Claims management

How to prepare for COVID-19 related delay claims.
The COVID-19 pandemic has impacted every sector in the Canadian economy. Non-essential construction sites were shut down temporarily, and many of those that continued have experienced delays.

As a result, owners will likely face a higher, more condensed volume of delay claims that they will need to resolve quickly.

Our team is here to help.
Keys to success.

Three steps owners can take immediately to prepare themselves and ensure better outcomes:

1. **Keep detailed records**
   - Maintaining accurate and detailed records will arm you with the information needed to address construction claims effectively.
   - Organize an appropriate file structure
   - Ensure your structure is easy to follow, and perhaps aligns with your contractor’s structure to facilitate easy dialogue and claims validation
   - Consider dedicating a resource with the sole responsibility of filing information correctly to ensure easy retrieval

2. **Maintain an ongoing dialogue**
   - Communicating regularly in a constructive dialogue can have a positive effect on downstream negotiations. Frequent communication will also help you:
     - Understand how COVID-19 is impacting your contractor to support more robust claims forecasting
     - Establish a collaborative approach to claims mitigation that could measurably reduce the impact of potential claims
     - Demonstrate your willingness to engage with site contractors to ensure better alignment and more mutually agreeable resolutions

3. **Know your contract**
   - While it is important for you to know your contract terms well, the best advice remains to seek legal counsel for guidance specific to your project, your contract and the impact of potential claims. Below are some tips to help ensure you have a good understanding of your circumstance.

   **Communication**
   - How you communicate in the event of a delay is prescribed in the contract. In Canada, we are fortunate to have broadly accepted industry-standard contracts, although that does not mean that all terms are the same. Take this time to review your contracts in detail. Knowing the prescribed time and format for Notices will undoubtedly be useful when you are faced with a delay and may mitigate some impacts.

   **Force Majeure**
   - While force majeure is a well-known term, it does not exist by default in all contracts. Before assuming that a force majeure provision will protect you, make sure it exists in your contract and is applicable in the current context.

   **Review the CCDC language for delays not caused by an owner or contractor**
   - GC 6.5.2 Provides for reimbursement by the owner for reasonable costs
   - GC 6.5.3 Provides only for additional time to complete the work, but no additional compensation to the contractor

   Which clause applies in this current COVID-19 situation will likely be the subject of considerable debate in the coming months, so ensure you’re familiar with both.
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