



HENDRICK PHILLIPS  
SALZMAN & SIEGEL<sup>PC</sup>  
ATTORNEYS AT LAW

**April 6, 2020**

**State Executive Orders:  
Continuation or Suspension of Construction During COVID-19?**

Throughout the United States, state and local governments continue to issue and update orders restricting activities of individuals and businesses in response to the COVID-19 pandemic. Generally, such orders provide exemptions from the restrictions for essential businesses, services and/or functions, and most states consider performance of construction an essential service. Pennsylvania, New York and Washington are exceptions, taking a much more restrictive approach limiting construction to only certain types of buildings and situations. Some local governments in California and elsewhere have also put some restrictions on construction.

This memorandum is intended to provide information and guidance with respect to orders issued by various state and local governments. Please keep in mind that this is a very fluid situation. State and local governments continue to issue and update orders, sometimes as frequently as hourly. We will continue to monitor the situation and update this information as quickly as possible, but please check with us or your state and local governments for the most updated information and restrictions.

Of course, the health and safety of employees is the highest priority for all contractors. Thus, as construction proceeds in many states, please ensure that you are following the latest guidelines issued by OSHA and the Centers for Disease Control (“CDC”) with respect to COVID-19 and safety and health in the workplace.

**Federal Government**

The Cybersecurity and Infrastructure Security Agency (“CISA”), a part of the U.S. Department of Homeland Security, released guidance on March 19, 2020, following up on President Trump’s March 16, 2020 updated Coronavirus Guidance for America. Many states refer to the CISA list of 16 critical infrastructure sectors in announcing state policy and determining what are essential activities that can continue. The CSA document identifies 16 critical infrastructure sectors. The CISA Guidance does, not reference construction specifically, but construction to support a critical infrastructure sector is implied. Included in the 16 critical infrastructure sectors are:

- Commercial Facilities Sector
- Critical Manufacturing Sector
- Defense Industrial Base Sector
- Energy Sector
- Chemical Sector
- Financial Services Sector
- Government Facilities Sector

CISA states that its guidance is not binding and is intended to help inform decisions by state and local jurisdictions but does not compel prescriptive action. The list does not impose any mandates on state or local jurisdictions or private companies.

On March 28, 2020, CISA issued an “Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During Covid-19 Response” and “Guidance on the Essential Critical Infrastructure Workforce.” The Advisory Memorandum includes workers engaged in maintaining and repairing critical infrastructure, working construction, public works, workers who support crucial supply chains and workers who enable functions for critical structures. Under the heading of Public Works and Infrastructure Support Services, CISA lists workers such as plumbers, electricians, exterminators, builders, contractors, HVAC technicians, landscapers and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, businesses and buildings such as hospitals, senior living facilities, and any temporary construction required to support COVID-19 response.

CISA emphasizes that its list of critical infrastructure sectors, workers and functions that should continue during COVID-19 response is advisory in nature and is not a federal directive or standard and is not intended as an exclusive list. Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion. Essential businesses that cannot work remotely are to use strategies to reduce the likelihood of spreading COVID-19 disease, including separating staff by off-setting shift hours or days and social distancing.

#### **Alabama** (updated March 27, 2020)

Construction is not listed as a non-essential business in the statewide March 27, 2020 Order of the State Health Officer and may continue. All non-work gatherings of 10 persons or more and all non-work gatherings of any size that cannot maintain a consistent 6’ distance between persons are prohibited effective March 28, 2020 at 5:00 p.m. Non-essential businesses, venues and activities are closed to non-employees. No statewide stay-at-home order has been issued by Governor Kay Ivey. There is a local stay-at-home order in Jefferson County. Jefferson County’s Health Officer ordered all nonessential businesses and services be closed as of 5 pm on March 20, 2020.

#### **Arizona** (updated April 3, 2020)

On March 23, 2020, Governor Ducey issued an order prohibiting counties, cities and towns from making or issuing any order, rule or regulation that restricts or prohibits any person from performing an essential function. The order specifically includes construction as an Essential Infrastructure Operation, and it includes Building and Construction Tradesmen and Tradeswomen and other trades as Essential Businesses and Operations. Construction can continue, but the Governor’s March 30, 2020 Stay-At-Home Order (Executive Order 2020-18) requires construction business to “establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Arizona Department of Health

Services.” The March 30, 2020 updated recommendations of the Arizona Department of Health Services require essential businesses to “implement rules and procedures that facilitate physical distancing and spacing of individuals of at least 6 feet.”

### **California** (updated April 1, 2020)

Governor Newsome issued a statewide stay-at-home order on March 19, 2020. As outlined in the Order, construction workers are included as critical infrastructure workers. However, local jurisdictions have put in place their own orders, some of which are more restrictive than the state mandate.

#### Local Action:

### **San Francisco Area**

The counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara, as well as the city of Berkeley have issued a revised stay at home order which is effective through May 3. Under the order, which by its terms is intended as a “complement” to the state-wide order, permissible activities are more limited.

“Essential Businesses” which are allowed to remain open and operating include Construction, but only of the types listed below:

1. Projects immediately necessary to the maintenance, operation, or repair of Essential Infrastructure;
2. Projects associated with Healthcare Operations, including creating or expanding Healthcare Operations, provided that such construction is directly related to the COVID-19 response;
3. Affordable housing that is or will be income-restricted, including multi-unit or mixed-use developments containing at least 10% income-restricted units;
4. Public works projects if specifically designated as an Essential Governmental Function by the lead governmental agency;
5. Shelters and temporary housing, but not including hotels or motels;
6. Projects immediately necessary to provide critical non-commercial services to individuals experiencing homelessness, elderly persons, persons who are economically disadvantaged, and persons with special needs;
7. Construction necessary to ensure that existing construction sites that must be shut down under this Order are left in a safe and secure manner, but only to the extent necessary to do so; and
8. Construction or repair necessary to ensure that residences and buildings containing Essential Businesses are safe, sanitary, or habitable to the extent such construction or repair cannot reasonably be delayed.

