



All Regular Construction Activity Suspended in Boston 3.17.20

Dear Clients and Friends,

Kenney & Sams, P.C. hopes that this message finds you, your families and colleagues in good health and safe circumstances. The ongoing COVID-19 outbreak continues to reshape all of our lives and our models of doing business. In particular, the decision by Mayor Marty Walsh to suspend all regular construction activity in the City of Boston starting Tuesday, March 17, 2020, is unquestionably going to impact those of you involved in the construction industry. In addition to the immeasurable impact the suspension will have on individuals within the construction industry, there are wide ranging legal and business issues that will need to be addressed by contractors, subcontractors, and material suppliers as a result of the suspension.

In the first instance, contractors at every tier should responsibly comply with the order to suspend work in an effort to prevent the spread of COVID-19. Understanding that contractors should be suspending their operations in accordance with the order, it will be critical to understand how your contractual and statutory rights can protect your company in this difficult time. In general, contractual clauses dealing with Force Majeure, suspension, change orders, and termination for convenience will likely be relevant to the ultimate implementation of the order. Contractors should start developing a plan for securing and protecting their work in place while demobilizing from effected projects. A comprehensive demobilization plan will include processes for tracking costs associated with the suspension and providing prompt notice of such costs and anticipated time impacts in accordance with the applicable contract requirements.

In addition to immediate suspension and demobilization concerns, there is also the related issue of securing payment for work performed prior to the suspension. An accounting review of all affected projects should be performed immediately to identify significantly past due accounts. Where all construction work will be suspended on the 17th, the clock for filing mechanic's liens and/or bond claims will start running that day for contractors at every tier. To the extent that the suspension continues indefinitely, there is a significant risk that suspended projects will ultimately be terminated for convenience and lien rights or potential bond claims will further dissipate. A legal analysis of how each individual contractor can most appropriately protect against the risk of non-payment should be performed as soon as possible where the impacts of this suspension and COVID-19 are unknown.

Kenney & Sams, P.C. remains committed to assisting our construction industry clients through this difficult time. We remain open and available to provide legal guidance on how best to implement the suspension order, minimize risk of non-payment, and manage your workforce employment concerns during the outbreak. If you need any assistance, please call or email us and you will receive immediate assistance. We thank you for the trust you have placed in our firm.

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