March 20, 2020

Information contained in our COVID-19 articles and publications is correct at the time of print. This is however a constantly evolving situation across the globe and specific advice and guidance should be sought as required.

The construction industry faces unprecedented disruption. Many will suffer potentially grave losses consequent on the spread of the coronavirus (COVID-19). Everyone is digesting new guidance on a daily basis and working hard to protect their staff and keep their businesses operational – and afloat.

In normal, "pre-COVID-19" times, the project disruption now emerging would result in legal claims and multiple disputes. Leading construction bodies have already called on employers, including the government, to explain their stance on where the losses for the expected delay and disruption will fall. If those affected approach the issues with a claims mentality – for which the construction industry is traditionally known – rather than collaboratively, swathes of the industry will not survive.

Extraordinary times demand different approaches. Be mindful of how your decisions affect other businesses: try to find ways to collaborate. We are all in this together.

We have collated information and guidance on the key issues below along with some useful links. If you want to discuss any of the issues raised, please get in touch with one of the Key contacts. You can find more information here: Dentons’ COVID-19 (Coronavirus) hub.

For a summary of key COVID-19 legislation and guidance affecting the UK construction industry, click here.

1. Keeping your business operational: where to start?
2. Managing the project and issues on site
3. Dispute avoidance: how do businesses protect themselves from loss and disputes?
4. What are your contractual rights?
5. Issues to consider when negotiating new contracts
6. Prioritising the health and wellbeing of staff – practical issues
7. Employment law issues – employer perspective
8. Employment law issues – employee perspective
9. Handling disputes
10. Maintaining your pipeline of work
11. How is Dentons handling COVID-19?
12. Key Contacts

Keeping your business operational: where to start?

Prepare

Set up a core team to keep up to date and manage the key issues arising from the impact of...
COVID-19. This crisis will evolve on a daily basis. Be prepared to be flexible. Above all, keep in mind that your employees, business partners and supply chain are also dealing with coronavirus on both a personal and commercial basis. Agree a business continuity plan with particular focus on:

- prioritising employee health and welfare including the enforcement of high standards of hygiene and the closure of sites/offices where necessary;
- supporting both office and site staff as everyone navigates new ways of living and working and the consequent toll on their physical and mental health;
- assessing the risks and potential impact of COVID-19 on each current and planned project including reviewing the related contracts and threats to the supply chain; and
- keeping commercial and trading partners up to date - particularly if it looks like significant action is needed such as closing sites.

### Keep up to date

Monitor the latest guidance, news and directions from Public Health England and World Health Organisation (WHO) and the government, such as:

- Coronavirus (COVID-19): UK government response
- Number of coronavirus (COVID-19) cases and risk in the UK
- Coronavirus (COVID-19) action plan
- COVID-19: guidance for employees, employers and businesses
- What is self-isolation and why is it important?

Review the effect of government announcements and plans for the immediate and longer-term future and prepare accordingly. Further help can be found on Build UK’s site which is issuing daily updates and from the Federation of Master Builders.

### Keep staff up to date – and encourage two-way communication

Regular, calm communication with your office and site workforce is essential. Set up regular briefings and dial-in meetings, chaired by a senior member of staff, to keep staff up to date on the latest action taken. Encourage team leaders to make use of popular, easy to use video-conferencing and group chat technology like "WhatsApp" or "Skype" groups for sharing information, emergency communications and to maintain morale.

Make sure employee records and contact details for sub-contractors working on site are up to date. Establish and maintain clear channels of communication. Ensure those responsible for temporary staff appointments are also keeping good records.