“Essential Infrastructure” is defined to include airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).

The text of the new order can be found here:

<https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Pages/order-health-officer-033120.aspx>

### **Los Angeles County**

Construction work is allowed to continue. Essential workers include construction workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects, including but not limited to, public works construction, construction of commercial, office and institutional buildings, and construction of housing.

### **Colorado (updated March 24, 2020)**

Governor Polis issued a statewide order, Executive Order D 2020 013, which requires employers to reduce their in-person work forces by fifty percent beginning on March 24, 2020 and continuing until April 10, 2020. The order directs the Colorado Department of Public Health and Environment (CDPHE) to issue a public health order defining critical infrastructure and other activities that are exempt from the directive of the Governor’s order. The order does not apply to “authorized businesses” that the public health order identifies as exempt from the Governor’s order, or “to any employer that can certify that employees are no closer than six feet from one another during any part of their work hours.”

The Public Health Order 20-24 issued by CDPHE provides that Critical Businesses are exempt from Executive Order D 2020 013 and are encouraged to remain open. Critical Businesses are required to “comply with guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Health and Environment and any applicable local health requirement.” They are also “encouraged to comply with Social Distancing Requirements and all PHOs [Public Health Orders] currently in effect to the greatest extent possible.” Construction is listed as a Critical Business; therefore, construction can continue.

### **Connecticut (updated April 2, 2020)**

Governor Lamont’s March 20, 2020 Executive Order 7H, which required non-essential businesses to reduce their personnel at each business location by 100%, includes construction as an “essential

business.” In accordance therewith, the Connecticut Department of Economic and Community Development issued a guidance document which stated that construction includes:

- all skilled trades such as electricians, HVAC and plumbers;
- general construction, both commercial and residential;
- other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes; and
- planning, engineering, design, bridge inspection, and other construction support activities.

The essential businesses designated in the guidance are not subject to the in-person restrictions. Governor Lamont’s Executive Order 7N, issued on March 26, 2020, prohibited gatherings of six (6) or more people. The 6-person limitation does not apply to government operations, private workplaces, retail establishments, or other activities that are not social or recreational gatherings.

Governor Lamont’s Executive Order 7H stated that essential businesses include, but are not limited to, the 16 critical infrastructure sectors as defined by the Cybersecurity and Infrastructure Security Agency (CISA) of the U.S. Department of Homeland Security.

#### **Florida** (updated April 3, 2020)

On April 1, 2020, Governor Ron DeSantis issued a state-wide stay-at-home Executive Order, which went into effect at 12:01 a.m. on April 3, 2020 and expires on April 30, 2020.

Pursuant to the stay-at-home order, senior citizens and individuals with significant underlying are required to stay at home and take all measures to limit risk of exposure to COVID-19. Further, all persons in Florida are required to limit their movements and personal interactions outside of their home to only those necessary to obtain essential services or conduct essential activities.

Florida defines “Essential Services” as:

- The list detailed by the U.S. Department of Homeland Security in its Guidance on Essential Critical Infrastructure Workforce v. 2 (March 28, 2020); and,
- The essential businesses set forth in Executive Order 20-89, which included the following construction-related essential business designations:
  - Contractors and other tradesman, appliance repair personnel, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operations of residences and other structures;
  - Open construction sites, irrespective of the type of building; and

- Architectural, engineering, or land surveying services.

Accordingly, construction is allowed to continue in Florida. Notably, the March 28, 2020 CISA Advisory Memorandum on Identification of Essential Critical Infrastructure Workers adopted by Florida includes individuals engaged in “maintaining and repairing critical infrastructure” and “working construction.” Essential Critical Infrastructure Workers include those working on Commercial Facilities and Government Facilities.

All prior executive orders relating to COVID-19 remain in effect in Florida. In general, prior orders that set forth restrictions not necessarily overridden by the stay at home order are:

- Executive Order 20-80, which required all individuals that fly into Florida from states with substantial community spread, specifically including Connecticut, New Jersey, and New York, to self-isolate in Florida for the shorter of 14 days or the duration of their trip;
- Executive Order 20-86, which required all individuals that drive into Florida from states with substantial community spread, specifically naming Louisiana, to self-isolate in Florida for the shorter of 14 days or the duration of their trip. However, this Order exempted any person engaged in “commercial activities”;

The Governor’s stay-at-home order supersedes any conflicting local action or order issued by local officials in response to COVID-19. Accordingly, the state-wide order governs.

Stay-At-Home Executive Order 20-91 found here:

[https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-91-compressed.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf)

Amendment clarifying local application via Executive Order 20-92 found here:

[https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-92.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-92.pdf)

## **Georgia** (updated April 3, 2020)

On April 2, 2020, Governor Kemp issued a statewide shelter-in-place order effective at 6:00 p.m. on Friday, April 3, 2020 and expiring at 11:59 p.m. on Monday, April 13, 2020. All residents and visitors to Georgia are required to remain in their place of residence and take every possible precaution to limit social interaction, unless they are:

1. Conducting or participating in Essential Services.
2. Performing Necessary Travel.
3. Are engaged in the performance of, or travel to and from, the performance of Minimum Basic Operations for a business,

- establishment, corporation, non-profit corporation, or organization not classified as Critical Infrastructure; or
4. Are part of the workforce for Critical Infrastructure and are actively engaged in the performance of, or travel to and from, their respective employment.

