

Is COVID-19 a Force Majeure Event?

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As the global spread of COVID-19 continues, businesses worldwide are experiencing disruptions to the normal course of business. These disruptions include mandatory quarantines, travel restrictions, supply chain delays, employee absences, and the fear related to the novel virus. But does the global spread of COVID-19 constitute a "force majeure" event, or otherwise excuse performance from a contract?

Many business contracts include force majeure clauses, which provide that if an extraordinary event beyond a company's control occurs, that company's performance under the contract may be suspended or excused. Such events typically include a war, strike, governmental order or act of God (a natural event including hurricane, earthquake, volcanic eruption, etc.). But does it include an outbreak of a novel virus?

It depends on the language of the contract. Some contracts include language that either specifically includes or excludes outbreaks. More commonly, the contract does not directly address this type of situation, but an outbreak might be covered under other language, such as language that designates "governmental orders or actions" as a force majeure event. In those cases, companies that are affected by government-ordered quarantines or travel restrictions may have an excuse from performance. Generally, this means that the other party to the contract could not terminate due to delays or nonperformance for the duration of the force majeure event. However, implications may vary based on the language of the agreement and, in the event of a dispute, the interpretation of a court.

Without specific language pertaining to force majeure, a contract for the sale of goods is governed by the Uniform Commercial Code. The UCC provides for the basic assumption that if there is a world-altering event and contract performance has become "impracticable," the seller may not be responsible for the terms or expectations of the original contract. For some companies, this may provide an alternative excuse from performance.

In the case of COVID-19, regardless of whether a contract includes a force majeure clause, the best course of action is often for companies to reach out directly to customers, suppliers, and employees to explain and discuss any delays or other potential problems. This can ensure everyone is on the same page, and the individuals and companies involved may appreciate a proactive approach during a period of uncertainty. Depending on the language of the contract, a company may also be required to provide notice to the other party or take other steps to mitigate the situation.

As our colleague Marty Siegel discussed in his [previous article](#), for all companies, the first and foremost concern should be the health and welfare of employees and customers.

Other business considerations will depend on the type of business and its locations. Companies with

operations, suppliers or customers in China and some areas of Europe should prepare for, and likely have already experienced, employee absences, manufacturing, and distribution delays. Because it is difficult to anticipate the duration of these delays, some companies will need to seek out alternative suppliers and distribution channels. Additionally, companies that have business interruption insurance should check with their insurer to determine whether a viral outbreak, which is often excluded from the scope of such policies, would be covered.

Regardless of the effects of COVID-19, the global outbreak presents an opportunity for businesses to review and, if necessary, revise their contractual language to consider the potential for extraordinary situations in an increasingly global economy.

In addition to considering the proactive steps discussed above, companies should reach out to their legal and business advisors for help. Barley Snyder attorneys are currently assisting businesses with a wide range of considerations related to COVID-19. If you have questions, please [contact me](#) or any member of the [Barley Snyder Business Practice Group](#).

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