We are moving rapidly towards wider self-isolation but, where possible, record which of your staff are self-isolating or on sick leave. If employees do become sick while at work, ensure that it is reported to the relevant key contact and that they are advised to return home quickly and directly. Current government advice (as at 19 March 2020) indicates that you do not have to close the entire office/site, or send home a member of staff who has helped the unwell worker, unless they develop symptoms. However, they should follow the government guidance on handwashing.
### Keeping your business operational: where to start?

| Consider whether access restrictions are necessary | As we write, the government is widening restrictions on social interactions and schools. For those sites and offices that remain open, consider carefully how/whether/when to restrict access to your premises or site. Whether you do will depend on your particular business needs balanced against the priority of safeguarding your staff.  

Ask staff and visitors alike to confirm whether they have, or anyone they have been in contact with has, a cough or a fever. If yes, they should be politely declined entry. If written declarations are requested, comply with data protection/GDPR legislation. (See COVID-19: Data Protection Checklist.) |

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### Managing the project and issues on site

Following the government's advice to reduce social contact, non-essential travel and work from home, many sites remain open. However, site closures, partial closures or restrictions will become inevitable for some. The health and safety of all site workers and visitors to site is paramount and maintaining business as usual may prove difficult.

In a letter to the government of 17 March 2020, Build UK, in conjunction with the Construction Leadership Council and other construction leaders, highlighted the difficulties that construction businesses would face in the event of enforced shut downs: "due to the number of self-employed workers (approaching 40% of people working in construction), the vulnerable cash position of over 210,000 SME businesses and the operational requirements of delivering large and complex construction and infrastructure projects".

They asked the government to:

"ensure all construction sites across the UK are able to remain open, as long as they are able to do so responsibly; … instruct all public sector construction clients to continue to pay their contractors and supply chain; and to consider implementing financial measures, such as the deferral of VAT & PAYE payments, that will reduce the burden on business and keep cash moving as long as possible".

The government has already introduced some measures to help businesses (which we touch on below), but continue to monitor the daily announcements.

### Impact assessments – what impact will COVID-19 have on each project?

<table>
<thead>
<tr>
<th>Review each current project and those scheduled to start within the next six to nine months. Assess the impact of COVID-19 on that particular project. As part of that assessment:</th>
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<tbody>
<tr>
<td><strong>Review contracts</strong>: review the impact of COVID-19 on the project and the relevant contracts. Identify specific risks which might include reduced labour force or late/no deliveries leading to site closures, delay and disruption.</td>
</tr>
<tr>
<td><strong>Collaborate</strong> with other contracting parties and, where possible, renegotiate the contracts to balance the risk between the parties more fairly. See &quot;What are your contractual rights?&quot; below.</td>
</tr>
<tr>
<td><strong>Serve relevant notices</strong>: in relation to each of the identified risks, determine whether contract notices will need to be served, when and by whom.</td>
</tr>
<tr>
<td><strong>Know your supply chain</strong>: monitor for potential gaps or breakdowns in the supply chain – and put</td>
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</tbody>
</table>
For sites that remain open

Evaluate site-specific risks: coronavirus adds a different dimension to the normal safety requirements on site. Ensure you implement the latest recommendations from the government (as above) and the Health and Safety Executive (HSE): Coronavirus (COVID-19): latest information and advice. Every site will be different. Evaluate the specific risks raised by COVID-19 for your project[s] and collaborate with your site team, client and suppliers to find ways to keep the project running. This might involve isolating certain teams within the site or staggering work programmes. That in turn might require meetings to be held in a different way (e.g. by conference calls or video-conferencing).

Monitor work in progress: ensure that there are enough workers to carry out the work safely and in accordance with all relevant health and safety legislation. What is the minimum number of staff required to run the site safely?

Implement hygiene protocols: are there good washing facilities available including soap, tissues and clean towels? Are facilities cleaned on a regular basis? Monitor all those entering the site and ensure they understand the need for hygiene and to self-isolate in accordance with the latest government and WHO guidelines (see COVID-19: guidance for households with possible coronavirus infection). Bear in mind that, on some sites, workers and visitors may not speak good English. Warn site workers of the dangers of picking up the virus if travelling by public transport.