Construction is allowed to continue in Georgia. Georgia follows the definition of “Critical Infrastructure” and “essential critical infrastructure workforce” as defined in the March 19, 2020 and March 28, 2020 guidance memoranda issued by the Cybersecurity and Infrastructure Security Agency (“CISA”) of the U.S. Department of Homeland Security. The March 28, 2020 CISA Advisory Memorandum on Identification of Essential Critical Infrastructure Workers includes individuals engaged in “maintaining and repairing critical infrastructure” and “working construction.” Essential Critical Infrastructure Workers includes those working on Commercial Facilities and Government Facilities.

Critical Infrastructure businesses that continue in operation are to implement measures which mitigate the exposure and spread of COVID-19 among its workforce. Such measures may include, but are not limited to:

1. Screening and evaluating workers who exhibit signs of illness, such as a fever over 100.4 Fahrenheit, cough, or shortness of breath;
2. Requiring workers who exhibit signs of illness to not report to work or to seek medical attention;
3. Enhancing sanitation of the workplace as appropriate;
4. Requiring hand washing or sanitation by workers at appropriate places within the business location;
5. Providing personal protective equipment as available and appropriate to the function and location of the workers within the business location;
6. Prohibiting gatherings of workers during working hours;
7. Permitting workers to take breaks and lunch outside, in their office or personal workspace, or in such other areas where proper social distancing is attainable;
8. Implementing teleworking for all possible workers;
9. Implementing staggered shifts for all possible workers;
10. Holding all meetings and conferences virtually, whenever possible;
11. Delivering intangible services remotely wherever possible;
12. Discouraging workers from using other workers’ phones, desks, offices, or other work tools and equipment;
13. Prohibiting handshaking and other unnecessary person-to-person contact in the workplace;

14. Placing notices that encourage hand hygiene at the entrance to the workplace and in other workplace areas where they are likely to be seen;
15. Providing disinfectant and sanitation products for workers to clean their workspace, equipment, and tools; and
16. Increasing physical space between workers' worksites to at least six (6) feet.

The Order states that operation of Critical Infrastructure shall not be impeded by county, municipal, or local ordinance. The Georgia Department of Economic Development is authorized to give guidance to any business, corporation, organization, or industry trade group regarding its status as Critical Infrastructure.

No business, establishment, corporation, non-profit corporation, organization, or county or municipal government shall allow more than ten (10) persons to be gathered at a single location if such gathering requires persons to stand or be seated within six (6) feet of any other person.

Any person who violates the Order shall be guilty of a misdemeanor. Officials enforcing the Order should take reasonable steps to provide notice prior to issuing a citation of making an arrest.

Governor Kemp's prior executive order of March 14, 2020 allows contractors to retain "private professional providers" to perform plan review and inspection services pursuant to O.C.G.A. §8-2-26(g)(5) immediately. This executive action would allow construction projects to continue to meet inspection requirements in situations where a local jurisdiction ceases providing inspection services due to COVID-19.

The Governor's shelter-in-place order supersedes any conflicting local action or order issued by local officials in response to COVID-19. Accordingly, the state-wide order governs.

Shelter-in-Place Executive Order found here:

<https://gov.georgia.gov/document/2020-executive-order/04022001/download>

### **Illinois** (updated April 3, 2020)

Governor J.B. Pritzker issued a stay-at-home order on March 20, 2020. Construction is expressly included within the definition of Essential Infrastructure. The Illinois order also expressly provides that "Essential Infrastructure" is to be broadly defined. The Illinois order currently extends through April 30, 2020.



## **Indiana** (updated March 23, 2020)

Most recent Executive Order issued by Governor on March 24, 2020, effective as of 11:59 pm on March 24, 2020. All individuals are ordered to stay at home, except as allowed in this Executive Order. Must maintain 6' distancing. May leave homes for Essential Activities, Essential Government Functions or to participate in Essential Businesses and Operations. Construction is listed as an Essential Infrastructure activity.

All Essential Businesses and Operations are encouraged to remain open and shall comply with the Social Distancing Requirements, including maintaining 6' social distancing for both employees and members of the general public at all times.

Individuals may leave their homes for:

- Health and Safety
- Necessary Supplies and Services
- For Outdoor Activity
  
- For Certain Types of Work

To perform work providing essential products and services at Essential Businesses or Operations, which includes Essential Governmental Functions and Essential Infrastructure.

- Essential Infrastructure

Individuals may leave their homes in order to provide services or perform work to offer, provision, operate, maintain and repair Essential Infrastructure.

Essential infrastructure includes, but is not limited to, distribution, construction (including but not limited to construction related to this public health emergency, hospital construction, essential business construction and housing construction), building management and maintenance.

The phrase "Essential Infrastructure" shall be broadly construed in order to avoid any impacts to essential infrastructure, broadly defined.

## **Louisiana** (updated March 29, 2020)

Governor Edwards issued a statewide stay-at-home order that went into effect at 5:00 pm on Monday March 23, 2020. Stay-at-home order does not include essential workers. Guidance issued March 22, 2020 lists construction as essential infrastructure.

