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

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U.S. 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. E.O. 107 closed all non-essential retail businesses and ordered that, where practicable, all other businesses must allow their employees to work from home or "telework." For construction, as of March 30, 2020, all construction projects within New Jersey can continue although this is subject to change at any time.

- Construction

> Until further notice, construction projects in New Jersey can continue. Governor Murphy specifically called out construction during his March 21 press conference, stating that "work at construction sites may continue," and "all kinds of construction" are essential. "Construction workers" are identified in E.O. 107 as examples of "employees who need to be physically present at their work site in order to perform their duties."

- Manufacturing

> Although E.O. 107 does not reference manufacturing, Governor Murphy specifically stated during his March 21 press conference that "manufacturing" can continue. (You can watch the press conference here.) New Jersey's COVID-19 Information Hub also identifies "manufacturing" here as a business that can continue to operate.

- Distribution

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> E.O. 107 does not reference distribution specifically, but the COVID-19 Information Hub states that "logistics, ports, shipping, trucking, and transportation operations can continue to operate," and Governor Murphy stated that "trucking and transportation operations" can continue. 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.

- Retail

> "Hardware and home improvement stores" are classified as essential retail stores that can remain open. The brick and mortar stores must follow social distancing practices "to the extent practicable," including all reasonable efforts to keep customers six feet apart and using sanitizing products on common surfaces.

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," (**P**olicy that **A**ssures **U**niform **S**afety for **E**veryone). 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 and limited construction operations throughout the state.

- Construction

> Within the last few days, the guidance for the construction industry has drastically changed. Although he has not issued a new or revised executive order, in his March 28 email on "New York State Coronavirus Updates," Governor Cuomo stated that "[a]ll non-essential construction must be suspended" and directed readers to revised guidance issued by Empire State Development ("ESD"), the umbrella organization for New York's Urban Development Corporation and Department of Economic Development. Under the ESD guidance, only essential construction may continue. This includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. All non-essential construction except for "emergency construction" must shut down. 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

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> employee/worker on a job site. Building cleaning and maintenance remain exempt.

- Manufacturing

> Unlike in New Jersey, New York will allow only "Essential Manufacturing" to continue. Manufacturing in the following categories are exempt:

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  - 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.

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> 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 Patrick J. Perrone, Loly G. Tor, or Tara L. Pehush.

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