Coronavirus-free declarations: you may want to ask site workers and visitors to declare before entering the site that they are not at risk of COVID-19 (currently that means free of cough and temperature – though that too could change). If you do use declarations, respect privacy rights. (See COVID-19: Data Protection Checklist.) If in doubt, sites should be closed to non-business critical workers/visitors.

Restrict movement between sites and between sites and the office. Ask site workers to report into the [head] office by telephone, Skype or similar rather than a physical visit, and vice versa. If site workers do need to access facilities in the office, then ensure they are restricted to specific zones and implement hygiene protocols.

If a site closure becomes necessary

Instigate "deep cleans": if a COVID-19 risk has been identified on site (e.g. a site worker has confirmed COVID-19 or is living with/had contact with someone suffering symptoms/diagnosed), the site or key parts of the site might need a "deep clean" (see COVID-19: cleaning in non-healthcare settings).

Make the site safe: do not forget to carry out all the usual measures to make the site safe before closing. Comply with duty of care obligations under the Occupiers Liability Acts (1957 and 1984) and make sure the site is not easily accessible, that hazards have been removed and the site is protected against fire risks. Secure hoardings, scaffolding and all plant and machinery, clear pathways and fasten down any weather protection materials (like tarpaulins). Check security...
Managing the project and issues on site

arrangements (including lighting and notification of emergency contact details). Make safe any excavations.

**Cancel/postpone deliveries**: check whether any deliveries are due, or contractors are due to start during the closure period, and deal appropriately.

<table>
<thead>
<tr>
<th>What kind of disruption is possible?</th>
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<tr>
<td>Examples include:</td>
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</table>

- a site/office worker/visitor (or someone with whom they have been in close contact) being tested positive for COVID-19 leading to a site or office closure;
- large numbers of staff self-isolating might mean there are insufficient numbers on site for it to be operated safely or efficiently;
- a government order to restrict social contact could mean further site or office closures;
- key materials or skilled labour not being available at key stages of the programme;
- delays or cancellations of deliveries of materials to site from countries heavily affected by the virus.

**Not all of these might give rise to valid contract claims. It is crucial that you read the contract and understand which losses are/are not recoverable.**

<table>
<thead>
<tr>
<th>How might parties seek to recover losses suffered as a result of disruption?</th>
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<tr>
<td>Some of the losses suffered from COVID-19-related disruption will be recoverable under construction contracts. Parties might be able to claim that disruptive events such as the above amount to:</td>
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- "force majeure": an exceptional event that relieves a party from its contractual duty. Sometimes referred to as an "act of God" but, in reality, it refers to scenarios that parties could not reasonably have avoided when viewed objectively;
- frustration of contract: where changed circumstances mean that a party cannot do what was initially contemplated and their contractual obligations are discharged;
- a change in law (by virtue of the government's introduction of new legislation to deal with the spread of the virus); and/or
- a right to "step-in" to the contractual shoes of a contractor in certain circumstances to progress the project.

Disputes about whether specific COVID-19-related events are covered by clauses such as the above are therefore likely. Recovery will depend on the facts and the specific wording of the contract. In addition, parties who do not serve appropriate notices on time, or at all, could find future claims affected. (See below for more on legal claims.)

**Dispute avoidance: how do businesses protect themselves from loss and disputes?**

<table>
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<tr>
<th>Protect and maintain</th>
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<tbody>
<tr>
<td>Remember that most businesses are dealing with similar issues, under similar stress and likely to be suffering similar losses. Collaborate with contractual parties to maintain goodwill while recognising</td>
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</tbody>
</table>
Dispute avoidance: how do businesses protect themselves from loss and disputes?

**Prepare for potential site closures**

Prepare in advance for potential site closures on each of your sites. Key issues to consider include:

- What are the specific risks to your business of a site closure? Delay? Disruption? Inability to pay others in the supply chain? Laying-off staff?