### **Maryland** (updated April 2, 2020)

Governor Hogan issued a stay-at-home Executive Order on March 30, 2020 effective at 8:00 p.m. on March 30<sup>th</sup>. The Order did not change what businesses are deemed essential or nonessential. Commercial and residential construction can continue in Maryland. Maryland follows the federal guidance published by the Cybersecurity and Infrastructure Security Agency (CISA) of the U.S. Department of Homeland Security pertaining to essential businesses (currently described at <https://cisa.gov/identifying-critical-infrastructure-during-covid-19>). The Maryland Office of Legal Counsel issued Interpretative Guidance pertaining to Governor Hogan's March 23, 2020 Executive Order which prohibited large gatherings and required closing of non-essential businesses and other establishments. The Interpretive Guidance states specifically under the Commercial Facilities Sector (which is one of the 16 essential sectors identified in the CISA guidance) that the sector includes: "building and property maintenance companies, including without HVAC service companies roofers, environmental services companies, exterminators, arborists, and landscapers" and "commercial and residential construction companies."

Essential businesses are allowed to remain open and must make every effort to scale down their operations to reduce the number of required staff, to limit interactions with customers, and to institute telework for as much of the workforce as practical. Non-essential businesses are closed to the general public as of 5:00 pm on March 23, 2020. Gatherings of more than 10 people are prohibited. Governor Hogan's Executive Order remains in effective until rescinded or superseded.

Maryland has a COVID-19 Layoff Aversion Fund and small business relief fund. Information about these programs is available at [businessexpress.maryland.gov](http://businessexpress.maryland.gov).

### **Massachusetts** (updated April 2, 2020)

Governor Baker's March 23, 2020 Emergency Order on Essential Services, updated on March 31, 2020, lists businesses that provide essential services and workforces. The list of essential services under Construction-Related Activities includes:

- Workers such as plumbers, electricians, exterminators, builders, contractors, HVAC technicians, landscapers, inspectors and other service providers who provide services that are necessary to maintaining the safety, sanitation and essential operation of residences, businesses and buildings such as hospitals, health care facilities, senior living facilities, and any temporary construction required to support COVID-19 response.
- Workers -including contracted vendors - who support the operation, inspection and maintenance and repair of essential public works facilities and operations, including construction of critical or strategic infrastructure. Critical or strategic infrastructure includes public works construction, including construction of public schools, colleges and universities and construction of state facilities.

- Workers performing housing construction related activities, including construction of mixed-use projects that include housing.
- Workers supporting the construction of housing, including those supporting government function related to the building and development process, such as inspections, permitting and plan review services

Governor Baker's order supersedes and renders inoperative any order or rule issued by a municipality that will or might in any way impede or interfere with the objectives of the Governor's Order, including any order or rule issued by a municipality that would interfere with ensuring the continued operation of COVID-19 Essential Services. Boston Mayor Martin Walsh ordered the halt of all but essential construction work in Boston (see below). It would seem that the Governor's Order supersedes the Boston Mayor's prior order shutting down non-essential construction sites in Boston.

All businesses and organizations that do not provide COVID-19 Essential Services are required to close their physical workplaces and facilities to workers, customers and the public. These businesses are encouraged to continue operations remotely. Gov. Baker's order remains in effect until May 4, 2020.

On March 31, 2020, the Massachusetts Building Trades Council asked Governor Baker to suspend all non-emergency and non-essential construction work statewide from April 3<sup>rd</sup> through April 30<sup>th</sup>. The North Atlantic States Regional United Brotherhood of Carpenters has directed its members to ceasing working in Massachusetts on all construction site other than health care facilities, effective April 6, 2020, until it is safe to do so.

Local Action:

**Boston**

As of March 17, 2020, the City suspended all regular activity at construction sites. New regular projects cannot be started unless they qualify as essential work. After sites have been secured by March 23, 2020, skeleton crews will be permitted for the remainder of the suspension to ensure safety. The only work that will be permitted is emergency work, which needs to be approved by the City of Boston's Inspectional Services Department. Essential work includes emergency utility, road or building work such as gas leaks and water leaks, mandated building or utility work, work at public health facilities and shelters, and other work necessary to render occupied residential buildings fully habitable.

In addition to the list of essential construction projects, the City will, on a case-by-case basis, review requests for exceptions to the temporary construction moratorium. These may be granted by the Commissioner of Inspectional Services for building-related work. These will be granted if they support increased public health and safety.

**Michigan** (updated March 23, 2020)

Governor Whitmer issued a statewide stay-at-home order on March 23, 2020, which becomes effective at 12:01 a.m. on Tuesday, March 24, 2020 and remains in effect for at least three weeks. The order specifically references the CISA guidelines in reference to essential infrastructure, but there is no specific reference to construction activities.

**Minnesota** (updated March 29, 2020)

Gov. Walz issued an Executive Order on March 25, 2020, effective at 11:59 p.m. on March 27, 2020 and extending to 5 p.m. on April 10, 2020, ordering all persons currently living in Minnesota to stay at home except to engage in exempt activities and Critical Sector work. All workers who can work from home must do so. Workers who perform work that cannot be done at their home and can be done only at a place of work outside of their home are exempt if their work is listed under Exemptions – Critical Sectors.

Construction and critical trades, including workers in the skilled trades such as electricians, plumbers, HVAC and elevator technicians, and other related construction of all kind, are explicitly identified as a critical service exemption in the governor’s order. The critical services exemptions apply only to travel to and from an individual’s residence and place of work and an individual’s performance of work duties that cannot be done at home. Travel may include transportation to and from childcare or school settings as necessary to ensure the safe care of children.

