

Managing the Unimaginable: COVID-19 and Impacts on the Supply Chain

Transportation, Logistics & Supply Chain Management Alert

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The business and legal impacts of the novel coronavirus (COVID-19) outbreak will be far reaching. Below, we address some of the many questions that clients may have regarding supply chain disruption.

What is the first step a company can take to prepare for the impacts of COVID-19 on the supply chain?

First, make sure you have a plan developed by all stakeholders to keep people safe and that you have and adhere to business continuity plans, including communicating with suppliers and contractors early and often. Develop a cross-functional task force to collect data and information from industry, governmental, internal, and other relevant sources on a daily basis, and grant it the right to proactively make process changes as the supply chain environment changes.

What are some of the business challenges?

Certainly having large numbers of people off-site creates its own logistical nightmare. As to product flow, having goods stopped or slowed in transit due to government directives is possible at both domestic and foreign ports. Another issue would be a drop in available production and transportation capacity should workers choose or be forced by government or company mandate to stay home or if businesses are simply forced to close or to limit production — for example if a significant portion of the U.S. motor carrier driver population chooses not to drive or to limit their driving if they are in an age group that is more susceptible to the virus. There is also the question of how the trend in the industry to limit inventory will ultimately play out if supply is insufficient to meet demand due to delayed imports or limited domestic production. Finally, while some large businesses may be able to mitigate the impacts on their supply chains, small businesses may not have the redundancies on hand or the finances or overall wherewithal to do so effectively.

What can companies do to manage the legal risk from supply chain disruption?

First, know, understand, and keep current on all restrictions and orders that have been put in place that could affect your business in all jurisdictions where it operates. Certainly, have your attorney review all relevant contracts to ensure you and your business partners can meet your respective obligations, and begin early talks on issues that may impede your company's ability to perform

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— regardless of whether a notice requirement is found in a force majeure clause (see our alert [Does Your Contract Protect You from the Coronavirus?](#) on this topic). Where a contract provides that nonperformance could be excused by an event of force majeure, review by an attorney is an absolute necessity, as this is a very complicated area involving a balancing of facts against the law of the relevant jurisdiction. For example, the very definition of a force majeure event in a contract could lead to it being unavailable in certain jurisdictions if the contractual clause does not include the word “pandemic” and/or “epidemic.” Also remember that, in general, loss of profit or increased cost may not be a force majeure event. Of course, insurance policy review is prudent, with a particular eye on whether the policy covers business interruption or contains a pandemic or epidemic exception, as is often the case.

How might COVID-19 affect labor union workers?

If employees are represented by a labor union, then the employer needs to both follow the terms of any existing collective bargaining agreement and, unless the union has waived its right to do so, bargain with the union about changes to wages, hours, or terms and conditions of employment. In practice, that means keeping the union informed about how the quickly changing situation is impacting employees and discussing issues with them before making substantial changes. Our experience is that labor unions understand disruption and are taking this as seriously as everyone else, but they will want to protect their members and prevent employers from taking unfair advantage of the situation.

What do you tell clients who rely on you not just for legal counsel but also for business advice?

Don't panic. While we have not seen this type of problem on this scale before, proper flexible and well-managed supply chains have successfully survived storms, floods, fires, and other acts of god and manmade situations. I have faith in logisticians and their resourcefulness. Again, it is key to be out in front and well informed, and also to not be afraid to be inventive.

Is there a silver lining?

Perhaps, for both society and the supply chain, as we now see what complacency can cause. Certainly some supply chain weaknesses have been revealed, and I would think that industry thought leaders will now proactively find fixes for these kinks, look for further holes in the supply chain, and develop solutions for what they discover.