- For each specific risk, ensure you are prepared to serve contractual notices on time and in accordance with the contract. Check the length of the relevant notice period, what notice is required to be given, by whom and to whom under the contract. Keep in regular communication with the notice giver (and ensure he/she has back-up).

- Decide in advance who will authorise the site closure. Also, decide how you will communicate site closure, demobilisation and remobilisation to the workers. Will workers be paid during the closure? If not, is there any other way you can support your workforce?

**Review your supply chain**

On each project, review the supply chain carefully. What has been or needs to be ordered, when and from where? Are material, labour or plant supplies likely to be affected on that particular project? If yes, can they be sourced elsewhere? What is the cost of that? What is the effect on the programme if they are not? Can trade partners help? Pay particular attention to those materials/labour sourced from countries heavily affected or likely to be affected.

Review all relevant contracts and renegotiate or serve notices as appropriate. (See "What are your contractual rights?" below.)

**Review your contracts**

See "What are your contractual rights?" and "Issues to consider when negotiating new contracts" below for more detail.

**Review your financial position - cash flow, statutory sick pay, tax and banking issues**

Most businesses, but especially those without cash reserves, will face very difficult trading and legal scenarios as people stop, divert or undergo a change in their normal spending patterns. The government has issued COVID-19: support for businesses which includes details of targeted measures to support businesses including: a statutory sick pay relief package for SMEs; a Business Rate Relief for small businesses and pubs; small business grant funding of £3,000 for all business in receipt of Small Business Rates Relief (SBRR) and Rural Rates Relief; the Coronavirus Business Interruption Loan Scheme to support long-term viable businesses who may need to respond to cash flow pressures by seeking additional finance; and the HMRC Time To Pay Scheme.

**Stash cash**: where possible, set aside cash contingency funds to cover low/lower cash flow. Equip all critical accounts and IT teams with suitable equipment to work remotely/off site so they can still maintain IT and communication systems, manage payroll, collect and pay progress payments and recover debts.

**Speak to your bank**: discuss the issues you face with your bank. Agree overdraft facilities or business loans to secure the business for the short term while the pandemic is ongoing. If dealing with the banks in relation to letters of credit, demand guarantees or negotiable instruments, read this...
Find out if you are eligible for business support: billions of pounds in loans are being made available to businesses struggling from the effects of the virus. Mortgage lenders have agreed to waive payments for a three-month period for individuals in difficulty. See the Chancellor's latest speech on 17 March 2020: The Chancellor announces further support in economic response to coronavirus. Details of the government's offer of health and support to businesses is here. Note, however, that we are still to learn the full extent of the government's pledge to do "whatever it takes" to support jobs, incomes and business.

Statutory sick pay (SSP): read and consider the effect on your business of the government announcements on SSP.

Seek tax deferral: find out whether HMRC’s time to pay system applies. See also HMRC’s Tax helpline to support businesses affected by coronavirus (COVID-19).

Note the delay to IR35 changes: the implementation of the tax changes relating to IR35 is to be delayed from April 2020 to 6 April 2021. For details of the changes, read Changes to IR35 rules in the private sector and the government guidance (note: these briefings were published before the delay announcement).

Check your insurance policies: Are you covered? Check whether your insurance policies cover the risks identified in your impact assessments. What is the specific procedure for making a claim? You will have to notify the insurer of the claim under the terms of the policy as appropriate, as soon as possible and within the prescribed notice period.

Keep records: a wide range of potential compensation claims touching many aspects of your business are likely, ranging from business interruption and event cancellation, employee claims for contracting COVID-19 at the workplace to aborted travel and medical expenses. To maximise your chance of recovery, keep good records of all losses incurred, receipts and action taken.

At the date of writing, the government has only advised, not ordered, businesses to restrict social contact. Without an order to close, some businesses will not be able to claim under their insurance policies to recover their losses.

What are your contractual rights?

