Well, it's getting real now, isn't it?

As employers we are having to face a number of issues related to the COVID-19 outbreak, including reductions/eliminations of travel, cancellation of training seminars, moving meetings from in-person to virtual, and deciding how to deal with production line issues.

Certainly, we are now seeing the "downside" of modern office life, with cubicle warrens, shared offices, and "bullpens." Putting all those bodies in a concentrated space reduced office space costs, but at a price. If one infectious person comes to work then an entire activity or function can be taken out in a matter of days. Not good.

Meanwhile, your employees' school districts are likely to have announced that children are now receiving an unplanned vacation, ranging in duration from two to four weeks, and now they have serious childcare issues that may require flexible work schedules and a lot of working from home.

OMB just issued **guidance** that encourages Federal agencies to—

… maximize telework flexibilities to eligible workers within those populations that the Centers for Disease Control and Prevention (CDC) has identified as being at higher risk for serious complications from COVID-19 … and to CDC-identified special populations including pregnant women …. These CDC-identified populations include older adults and individuals who have chronic health conditions, such as high blood pressure, heart disease, diabetes, lung disease or compromised immune systems. Agencies do not need to require certification by a medical professional, and may accept self-identification by employees that they are in one of these populations. Additionally, agencies are encouraged to consult with local public health officials and the CDC about whether to extend telework flexibilities more broadly to all eligible teleworkers in areas in which either such local officials or the CDC have determined there is community spread. Agencies are also encouraged to extend telework flexibilities more broadly to accommodate state and local responses to the outbreak, including, but not limited to, school closures.

Thus, feel free to emulate the Federal government and “maximize telework flexibilities” as much as possible.

Not to be outdone, the Department of Defense also **announced** that service members and civilian employees have had their travel plans halted.

This restriction will halt all domestic travel, including Permanent Change of Station, and Temporary Duty. This restriction will also pause civilian hiring at DoD installations and components for persons who do not reside within the hiring entity's local commuting area. Additionally, service members will be authorized local leave only, following Service guidelines. This new guidance is effective March 16 and continues through May 11.

Obviously, exceptions will be made, but right now we interpret that announcement to mean that there is going to be a significant reduction to travel. It may impact source selection decisions, or business system reviews, or contracting officer review boards, or even DCAA floorchecks. Some flexibility in how audits/reviews will be conducted and/or supported is obviously warranted.

There are any number of law firms and attorneys who have advice to offer in situations such as these. One firm we’ve been following is Covington. Covington has published several informative articles that we bring to your attention.

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Checklist for U.S. Employers: **Here**

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Mission-Essential Services: **Article**

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Excusable Delays: **Insight**

That last article is interesting, because it discusses the “excusable delay” clauses and what contractual rights they confer. Here’s an excerpt:

Key here is that these provisions do not entitle the contractor to compensation.
Non-compensable delays are delays for which the contractor is entitled to a time extension, but there is no entitlement to any additional monetary compensation. The theory is that neither the contractor nor the federal government has control over the non-compensable delay. Therefore, both parties assume their own additional costs. The contractor absorbs its delay costs for being out on the project longer and the federal government absorbs its costs by granting a time extension to the contractor and extending the contract.

Despite the contractual language discussed in the Covington article, it is likely that most contractors will see increased indirect costs stemming from the COVID-19 outbreak. There will likely be some inefficiencies created as companies respond to the situation. Employees may use more sick leave that usual. Compassionate leave may be granted. On its face, those increased costs would seem to be fully allowable.

However, to the extent that contractors have Forward Pricing Rate Agreements (FPRAs) or Provisional Billing Rate Agreements (PBRAs) based on 2020 budgets, it is possible that the additional costs (coupled with a potential reduction in direct costs) are going to blow those budgets out of the water. Thus, two points: (1) try to document the increased costs associated with the COVID-19 situation, and (2) as those costs are recorded, work to understand the impact on 2020 budgets. And a third point: communicate with your cognizant contracting officers and/or ACOs to let them know what you’re seeing.

The situation is fluid and will likely evolve over the next few weeks. But this is our assessment of what’s happening at this time.

Also: wash your hands.