

Coronavirus vs. Force Majeure Clauses

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It is good planning for the parties to consider potential risks and to provide for them clearly in the contract, in clauses such as a force majeure clause. Although no risk allocation is foolproof, as it may fail to contemplate the actual event that occurs, providing for potential risks clearly in a contract reduces the possibility of later disputes and litigation.

A force majeure clause excuses a party from its performance obligations by providing relief to a party when circumstances, that are beyond the control of the parties, arise making performance impracticable, impossible, or even potentially illegal, and include fires, floods, wars, acts of god, acts of government, and possibly even an epidemic or pandemic, such as the current pandemic involving COVID-19.

In order for a force majeure provision to cover the current COVID-19 pandemic, contracts must specifically provide public health-related language, such as "flu, epidemic, serious illness or plagues, disease, emergency, or outbreak." Without such language, even "catch-all" provisions will be ineffective.

Additionally, acts of government may trigger a force majeure provision. Although no such action has occurred in Florida as of yet, the trend continues to move in the direction of possible government acts which will severely impact both the rendering of services and the sale of goods. So far, Florida Governor Ron DeSantis, as of March 17, 2020, who was initially hesitant to impose mandates on business or individuals, has, among other actions:

- Shutdown bars across Florida;
- Ended classroom instruction at universities for the semester;
- Ordered a limit of 10 people at beach gatherings; and
- Restricted restaurant occupancy to 50%.

Further government action may cut supply chains off completely or may prevent services from being completed. Therefore, businesses should consult counsel in order to review their current contracts, both for services and for goods, to determine whether their contracts contain force majeure clauses, and determine if there is specific language provided within such contracts, which would excuse performance due to the COVID-19 pandemic. Additionally, businesses should seek to amend their current contracts to provide further protection against possible breach, as the impacts from the COVID-19 outbreak are unknown and remain to be seen.

Disclaimer: This article is intended to provide you with general information regarding the impact of a potential or actual coronavirus pandemic. The contents of this article are not intended to provide specific legal advice.

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