Read the contract and check notice provisions: depending on the type of contract used, delay caused by COVID-19 may entitle you to claim an extension of time. In all cases of delay, read the contract carefully and ensure all relevant notices are given within the stipulated time limits to the correct recipient. If in doubt, obtain legal advice.

Prepare for potential delay: you could see if contract partners will negotiate contract amendments to provide that COVID-19-related delays give rise to an extension of time.

Do not forget the usual contractual obligations: do you need to submit progress reports, early warnings, notices that the programme is behind or notice of the effect on costs?

Think about the practicalities too: if the person normally serving notices is in self-isolation, who will
**What are your contractual rights?**

Does the disruption amount to force majeure on current contracts?

**What is force majeure?** Disruption arising from COVID-19 could amount to a "force majeure". A force majeure clause relieves parties from the consequences of non-performance in the event of circumstances beyond their control. Typically, it allows parties to suspend performance or terminate the contract.

**Is there a force majeure clause?** There is no general legal right to rely on force majeure in English or Scots law. The parties must have agreed to include a force majeure clause in their contract. Whether the COVID-19 disruption triggers the force majeure clause will depend on its specific wording.

**Starting with the contract: is there a force majeure clause?** What does it cover? The drafting will often include a list of force majeure events which result in the parties being unable to perform the contract. Whether or not the disruption you are experiencing falls within the parameters of this clause must be considered carefully. Look for specific references to "epidemics" or "pandemics", or to quarantines or other forms of government intervention. The fact that the WHO has declared the virus a pandemic will assist all those with clauses that specifically list "pandemics" as a force majeure event. (Although there may still be some argument over whether the facts causing the loss relate to the pandemic.) The force majeure clause may, however, use more general language and refer to "causes beyond a party's control" or to an "Act of God".

**Legal advice is recommended:** if you assert force majeure incorrectly, the assertion may itself amount to a breach of contract which could entitle the other contracting party to claim damages or even to terminate the contract.

**What relief does a force majeure clause provide?** It could be an entitlement to cancel the contract, suspend performance, claim an extension of time, or otherwise be excused from performance. For example, delay to the project programme caused by a site closed due to a COVID-19 lockdown could relieve the contractor from an obligation to pay liquidated damages. It is not enough for the disruption to have caused inconvenience or hardship. The protection offered under a force majeure clause will only be triggered when a party is genuinely unable to perform (rather than it simply being more difficult or expensive to do so). The force majeure event must usually be the sole cause of the failure to perform an obligation.

**How to claim force majeure?** Check the contract clause for requirements on how to establish the claim. Keep detailed records. Record everything – staff absences, notices, delays, delivery dates. Collate evidence. Serve the appropriate notices. Even if there is a force majeure clause and the disruption falls within its terms, a party relying on the clause must use all reasonable endeavours to mitigate the effect of the force majeure event. What measures are you putting into place to mitigate? Remember that the disruption will have a knock-on effect on sub-contractors and suppliers further down the line.

Could coronavirus mean the

In the absence of a force majeure clause, contracting parties may be able to argue that the impact of COVID-19 has "frustrated" the contract.

The legal doctrine of frustration applies where an event occurs after the formation of the contract,
What are your contractual rights?

Aims of the contract are frustrated?

Which renders the contract physically or commercially impossible to fulfil, or makes the obligation to perform a radically different obligation from that undertaken upon entry into the contract. The courts treat this as a high threshold to be met. This is because the effect of frustration of a contract is radical: the contract is terminated and the parties are discharged from their obligations.

As with force majeure, parties considering whether their contract has been frustrated should take legal advice. Incorrectly asserting that a contract has been frustrated may itself amount to a breach of contract, entitling the other contracting party to claim damages or potentially terminate the contract.

You may need to give unusual contractual notices to protect your rights

If you want to rely on your contract to make claims such as the above, read the terms of your contract carefully. Take legal advice – these are not easy claims to make and it is absolutely imperative that you serve the correct notices at the correct time. Serving a non-compliant notice or a late notice could make it very difficult to establish a claim later.

