in close contact with, been directed to self-quarantine?
- Have you: have trouble breathing; had a fever; had chills; had fatigue; lost sense of taste/smell etc. (can only ask about COVID-19 related symptoms)
Require subcontractor to follow your own employee's rules

● Be sure to make the subcontractor supervisor responsible for enforcement

Examples of what not to do:

● Knowingly submit an employee to close contact with someone displaying COVID-19 symptoms

● Example: If you usually have 4 employees in a vehicle together and one of them comes in with COVID-like symptoms that are reported to you, do not require/allow the other three employees to continue to ride in the vehicle.
What if my employee is scared of COVID-19?

- You are not required to compensate an employee under any of the newly implemented Acts if they choose not to come to work for “fear” of contracting COVID-19.
  - If you continue to have work for them to do and they refuse to work for a reason not protected under the Acts then they are not entitled to compensation through any of the newly implemented forms of relief including unemployment.

Where are we going?

- Decreased demand and increased AR
- Adjusting type of work
- Restructuring contracts
- Scaling down the right way
Decreased Demand and Increased AR

- AR Process timeline
  - E-mail drips
  - Work the Phones
  - Demand Letters
  - Claims of lien/bond claims
  - Suit

Residential Contractor Timeline

<table>
<thead>
<tr>
<th>Event</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment Due</td>
<td>+0 Days</td>
</tr>
<tr>
<td>Send out any required payment affidavits</td>
<td>+3 Days</td>
</tr>
<tr>
<td>E-mail customer inquiring about satisfaction in job and sending a link for payment</td>
<td>+5 Days</td>
</tr>
<tr>
<td>E-mail customer stating that ready to provide warranties for the job but need payment for them to become effective</td>
<td>+7 Days</td>
</tr>
<tr>
<td>Demand letter from lawyer</td>
<td>+10 Days</td>
</tr>
<tr>
<td>E-mail stating that matter will be sent to collections/lawyer for handling if not paid today</td>
<td>+12 Days</td>
</tr>
<tr>
<td>Telephone call with customer seeking to take payment over phone</td>
<td>+15 Days</td>
</tr>
<tr>
<td>E-mail stating haven't received payment and that it is critical we receive payment as soon as possible given the crisis</td>
<td>+20 Days</td>
</tr>
<tr>
<td>Record lien/file bond claim</td>
<td>+25 Days</td>
</tr>
<tr>
<td>Telephone call with customer seeking to take payment over phone</td>
<td>+30 Days</td>
</tr>
<tr>
<td>File suit to collect</td>
<td>+40 Days</td>
</tr>
<tr>
<td>E-mail stating haven't received payment and that it is critical we receive payment as soon as possible given the crisis</td>
<td>+45 - +60 Days</td>
</tr>
</tbody>
</table>

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Commercial Contractor Timeline

- **Payment Due**
  - Send out any required payment affidavits and partial/final releases, close out documents

- **+3 Days**
  - E-mail customer inquiring about satisfaction in job and sending a link for payment

- **+5 Days**
  - E-mail customer stating that warranties are only valid if payment received

- **+7 Days**
  - Telephone call with customer seeking to take payment over phone

- **+45 Days**
  - Daily phone calls or emails seeking payment

- **+40 Days**
  - Demand letter from lawyer

- **+35 Days**
  - E-mail reminder that no warranties until payment received and if not paid by +30, then pursue lien/bond claims

- **+30 Days**
  - Record lien/file bond claim

- **+8 - +25 Days**
  - Telephone call with customer seeking to take payment over phone

- **+50 Days**
  - Telephone call with customer seeking to take payment over phone

- **+55 - +75 Days**
  - File suit to collect

**Adjusting Type of Work**

- **Recession/Depression Work**
- **Impact on new construction**
- **Impact on re-roofs, remodels and larger repairs**
- **Service work, repairs and maintenance**
- **Emergency work—blue roofs, remediation, storm clean-up**
Restructuring Contracts

- Change your payment terms—you are not a bank for your customer
  - Do not pay upon completion
  - Obtain payments upfront for materials
  - Avoid contingent payment clauses
  - Limit retainage
  - Watch out for payment markers—issuance of CO, final inspection, etc.

Key Contract Provisions to Protect You from Customer Claims of Exposure to COVID-19

- Set the contractual stage
- Disclaimer
- Waiver and Release
- Forbearance of COVID-19 Claims
- COVID-19 Indemnification and Hold Harmless
- Severability
Scaling Down the Right Way

- Do not underestimate the severity and length of an economic downturn
  - Take control of your cash flow
  - Track your finances daily
  - Do not implement across-the-board cuts
  - Always be looking for ways to reduce costs
  - Re-visit your hiring and firing practices
  - Train and cross-train your staff
  - Resist profit-eating sales
  - Manage effectively

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