

Greyling Brief:

Navigating State Restrictions and Limitations on Business Activity

Over the past few days multiple government authorities across the United States have issued mandates in response to the expanding coronavirus pandemic requiring employees to work at home and avoid office environments with limited exceptions. Your firm has likely already implemented some form of remote working for many offices and workers, as we have. Nonetheless, these government orders are another inflection point for possible restrictions on your firm's ability to timely fulfill project requirements in the manner contemplated by your contract. If you have not previously provided blanket or contract-specific notice of possible impacts, or if these orders mandate a departure from your firm's previous client communications, you should consider an updated, revised, or new notice regarding delays, disruptions, and force majeure, along the lines of what Greyling recommended last week.

If you are continuing to have employees working at locations outside of their homes, you must evaluate the legal authority for them to do so, as well as the prudence of maintaining any scheduled on-site activities and any risk management protocols that employees should follow. In states, counties, and cities where government orders impact locations and conditions of work, we recommend determining if the nature of any project and any work tasks proposed to take place outside of any employee's home fit within the parameters of defined "essential" business activities that are permitted. For example, New York's PAUSE order specifically contemplates continued provision of professional services at on-site locations but arguably only authorizes those services for emergency repairs, safety, and for certain specified "essential infrastructure" construction projects involving utilities, water resources, telecommunications, transportation, and hotels.

As of mid-morning on Monday, March 23, eight states with broad, publicized limitations are [California](#), [Connecticut](#), [Delaware](#), [Illinois](#), [Louisiana](#), [New Jersey](#), [New York](#), and [Ohio](#), with more likely to follow suit. These hyperlinks will take you to government websites and the text of the applicable orders so you can see how each state is referencing construction activities. Given the ambiguity and uncertainty within these orders and other emerging local and state directives, we also recommend consulting local legal counsel for further advice regarding what activities are allowed outside of an employee's home.

For employees traveling outside their homes for work in any restricted jurisdictions, Greyling recommends providing them with a written authorization – preferably countersigned by the relevant client or contractor requesting or permitting an on-site activity – setting forth the parameters of work outside of the home. Numerous states and localities have threatened civil penalties for workers deemed to violate the applicable orders.

Disclaimer: This document has been provided for informational purposes for clients and business partners of Greyling Insurance Brokerage & Risk Consulting, a division of EPIC. It is intended to provide general guidance on potential exposures and is not intended to provide legal or medical advice, which should be directed to other licensed legal or medical professionals. Coverage for any claim in connection with the coronavirus pandemic will depend on applicable policy terms and conditions, the particular facts and circumstances, and legal or insurer adjudication. Please reach out to Greyling resources to further discuss any specific policy language or potential claim.

Sample Written Authorization:

To Whom it May Concern,

[INSERT NAME] is employed by [FIRM] as [TITLE]. [FIRM] is a professional services firm engaged in the [PLANNING AND DESIGN, OPERATIONS, INSPECTION, and MAINTENANCE] of construction projects in areas of [ESSENTIAL INFRASTRUCTURE, ESSENTIAL MANUFACTURING] as follows: [DESCRIBE PROJECT TYPES, GENERALLY.] As part of [FIRM]'s support of such [ESSENTIAL INFRASTRUCTURE, ESSENTIAL MANUFACTURING] projects, [INSERT NAME] must perform field activities at [NAME PROJECT SITE(S)] in order to perform the following anticipated tasks: [LIST TASKS, INCLUDING DATES IF POSSIBLE].

During any time away from home, [INSERT NAME] is instructed to comply with the following "Social Distancing" requirements to minimize exposure to and transmission of coronavirus: maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, using hand protection such as gloves when permissible, avoiding portable toilet facilities, not shaking hands and using any other required or recommended personal protective equipment. In addition, [INSERT NAME] is advised by [FIRM] to avoid gatherings of other individuals on any project site or during any field activity of more than [INSERT NUMBER] persons.

If you have any questions regarding this Authorization, please contact [FIRM]'s [CEO, COO, In-House Counsel, or Employee's Manager]:

Sincerely,

[FIRM]'s [CEO, COO, In-House Counsel, or Employee's Manager]

Finally, Greyling recommends formally providing employees with risk management guidance related to coronavirus transmission for out-of-home work tasks. This could take the form of publicized "social distancing" requirements, such as those listed in the sample authorization above, recommendations by [OSHA](#) or the [CDC](#) (particularly in reference to personal protective equipment needed for projects within certain higher risk industries such as healthcare, laboratories, and airlines), state requirements in the above-linked orders, or utilization of the [flyers](#) and [posters](#) produced by EPIC's employee benefits team.

Please contact us with any questions

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