Practical points to remember when serving notices:
- Draft the notices in compliance with the specific term of the contract.
- Check the time period within which notice must be served and diarise.
- Serve within the time limit. Ensure it is served on the correct addressee. Who normally serves notices? Is there a back-up, in case that person is ill or absent?

Issues to consider when negotiating new contracts

If you are negotiating new contracts, consider the potential effect of COVID-19 on the specific project. Consider who is involved, the location of the site[s] and the type of materials and equipment being used and from where they are sourced. Here are some amendments to consider.

Relevant Events: do you need to include new [Relevant Event[s]] to cover any delays in delivery to site of materials or goods and/or delays to the progress of the works to the extent they are caused by a coronavirus outbreak (whether in the UK or abroad)?

Provisions relating to suspension and remobilisation: to the extent not already addressed by the contract, consider including an employer's right to suspend the works [and the contractor to demobilise from site] at any time on [seven] days' notice for a period of [X] months for any reason relating to coronavirus. Following such suspension, include an obligation on the contractor to remobilise within [seven] days of an employer's notice, and a clause dealing with the de- and remobilisation costs but [potentially] excluding any additional entitlement to claims for delay costs, delay damages, breach of contract, loss of profit, loss of reputation or otherwise.

Insurance: check if the insurance provision is suitable/adequate.

Post COVID-19 contracts: force majeure or its equivalent might not apply to contracts entered into after COVID-19 was known about, because the fact that the parties already knew of its existence will mean that the effect of its outbreak is not "unforeseeable". To cover such cases, agree an amendment to allocate COVID-19-related delay risks or, where appropriate, rely on the extension of time provision which allows the contractor extra time to complete the works if the government or a local authority exercises any statutory power which directly affects the execution of the works. (This requires the exercise of a statutory power as opposed to the government issuing advice or best practice guidance.)

Practical steps – keep records! Implement robust systems to record all delay, disruption and extra
Top tips from our team on home working

Issues to consider when negotiating new contracts
costs incurred and to serve appropriate notices.

You can read more here:
- Our Construction/Real Estate briefing: COVID-19 and real estate arrangements
- Covid-19: implications for commercial contracts

Prioritising the health and wellbeing of staff – practical issues

Inevitably, staff are working under extra pressure. Be understanding and provide visible support.

COVID-19 will affect your employees in a variety of ways. Most will experience self-isolation. Many will be new to remote working. They may be parents/carers of children whose school has been shut down or have responsibility for elderly relatives. They will be worried about whether they or their families and friends contract the virus. They may be caring for sick relatives or sick themselves. They or their partners might have lost or be at risk of losing their jobs. Some may have heavier workloads because they are covering for absent employees.

Provide clear guidance to employees on what is expected of them. Regular communication is key and will help maintain a measured approach to any outbreak.

Remote working – for your office workers

Only a week ago our tips would have focused on testing IT, communications and security systems to support a shift to remote working. As we write, many have already shifted to remote working and are getting to grips with a new working pattern in a rather stressful context. The survival of many businesses will depend on their employees' productivity. Support your staff and help keep up morale.

Top tips from our team on home working

Plenty of useful advice is appearing on LinkedIn about remote working but these are our team's favourite tips.

Be vigilant about cyber security and online scams: home working can make people more relaxed. (Check before you click!)

Maintain confidentiality: be aware of where you are leaving confidential papers or talking about confidential client issues. Maintain professional standards.

It is ok for your children/dog to make the odd unexpected appearance on calls/video. Schools are going to be closed for a prolonged period – this is just how it is for now! (Remember this?)

Stay in touch: Skype is a great way to keep in touch. Experiment with video-conferencing. Set up inclusive WhatsApp groups (though do set some basic rules about what can be shared).

