




COVID-19

UPDATE:
March 19, 2020

**Coronavirus / COVID-19
Response Team**


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**GM, Ford, and FCA Shut Down
All North American Production
Until March 30, 2020**

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OEM Shut Downs – Key Details

- Ford, GM, and FCA will shut down all North American production
 - Ford begins today
 - GM will implement rolling shutdowns
 - FCA began yesterday
- Shut downs will last until at least March 30
 - May be extended
 - Possible intermittent shut downs?
- Honda and Nissan also announced closures
 - Honda: 3/23 to 3/31
 - Nissan until April 6

Why Did The OEMs Shut Down?

- Employees in some facilities tested positive for the novel coronavirus / COVID-19
 - Ford assembly plant in Wayne, Michigan
 - FCA assembly plant in Sterling Heights, Michigan
 - VW offices in Auburn Hills
- UAW demanded closures to protect employees
- “Market conditions”

Impact On Supply Chains

- OEMs may have no demand
 - Will pent-up demand return after facilities re-open?
- OEMs may refuse shipments, even firm orders
- OEMs may push risk down the supply chain - excess inventory, materials, labor, etc.

Potential Legal Issues

- Contracts - up and down the supply chain
- Employment - WARN Act

Contracts With OEMs And Suppliers

- Immediately review contracts up and down the supply chain
 - Including terms & conditions
- Key issues:
 - What type of contract is it?
 - What orders must be accepted? Which can be rejected?
 - Are there “escape hatches”?
 - Possible negotiated solutions?

Contracts With OEMs And Suppliers

- What type of contract is it?
 - Fixed-quantity vs. requirements contracts have different risk profiles
 - Fixed-quantity contracts obligate for a certain quantity of goods during the contract term
 - Requirements contracts obligate for actual, good-faith requirements during the contract term
 - But orders cannot be “unreasonably disproportionate” to estimates (or normal orders, if no estimate) (UCC 2-306)

Contracts With OEMs And Suppliers

- What orders must be accepted?
 - Firm orders
 - Material authorizations
- What orders can be rejected?
 - Non-binding forecasts
- Potential strategies
 - Update releases immediately, and watch for updates from customers
 - Reject all orders and negotiate (may be risky)
 - Withhold shipments when production resumes until prior orders are paid (may be risky)

Contracts With OEMs And Suppliers

- Are there “escape hatches”?
 - Cancellation rights
 - Force majeure clauses
 - Price change clauses
 - UCC impracticability of performance
 - Others?
- Possible negotiated solutions?
 - Know your contract rights, but communicate with your business partners
 - Remember, this is a community-wide problem

WARN Act

- Employers with 100 or more full-time employees must provide notice when they implement a “plant closing” or “mass layoff”
 - Plant Closing: The permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss during any 30 day period of 50 or more employees
 - Employment Loss: (1) employment termination, other than discharge for cause, voluntary departure, or retirement; (2) layoff exceeding 6 months; or (3) reduction in hours of more than 50%
 - Mass Layoff: Reduction in force that is not a plant closing that results in employment loss in any 30 day period of: (1) at least 33% of active full-time employees; and (2) at least 50 full-time employees.

WARN Act

- Issues to consider:
 - Does the employer meet the threshold requirements for WARN to apply?
 - Will employees be laid off or permanently discharged?
 - Will layoffs last longer for six months?
 - Should we give notice now?
 - Should we wait to give notice until it is clear whether employees will be laid off for at least six months?



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