

# Getting Paid! Surviving the Covid-19 Financial Instability

By Milene C. Apanian, Esq.

## *Construction Disputes, Stop Notice & Mechanic's Lien Lawsuits*

First things first. I hope you are physically and mentally healthy as you read this article!

Over the past few days, I have received numerous calls, e-mails, and inquiries from clients and friends regarding various current issues impacting the construction industry. Since construction is considered an "essential business," a lot of your businesses remain open and functioning. Here, are a few updates, suggestions and tips for you to consider, as we all try to understand the current situation and how to cope with the financial fallout of the Coronavirus (Covid-19) Pandemic.

Please keep in mind that the governmental orders impacting the construction industry change daily, if not hourly. This information was written on March 30, 2020 and may change, depending on new governmental orders. Also, it is impossible to provide an exhaustive and comprehensive analysis of all the pending issues. I will simply point out a few. I will initiate a Zoom discussion on **Thursday April 2, 2020 at 10:00 a.m.** to answer questions. E-mail me at [mca@agrlaw.com](mailto:mca@agrlaw.com) and I will share the login number.

1. **Status of the California Courts.** Without discussing details of the multiple court orders, suffice it to say that California courts remain closed to the public and are postponing civil trials until at least June 22, 2020. We are waiting for clarification regarding routine court appearances and whether they will be rescheduled prior to June 22, 2020. Nevertheless, except for a few courthouses, **we can file pleadings and initiate new lawsuits via electronic filings or fax filings.** If you have a new matter, such as a breach of contract/nonpayment lawsuit, you do not need to wait until June 22, 2020. It can be filed now.
2. **Status of Depositions and Mediations.** Because of the "Safer at Home" order, most attorneys and litigants are choosing to postpone previously scheduled depositions and mediations. Some court reporters and mediators are starting to offer remote services, but most people are still preoccupied with family and health related issues and choosing to delay non-urgent litigation activities.
3. **Status of the County Recorder's Offices.** The County Recorder's offices are closed to the public, including attorney services and attorneys. However, **the County Recorder's offices are currently open and functioning. We can record new mechanic's liens and releases of mechanic's liens** and other documents. However, we must mail the documents to the Recorder, and it will take longer than before to receive the recorded document. If you have a mechanic's lien, you don't need to wait to record it.
4. **Status and Impact on Pending Contracts & Performance.** If you haven't already done so, now is the time to review your pending construction contracts. Pay close attention to the following provisions: contract duration, schedule and delays; changed conditions; extra/added work; Force Majeure; safety; and **most importantly to the notice provisions.** Given the current possibility for reduction of staffing and the associated inefficiencies and delays, you may be contractually required to give notice of your potential claims. Notices may be required for extending the contract duration, the changed scope of work, delays, and the increased costs associated with the pandemic. If you have questions about the timing and content of notices, have the contract reviewed by a lawyer.

5. **Added Construction Costs.** It is anticipated that the pandemic and the existing governmental orders will result in added construction costs for all involved in construction. Contractors and subcontractors will lose productivity, will have added overhead, and costs complying with safety regulations. Additionally, material suppliers may delay deliveries and/or increase the cost of materials due to plant closures and material shortages. If you are presented with a change order, review and evaluate it carefully - and the implications on future claims - before you sign it. If you are unsure about the ramifications, seek advice.
6. **Cessation of Labor.** Depending on the circumstances, some construction projects may be suspended during the pandemic. Keep in mind that a project is deemed “completed” for purposes of calculating statutory deadlines for collections purposes **if the project is suspended for a continuous 60-day period**. Therefore, if a project is put on hold for more than 60 days, the deadlines begin to run for recording mechanic’s liens, serving stop payment notices and submitting payment bond claims. Also, if the project restarts, **you must serve a new preliminary notice for the project** (even if a new contract is not issued).
7. **Request for Financial Reassurances.** Some contracts, including various AIA contracts, include provisions requiring the project owner to provide evidence of its financial ability and arrangements to fulfill the owner’s payment obligations. Given the financial instability facing all of us, it may be prudent to request evidence of the financial arrangements while performing additional work, especially on projects where the owner is already late in its prior payments. Follow the contractual language when demanding such assurances.
8. **Safety at the Jobsites.** Reminders about staying safe and healthy are prevalent these days. However, construction jobsites have unique challenges when it comes to remaining open and safe during the pandemic. A few suggestions: increase the frequency of safety meetings, emphasize Covid-19 safety; provide wash stations with soap and sanitizers; provide **personal protective equipment** such as facemasks, shields, gloves and goggles; take the temperature of workers daily, send home those with symptoms. Check out websites such as the Centers For Disease Control and Prevention site at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html> and CALOSHA site at <https://www.dir.ca.gov/>
9. **Business Disruption Insurance.** Depending on the type of insurance policy your company has, you may qualify for a claim arising from disruption to your business. Review your insurance policies. Talk to your insurance broker. Determine whether you have business disruption insurance and put your insurance carrier on notice of possible claims.
10. **Staffing/Labor Law Issues.** All businesses will inevitably have labor law issues, including issues related to employees exposed to the virus, layoffs, reduction of hours, paid time off, paid sick leave. Don’t navigate these issues without guidance from a qualified labor law attorney. Call us for referrals to labor law firms serving the construction industry.

Milene Apanian is a partner at the law firm of Abdulaziz, Grossbart & Rudman, an adjunct professor of construction law and contracts and is passionate about getting clients paid! She assists clients collect on construction projects by drafting & reviewing contracts and by pursuing contract remedies, and enforcing mechanic’s liens, stop payment notices, bond claims and prompt payment violations. **Milene Apanian can be reached at [mca@agrlaw.com](mailto:mca@agrlaw.com)**

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