Stay connected with people outside your immediate team: diarise catch-ups with people you might only see at the coffee machine. Leave messages if someone does not answer their telephone or drop them a Skype message.

Use all available tech: make use of e-signatures. You can screen share, message etc. on Skype. You can also take control of the other person's computer if you want to make amendments and/or work on a document together. If the technology lets you down (broadband will be under extra pressure), do not get stressed. It is not something you can control. Accept that there are some things
Prioritising the health and wellbeing of staff – practical issues

which you cannot do, or do as effectively, from home.

**Take a break!** It is far too easy to stay in front of the screen when there are no distractions. Get up, stretch and go for a walk. Resist eating all the chocolate biscuits in the house…

### Support site workers

While some office workers will be able to work remotely from home, site workers may not have that option. Provide support where possible. Offer ways and means to stay as productive as possible, perhaps by focusing on personal development using online training, keeping fit or by keeping in touch with each other and with business contacts.

### Look after your physical and mental health and wellbeing

Here are a few examples of how to help employees look after their physical and mental health.

- Offer webinars on wellbeing topics such as resilience, mindfulness and staying fit.
- Encourage people to exercise at home by offering access to health and fitness apps.
- Encourage people to look out for colleagues. Set up a buddy system via WhatsApp to ensure employees who normally work on site keep in touch with each other.
- Keep in touch particularly with those whose mental health was suffering even before the COVID-19 crisis.
- Offer discreet mental health services which will provide support and treatment throughout periods of self-isolation. See our article from 2017 on Safeguarding mental health: essential for your construction workers, good for your business.

One of our inspirational mental health ambassadors in Milton Keynes, Debra Hay-Davison, shared the following tips:

- **Exercise at home**: there are lots of apps out there. If you lack the equipment, do not worry – look in your cupboards for those tins of spam you saved for a rainy day!
- **Get some structure**: get up at the same time and stop for lunch and take a break. Mix things up. Read a book in your lunch break, or do something creative - now is the time to do it.
- **Talk lots**: communication is key. Start WhatsApp groups, FaceTime your relatives/friends/colleagues.
- **Keep news trawling to a minimum**: it is important to stay abreast of what is going on, but that does not mean trawling through news sites all day.

### Employment law issues – employer perspective

**Remain compliant with employment law**

Handling COVID-19 will require you to bring in new procedures and changes to the working environment quickly and with little, sometimes no, consultation with employees. Key issues to consider from an employment law perspective include:

**Review policies**: particularly those relating to salaries, sick pay, remote/agile working and work expectations in the event of illness/self-isolation/in hospital/quarantine? How could you support employees diagnosed with COVID-19?
Employment law issues – employer perspective

You will find useful summaries of the key issues here: COVID-19 (Coronavirus): Guidance for UK Employers.

**Do not forget your data privacy obligations under GDPR:** pay attention to GDPR obligations to ensure that data privacy is maintained when dealing with employee/client/visitor records. For example, if visitors are required to sign a declaration that they are not at risk of COVID-19, how will those records be handled? See COVID-19: Data Protection Checklist.

**Support your HR team:** HR teams will be under substantially more pressure in the next few months keeping up with the additional paperwork involved in staff absences and amendments to contracts. Work closely with them and give them all the necessary support for handling their increased workload. If extra temporary staff might not be available in the employment market, can other staff be drafted in to help?

Employment law issues – employee perspective

It is a potentially confusing time for employees having to weigh up government guidance on self-isolation, personal health, the good of the wider community and the need to earn a living. The issues are far more pronounced for site workers than office workers who, in many cases, will not have the home working option. Discuss the issues with your employer and read COVID-19: guidance for employees for more information.

The government has changed the rules relating to SSP to enable those who are advised to self-isolate to claim it straight away rather than waiting three days. You can read more here: Statutory Sick Pay (SSP).

Handling disputes

COVID-19-related disruption means that businesses will have less cash and time available to spend on disputes. Many will be firefighting issues on a range of fronts from safeguarding staff to keeping their business afloat. This is not a time to be taking procedural points in current disputes!

