

Perspectives of a Claims Analyst: What the Pandemic Taught Us

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Many of us are fatigued with COVID-19-related content, but we thought it was important for us, as claims analysts, to reflect on what the pandemic has taught us about construction claims and to acknowledge that we are still learning from this event that disrupted our industry.

When COVID-19 was declared a pandemic and the United States announced a state of emergency, many states issued directives or executive orders establishing health and safety measures for all businesses. Specifically for construction, these directives represented mandatory changes to the way work could be performed. These mandates remained in place, in some form, for several years, and we are still experiencing the continual and latent impacts.

It quickly became clear that COVID-19 and these state mandates had caused severe disruption in construction, but how was the industry to determine the impact of COVID-19? That was uncharted territory. Many questions arose:

- » Was the contractor's performance actually impacted by the pandemic? How?
- » Who was responsible for any associated damages?
- » How should a contractor demonstrate those damages?
- » What impacts could be attributable to the pandemic vs. distinct subsequent economic disruptions?

The debate about the responsibility for COVID-19 impacts was heard everywhere, and as claims consultants, whether assisting a contractor with developing a COVID-19-related



claim or helping an owner to review a contractor-prepared COVID-19 claim, we were expected to comprehensively analyze all impacts contractors may have suffered. This included everything from direct trade labor costs for lost productivity or lost time, non-labor impact costs, material cost escalation, claim preparation costs, and others.

While many owners have taken a narrow view in compensating contractors for COVID-19 impacts, reasoning that the pandemic was not an owner-made problem, contractors have plausibly traced a vast array of adverse impacts to the origins of the pandemic. One key principle is to assess how COVID-19-caused changes were governmentally mandated and how resulting work protocols altered the original manner of performance.

Impacts

The financial impacts of COVID-19 rippled through the industry and came in multiple forms as contractors adhered to new COVID-19-caused changes. In the early days of the pandemic, this included things such as more thorough and frequent cleaning of offices, job sites, and equipment; longer and more frequent hydration breaks due to mask-wearing; more handwashing stations; added staffing to learn and implement health and safety guidelines; daily temperature checks; increased absenteeism due to illness or quarantine; social distancing; impeded public transportation; lack of available childcare causing delayed arrival or absenteeism; increased material prices due to global manufacturing shutdowns, closure of ports, and transportation delays; and labor productivity impacts realized because of work performed differently and less efficiently.


No one could have imagined that COVID-19 could transform the construction process as it did. And instead of shutting down the industry, contractors, designers, and owners rose to the challenge. They found safe and innovative ways to continue to work, mitigating impacts as best they could. These new strategies and mitigations came at some cost, which needed to be quantified. But when faced with these unprecedented conditions, the industry still looked to time-honored and tested procedures to quantify the impact of COVID-19:

- 1. Look to Contract Provisions** – while contracts may not have had explicit language about global pandemics, they often included a force majeure clause and clauses that addressed entitlement to additional time and cost for delay and suspension. These provided a road map for how the contract might be modified to address COVID-19 impacts.
- 2. Review Contractor Notifications and Owner Responses** – construction contracts also often spelled out requirements to notify an owner of impacts, including the timing of the notice and the detail required in the notification, to include information on impacted operations and estimates of pending costs. These notifications started conversations between owners and contractors as impacts were being felt. Owner responses helped shape the plans for keeping workers safe while progressing with work.

- 3. Segregate the Impact Costs** – the impact of COVID-19 was so far-reaching that it affected projects in both expected and unexpected ways. Construction has always involved some change, but COVID-19 brought new challenges specific to the pandemic, and all costs needed to be identified and accurately quantified:
 - » Hiring more expensive subcontractors in place of those initially planned to perform the work but became unavailable due to COVID-19.
 - » Increased unit rates associated with work that was planned but not completed during the initial pandemic period and pushed into the following year.
 - » Increased costs related to trucking due to absent drivers, slow or late deliveries, and truck shortages.
 - » Increased costs for specialized or additional equipment and supplies - PPE, cleaning and disinfection supplies, diagnostic testing equipment, screening and temperature scanning equipment, temporary physical barriers, signage, professional sanitation of offices, medical quarantine facilities, handwashing stations, and office expansion for social distancing.
- 4. Document the Disruptions and Delays** – impacts also included delays to the progress of work. Impacts included regular standdown training on COVID-19 awareness; preparation of internal office protocols; time spent adhering to CDC, state, and federal requirements; daily notifications of COVID-19 cases, additional shifts for 24-hour safety coverage; a general loss of productivity by management personnel due to telework and impeded communication; changed protocols and closed borders; delays in supply of materials; and installation delays due to workers getting sick. Documenting these interruptions and disruptions was important in the quantification of impact.
- 5. Utilize Industry-Recognized Evaluation Methods** – to quantify difficult-to-measure contractor performance impacts, we looked to best practices from ACEC, AGC, CII, NECA, MCAA, and other industry experts. In one case where MBP was involved, a contractor employed a craftsmen survey recommended by ACEC and found an average increase in activity duration due to safety measures of 11%, representing a labor inefficiency factor of 10% (about 45 minutes lost per day per field worker).

MBP addressed a situation where a contractor overcame the impacts of new safety procedures and worker shortages by working overtime to avoid project delays. The contractor sought to demonstrate additional productivity losses due to the extended overtime worked. In this instance, workers worked 50 hours on average for 10 consecutive weeks without a break. Using industry labor studies from NECA and MCAA, we utilized a model that showed that extended overtime resulted in a gradual weekly loss of productivity from 6% (the first week) to 28% (the 10th week).

- 6. Identify the Causes** – it is essential to clear the fog of the pandemic and link the specific COVID-19-caused changes to the losses incurred or claimed. In many cases, prolonged follow-on impacts due to supply chain disruptions, materials escalation, or continued labor shortages can be considered distinct events contractually and/or practically based on their occurrence after the pandemic impact period. It is imperative to show all the project-specific solutions implemented (and associated costs) to mitigate impacts specifically driven by COVID-19 changes. All claimed losses needed to be supported by project records to show that the pandemic was the sole cause of impact.

The COVID-19 impact period was a stressful and uncertain time, but it also was a time of great resilience and creativity in the construction industry. The industry rose to the challenge and found safe and innovative ways to press on. COVID-19 certainly had its impacts on the time and cost of projects, but the construction industry had a strong foundation for addressing change and quantifying impacts, even if the changes were unprecedented. Our recommended approach for the preparation and evaluation of COVID-19 claims is to return to the fundamentals of managing change and apply them to the circumstances at hand. 



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