

Mitigating Risk of Liability at Construction Sites During COVID-19



By William D. Auxer
610.941.2519
wauxer@kaplaw.com

Compliance with Guidelines

- CDC Guidelines
 - Interim Guidance for Businesses and Employers
 - Last Updated on May 6, 2020
 - Review General Business FAQs updated on May 3, 2020
- State Guidelines
 - Guidance for Businesses in the Construction Industry Permitted to Operate During the Covid-19 Disaster Emergency issued on April 23, 2020
 - Requires businesses to follow the PA DOH Orders for business safety issued on April 5, 2020 and April 15, 2020
 - Review FAQs last updated on May 12, 2020
- City Executive Order issued on April 29, 2020
 - References CDC Guidelines, State's Guidelines, PA DOH Orders
 - Review FAQs last updated on May 19, 2020



Strictly Enforce Compliance with Guidelines

- Prepare and Implement a Preparedness and Response Plan
 - Make the plan a contract requirement in each of the trade contracts
- Exposure of Covid-19 at jobsite will disrupt the progress of work at the jobsite
 - Enforcing compliance with the guidelines is best practice to avoid an exposure to Covid-19 at the jobsite

Guidelines Relating to Employees

- Require each trade to be responsible for their own employees
 - Temperature Screening
 - PPE
 - Limiting tool sharing
 - Limiting groups traveling together to/from jobsite
 - Social Distancing
- Do not assume responsibility of protecting another's employees
- Your responsibility for protecting workers is limited to your own employees

The logo for Kaplin Stewart Attorneys at Law is centered within a white circle on a green background. The text "Kaplin Stewart" is in a bold, black, serif font, with a vertical line separating the two names. Below it, "Attorneys at Law" is written in a smaller, italicized, black, serif font.

Kaplin Stewart
Attorneys at Law

Guidelines Affecting Entire Jobsite

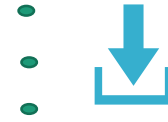


Coordinate as to who will be responsible for those guidelines affecting the entire jobsite

- Jobsite Security
- Limiting Workers at Jobsite
- Hand Wash stations
- Cleaning/Disinfection of Common Areas, Break Areas and Porta-Potties

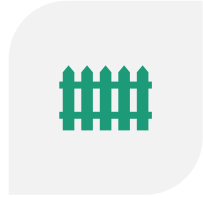


Generally GC responsible for this



Owner may consider an environmental consulting / site safety company to implement

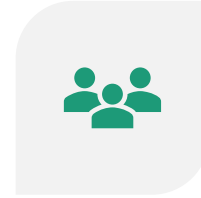
Site Security



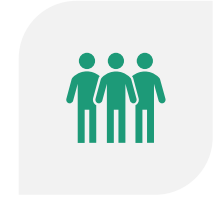
SECURE THE JOBSITE
WITH FENCING AND
BARRIERS



ONE INGRESS AND
EGRESS WITH
SECURITY GUARD
DURING WORKING
HOURS LOCKED
GATE AT OFF-HOURS



LIMIT VISITORS



LIMIT WORKERS

- Identify and impacts and disruptions that Covid-19 has to the supply chain before it is too late
- Take proactive approach to reach out to trades and vendors to identify and assess potential issues impacting the shipping and delivery of critical materials and equipment
- Have a Plan B just in case
 - Consider alternative materials and equipment in the event that the original specified materials and equipment are unavailable or will not be timely delivered

Re-Evaluate
Supply
Chain

Collaboration with Team is Key

- Constantly evaluate schedule and evaluate availability of labor and materials
- Utilize two week look ahead schedule
- Get full input and feedback from all trades



Review Insurance Policy Coverage

- Make sure third-party claims is covered under CGL Policy
- Are there any exclusions that would put a Covid-19 exposure and loss out of the scope of coverage?
 - Look at communicable disease exclusion
 - Viruses like COVID-19 may be excluded from coverage
 - Look at microbe exclusion
 - Is it broad enough to include the Covid-19 virus
- Talk to insurance broker to see if you can get some of these exclusions amended to not include viruses like Covid-19

- Provides coverage for:
 - Third-party liability for bodily injury and property damage
 - Disinfection costs
 - Business interruption losses
 - Coverage is for a “pollution condition” or indoor contaminant condition”
 - Neither of these may by definition include communicable viruses
 - May need to get an endorsement
- Even if such a policy would cover viruses, the policy is expensive

Pollution Liability Insurance

Indemnity Provision

- Reevaluate existing indemnity provision in contract
 - How broad is the indemnity provision?
 - Does the indemnity provision include indemnification for any claims by workers or other persons who become exposed to Covid-19 at the jobsite?
- If no indemnity provision exists in the contract, consider adding such a provision via amendment

Release and Waiver

- Consider getting trades and employees to sign a Release and Waiver
 - Releasing you from any and all liability relating to an employee's or a worker's exposure of COVID-19

