



Dallas County has again amended its “Stay Home Stay Safe” order. Effective March 29, 2020, [the order](#) contains several provisions that impact the construction industry.

REQUIREMENTS FOR CONSTRUCTION BUSINESSES

The order clarifies that “[c]onstruction for public works, residential, commercial and schools” is essential, and may continue. The most significant change, however, is the order’s placement of specific requirements on “construction” businesses that continue their work during the shutdown. All construction sites must follow the safety recommendations issued by the Construction Industry Safety Coalition (CISC). Some but not all of the CISC recommendations are listed in the order, meaning contractors must look at the CISC’s documentation to ensure compliance with the order. CISC’s recommendations can be found on its website, by clicking [here](#). Some of the CISC’s requirements include:

- Requiring all workers to take their own temperature at home before travelling to a project site;
- Requiring supervisors to check all workers temperature with a forehead thermometer before the worker begins work;
- Implementing shift work such that each shift has no more than 50 percent of the workers on shift prior to March 16, 2020;
- Limit crossover of subcontractors;
- Precluding gatherings during meals or breaks;
- Providing separate water sources, or requiring workers to bring their own;
- Keeping a 6-foot distance between workers unless the work being performed requires multiple workers for the safety of the workers;
- Providing soap, water and hand sanitizer;
- Mandating rest breaks of at least 15 minutes for every 4 hours of work in order to allow workers to follow hygiene guidelines; and
- Designating a COVID-19 safety monitor on each project site, who has authority to enforce the CISC rules.

Employers must also be aware that the order prohibits the taking of adverse action against an employee who has been quarantined, or advised to self-quarantine, due to possible exposure to coronavirus. On the surface, such a requirement may not be of great concern to most employers who understand the importance of such a policy to the health and safety of other employees. As the far-reaching consequences of the coronavirus reveal themselves, and the necessity for terminations, furloughs or layoffs become a reality for some, employers must consider this requirement.

ENFORCEMENT

Compliance with the provisions of the order and CISC’s recommendations may prove to be difficult for some businesses. The consequence of failing to comply, however, could be much worse. For some companies, fines of up to \$1,000 may not be as significant as the cost of compliance with the order. But violations can also result in confinement in jail for up to 180 days. The biggest enforcement hammer of all, though, is the County’s ability to remove non-compliant general contractors and non-compliant subcontractors from the essential business list. In such an event, a company would be forced to stop all construction

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within Dallas County for the entire time the order is in place. Even though the order is currently set to expire on April 3, 2020, many predict an extension of the order in some form. A company removed from the essential business list could find its projects extensively delayed. And because such a delay could have been avoided by compliance with the order, applicable force majeure provisions may not save the contractor from resulting liquidated damages.

HEADS UP, TEXAS CONTRACTORS!

Contractors at all levels must become familiar with the requirements of the order and CISC's recommendations, which the order mandates construction companies implement. Ignoring the order can result in jail time up to six months and the shutdown of a company's projects for as long as the County limits the operations of non-essential businesses to slow the spread of the coronavirus. Moreover, it is likely that surrounding counties and other major counties in Texas will adopt similar construction safety amendments to existing "shelter in place" orders regarding COVID-19. A best practice for companies continuing construction projects is to start adhering to the CISC's COVID-19 safety rules to ensure compliance, the well-being of your workforce and others, and the health of your business.

ABOUT THE AUTHOR



[Russell Jumper, Partner - rjumper@grayreed.com](mailto:rjumper@grayreed.com)

Russell is the go-to lawyer for general contractors, sub-contractors and owners throughout Texas that need creative solutions for the day-to-day and big-picture problems that arise during sophisticated commercial construction projects. While his practice is primarily focused on finding efficient ways to resolve payment, lien, delay and defect disputes both in and out of the courtroom, Russell also develops dispute avoidance strategies and crafts master service and sub-contract agreements that help clients address issues proactively in an effort to prevent litigation altogether.



[J.P. Vogel, Partner - jpvogel@grayreed.com](mailto:jpvogel@grayreed.com)

J.P. is a trusted advisor and litigator for businesses and individuals involved in the construction industry throughout Texas and the United States. His clientele includes owners, general contractors, specialty sub-contractors, suppliers, and manufacturers. For many of his clients, J.P. routinely provides counsel regarding their daily business operations including litigation, collection services, labor and employment issues, defect and insurance issues, drafting and negotiating agreements, and corporate governance.

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