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**HBA of Greater Des Moines  
April 15, 2020 Remodeler's Council Meeting**

**COVID-19 & the Construction Industry:  
State and Federal Financial Assistance and Programs  
for Businesses, and Operational Considerations.**



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# The Davis Brown Law Firm

Davis Brown is a full-service law firm that handles:

- **Agribusiness and Cooperatives**
- **Business Organizations, Transactions, and Commercial Law**
- **Construction Law** (Contracts, Project Disputes, Liens, Litigation, Etc.)
- **Employment Law**
- **Family Law** (Dissolution, Child Custody)
- **Governmental Relations and Lobbying**
- **Immigration**
- **Intellectual Property** (Patents, Copyrights, Trademarks)
- **Landlord/Tenant Law**
- **Litigation**
- **Real Estate, Environmental, and Property Matters**
- **Tax**
- **Trusts, Wills, and Estates**

# Disclaimer & Introductory Info.

- **Disclaimer:** Due to limitations and nature of this program please understand printed material and oral presentations or other data presented are not intended to be a definitive analysis of the subjects discussed. Users are cautioned that situations involving legal questions are unique to each individual circumstance, and the facts of each situation will dictate a different set of considerations and varying results. Material contained in this presentation or listed as a reference is a general review of the issues, and must not be considered as a substitute for advice from your attorney on your own situations.
- **Factually specific questions.** Our answer may not apply to your situation.
- **Rapidly changing, fluid situation.** *Advice is current as of April 13<sup>th</sup>.*
- **Agenda:** Go through PowerPoint presentation, and then we will answer questions submitted during webinar at the end.
- **Resources:** PowerPoint presentation, and recording, will be distributed.
- **[Davis Brown's Online COVID-19 Resource Center](#)**

# Outline of Presentation

- Highlights RE: Operational Changes and Considerations for Construction Industry Companies in light of COVID-19 by Jodie McDougal
  - A more thorough discussion of these topics occurred at the March 27, 2020 HBA Webinar: Operational, Employment & Other Considerations for the Construction Industry.

[Slide Deck](#) | [Webinar Recording](#)

- Discussion of State and Federal Financial and Other Programs by Courtney Strutt Todd.

# State and Federal Guidance; Other Resources

- [Centers for Disease Control](#)
  - CDC: [Interim Guidance for Businesses & Employers RE COVID-19](#).
  - CDC: [Environmental Cleaning and Disinfection Recommendations](#)
  - CDC: [one-page quick reference poster](#) with recos. for keeping workplaces safe
- [OSHA:](#)
  - OSHA: [Guidance for Preparing Workplaces for COVID-19](#).
- [Department of Labor](#)
- [Iowa Department of Public Health](#)
- NAHB: [Jobsite Safety Poster](#)
- Construction Ind. Safety Co.: [CISC COVID-19 Preparedness and Response Plan for Construction](#)
- Asso. General Contractors: [ASC COVID-19 Exposure Prevention, Preparedness, and Response](#)
- Associated General Contractors of America [COVID-19 Jobsite Practices](#)

# Operational Changes & Considerations in the Office Setting

# Operational Changes in Office Setting

- ❑ Remember to educate employees on COVID-19 policies and OSHA/CDC recos.
- ❑ Remember to document all actions taken regarding COVID-19 precautions and actions.
- ❑ All employees who can work remotely, should work remotely.
- ❑ For employees remaining in office, maintain social distancing of 6 feet btwn. employees.
- ❑ Internal/intra-office meetings and client meetings:
  - ❑ In-person meetings of any size should be **avoided whenever possible. Change to virtual or telephonic meetings whenever possible.**
  - ❑ In-person meetings of 10 or more should **not occur.**
  - ❑ For necessary smaller meetings, social distancing (of 6 ft) should be maintained.
- ❑ Increase cleaning and sanitation of the office, including all individual workstations, common areas, and frequently touched surfaces.
- ❑ Employees to engage in frequent hand washing & good hygiene/infection control habits.



# Operational Changes in Office Setting

- ❑ Close offices and storefronts to the general public/walk-in traffic. Meetings should be by appointment only.
- ❑ Implement visitor/customer screening for all visitors to the office (discussed later).
- ❑ Post COVID-19 Notice on front door

**\*See sample notice on next slide**

- ❑ Implement employee screening for all employees both in the office and those of on the job site. (Taking of temporal temps?)

**\*Sample Employee Screening Policy on later slide**

# Sample Office Door Notice

## Coronavirus/COVID-19 Notice

If you have respiratory symptoms such as a cough or shortness of breath, have had a fever within the past 72 hours, have recently been in close contact with someone with any of the aforementioned symptoms, or have otherwise been exposed to Coronavirus (COVID-19), please do not enter the office, and, instead, call us at \_\_\_\_\_ . You may be asked to postpone your appointment in the office for fourteen (14) days.

