

## COVID-19: UPDATE – NEW JERSEY AND NEW YORK EXECUTIVE ORDERS' IMPACT ON CONSTRUCTION PROJECTS

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### Construction & Infrastructure Alert

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### NEW JERSEY

Governor Murphy issued the Statewide “Stay at Home” Order, Executive Order No. 107 (E.O. 107), on March 21, 2020, which closed all non-essential retail businesses and ordered that, where practicable, all other businesses must allow their employees to work from home or “telework.” All construction projects within New Jersey were permitted to continue until Governor Murphy announced on April 8, 2020, that all non-essential construction must stop by 8 p.m. on April 10, 2020.

#### Construction

As of 8 p.m. on Friday, April 10, 2020, the “physical operation” of all non-essential construction projects must end; only essential construction projects in New Jersey can continue. Executive Order No. 122 (E.O. 122) identifies the following as essential construction projects:

#### *Residential*

- Projects already underway involving individual single-family homes, or an individual apartment unit where an individual already resides, with a construction crew of 5 or fewer individuals. This includes additions to single-family homes such as solar panels.
- Projects already underway involving a residential unit for which a tenant or buyer has already entered into a legally binding agreement to occupy the unit by a certain date, and construction is necessary to ensure the unit's availability by that date.

#### *Health care*

- Projects necessary for the delivery of health care services, including but not limited to hospitals, other health care facilities, and pharmaceutical manufacturing facilities.

#### *Transportation*

- Transportation projects, including roads, bridges, and mass transit facilities or physical infrastructure, including work done at airports or seaports.

#### *Utilities*

- Utility projects, including those necessary for energy and electricity production and transmission, and any decommissioning of facilities used for electricity generation.

## ***Affordable Housing***

- Residential projects that are exclusively designated as affordable housing.

## ***Schools***

- Projects involving pre-K-12 schools, including but not limited to projects in Schools Development Authority districts, and projects involving higher education facilities.

## ***Goods for Online & Essential Retail***

- Projects involving facilities at which any one or more of the following takes place: the manufacture, distribution, storage, or servicing of goods or products that are sold by online retail businesses or essential retail businesses, as defined by Executive Order No. 107 (2020) and subsequent Administrative Orders adopted pursuant to that Order.

## ***Data Centers***

- Projects involving data centers or facilities that are critical to a business's ability to function.

## ***Social Services***

- Projects necessary for the delivery of essential social services, including homeless shelters.

## ***COVID-19***

- Any project necessary to support law enforcement agencies or first responder units in their response to the COVID-19 emergency.

## ***Government Contracts***

- Any project that is ordered or contracted for by Federal, State, county, or municipal government, or any project that must be completed to meet a deadline established by the Federal government.

## ***And two catch-alls:***

- Any work on a non-essential construction project that is required to physically secure the site of the project, ensure the structural integrity of any buildings on the site, abate any hazards that would exist on the site if the construction were to remain in its current condition, remediate a site, or otherwise ensure that the site and any buildings therein are appropriately protected and safe during the suspension of the project.
- Any emergency repairs necessary to ensure the health and safety of residents.

## **New On Site Protocols for Construction, Manufacturing, and Warehousing to Prevent the Spread of COVID-19**

E.O. 122 requires that essential construction projects, manufacturing businesses, and warehousing businesses implement the following protocols on site:

- Prohibit non-essential visitors.

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- Limit worksite meetings, inductions, and workgroups to groups of fewer than 10 people.
- Require individuals to stay at least 6 feet apart wherever possible.
- Stagger work start and stop times.
- Stagger lunch breaks and work times.
- Restrict the number of people who can access common areas, such as restrooms and breakrooms, at the same time.
- Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal.
- Limit the sharing of tools, equipment, and machinery.
- Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to workers and visitors.
- Require frequent sanitization of high-touch areas like restrooms, breakrooms, equipment, and machinery.
- Require workers and visitors to wear cloth face coverings, in accordance with Center for Disease Control and Prevention (“CDC”) recommendations (information from the CDC is available here), and wear gloves.
  - Except – face coverings are not required where doing so would inhibit that individual's health or for children under the age of two.
  - Businesses must provide, at their expense, the face coverings and gloves for their employees.
  - If a visitor refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline entry to the individual.
  - Workers and visitors can wear surgical-grade masks or other more protective face coverings if they already have such equipment, or if the business is otherwise required to provide such worker with more protective equipment due to the nature of the work involved.
  - If an individual declines to wear a face covering on store premises due to a medical condition, neither the business nor its staff shall require the individual to produce medical documentation verifying the condition.

## **Distribution**

Marine terminals in the Port of New York and New Jersey are open and fully operational. Visit <https://www.panynj.gov/port/en/index.html> for up-to-date information on the ports.

On April 8, Governor Murphy increased trucking weight limits on New Jersey highways and toll roads from 40 tons to 46 tons for trucks carrying COVID-19 related supplies. Information is available here.

