

The Nine Important Contractual *Force Majeure* Questions

1. What is the triggering event that has affected your contractual performance? Is it, for example:

- A governmental closure of your plant?
- A supply chain issue?
- A workforce issue?

Be as specific as possible.

2. Is the triggering event directly encompassed by the force majeure clause in your contract? If not, is there a catch-all term?

3. What state law governs?

4. Was the triggering event foreseeable or unforeseeable?

5. How did the triggering event affect performance, and did it make performance impossible, impracticable, or just unreasonably expensive?

As a general rule, financial inability to perform is not a *force majeure* event.

6. Could non-performance have been avoided?

7. What efforts have you taken to mitigate non-performance? Document all mitigation efforts.

8. What remedies does the *force majeure* clause (or some other contract term) provide with respect to non-performance? For example, does it provide for termination of the contract; does it excuse performance of some obligations but not others; or does it allow you to delay performance for a certain amount of time?

9. What steps do you have to take to exercise your *force majeure* rights? For example, is there a mandatory notice requirement?

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