**Missouri** (updated April 6, 2020)

Effective April 6, 2020 and until April 24, 2020, the Missouri Department of Health and Senior Services has issued a statewide stay at home order. The order provides that “any entity that does not employ individuals to perform essential worker functions, as set forth in guidance provided by CISA shall adhere to the limitations on social gatherings and social distancing” specified in the order. Because the order applies the CISA guidelines, construction work is permitted. Gatherings are limited to 10 people or less and all workers and others at any gathering must maintain a social distance of six feet or more. The state-wide order does not limit the right of local authorities to make such further ordinances, rules, regulations, and orders not inconsistent with the Order which may be necessary for the particular locality under the jurisdiction of such local authorities.

Local Action:

The following cities and counties have issued stay at home orders. Definitions and specifics related to the construction industry vary by local jurisdiction.

### **Kansas City**

“Essential Infrastructure” shall mean to include, but not be limited to, public works construction, construction of housing, airport operations, water, sewer, gas, electrical, oil refining, railroad and rail systems, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential infrastructure for computing services, business infrastructure, communications, and web-based services).

### **Jackson County (Kansas City area)**

Essential Infrastructure includes, but is not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

### **St. Louis (including St. Louis County, Jefferson County, and Perry County)**

Construction is either exempt from the stay at home restrictions or is deemed an Essential Activity (in Perry County).

### **Branson**

Construction is specifically designated as an Essential Business by the city’s Emergency Management Director and so is permitted.

### **Cass County, Clay County, Jackson County, Platte County, and Ray County**

In each of these counties, plumbers and electricians fall within the definition of Essential Business. Public works construction and housing construction are included within the definition of Essential Infrastructure. Other construction activity falls within the stay at home orders.

### **Cole County, Randolph County, and the City of Columbia**

In each of these jurisdictions, construction is included as an Essential Activity and so is permitted.

### **Springfield-Greene County**

Construction is included with the definition Essential Business and so is permitted.

### **Montana** (updated April 6, 2020)

Governor Bullock issued an Executive Order on March 26, 2020 directing all individuals to stay at home to the greatest extent possible. Persons may leave their homes only for Essential Activities or to operate Essential Businesses and Operations, which includes Essential Infrastructure. Individuals may leave their residence to perform work to provide, maintain or repair Essential Infrastructure which includes construction, including housing construction. The governor's order includes "Critical trades" under "Essential Businesses and Operations" and lists, among others, building and construction tradesmen and tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, operating engineers, HVAC, painting and other service providers who provide services that are necessary to maintaining the safety, sanitation and essential operation of residences, Essential Activities and Essential Businesses and Operations.

Governor Bullock's order defines Essential Businesses and Operations to encompass the workers identified in the Cybersecurity & Infrastructure Security Agency March 19, 2020 Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, available at <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>. Essential Infrastructure is to be construed broadly.

### **New Jersey** (updated March 29, 2020)

Currently, construction can continue in New Jersey. Effective March 21, 2020 at 9:00 PM, Executive Order 107 requires all residents to remain at home or their place of residence, unless they fall into an exception. Residents reporting to or performing their job are exempt from the stay at home order.

Businesses are required to accommodate their workforce by allowing them to telework or work from home whenever possible. To the extent workers cannot perform their functions via teleworking or working from home, the businesses are required to make best efforts to reduce staff onsite to the minimal number necessary to ensure essential operations can continue. Construction is included in the list of examples of employees who need to be physically present at work to perform their job duties.

### **New Mexico** (updated March 24, 2020)

The New Mexico Department of Health issued a Public Health Order that directs all business, except "essential businesses", to reduce their in-person workforce by 100%. The order allows "essential businesses" to remain open, but they have to minimize their operations and staff to the greatest extent possible. "Essential businesses" must adhere to social distancing protocol to the greatest extent possible, including maintaining at least 6' social distancing from others, avoiding person-to-person contact, and directing employees to wash their hands frequently. They must also ensure that all surfaces are cleaned routinely. The definition of "essential businesses" includes

public works construction, commercial construction, and residential construction. Thus, construction can continue.

#### **New York** (updated March 29, 2020)

The New York Office of Empire State Development issued a guidance document for determining whether a business enterprise is subject to workforce reduction under New York's Executive Orders at 11:00 a.m. on March 27, 2020. This guidance document limits construction in New York as follows:

- All non-essential construction must shut down except emergency construction (e.g. 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.)
- Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing and homeless shelters. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/ entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with city/local governments. This will include fines of up to \$10,000 per violation.
- For purposes of this section construction does not include a single worker, who is the sole employee/worker on a job site.

Effective March 22, 2020 at 8:00 p.m., Executive Order 202.8 required reduction of in-person workforce at any work location by 100%, except for essential services and functions. Originally, according to guidance issued by Governor Cuomo March 20, 2020, construction was classified as an essential service. This was clarified and revised on March 27, 2020.

#### **North Carolina** (updated April 3, 2020)

On March 27, 2020, Governor Roy Cooper issued a state-wide stay-at-home Executive Order, which went into effect on March 30, 2020 at 5:00 p.m. and is in effect for 30 days.

Pursuant to the stay-at-home order, all individuals in the North Carolina are ordered to stay at home except as set forth in the Executive Order and to maintain Social Distance Requirements when outside their residence. Persons may leave their homes only for Essential Activities, Essential Government Operations, or to participate in or access COVID-19 Essential Businesses and Operations.