## **Retail**

“Hardware and home improvement stores” are classified as essential retail stores that can remain open. On April 8, Governor Murphy reported that additional, mandatory guidelines will be put in place for all essential retail stores. E.O. 122 requires that essential retail stores do the following:

- Limit occupancy to 50 percent of the store's approved capacity.
- Provide special shopping hours for high-risk individuals as defined by the CDC (information from the CDC is available here).
- Erect physical barriers between customers and cashiers and baggers where feasible or otherwise ensure that individuals stay 6 feet apart (except at time of payment or exchange of goods)
- Place conspicuous signage at entrances and throughout the store, if applicable, alerting staff and customers that they must stay 6 feet apart.
- Demarcate 6 feet of spacing in check-out lines.
- Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal.
- Provide employees break time for repeated handwashing throughout the workday.
- Arrange for contactless pay options, pickup, and/or delivery of goods wherever feasible (while taking into account populations that do not have access to internet service).
- Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers.
- Require frequent sanitization of high-touch areas like restrooms, credit card machines, keypads, counters and shopping carts.
- Require workers and customers to wear cloth face coverings while in the store and require workers to wear gloves when in contact with customers or goods.
  - Except – face coverings are not required where doing so would inhibit that individual's health or for children under the age of two.
  - Businesses must provide, at their expense, the face coverings and gloves for their employees.
  - If a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline entry to the individual, unless the business is providing medication, medical supplies, or food, in which case the business policy should provide alternate methods of pickup and/or delivery of such goods.
  - Workers and customers can wear surgical-grade masks or other more protective face coverings if they already have such equipment, or if the business is otherwise required to provide such worker with more protective equipment due to the nature of the work involved.



- If an individual declines to wear a face covering on store premises due to a medical condition, neither the essential retail business nor its staff shall require the individual to produce medical documentation verifying the condition.

## **New COVID-19 Exposure Policies for Construction, Manufacturing, Warehousing, and Retail**

Exposure to COVID-19 Protocols: E.O. 122 requires that essential retail businesses, warehousing businesses, manufacturing businesses, and businesses performing essential construction projects implement the following protocols:

- Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day.
- Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws.
- Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness. (Information from the CDC regarding cleaning and disinfecting your facilities is available [here](#).)
- Continue to follow guidelines and directives issued by the New Jersey Department of Health, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment.

Cleaning Protocols for businesses allowed to maintain in-person operations:

- Clean and disinfect high-touch areas routinely in accordance with CDC guidelines, particularly in spaces that are accessible to staff, customers, tenants, or other individuals, and ensure cleaning procedures following a known or potential exposure in a facility are in compliance with CDC recommendations. (Information from the CDC regarding cleaning and disinfecting your facilities is available [here](#).)
- Otherwise maintain cleaning procedures in all other areas of the facility.
- Ensure that the facility has a sufficient number of workers to perform the above protocols effectively and in a manner that ensures the safety of occupants, visitors, and workers.

Permitted Employee Letters for NJ Travel: If you have employees traveling to work in New Jersey, the State recommends that employers provide employees with a letter indicating that the employee works in a business that is permitted to continue operating under E.O. 107.

## **NEW YORK**

After gradually reducing non-essential workforces over the last two weeks, New York directed non-essential businesses to close in-office personnel functions effective at 8 p.m. on Sunday, March 22, under Governor Cuomo's directive, "New York State on PAUSE," (Policy that Assures Uniform Safety for Everyone). New York State on PAUSE supplants any local laws and statutes. While all construction operations, suppliers, vendors, and other providers to those operations were initially exempt from the restrictions, New York has now re-defined essential business in the construction context.

## Construction

On March 28, 2020, Governor Cuomo halted all non-essential construction in New York. Executive Order 202.13 that followed his announcement authorized the Empire State Development (“ESD”), the umbrella organization for New York’s Urban Development Corporation and Department of Economic Development, to determine which construction projects should be deemed essential. Under the ESD guidance, only essential construction, including roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters, and non-essential “emergency construction” may continue. The guidance provides an example of such emergency construction: “a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site.” Social distancing must be maintained at every essential construction or emergency non-essential construction site. Sites that cannot maintain social distancing and best safety practices must shut down. Violations are subject to fines of up to \$10,000 per violation. Construction work does not include a single worker, who is the sole employee/worker on a job site.

An interactive map of essential active construction sites in New York City has been published by the New York City Department of Buildings.

Building cleaning and maintenance remain exempt.

## Manufacturing

New York will allow only “Essential Manufacturing” to continue. Manufacturing in the following categories are exempt:

- food processing, manufacturing agents, including all foods and beverages;
- chemicals;
- medical equipment/instruments;
- pharmaceuticals;
- sanitary products including personal care products regulated by the Food and Drug Administration;
- telecommunications;
- microelectronics/semi-conductor;
- food-producing agriculture/farms;
- household paper products; and
- defense industry and the transportation infrastructure.

Note that defense industry and transportation infrastructure were added to the list of essential manufacturing businesses within the last few days.

## Distribution

Certain essential services, including warehouse/distribution and fulfillment and storage for essential businesses, are exempt from the executive order. Transportation infrastructure and mail and shipping services are also exempt, but there is no specific mention of trucking as in New Jersey.

## Retail

Hardware, appliance, and building materials stores are exempt from the executive order because they are essential retail. Note that the guidance was recently clarified specifically to include appliance stores.

Importantly, vendors, suppliers, or other companies that provide support to an essential business that is required for the essential business's operation are exempt from the restrictions. Non-essential businesses operating in New York can seek to become an essential business by request. ESD is considering exemptions for individual businesses with an "eye towards public health."

The situation is fluid and is changing daily, if not hourly. We are monitoring the "Stay at Home" order in New Jersey and the Executive Orders following New York State on PAUSE. If you need assistance with these or similar government actions, please contact the authors listed below.

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