



## Force Majeure Clauses and COVID-19

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A “force majeure” clause – sometimes called the “**Act of God**” clause – excludes a party’s performance under a contract because a certain event renders performance impossible or impractical. The **COVID-19** pandemic will be invoked as just such an event. Here is what you need to know.

- ***It Must be in the Contract.*** Your contract must specifically contain a force majeure clause.
- ***Is COVID-19 a force majeure event?*** Most force majeure clauses list certain categories of events that qualify, e.g. acts of God, acts of government, war, terrorism, and epidemics. If your contract includes “pandemics as determined by the World Health Organization,” chances are high that COVID-19 will qualify as a force majeure event. If your contract mentions “disease,” “epidemic,” or similar language, COVID-19 is much more likely to be a force majeure event than if your contract does not use that language. And because this is also an “act of government” event given the significant (and varying) government-ordered restrictions, the specific restrictions applicable to your business and how they make performance impossible are important.
- ***The Litigation Component.*** Absent a business resolution between the parties to the contract, whether COVID-19 actually excuses a party’s performance will be litigated in court or arbitration. Navigating the court system at a time when COVID-19 is significantly limiting court operations is another issue that must be considered at the outset.

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The business and litigation attorneys at Wisler Pearlstine are ready to analyze your contracts and navigate the courts. Please contact any one of us.

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