Under the order, among other defined Essential Activities, individuals may leave their home to perform at businesses authorized to remain open under the Order. North Carolina includes within its list of COVID-19 Essential Businesses the following construction-related categories:

- Businesses, not-for-profit organizations or education institutions operating in the federal critical infrastructure sectors outlined in the March 28, 2020 CISA Advisory Memorandum on Identification of Essential Critical Infrastructure;
- Essential Infrastructure Operations, specifically including “construction (including but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, and essential commercial and housing construction) . . .”
  - The order notes that “Essential Infrastructure Operations” “shall be construed broadly to avoid impacts to essential infrastructure, broadly defined.”
- Critical Trades are defined to include, but are not limited to, building and construction tradesmen and tradeswomen, and other trades including, but not limited to, plumbers, electricians, HVAC, painting, landscaping and other service providers who provide services that are necessary to maintain the safety, sanitation, and essential operations of residence and COVID-19 Essential Businesses and Operations.

Accordingly, construction is allowed to continue in North Carolina. Notably, the March 28, 2020 CISA Advisory Memorandum on Identification of Essential Critical Infrastructure Workers adopted by North Carolina includes individuals engaged in “maintaining and repairing critical infrastructure” and “working construction.” Essential Critical Infrastructure Workers include those working on Commercial Facilities and Government Facilities.

All Essential Businesses, to the extent practicable, must maintain the Social Distancing requirements set forth in the order, which means:

- Maintaining at least six (6) feet distancing from other individuals;
- Washing hands using soap and water for at least twenty (20) seconds as frequently as possible or the use of hand sanitizer;
- Regularly cleaning high-touch surfaces;
- Facilitate online or remote access by customers if possible.

North Carolina’s stay-at-home order allows counties and cities to enact ordinances and issue state of emergency declarations which impose greater restrictions or prohibitions that those set forth in the Governor’s stay-at-home order.

The violation of the stay-at-home order is a Class 2 misdemeanor under North Carolina law.

North Carolina stay-at-home order found here:



<https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

North Carolina's stay-at-home does not prevent local governments from putting additional measures in order.

*Local Action:* (updated March 27, 2020)

The following cities and counties have issued stay-at-home orders:

**Clemmons**

<https://www.clemmons.org/DocumentCenter/View/688/COVID-19---State-of-Emergency---Shelter-in-Place-Order>

**Durham**

[https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20\\_FINAL](https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL)

**Winston-Salem**

<https://www.cityofws.org/DocumentCenter/View/13660/Mayor-Stay-At-Home-Order-for-COVID-19-PDF?bidId=>

**Buncombe County**

[https://www.buncombecounty.org/common/health/Decl%20St%20of%20Em%20BE%20SAFE\\_STAY%20HOME%203-25-2020.pdf](https://www.buncombecounty.org/common/health/Decl%20St%20of%20Em%20BE%20SAFE_STAY%20HOME%203-25-2020.pdf)

**Guilford County**

<https://www.guilfordcountync.gov/home/showdocument?id=10202>

**Madison County**

[https://www.madisoncountync.gov/uploads/5/9/7/0/59701963/covid-19\\_shelter\\_in\\_place\\_psa.pdf](https://www.madisoncountync.gov/uploads/5/9/7/0/59701963/covid-19_shelter_in_place_psa.pdf)

**Mecklenburg County**

<https://www.mecknc.gov/news/Documents/Mecklenburg%20County%20Stay%20at%20Home%20Orders.pdf>

### **Orange County**

<https://www.orangecountync.gov/DocumentCenter/View/10271/Orange-County-Declaration-Stay-at-Home-3-25-20--Final>

### **Pitt County**

[https://www.pittcountync.gov/DocumentCenter/View/10436/2020-3-24\\_Second-Proclamation-of-Emergency-Restrictions-for-COVID-19-Response](https://www.pittcountync.gov/DocumentCenter/View/10436/2020-3-24_Second-Proclamation-of-Emergency-Restrictions-for-COVID-19-Response)

### **Wake County**

<http://www.wakeGovernorcom/covid19/Documents/FinalSignedSOE3-26-20.pdf>

### **Ohio** (updated April 3, 2020)

Construction projects are exempt from the stay-at-home order issued by Director of Ohio Department of Health. Construction is included in the essential infrastructure exception:

Construction (including but not limited to construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, essential business construction and housing construction).

Also, listed among Essential Businesses and Operations:

Critical trades. Building and Construction Tradesman and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, HVAC, painting and essential operation of residences, Essential Activities, and Essential Businesses and Operations.

The Ohio order specifically provides that the definition of essential infrastructure is to be construed broadly.

The Ohio order currently extends through May 1, 2020.

### **Pennsylvania** (updated March 29, 2020)

Most construction is suspended. Effective March 23, 2020 at 8:00 AM (deadline extended from March 19 at 8:00 PM), all non-life-sustaining businesses are required to shut down. This includes construction, except for emergency repairs and construction of health care facilities.

## **South Carolina (updated April 6, 2020)**

Governor McMaster issued a stay-or work order on April 6, 2020, effective at 5:00 p.m. on April 7, 2020, limiting movements outside of residences except for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations. Critical Infrastructure Operations include all operation and services identify in the Cybersecurity and Infrastructure Security Agency March 28, 2020 Memorandum. All residents and visitors are to practice “social distancing and take every possible precaution to avoid exposure to and slow the spread of COVID-19.

*Local Action:* (updated March 27, 2020)

### **Charleston**

<https://www.charleston-sc.gov/DocumentCenter/View/26251/Emergency-Ordinance-Stay-at-Home>

### **Columbia**

<https://www.columbiasc.net/uploads/headlines/03-26-2020/stay-home-stay-safe-emergency-order/2020-034%20Stay%20Home%20Stay%20Safe%20Amended.pdf>

## **Tennessee (updated April 3, 2020)**

On April 2, 2020, Governor Bill Lee amended his previously issued “safer-at-home” Executive Order, which went into effect on March 31, 2020 at 11:59 p.m. Central Daylight Time and is in effect until 11:59 p.m. Central Daylight Time on April 14, 2020. The amended order requires all persons in Tennessee to stay at home except when engaging in Essential Activity or Essential Services and, when engaging in such Essential Activities or Essential Services to follow the Health Guidelines set forth therein.

