

Covid 19 Preparation: Contracts 101 for Glaziers Amid Covid-19 Worksite Closures

Five contract considerations for glaziers

In this time of COVID-19 and worksite closures, it is more important than ever for glazing contractors to understand contractual obligations. Some questions to ask about current contracts:

01 — Does the subcontract or prime contract have a flow-down clause?

The flow-down clause is found in most subcontracts and will bind the glazier to the same obligations and responsibilities to the owner that the general contractor has. If a subcontract has a flow-down clause, the owner should review the prime contract carefully for the same clauses that you would need to have in your subcontracts. Some of those are listed below.

02 — Does the subcontract have a force majeure clause?

A force majeure (French for superior force) clause allows parties to alter their obligations in times of crises. If the subcontract does not have a force majeure clause, it will most likely be in the prime contract, the main contract between the GC and the building owner. Most boilerplate clauses do not contain language related to current events but do allow for contract changes when circumstances make it impossible for the company to meet its obligations. Owners should review this clause in either the prime contract or the subcontract to understand the implications as they move forward with work or work stoppages. Companies may only see time extensions as a result of the force majeure clause. Read more about force majeure, Window + Door magazine <https://www.windowanddoor.com/blog/force-majeure-clauses-basics>.

03 — Which contract clauses cover delays, extensions and terminations?

Read any delays clause(s) carefully to determine if COVID-19 provides compensation, extensions and/or termination rights. If the owner or GC invokes the delays, extensions and suspension clauses, a subcontractor may be entitled to a benefit that should be spelled out in either the prime or subcontracts. Additionally, read the termination for convenience section carefully, as it may allow for other relief. This section gives the owner or GC the right to terminate the contract for reasons other than the subcontractor's default. Typically it bestows some compensation for work done and other expenses incurred.

04 — Are epidemics or pandemics included in the subcontract?

What are the listed events that will give the subcontractor relief from contractual obligations? Study the contract to identify if an epidemic is allowed. Read carefully to determine if the current pandemic could be included in that language.

05 — What can glaziers do to ensure that they see relief from contractual obligations due to COVID-19?

First, it is vital to document everything. Should owners need to invoke any of the clauses in the subcontract, they will need to show proof. Keep written records of the efforts made to fulfill contracts. All communications should be written, including a summary of any phone conversations.

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