# COVID-19: UPDATE – WHAT YOU NEED TO KNOW AS NEW JERSEY AND NEW YORK CONSTRUCTION PROJECTS BEGIN TO REOPEN

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**Construction & Infrastructure Alert**

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## NEW JERSEY

On 13 May 2020 Governor Murphy issued Executive Order No. 142 (E.O. 142) permitting non-essential construction to resume subject to strict social distancing measures.

All other businesses must continue to allow their employees to work from home or "telework" as set forth in the 21 March 2020 Statewide "Stay at Home" Order, Executive Order No. 107 (E.O. 107).

### Construction

As of 6:00 a.m. on Monday, 18 May 2020, the physical operations of all non-essential construction projects can resume.

### On Site Protocols for All Construction Projects to Prevent the Spread of COVID-19

E.O. 142 requires that all construction projects—both essential and non-essential—implement the following protocols on site:

- Prohibit non-essential visitors.
- Use appropriate social distancing measures when picking up or delivering equipment or materials.
- Limit worksite meetings, inductions, and workgroups to groups of fewer than 10 people.
- Require individuals to stay at least six feet apart wherever possible.
- Stagger work start and stop times.
- Stagger lunch breaks and work times.
- Identify "high-risk areas," including restrooms, lunch rooms, breakrooms, and elevators, and restrict the number of people who can access those areas 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.

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- Where running water is not available, provide portable washing stations with soap and/or alcohol-based hand sanitizers that have greater than 60 percent ethanol or 70 percent isopropanol.
- Require frequent sanitization of high-touch areas like restrooms, breakrooms, equipment, and machinery.
- When the worksite is an occupied residence, require workers to sanitize work areas and keep a distance of at least six feet from occupants.
- 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.
    - 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 the premises due to a medical condition, neither the business nor its staff shall require the individual to produce medical documentation verifying the condition.
- Place conspicuous signage at entrances and throughout the worksite detailing the above mandates.

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

With the exception of those portions of the Executive Order that differentiated between essential and non-essential construction projects, Executive Order No. 122 (E.O. 122) remains in place. With respect to manufacturing and warehousing business, the following protocols must be implemented on site:

- Prohibit non-essential visitors.
- Limit worksite meetings, inductions, and workgroups to groups of fewer than 10 people.
- Require individuals to stay at least six 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.

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- 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 CDC recommendations (information from the CDC is available here), and wear gloves.
    - 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 the 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. Up-to-date information on the ports is available here.

On 8 April 2020 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.

## Retail

### *Essential Retail*

“Hardware and home improvement stores” are classified as essential retail stores that can remain open. On 8 April 2020 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.
- Erect physical barriers between customers and cashiers and baggers where feasible or otherwise ensure that individuals stay six feet apart (except at time of payment or exchange of goods)

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- Place conspicuous signage at entrances and throughout the store, if applicable, alerting staff and customers that they must stay six feet apart.
- Demarcate six 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 hand washing 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.
    - 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.

### *Non-Essential Retail*

As of 6:00 a.m. on Monday, 18 May 2020, non-essential retail can reopen for curbside pick-up only. Information on protocols that must be followed by non-essential retailers is available here.

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

Exposure to COVID-19 Protocols: The COVID-19 Exposure Policies set forth in E.O. 122 remain in place. E.O. 122 requires that essential retail businesses, warehousing businesses, manufacturing businesses, and businesses performing construction projects implement the following protocols:

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- 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.
- 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.
- 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 almost two months on "PAUSE" (Policy that Assures Uniform Safety for Everyone), New York is gradually opening non-essential businesses region-by-region using a phased approach under the state's "New York Forward" guidelines. Phase 1 businesses, including construction, manufacturing, agriculture, and retail and wholesale trade, may resume operations on 15 May 2020 if the region where they operate meets seven metrics mandated by the state. The Regional Monitoring Dashboard, which is updated every 24 hours, indicates which regions have met the metrics. Each region will be monitored by a Regional Control Room that will track the metrics and alert the state should the region no longer meet reopening guidelines. As of today, the Finger Lakes, Mohawk Valley, North Country, and Southern Tier regions are eligible to reopen Phase 1 businesses on 15 May.