Under the order, among other defined Essential Services, Tennessee includes the following construction-related categories:

- Personnel identified on pages 5-15 of the March 28, 2020 CISA Advisory Memorandum on Identification of Essential Critical Infrastructure;
- Essential Infrastructure Operations, specifically including “construction-related services, including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long term care facilities, public works construction, school construction, construction related to Essential Activities or Essential Services, and housing construction...”

- The order notes that “Essential Infrastructure Operations” shall be construed broadly to avoid impacts to essential infrastructure, broadly defined.
- Critical Trades, defined to include, but not be limited to, building and construction tradesmen and tradeswomen, and other trades including, but not limited to, plumbers, electricians, HVAC, painting, landscaping and other service providers who provide services that are necessary to maintain the safety, sanitation, and essential operations of residence, Essential Activity, and Essential Services.

Accordingly, construction is allowed to continue in Tennessee.

The order further sets forth that all businesses that remain open, to the extent practicable, should equip and permit employees to work from home, and employees and their customers should practice good hygiene and observe the Health Guidelines and necessary precautions advised by the President and the CDC.

Tennessee’s stay-at-home order does not preempt or limit the authority of any locality to issue further orders or measures in relation to COVID-19. Accordingly, local governments can impose stricter requirements as long as they are accordance with the law.

Tennessee’s “safer-at-home” order is found here:

<https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee22.pdf>

Amendment to “safer-at-home” order found here:

<https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee23.pdf>

Tennessee’s “safer-at-home” order does not prevent local governments from putting additional measures in order.

*Local Action:* (updated March 27, 2020)

The following cities and counties have issued stay at home orders:

### **Memphis**

<https://covid19.memphistn.gov/wp-content/uploads/2020/03/Executive-Order-No-03-2020.pdf>

### **Nashville / Davidson County**

Nashville/ Davidson County issued a stay-at-home order on March 22, 2020, to go into effect at 12:01 a.m. on Monday March 23, 2020 for the City of Nashville and Davidson County. All business that do not perform essential services were ordered to close under the Mayor’s order.

However, the order deemed construction, architectural, engineering, and surveying services to be essential.

<https://www.asafenashville.org/wp-content/uploads/2020/03/Directors-Order-3-Safer-At-Home.pdf>

### **Knox County**

<https://covid.knoxcountyttn.gov/pdfs/safer-at-home-order.pdf>

### **Shelby County**

<https://www.shelbycountyttn.gov/DocumentCenter/View/36518/Release---Shelter-In-Place-Executive-Order>

### **Texas (updated April 2, 2020)**

Construction can continue in Texas. On March 31, 2020, Governor Abbott issued an executive order requiring every person in Texas, except where necessary to provide essential services, to minimize social gatherings and minimize in-person contact with people who are not in the same household. The order remains in effect until April 30, 2020 unless modified, rescinded or superseded by the governor.

“Essential services” are as described in the Cybersecurity and Infrastructure Security Agency (CISA) Guidance on the Essential Critical Infrastructure Workforce, Version 2.0 (March 28, 2020), plus religious services. Other essential services may be added with the approval of the Texas Division of Emergency Management.

Governor Abbott’s March 31, 2020 Executive Order supersedes any conflicting order issued by local officials in response to COVID-19, but only to the extent that a local order restricts essential services allowed by the Governor’s Order. Local officials are not to impose restrictions inconsistent with the governor’s order.

On March 26, 2020, Gov. Abbott issued an Executive Order requiring all persons who entered Texas as the final destination through an airport in New York, New Jersey, Connecticut or New Orleans to be subject to a 14-day self-quarantine at a quarantine location designated upon arrival in Texas, excepting people traveling in connection with military services, health response or critical-infrastructure activities.

### **Dallas, San Antonio, Austin, and Houston**

On March 21, 2020, Dallas County Judge Clay Jenkins, the chief executive, issued a shelter-at-home order for Dallas County starting at 11:59 pm on Monday, March 23, 2020. The order

requires all individuals anywhere in Dallas County to shelter in place except for certain “essential activity.” As defined by Judge Jenkins, essential activity includes work necessary to the operations and maintenance, including residential and commercial construction, of the 16 critical infrastructure sectors as identified by the CISA’s March 19, 2020 guidance.

On March 23, 2020, San Antonio Mayor Ron Nirenberg issued a stay home/work safe order in effect from March 24 to 11:5 pm on April 9, 2020. Businesses related to public works construction, construction of housing and commercial construction are among the Exempted Businesses in the Mayor’s order.

On March 24, 2020, Austin issued an order requiring businesses cease activities at all locations within the City except certain types of operations, including those defined as “Critical Infrastructure.” The City issued Guidance for the Construction Industry. Commercial and residential construction activities are prohibited except in very limited situations: public works construction projects, affordable housing projects, construction of facilities for individuals experiencing homelessness, construction of facilities that provide social services, construction of facilities that are defined in the Mayor’s Order as Essential Businesses, Essential Government Functions, or Critical Infrastructure and construction of facilities specifically required by the City in response to the COVID-19 emergency.

Houston/Harris County has adopted a stay home / work safe order that allows construction to continue.