**Risk profiles for many disputes might also change radically,** and very quickly. A defendant whose accounts showed robust financial health six months ago may be bust within weeks if its key site closes or it is not paid by a third party. Now is the time to review settlement prospects seriously.

**Use tech to ensure meetings/short hearings go ahead:** consider alternative ways of holding settlement meetings such as through video or telephone conferencing. For more guidance on setting up and running such hearings/meetings effectively, see An opportunity to get to grips with video conferencing?

**Expect longer hearings and trials to be pushed back:** we are already seeing applications to postpone some hearings and trials, and can expect to see more delays to procedures. See Court exercises case management powers in response to COVID-19 (Coronavirus) pandemic.

**Expect more use of tech by the courts:** the courts and the legal profession generally are not traditionally known for embracing new technology – but things are changing rapidly. While limits on travel and face-to-face meetings might hamper some dispute resolution proceedings and cause
Handling disputes

procedural delays, the courts are willing and better equipped to conduct meetings and hearings by telephone or video conferencing. Mediators, arbitrators and experts likewise.

**Collaborate with the other party and their lawyers in litigation and ADR proceedings:** everyone is in the same boat. Do not underestimate the effect of COVID-19 on people's lives. Most people will be distracted and tasks such as taking a witness statement or preparing pleadings could well take much longer. Be patient and understanding.

**Preserve privilege:** in-house lawyers should take particular care when communicating with others in the business or with third parties to ensure that their advice is delivered in a way that preserves privilege.

**Confidentiality:** as employees become accustomed to working from home, ensure that those in positions of trust continue to protect confidential information and documents.

<table>
<thead>
<tr>
<th>Protect your position in case of future disputes</th>
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<tbody>
<tr>
<td><strong>Keep records:</strong> disputes on a range of fronts are possible, ranging from claims for extensions of time to employees who contract the virus in the workplace, against suppliers who failed to deliver on time, or at all, and in relation to site closures, delay or disruption where notices were not served properly, or at all. The list could go on.</td>
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<tr>
<td><strong>Notify key people if a risk of dispute arises:</strong> ensure your employees report any dispute risk to their line manager/site manager/head office/human resources team or lawyers.</td>
</tr>
<tr>
<td>The same points in relation to privilege and confidentiality (as above) apply to future disputes.</td>
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</tbody>
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Maintaining your pipeline of work

With more people in self-isolation and/or working from home, a reduction in business development activity is already affecting the pipeline of future business and order books. Where possible, continue to tender for work – few projects might start in the next few months but at least there will be jobs in the potential pipeline. Be prepared for tender prices to increase as suppliers and contractors price for additional risk.

Everyone will be in similar uncharted territory. Where possible, keep in touch and up to date with business contacts and trade partners.

How is Dentons handling COVID-19?

Since the beginning of this public health threat we have been consulting with leading public health organisations and working to ensure that our firm has the agility and resilience to protect its people while continuing to be fully available to meet our clients’ needs around the world.

We have activated our Global Pandemic Preparedness Task Force which meets on a daily basis to ensure that all our people and our clients are able to take advantage of the most current and advanced thinking, resources, and talent pool available to manage and mitigate the impact of the virus as it spreads around the world. We have best practice business continuity processes in place across the global firm. In the UK, these processes have been stress-tested, including our remote working practices, so we can provide you with the reassurance that we have the people and systems...
How is Dentons handling COVID-19?

in place to remain fully available to clients at all times.

Key Contacts

If you want to discuss any of the issues raised in this round-up, please get in touch with one of the Key Contacts. You can find more information here: Dentons’ COVID-19 (Coronavirus) hub.

Stay well!

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This article was published on 20 March 2020. Due to the fast moving developments in relation to COVID-19, please do speak to one of our Key Contacts for advice on the latest position.

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