For those visiting the office, please remember to practice the CDC-recommended social distancing (of six feet apart) and good infection control/hygiene habits. Thank you.

## COVID-19 Employee Screening

### Employee Screening Documentation for ALL Employees Entering the Office or Job Site

PRINT NAME: \_\_\_\_\_

<b>Date:</b>							
<b>(1)</b> Have you washed your hands or used alcohol-based hand rub on entry? <b>If no, you shall not work.</b>	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no
<b>(2)</b> Have you had a fever over 100.4 in the last 72 hours? <i>Employer may take your temporal temp.</i> <b>If yes, you shall not work.</b>	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no
<b>(3)</b> Do you have any of the following respiratory symptoms?							
Sore throat	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no
Cough	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no
New shortness of breath	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no
<b>If yes, employer will evaluate information* and make decision.</b>							
<b>(4)</b> Have you recently been in close contact with someone with any of the above noted symptoms or who has tested positive for COVID-19, or otherwise been exposed to COVID-19? <b>If yes, you shall not work.</b>	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no	yes/no
<b>INITIAL:</b>							

SIGN NAME: \_\_\_\_\_

I understand that my employer is relying on the above noted information on the above noted dates to be truthful and accurate and that making any false or misleading statement is considered to be gross misconduct and will result in disciplinary action up to and including termination of my employment.

Please remember to practice CDC-recommended social distancing (of six feet) and good infection control/hygiene habits.

*\*For evaluation purposes, employer may request further limited information regarding whether such symptoms have a known cause (e.g., asthma, COPD, allergies, etc.).*

# More on Screening

- ❑ Sick or otherwise exposed employees should stay home and remain home per CDC/doctor recommendations.
- ❑ **Ill Employee in the Office:** If an employee who has been in the office becomes sick or tests positive for COVID-19, or there is another substantial exposure concern, employer should:
  - ❑ Send a written notification of such (without specific names) to all employees.
  - ❑ Send everyone home for a sufficient period of time (e.g., 14 days).
  - ❑ Deep clean/sanitize office before anyone returns.
  - ❑ Determine whether the COVID-19 exposure is a recordable event under OSHA.
- ❑ Client/Visitor Screening Questionnaire on Next Slide.



### COVID-19 Screening for Visitors, Tenants, and Other Third Parties

*\*Employer/staff member to verbally ask the below questions and document person's answers.*

Date and Time of Entry: \_\_\_\_\_

Name of Visitor/Person: \_\_\_\_\_

(1) Have you washed your hands or used alcohol-based hand rub on entry? <b>If no, you shall not proceed.</b>	Yes / No
(2) Have you had a fever over 100.4 in the last 72 hours? <b>If yes, you shall not proceed and meeting/visit will be rescheduled.</b>	Yes / No
(3) Do you have any of the following respiratory symptoms?	
..... Sore throat	Yes / No
..... Cough	Yes / No
..... New shortness of breath	Yes / No
<b>If yes, employer will evaluate information* and make decision.</b>	
(4) Have you recently been in close contact with someone with any of the above noted symptoms or who has tested positive for COVID-19, or otherwise been exposed to COVID-19? <b>If yes, you shall not proceed and meeting/visit will be rescheduled.</b>	Yes / No

Name of Person Completing this Form: \_\_\_\_\_

*\*For evaluation purposes, employer/staff member may request further limited information regarding whether such symptoms have a known cause (e.g., asthma, COPD, allergies, etc.).*

# Operational Changes & Considerations on the Job Site

# Operational Changes on the Job Site

- General Best Practices:
  - ❑ TRAIN EMPLOYEES ON ALL PRECAUTIONS
  - ❑ Employee screening as discussed above.
  - ❑ Homeowner screening for occupied premises, as discussed above. \*Employers have general duty per OSHA to ensure employees are working in a safe workplace
  - ❑ Maintain social distancing/increase personal space of 6 feet whenever possible
  - ❑ Limit people on site and in one area at any given time (rotation of crews).
  - ❑ Do not congregate in common areas, job trailers, lunch area
  - ❑ Separate trucks for crew people
  - ❑ No shared tools, or sanitize between workers, and no shared PPE
  - ❑ Wear gloves at all times even when not typically required, & cleaning of gloves
  - ❑ Wear eye protection even when not typically required
  - ❑ Per current CDC recos., best practices dictate face masks/covering at all times.

