



# Legal Connections

LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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## DETAIL IN FORCE MAJEURE CLAUSES IS FORESEEABLE PT. 1

Prior to 2020, force majeure clauses were part of a checklist of boilerplate items in commercial contract construction but were scarcely litigated. Today, litigation over pre-pandemic force majeure clauses is skyrocketing. It is clear the wording of contracts and force majeure clauses are more crucial than ever and essential for businesses.



BY: BRYAN PRITIKIN

manufacturing, distribution, and transportation needs, causing the term of each clause to vary. Because force majeure clauses provide contract-based defenses against claims of breach of contract due to non-performance, parties in the post-pandemic world are focusing more on the language of those clauses. A company's post-pandemic force majeure

clause with a vendor in Columbus may differ from its force majeure clause with a vendor in Cincinnati. Where one force majeure clause may fail to excuse specific breaches, such as non-payment of certain obligations, others may excuse performance entirely.

### Why the language matters

In a pre-pandemic world, a non-

performing defendant could only prevail on an impossibility defense under a force majeure clause by showing that the event preventing performance was unforeseeable and beyond both parties' control.

Post-pandemic courts construe force majeure clauses the same way they construe all contract questions: by looking at the document's language and the facts of the case. Most courts faced with the question have interpreted force majeure clauses using terms such as "pandemic," "natural disaster," and "economic upheaval" to include COVID-19 for purposes of defense to claims of non-performance. Few courts are willing to excuse non-performance due to the pandemic absent such language, which is the case with many such clauses drafted prior to the pandemic.

Because the purpose of a force majeure clause is to limit damages following non-performance, it is common for courts to interpret them narrowly. Even if a court agrees that the parties could not have foreseen a global pandemic, it may find government-mandated shutdowns, transportation difficulties, funding, and employment issues as the real causes of non-performance— which are arguably more foreseeable than global pandemics. Courts will focus on the question of causation for non-performance, as it did pre-pandemic, which could produce findings that foreseeable, intervening events caused non-performance and not the pandemic.

Watch for Part 2 of Brian's article in the 4/28 Legal Connections Page. ■

### What is a Force majeure clause?

Force majeure clauses are contractual provisions allocating risk and providing defense for non-performance when circumstances beyond the contracting parties' control make contractual obligations impracticable or impossible. Every industry faces unique

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## YOUTH AND EMPLOYMENT: WHAT YOU NEED TO KNOW

Generally, minors under the age of 14 cannot be employed. Minors between the ages of 14 and 16 may be employed in occupations other than manufacturing or mining as long as the employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being. Children employed by their parents and minors engaging in certain occupations, such as acting and newspaper delivery, are exempt from minimum age requirements. Minors under the age of 14 may also be employed on a farm owned or operated by their parents or guardian. However, regardless of age, minors are



BY: REBECCA HILL

prohibited from employment in occupations deemed hazardous by the Secretary of Labor or Ohio Director of Commerce unless an express exemption applies.

Ohio child labor law requires minors to obtain a work permit before the commencement of employment. Minors aged between 16 and 17 are not required to obtain a work permit for employment during summer break. Only the superintendent or chief administrative officer of the school district where the minor resides may issue the permit. The application for the work permit requires supporting documentation related to the minor's age, physical fitness, school record, and information identifying the employer and type of

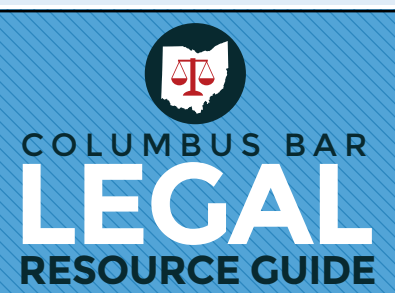
work to be performed.

Child labor law also restricts the hours of employment for minors. Generally, minors between 14 and 15 years of age may not work during school hours or more than 3 hours per day and only for a maximum of 18 hours per week when school is in session. Minors aged between 14 and 15 years are also restricted to working between the hours of 7 a.m. and 7 p.m.. Minors aged 16 and older are restricted work hours to between 6 a.m. and 11 p.m. on school nights. All minors, regardless of age, must be given a rest break after 5 hours of continuous work.

In Ohio, employers are obligated to provide minor employees with a written agreement with respect to the rate of pay and to provide the minor

employee with a wage statement each payday. Employers may not reduce the minor employee's rate of pay without providing 24 hours' notice and are not permitted to reduce the minor employee's compensation because of presumed negligence or failure to comply with rules, breakage of machinery, or alleged incompetence to produce work or perform labor according to any standard of merit. Employers are also required to maintain records relating to the minor's employment and to post a notice on Ohio child labor law in plain view on the employer's premises.

Read the full article in the Fall 2022 Columbus Bar Lawyers Quarterly. ■



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