### **Virginia** (updated March 31, 2020)

Construction is allowed to continue in Virginia. It is not on the list of businesses that were required to close pursuant to Gov. Northam’s March 23, 2020 Executive Order #53. pertaining to restaurants, recreational, entertainment, gatherings, non-essential retail businesses and closure of schools. All businesses shall, to the extent possible, adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.

Governor Northam issued a Temporary Stay at Home Order (Executive Order #55) on March 30, 2020 requiring individuals to remain in their place of residence unless exempted. The order remains in effect until June 10, 2020 unless amended or rescinded. The restriction does not apply to the operation of businesses not required to close under the governor’s prior executive order.

### **Washington** (updated April 6, 2020)

Governor Inslee issued guidance for construction on March 25, 2020 pertaining to his March 23, 2020 “Stay Home, Stay Healthy” Proclamation which required all people in Washington State to cease immediately leaving their home except to conduct or participate in essential activities or for employment in essential business services. The original proclamation seemed to allow most

construction to continue. The governor's March 25<sup>th</sup> construction guidance memorandum indicated that was not the intent. The memorandum states:

In general, commercial and residential construction is not authorized under the proclamation because construction is not considered to be an essential activity.

However, the governor's guidance goes on to allow construction in the following limited circumstances:

- (a) Construction related to essential activities as described in the governor's order;
- (b) To further a public purpose related to a public entity or government function or facility, including but not limited to publicly financed low-income housing;
- (c) To prevent spoliation and avoid damage or unsafe conditions, and address emergency repairs at both non-essential businesses and residential structures.

The construction guidance states it is permissible for workers who are building, construction superintendents, tradesmen, or tradeswomen, of other trades including, but not limited to, plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, heavy equipment and crane operators, finishers, HVAC technicians, painting and other service providers to provide services consistent with the above guidance.

All construction activity must meet social distancing and appropriate health and worker protection measures.

The Governor's March 23, 2020 Order identified numerous Essential Workforce categories including:

- Workers who support the operation, inspection and maintenance of essential public works facilities and operations, including bridges, water and sewer breaks, fleet maintenance personnel, construction of critical or strategic infrastructure and other emergent issues.
- Workers such as plumbers, electricians, exterminators and other service providers who provide services that are necessary to maintain the safety, sanitation, and essential operation of residences
- Construction workers who support the construction, operation, inspection and maintenance of construction sites and construction projects (including housing construction) for all essential facilities, services and projects included in this document [the Governor's guidance document identifying essential infrastructure sectors and businesses] , and for

residential construction related to emergency repairs and projects that ensure structural integrity

- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintain the safety, sanitation and essential operation of construction sites and construction projects

The Governor's original March 23, 2020 Stay at Home, Stay Healthy order was extended on April 2, 2020 and is currently scheduled to remain in effect through May 4, 2020.

If a worker or business seeks clarification whether its work is an essential business or can be added to the list of essential businesses, an essential business inquiry form can be submitted.

Construction industry groups have sought a change in state policy to allow more construction to proceed as an essential activity.

#### **Wisconsin** (updated March 29, 2020)

The Wisconsin Department of Health Services issued its Safer at Home Emergency Order #12 on March 24, 2020, effective from 8:00 a.m. on March 25, 2020 and remaining in effect until 8:00 a.m. on April 24, 2020 or until a superseding order is issued. All individuals present within the State of Wisconsin are ordered to stay at home unless engaged in Essential Activities, Essential Government Functions, Essential Travel or to operate Essential Businesses and Operations. Essential Infrastructure is exempt. Individuals may leave their residence to provide any service or perform any work necessary to offer, provide, operate, maintain, and repair Essential Infrastructure.

Essential Infrastructure includes construction, including, but not limited to, construction required in response to the COVID-19 emergency, public works construction, school construction, Essential Business and Operations construction, construction necessary for Essential Governmental Functions, and housing construction, except that optional or aesthetic construction should be avoided. Essential Infrastructure is to be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

The list of Essential Businesses and Operations includes critical trades, building and construction tradesmen and tradeswomen and other trades including but not limited to plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, operating engineers, HVAC and other service providers who provide services that are necessary to maintaining the safety, sanitation and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations.

Businesses that supply construction materials and equipment are also included in the list of exempt Essential Businesses and Operations.



All Essential Businesses and Operations including Essential Infrastructure are to meet Social Distancing Requirements between all individuals on the premises and use technology to avoid meeting in person and work remotely to the greatest extent possible. Social Distancing Requirements include maintaining social distancing of 6' between people; washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer; covering coughs or sneezes into the sleeve or elbow; regularly cleaning high-touch surfaces; not shaking hands; and following all other public health recommendations issued by DHS and the U.S. Centers for Disease Control.

Essential Travel applies to any travel related to providing or access to Essential Activities, Essential Businesses and Operations or Minimum Basic Operations. Individuals engaged in Essential Travel must comply with Social Distancing Requirements to the extent possible.

\*\*\*\*\*

Please feel free to contact any of the following attorneys for more information:

C. Leanne Prybylski ([clp@hpsslaw.com](mailto:clp@hpsslaw.com)); Scott D. Calhoun ([sdc@hpsslaw.com](mailto:sdc@hpsslaw.com)); J.T. Gallagher ([jtg@hpsslaw.com](mailto:jtg@hpsslaw.com)); Stephen M. Phillips ([smp@hpsslaw.com](mailto:smp@hpsslaw.com)).

If you have employment related questions, please contact Benjamin S. Lowenthal ([bsl@hpsslaw.com](mailto:bsl@hpsslaw.com)) or Philip J. Seigel ([pjs@hpsslaw.com](mailto:pjs@hpsslaw.com)).