

Updated Guidance on “Essential” Construction

Governor Cuomo Announces Construction Freeze; Some Public Works Projects Excluded

(Courtesy of GCA NY)

On Friday, March 27, Empire State Development updated the guidance to Executive Order 202.6, to require that all non-essential construction, except for emergency work shut down. As you may recall, Executive Order 202.6, modified by subsequent executive orders, ordered all businesses, effective March 20 at 8:00pm to reduce the in-person workforce at work locations by 50%, later increased to 75% and then 100%. Essential services were exempt from this order.

Essential services were defined as “essential infrastructure including utilities, telecommunication, airports and transportation infrastructure”, as well as “construction.” Guidance issued by Empire State Development further expanded on what construction activities were considered essential services.

The guidance, updated on March 27 at 11:00am, narrowed the definition of essential construction activities. No longer is all construction considered an essential service. Essential construction, defined as roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing and homeless shelters, may continue. According to the directive, non-essential construction, except for emergency work, must shut down.

The updated guidance further states that for essential projects, workers at every site must maintain social distance including for purposes of elevators, meals, entry and exit. Sites that cannot maintain distance and safety best practices must close. Enforcement will be provided by the state in coordination with city and local governments. This will include fines of up to \$10,000 per violation.

The guidance left many issues unresolved. This weekend the Governor’s Counsel clarified that school districts, including the School Construction Authority, are allowed to continue construction projects as government entities are exempt from essential business restrictions. However, the guidance further stated that schools should postpone any non-essential projects and only proceed with essential projects when they can implement appropriate social distancing and cleaning/disinfecting protocols. Essential projects are those that have a nexus to health and safety of the building occupants or to the broader essential services that are required to fulfill the critical operations of government or the emergency response to the COVID-19 public health crisis. Empire State Development clarified that the same guidance applies to localities and municipalities as well.

We will continue provide updates as new information becomes available.

[CLICK HERE TO RETURN TO LICA’S SPECIAL COVID-19 RESOURCE SITE](#)

