

Risk Management Advisory

ARCHITECTS & ENGINEERS PROFESSIONAL LIABILITY

Avoid contract default when COVID-19 strikes

Design firms have two major challenges as COVID-19 (coronavirus) continues to spread. The primary challenge is keeping employees as safe as possible. Another challenge is strictly financial: what happens when a design firm cannot provide services because of the epidemic or government constraints in response to the pandemic?

Look at your contracts

When addressing contractual service obligations, firms should understand how the virus could have significant impacts on design and construction projects. Projects may be delayed and may result in the delay of the payment of fees or in claims made by clients, contractors and others. Some professional services agreements have a provision that allows excusable project delays; few such provisions address the issue of massive illnesses or government actions that affect the ability of firms to perform contracted services. This can be a potential issue in circumstances like the current pandemic. These contracts normally do not allow an engineering firm to delay services because of staffing disruptions or government restrictions. Professional liability policies exclude coverage for allegations relating to an engineer's failure to complete items such as drawings and plans on time unless the failure is the result of an error in the preparation of these documents.

Without the ability to extend the time for services, design firms are left with few options. Firms might consider the following:



- Discuss with current clients the possibility of project delays caused by COVID-19 exposures, travel restrictions, or quarantines and possible procedures to authorize additional time, temporary staffing, or the transfer of contracted service obligations to a substitute firm.
- Negotiate force majeure provisions in future contracts that acknowledge that massive illnesses or resulting government advisories or restrictions from such illnesses provide the basis for an excusable delay in contract performance.
- Structure cooperative arrangements with similar firms in other geographic areas in which each firm commits to supporting the other by providing professional services if one firm is restricted from completing a contract because of staffing inadequacies or government restrictions.

Protect your employees

As employers, professional services firms have to provide their employees with appropriate protection while they carry out their duties on behalf of the firm and it is a vital business continuation procedure.

Educate your employees

If employees understand the risks associated with COVID-19, they are more likely to comply with safety rules. Firms should provide their workforce of notice regarding potential exposure. Firms should not identify diagnosed individuals by name or provide other identifying information; doing so could expose confidential employee health information. Firms should however, address in detail the steps taken to mitigate exposure to COVID-19, including environmental cleaning and other preventative measures.

Monitor available reliable information

Firms and their employees could be misled by tweets, sound-bites, and other misinformation. Firms should continue to monitor reliable guidance provided by the [Public Health Agency of Canada](#) along with public health authorities at all levels of government across Canada. Understanding how COVID-19 is transmitted and what steps can be taken to protect diagnosed or exposed employees is essential. Firms should use the information to educate employees on prevention and symptoms and should be prepared to answer employee concerns regarding workplace safety. The following are COVID-19 resources that may be helpful to firms:

- › [Victor Canada COVID-19 Resources](#)
- › [Government of Canada: Coronavirus \(COVID-19\)](#)
- › [Canada's COVID-19 Economic Response Plan: Support for Canadians and Businesses](#)
- › [Resources for Canadian Businesses: Coronavirus \(COVID-19\)](#)

Professional service firms depend on a steady cash flow from a productive staff working on projects for reasonable clients. COVID-19 could change those conditions. Now is the time to prepare your firm, your employees, and your clients for the possible disruptions caused by a pandemic.

Visit us at victorinsurance.ca to learn more.

NOTE: Some of the content for this advisory originated from our Victor US blog and was shared on social media. This advisory is also publicly available on our [COVID-19 Resources](#) page and [Victor Canada website](#).

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