Importantly, all businesses must adhere to new obligations under New York Forward. These new obligations apply equally to essential businesses that have been operating under exemptions from New York on PAUSE and businesses that are reopening under New York Forward. First, businesses must review New York Forward health and safety guidance specific to their operations (links available below) and affirm that they have read and understood it. No waivers for compliance with the guidance will be issued. Second, they must develop a COVID-19 Health and Safety Plan that includes (1) protections for employees and customers, (2) changes to physical workspace, and (3) processes, like screenings and reporting, that meet changing public health obligations. Businesses can use a template plan provided by the state or can use their own format. The Safety Plans do not

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need to be submitted to any state agency for approval but must be retained and made available to state and local authorities for inspection and must be posted conspicuously at sites.

## Construction

In addition to essential construction, which includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters, and non-essential "emergency construction," the following construction operations may resume:

- Building equipment contractors;
- Building finishing contractors;
- Foundation, structure, and building exterior contractors;
- Highway, street, and bridge construction;
- Land subdivision;
- Non-residential building construction;
- Residential building construction; and
- Utility system construction.

The New York Forward guidelines contain Interim Guidance for Construction Activities During the COVID-19 Health Emergency. This guidance, which contain the minimum requirements for construction employers, provides direction on physical distancing of workers, gatherings, workplace activity, movement, protective equipment, hygiene and cleaning, screening, testing, and disease tracing and tracking. Employers must affirm that they have read and understand their obligations under the guidance and can submit their affirmation electronically via a link at the end of the guidance.

A chart containing the mandatory and recommended safety guidelines for construction employers and employees are available here.

## Manufacturing

Several more categories of manufacturing will be allowed to reopen in Phase 1:

- Apparel manufacturing;
- Computer and electronic product manufacturing;
- Electric lighting equipment manufacturing;
- Fabricated metal product manufacturing;
- Furniture and related product manufacturing;
- Leather and allied product manufacturing;
- Machinery manufacturing;

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- Nonmetallic mineral product manufacturing;
- Paper manufacturing;
- Petroleum and coal products manufacturing;
- Printing and related support activities;
- Textile mills;
- Textile product mills;
- Wood product manufacturing; and
- Other miscellaneous manufacturing.

As a reminder, “Essential Manufacturing” includes:

- 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.

The New York Forward guidelines contain Interim Guidance for Manufacturing Activities During the COVID-19 Health Emergency. This guidance, which contains the minimum requirements for manufacturing sites, provides direction on physical distancing of workers, gatherings, workplace activity, movement, protective equipment, hygiene and cleaning, screening, testing, and disease tracing and tracking. The operator of the manufacturing site or another party designated to be the operator of the site must affirm and that they have read and understand their obligations under the guidance and can submit their affirmation electronically via a link at the end of the guidance. The operator must also conspicuously post a copy of the Safety Plan on site.

A chart containing the mandatory and recommended safety guidelines for manufacturing sites is available here.

## Distribution

Warehouse/distribution and fulfillment and storage remain essential businesses and may continue to operate. Transportation infrastructure and mail and shipping services also remain essential businesses.

## Retail

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Hardware, appliance, and building materials stores were exempt from the Pause and can continue to operate because they are essential retail stores. Lawn and garden equipment and supply stores may reopen in Phase 1 with curbside and in-store pickup only.

The New York Forward guidelines contain Interim Guidance for Curbside and In-Store Pickup Retail Business Activities During the COVID-19 Health Emergency. This guidance, which contain the minimum requirements for retail locations, provides direction on physical distancing of workers, gatherings, workplace activity, movement, protective equipment, hygiene and cleaning, screening, testing, and disease tracing and tracking. The property owner of the retail business or another designated party must affirm and that they have read and understand their obligations under the guidance and can submit their affirmation electronically via a link at the end of the guidance.

A chart containing the mandatory and recommended safety guidelines for retail activities is available here.

Note that businesses previously allowed to operate because they supported essential businesses but do not fall into Phase 1 may continue to operate.

## KEY CONTACTS



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