

**Welcome to**



**SRBX LEGAL  
COMMITTEE**

**Coronavirus  
Construction Industry  
Update**

# Presenters



**Carrie E. Bushman**



**Neil H. Bui**



**Greg Reaume**

# Agenda

- **Introduction and Overview**
  - SRBX
- **Employment law updates and best practices**
  - Carrie Bushman (Cook Brown LLP)
    - General overview of how to terminate employees
    - Current and evolving law
      - How H.R.6201 impacts employment decisions
      - Changes to the WARN Act
    - Resources for terminated employees
- **Contract and Project Management Issues**
  - Neil Bui and Greg Reaume (McInerney & Dillon, PC)
    - What work do Shelter in Place Orders allow?
    - How to deal with project delays.
    - Best practices.

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)

# Employment



**Carrie E. Bushman**

# Employment

## **PRESENTER INTRODUCTION UPDATES AND BEST PRACTICES**

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)

# Employment

## **BEST PRACTICES FOR EMPLOYEE LAYOFFS NECESSITATED BY COVID 19**

# Employment

## Layoff Best/Required Practices

- Payment of final wages upon termination
- Pay out of unused accrued PTO/Vacation
- Retention of accrued / unused paid sick leave for returning employees
- Notice of right to unemployment benefits
- WARN Act implications?

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)

# Employment

## **NEW EMPLOYMENT LAWS/ORDERS**

- **HR 6201**
- **The WARN Act**

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)



# Employment

HR 6201 – Families First Coronavirus Act (Eff. 4/2/20 – 12/31/20)

- **EMERGENCY PAID SICK LEAVE**

- Covered employers = businesses employing fewer than 500 employees
- All employees covered; no length of employment requirement
- Reason for leave: EE (1) subject to COVID-19 quarantine/isolation order; (2) advised by HCP to self-quarantine; (3) experiencing symptoms/seeking diagnosis; (4) caring for another individual for (1) or (2), (5) caring for child impacted by school/place of care closure; or (6) other substantially similar conditions
- Full time employees entitled to up to 80 hours of paid sick time at employee's regular rate (or 2/3 regular rate for reasons 4, 5, 6)
- Sick leave pay capped at \$511 per day / \$5,110 aggregate for leave related to employee's own use
- Sick leave pay capped at \$200 per day / \$2,000 aggregate to care for others
- Tax credit available

# Employment

## HR 6201 – FMLA Expansion

- Applies to employers with fewer than 500 employees
- Applies to employees who have worked at least 30 days prior to leave
- Eligible employees may take up to 12 weeks of job protected leave
- Reason for leave limited to employee inability to work/telework in order to care for the employee's child if school or place of care is closed/unavailable due to public health emergency
- First 10 days of leave may be unpaid
- After 10 day period, full time employees entitled to pay at 2/3 regular rate, capped at \$200/day and \$10,000 aggregate

# Employment

## CA WARN ACT – Executive Order N-31-20

- For period starting 3/4/20 through end of emergency, 60 day notice period for mass layoffs under CA WARN Act suspended for layoffs due to unanticipated COVID-19 business circumstances
- However, still required to provide employees and local government officials as much written notice as is practicable and explain why 60 days' notice not feasible
- Must give notice of unemployment rights

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)

# Employment

## **OTHER RESOURCES FOR AFFECTED EMPLOYEES**

**State Disability Insurance**

**Paid Family Leave**

**Unemployment Insurance**

**[EDD Coronavirus Page LINK](#)**

# Contracts and Project Management

McInerney  
& Dillon



Neil H. Bui



Greg Reaume

# Contracts and Project Management

## **SHELTER IN PLACE ORDERS**

**Types of Construction Allowed**

**Penalties for Violations**

# Contracts and Project Management

## **AIA A201 Contract Provisions Regarding Unavoidable Delay**

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)

# Contracts and Project Management

## **AIA A201 § 8.3.1**

**If the Contractor is delayed ... by**

(1) an act or neglect of the Owner or Architect....or of a Separate Contractor;

(2) changes ordered in the Work;

**(3) ...unusual delay in deliveries, unavoidable casualties, ... or other causes beyond the Contractor's control;**

(4) delay ...pending mediation and binding dispute resolution; or

**(5) other causes ...Contractor asserts and ... Architect determines justify delay,**

**then the Contract Time shall be extended** for such ... time as the Architect may determine.



# Contracts and Project Management

## SUMMARY

If the Coronavirus causes delays in delivery or other delays that are beyond your control, you should be entitled to a schedule extension.

But - how do you get that extension?

# Contracts and Project Management

## **AIA A201 § 8.3.1**

Claims relating to time are made according to Article 15.

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)

# Contracts and Project Management

## **AIA A201 § 15.1.6.1**

If the Contractor wishes to make a Claim for an increase in the Contract Time, **notice as provided in Section 15.1.3** shall be given.

The Contractor's Claim shall include an **estimate of cost and of probable effect of delay on the progress of the Work.**

In the case of a continuing delay, only one Claim is necessary.

# Contracts and Project Management

## **AIA A201 § 15.1.3.1**

Claims by either the Owner or Contractor...shall be initiated by notice to the other party and to the Initial Decision Maker ...

Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim ...

# Contracts and Project Management

## SUMMARY

To get a schedule extension, you must give Notice of your Claim for that time.

One more important point- how to give Notice of your Claim?

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)

# Contracts and Project Management

## AIA A201 § 1.6.2

Notice of Claims as provided in Section 15.1.3 shall be provided in writing and

shall be deemed to have been duly served **only if**

delivered to the **designated representative** of the party to whom the notice is addressed by

*certified or registered mail, or by courier providing proof of delivery.*

Submit any questions to [Dconklin@SRBX.org](mailto:Dconklin@SRBX.org)

# Resources

- [SRBX Covid 19 Update Page](#)
- [Changes to the WARN Act](#)
- [EDD Coronavirus Page](#)
- [California Public Health Covid 19 page and link to executive order](#)

# Questions and Answers