# CONT'D: Oper'l. Changes on Job Site

- ❑ Disinfect reusable supplies and equipment
- ❑ Increased cleaning and sanitation of the jobsite, with a focus on frequently touched surfaces; job trailers; portable bathrooms.
- ❑ Frequent crew hand-cleaning
- ❑ No communal food (donuts, pizzas, etc.) and no common water cooler.
- ❑ All people on the site should be tracked.
- ❑ For interior work in occupied homes or structures, owner/visitor screening.
- ❑ **Delivery of Materials:** Consider posting/placing notice on all delivered boxes/materials stating that customers are encouraged to not handle deliveries until after a 72-hour period or sanitation of the delivery.
- ❑ **Warranty Work:** Suspend all non-emergency warranty work (particularly interior work) for a period of 30 days or other period of time.



# CONT'D: Oper'l. Changes on Job Site

- ❑ **On-Site Walk Throughs and Site Visits:** Change on-site walk throughs and site visits with clients to telephonic or virtual meetings whenever possible or reschedule for a later date. When that is not possible:
  - ❑ Meetings should be strictly limited to essential people only (and in no circumstance, should include 10 or more people per the CDC recommendation).
  - ❑ Maintain social distancing of six feet.
  - ❑ Ask screening questions/perform screening of the clients prior to those meetings and on-site visits as noted above, and cancel/reschedule meeting as necessary. (see next slide)
- ❑ **Subcontractor Screening and Risk Management:**
  - ❑ Conduct subcontractor screening as you would visitors/clients, or
  - ❑ Have subcontractors implement their own screening (see next slide)

**Notice RE: COVID-19 Certification for Trade Contractors, Subcontractors, Consultants & Suppliers**

Please read this notice carefully, as the information contained herein will affect whether you may work with our company ("Company") on future projects. By way of background, the new requirements that we seek from you, and from all of our other contractors and consultants, are in response to the COVID-19 global pandemic and the applicable recommendations and regulations by the CDC, OSHA, and IDPH and to otherwise protect the safety of all persons on our job sites.

In light of the COVID-19 global pandemic, our Company has implemented various health and safety policies and practices, including employee screening. In addition, our Company will now require each of our contractors, consultants, subcontractors, and suppliers to sign the below certification in order for our two companies to continue to work together. If you have any questions, please let me know. Thank you for your cooperation.

Sincerely,

**COVID-19 - Certification of Compliance**

The undersigned contractor, subconsultant, or other company ("Subcontractor") acknowledges, agrees and certifies that:

- (a) Subcontractor is performing COVID-19 daily screening of all of its employees, subcontractors, crew people, and other agents or representatives who may enter job sites in the course of their work and has otherwise implemented an employee screening policy ("COVID-19 Daily Screening Policy");
- (b) Subcontractor is documenting its performance of its daily screening under its COVID-19 Daily Screening Policy; and
- (c) Subcontractor's COVID-19 Daily Screening Policy, and its implementation of such policy, comports with CDC, OSHA, and IDPH recommendations.

The above noted Company provides the below example of a sufficient COVID-19 daily screening questionnaire:



(1) Have you washed your hands or used alcohol-based hand rub on entry?  *If no, you shall not work.
(2) Have you had a fever over 100.4 degrees Fahrenheit in the last 72 hours?  *If yes, you shall not work, and may be asked to remain at home for 14 days or until a medical provider clears you to return.
(3) Do you have any of the following respiratory symptoms? (a) Sore throat (b) Cough (c) New shortness of breath.  *If yes, you shall not work, and may be asked to remain at home for 14 days or until a medical provider clears you to return.
(4) Have you recently been in close contact with someone with any of the above noted symptoms or who has tested positive for COVID-19, or otherwise been exposed to COVID-19?  *If yes, you shall not work, and may be asked to remain at home for 14 days or until a medical provider clears you to return.

**Subcontractor's Certification:** By signing below, Subcontractor (1) certifies, under penalty of perjury, that Subcontractor is in full compliance, and will continue to be in full compliance, with the requirements set forth above in sections (a) through (c) regarding Subcontractor's COVID-19 Daily Screening Policy, and (2) agrees to indemnify, protect, defend, and hold harmless the above noted Company from and against all claims, losses, attorneys' fees, costs, and damages ("Claims") to the extent the Claims arise from Subcontractor's failure to strictly comply with the requirements set forth above in sections (a) through (c).

Subcontractor Name: \_\_\_\_\_ By (Sign): \_\_\_\_\_

Date: \_\_\_\_\_ Print Name: \_\_\_\_\_

# COVID-19 on the Job Site

- **Ill Employee/Sub on the Job Site:** If employee or subcontractor becomes sick or tests positive, or there is an exposure concern, employer should:
  - ❑ Send a written notification of such (without specific names) to owner and others on the job. (\*see sample owner notice.)
  - ❑ Suspend project for a sufficient period of time (at least 5 days) to deep clean/sanitize the project.
  - ❑ Order other crew people in contact with the sick person to remain off the job for a period of time (e.g., 14 days)
  - ❑ Determine whether the COVID-19 exposure is a recordable event under OSHA.

