



Flash Covid-19 - Public Law Team

Construction sites facing the COVID-19 challenge

Measures to combat the spread of the Covid 19 virus and to restrict people's movement accompanying them brutally raise the question of the continuation of economic activity and ongoing contracts.

This is particularly true in the construction sector, due to the nature of its activity.

A physical construction is impossible to carry out in telework, and decree 2020-260, authorising, by exception, people to go to the place where they carry out their professional activity, should therefore logically apply to construction site personnel. But can they work once on site?

The preliminary article of the amended Order of 14 March 2017 indeed states that hygiene and social distancing measures, known as «barriers», defined at national level, must be observed in any place and under any circumstances, and that activities that are not prohibited under this Order are organised in strict compliance with these measures.

However, the organisation of a construction site, as rigorous it may be, will never be that of a factory: permanent and built around, and serving processes and machines, the factory allows an extremely mechanised and controlled organisation of tasks. The organisation of the construction site is constantly evolving to keep pace with the progress of the work, in an environment that is itself only temporarily dedicated to the production of the building.

Tasks cannot be so industrialized and mechanized, handling of materials and equipment requires more personnel and man-machine interaction, physical work and often outdoor work. All these circumstances are part of the job but make singularly problematic the application of simple precautionary rules such as keeping a distance of one meter (ideally two...), the permanent wearing of masks (when they have not been requisitioned) and gloves, the fact of not putting one's hands to one's face, ... Not to mention the number of personnel on site which can increase rapidly – should a construction site gathering more than a hundred people be the subject of an express derogatory authorisation?

Things may be simpler for certain types of work, for example small-scale building renovations, because it is then easier to limit the number of trades simultaneously present and to organise a finished space.

Even under these more favourable conditions, the entrepreneur, if he is not a self-employed craftsman acting under his responsibility, remains moreover an employer, bound by a safety obligation towards his employees.

In sum, assuming that the movement of their staff is actually ensured, construction contractors face in practice, particularly on a large-scale construction site, specific difficulties which can make the implementation in their activity of the sanitary rules laid down by the Government an insurmountable obstacle to the continuation or the starting of their work.

To deal with such a situation, the law and the contract have legal tools, at the centre of which is of course force majeure. The contractual complexity of a construction operation, involving employers, *maîtres d'œuvres*, contractors, suppliers and subcontractors, furthermore makes it necessary to implement these tools with consistency.