Manufacturing/Supply Chain Alert: The New Safety Protocols for Companies in the Supply Chain Industry: How Will You Handle the New and Unexpected Costs?

May 12, 2020 – The COVID-19 pandemic has changed how many industries must work. It has resulted in new rules, new procedures, and more stringent safety protocols, not only to prevent physical injury but to also prevent the spread of disease. Recently, several state government contractors requested that all vendors doing business with them voluntarily revise their safety plans, especially relating to on-site work and deliveries, to include procedures to address the COVID-19 pandemic.

This soon may be a requirement on not only government sites post-COVID-19, but in every manufacturing plant, warehouse, and distribution center. We anticipate, as is being implemented by some, that several or all of the following could be implemented and required on a manufacturing work site, warehouse, and distribution center:

- Provisions and protocols for washing hands or hand sanitizing;
- Cleaning and sanitizing practices for equipment, work spaces, and sanitation facilities, both for everyday situations and for a situation where a worker is found to have been infected by COVID-19;
- Cleaning and sanitizing of devices and materials brought to the site for installation;
- Meeting arrangements, including techniques for remote meetings, maintaining six-feet minimum spacing if face-to-face meetings are unavoidable, and trying to verbally communicate around loud machinery and operations;
- Protocol and plan for enforcement on who may access facilities and testing sites to ensure social distancing is maintained;
- Protocol to ensure staff maintain social distancing while taking breaks from work activities, including the use of temporary lodging on remote jobs;
- Specific arrangements shall be coordinated between the various plant supervisors to limit person-to-person contact and to maintain proper distancing in accordance with CDC guidelines;
- The planned use of shift work to minimize interpersonal contact between crews;
- Task-specific protocols that ensure people minimize contact and maximize social distancing while performing particular jobs;
- Protocol to ensure that materials testers, inspectors, and other similar persons can perform their work safely;
- Electronic communications and meetings;
- Protocol for deliveries;
- Protocol for reporting potential and confirmed infections;
- Protocol for requiring symptomatic individuals to stay away from the plant, distribution center, offices or warehouse; and
- Protocol for identifying and protecting vulnerable individuals.

As stated, some entities have already requested that the above protocols be implemented in the supply chain/material handling industries. More companies will follow suit and demand these requirements before doing business with your company. How will this new “normal” change the dynamics of a manufacturing site, a distribution center, or warehouse? Will safety costs be significantly increased? Are you prepared to implement these measures? The post-COVID-19 era will surely change the way the supply chain industry conducts business.

Companies in the supply chain industry should be mindful of including an escalator clause in their contracts to help protect them against increased and unforeseen costs due to changes in safety protocols or other sudden cost increases. An escalator or price-adjustment clause in a contract permits the seller to increase price based on an unexpected increase in costs. Escalator clauses are enforceable in most states and are commonly used in commercial contracts. An escalator clause should specify how to calculate the price increase and the types of cost increases that permit the price increase. To enforce a price increase under an escalator clause, your company should be prepared to present evidence to establish the amount of the price increase. Including an escalator clause in contracts will permit a price increase and help protect against sudden or unforeseen increased costs.

For questions or guidance about the information contained in this Alert, or any other legal issue affecting your company, please contact:

Rose A. Suriano, Esq., Member and Co-Chair, Litigation Practice, at rsuriano@bracheichler.com or 973-403-3129

Robyn K. Lym, Esq., Associate, Litigation Practice, at rlym@bracheichler.com or 973-403-3124