# Sample Notice to Owner of COVID-19

## Coronavirus/COVID-19 Notice

We are writing to notify you that a [crewperson/subcontractor] who was on the job site tested positive for COVID-19. This construction worker was working in the [unoccupied and/or occupied] areas of [list areas]. That worker and any other worker who came into contact with him are in self-quarantine for a minimum of 14 days. We have also temporarily suspended work on the job, and full cleaning procedures will be completed in the area(s) where work was being done before work recommences.

We cannot provide you with the name of the worker. If specific notification of any person is required, that is done by the Iowa Department of Public Health.

If you have any questions please contact us at [phone/email].

# Contract Considerations

- This is a case-specific and contract-specific analysis. Contact attorney for advice.
- Lots of considerations for companies regarding contract issues, including:
  - Review your current contracts for excusable delay provisions.
  - If you need to invoke the provision, give prompt notice and otherwise fulfill any contractual requirements for invoking delay provisions.
  - Modify your future contracts to ensure proper excusable delay provisions relating to COVID-19 delays.
- **For pre-mid March 2020 Executed Contracts – Takeaway:** The COVID-19 situation will likely be deemed a force majeure event, but it depends & proper notice crucial.
- **Post March-2020 Contracts: Takeaway:** Likely a different analysis regarding force majeure events, as COVID-19 delays are no longer unanticipated by the parties. Thus, you should look at your contracts & include specific language on COVID-19 as a reason for excusable delay.
- **Webinar this Friday from 2-3 pm on Contracts and the Construction Industry.**

# State and Federal Resources and Programs for Small Businesses



# Paycheck Protection Program

- Who is eligible?
  - Small Business Concerns – meet SBA employee-based or revenue-based standard; or meets March 27 criteria
    - Maximum tangible net worth of business no more than \$15 million; and
    - Average net income (after federal taxes) for two full years is not more than \$5 million
  - Any other business concern, non-profit, veterans' organization, or tribal business concern employing 500 or fewer people

# PPP Eligibility

- Who is not eligible?
  - Person engaged in activity that is illegal
  - Household employers (nannies/housekeepers)
  - Owner of 20% or more, if applicant is incarcerated, on probation, on parole or subject to indictment, criminal investigation, arraignment or convicted of felony with last 5 years



# Loan Terms Under PPP

- Portion of loan is forgivable if used for payroll costs, rent, utility payments for payments made within 8 weeks following application.
- Unforgiven portion interest rate is 1% and maturity date no longer than 2 years
- Payments of P&I deferred for at least six months
- Borrower certifications required

# PPP Maximum Loan Eligibility

- Maximum loan amount is lesser of \$10 million or 2.5 multiplied by:

Average Monthly Payroll Costs\*

+ group health insurance

+ retirement benefit costs

+ State/local Taxes on Employee Comp.

\*salaries, wages not exceeding \$100,000 per employee plus qualified sick and family leave

# Allowable Use of Funds

- Payroll costs
- Health care benefits
- Interest on mortgage (not principal)
- Rent
- Utilities
- Interest on any other debt obligation incurred before Feb. 15, 2020

# Forgivable Portion

- Add together payroll costs, rent, utilities and interest on covered mortgages over covered period
- Reduce that amount by percentage of employees reduced during that period
- Reduce that amount by reductions in salary made in excess of 25% of total wages in most recent full quarter

# Emergency Economic Program

- Eligible: Small businesses with 500 or fewer workers
- Grants capped at \$10,000
- Loans also available in amounts of \$2 million with interest rate of 3.75% for small business and 2.75% for non-profits with maturity date of 30 years.

# Emergency Economic Program

- Funds may be used for providing paid sick leave for employees unable to work due to the direct affect of COVID-19, maintaining payroll, meeting increased costs to obtain materials, making rent payments and other obligations.
- Filing open at <https://disasterloan.sba.gov/ela/>
- Businesses that apply for this loan may later transfer into a Paycheck Protection Loan and amounts advanced are subject to being forgiven.

# Employer Retention Credit

- Cannot be used with loan programs. Eligible only if meet certain criteria.
- Credit is a fully refundable tax credit for employers equal to 50% of “qualified wages” that employers pay their employees.
- Applies to wages paid after March 12, 2020 and before January 1, 2021.
- Maximum amount of wages for each employee limited to \$10,000 (so maximum credit for any employer per employee is \$5,000)

# Delay of Payroll Taxes

- Cannot be used with loan programs
- Can delay payment of employer portion of social security taxes for wages paid between March 27, 2020 and December 31, 2020.
  - 50% are due by 12/31/21 and the remainder due by 12/31/22.



# THANK YOU

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