

# CORONAVIRUS COVID-19

## WEBINAR SERIES:

Manufacturing Solutions to COVID-19 Challenges

## Session 2: Contracts & COVID-19

This webinar series is being presented by:

AMFA, CMMA, MPMA, TSMA, & Fredrikson & Byron

With Industry Partners:

LAMA, Hwy 2 West, Manufacturers Alliance, and

Minnesota State Advanced Manufacturing Center of Excellence



## Shelter in Place

- Shelter in place order goes into effect 3/27 11:59 through April 10<sup>th</sup> for non-essential employees/businesses
  - Refer to [CISA Standards](#) for exemptions
  - In general, if your business meets CISA standards and you have letters from essential customers, you may remain operational without application.
  - If not sure, go to <https://mn.gov/deed/critical/>
- An application for exemption can be found on the website for those that do not qualify under what has been outlined in CISA and the Governor's Executive Order
  - Even if your business is essential, workers who can do their job remotely are encouraged to do so
  - Non-essential businesses/workers may still continue to work remotely
  - Minnesotans will still be allowed to leave their homes for essential needs like groceries, seeking health care, assisting others and enjoying the outdoors



## Legislative Updates

- COVID-related package still expected to be taken up by MN Senate and House later today
  - The bill has not yet been released
  - Legislators have been discussing 30+ potential provisions including:
    - Child care assistance
    - Flexibility & funding for health care providers
    - Housing supports
- Latest Executive Orders/Announcements from Walz Administration include:
  - PPE Inventory was due 3/25 at <https://mn.gov/ppe/>



## General Updates

- Over 3million jobs nationally lost in past week
- Find or offer resources at [Medical Alley](#) or [Mn Chamber's Grow Minnesota Initiative](#)
- For webinar recordings, Power Points and other COVID-19 updates, go to
  - MPMA's [COVID-19 resource page](#)
  - TSMA's <https://www.tsma.org/covid-19>

# Contracts & Covid-19: What You Need To Know About Orders And Payments

By Jeffrey Post



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# Topics

- 1) Force Majeure Clauses
- 2) Commercial Impracticability Under Minn. Stat. § 336.2-615
- 3) Frustration Of Purpose
- 4) Right To Adequate Assurance of Performance

# Force Majeure Clauses

- Excuses performance upon the occurrence of certain events spelled out in the clause.
- Some events are usually covered:
  - War
  - Governmental regulation
  - Epidemics
  - Other acts of God
- Some events are not usually covered:
  - Labor disputes
  - Changes in product market price
  - Increase in the cost of production inputs

# Force Majeure Clause Limitations

- Force Majeure Clause Must Be In Contract.
- Force Majeure Clauses Narrowly Interpreted.
- Event Must Be Unforeseen And Not In The Control Of Either Party.
- Some Clauses Require That The Triggering Party Give Notice Within A Defined Period.
- Clause May Not Completely Excuse Performance.



# Commercial Impracticability

- Arises In Every Sales Of Good Contract Under Minnesota Statute § 336.2-615.
- Applies Where 1) The Nonoccurrence Of A Condition That Was A Basic Assumption Of The Contract, Which Makes Performance Impracticable or 2) There Is Good Faith Compliance With A Government Regulation.
- Performance Does Not Need To Be Impossible, Merely Impracticable.
- Allows Delay Or Nondelivery In Whole Or Part

# Limitations On Commercial Impracticability

- Nonoccurrence Of Condition Cannot Be Foreseeable Or In The Control Of Either Party. Classic Examples Are Overbooking Orders And Partial Failure Of Component Supply.
- Must Provide Seasonable Notice To Other Party (Slightly More Than 30 Days Has Been Held Seasonable In Minnesota).
- Where Seller's Capacity To Perform Is Only Partially Impeded, The Seller Must Allocate Goods In A Fair and Reasonable Manner.

# Frustration Of Purpose

- Similar To Commercial Impracticability, But Applies To Every Contract.
- Only One Party's Principal Purpose Need Be Frustrated.

# Limitations On Frustration Of Purpose

- Nonoccurrence Of Event Cannot Be Fault Of Party.
- Changes In Market Price Do Not Trigger Frustration Of Purpose.
- Ability To Rely On Defense Can Be Limited By The Contract.
- Frustration Of Purpose Provides Only For Cancellation, Not Delivery Delay.

# Adequate Assurance Of Performance

- Arises In Every Sales Of Goods Contract Under Minnesota Statute § 336.2-609.
- When reasonable grounds for insecurity arise with respect to performance, the other party may ask in writing for adequate assurance.
- The receiving party must provide assurance within a commercially reasonable time, not to exceed 30 days.

# Limitations On Adequate Assurance Of Performance

- Whether Insecurity Exists Is Determined By Normal Commercial Standards.
- Requested Assurance Must Be Commercially Reasonable.
- If You Are Wrong, You Have Breached The Contract.

# Your Presenter



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