

List compiled by Duane Morris

This list is current as of **April 14, 2020** (4:00 p.m. EST) and is an Update to an earlier Alert we posted on April 3rd. Please note that these closure orders are changing almost daily so please make sure you are checking the applicable state in question when considering a closure question:

California:

California ordered that all workers must stay home, except workers deemed “Essential Critical Infrastructure Workers.”

Generally, construction workers are “essential” to critical infrastructure. Therefore, construction companies may continue to operate and construction workers may go to work.

Specifically designated as essential are:

- Workers who support the operation, inspection and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, construction material suppliers, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations and other emergent issues;
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables;
- Construction workers who support the construction, operation, inspection and maintenance of construction sites and construction projects (including housing construction);
- Workers such as plumbers, electricians, exterminators and other service providers who provide services that are necessary to maintaining the safety, sanitation, construction material sources and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage and disposal of solid waste and hazardous waste).

Los Angeles, San Francisco and San Diego:

These cities in California have each taken separate positions. Some have a more limited view of which construction is essential (e.g., San Francisco) and as such permit construction to remain operational in narrow circumstances, which is at odds with the state’s position on construction.

Care should be taken in these cities to evaluate the state executive order in the context of city orders, noting that in most cases the more restrictive interpretation is likely to rule the day.

Delaware:

Delaware ordered the closure of all nonessential businesses.

Construction, however has been deemed to be an “essential” category. Therefore, construction companies may continue to operate and construction workers may go to work.

Specifically designated as essential in the order are:

- Workers who support the operation, inspection and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations and other emergent issues;
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables.
- Workers who are engaged in the construction of residential and nonresidential structures or infrastructure, and any workers who provide critical maintenance to residential or nonresidential structures;
- Businesses that supply materials and hardware to those engaged in the construction of residential or nonresidential structures;
- Workers involved in activities related to the design and apportionment of residential and nonresidential structures.

Washington, D.C.:

Washington, D.C., ordered the closure of all nonessential businesses except for “Minimum Basic Operations.”

“Construction and Building Trades” are, however, classified as “Essential Businesses” per the order. Therefore, construction companies may continue to operate.

The order specifically includes the following as essential under that category: plumbers, pipefitters, steamfitters, electricians, boilermakers, exterminators, roofers, carpenters,

bricklayers, welders, elevator mechanics, businesses that sell supplies and materials for maintenance of commercial and residential buildings and homes, including “big box” supply stores, plumbing distributors, electrical distributors, HVAC distributors and other businesses that provide services that are necessary to maintaining the safety, sanitation and operations of residences and essential businesses.

Florida:

Florida ordered the closure of all nonessential businesses. Florida has also ordered that all residents stay home unless leaving to perform “essential services or conduct essential activities.”

Essential services includes the list detailed in the CISA Guidance, which was attached to the order, as well as businesses and activities designated essential by Miami-Dade County (see below). The state published a list of services deemed essential per the order.

The list includes:

- Workers who support construction in the petroleum, electricity, and energy industries;
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues;
- Workers such as plumbers, electricians, exterminators, builders, contractors, HVAC Technicians, landscapers, pool care service providers, 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, any temporary construction required to support COVID-19 response;
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables, buried conduit, small cells, other wireless facilities, and other communications sector-related infrastructure. This includes construction of new facilities and deployment of new technology as these are required to address congestion or customer usage due to unprecedented use of remote services;
- Suppliers, designers, transporters and other workers supporting the manufacture, distribution and provision and construction of essential global, national and local infrastructure for

computing services (including cloud computing services and telework capabilities), business infrastructure, financial transactions/services, web-based services, and critical manufacturing;

- Workers supporting essential maintenance, manufacturing, design, operation, inspection, security, and construction for essential products, services, and supply chain and COVID 19 relief efforts;
- Workers performing housing construction related activities to ensure additional units can be made available to combat the nation's existing housing supply shortage; and
- Workers supporting the construction of housing.

Generally, construction appears to be an essential business, but not all types of construction. Therefore, construction businesses should evaluate projects on a case-by-case basis.

Miami:

Miami has ordered that all nonessential retail and commercial establishments close.

The following, among other industries, have been deemed essential:

- Open construction sites, irrespective of the type of building;
- Architectural, engineering or land surveying services;
- Contractors and other tradesmen who provide services that are necessary to maintaining the safety, sanitation and essential operation of residences and other structures.

Generally, construction appears to be an essential business, but not all types of construction. Though open construction sites may remain open, the Miami-Dade order does not specifically include construction that has not yet commenced, except for specific purposes. Therefore, construction businesses should evaluate projects on a case-by-case basis.

Georgia:

Georgia ordered the closure of all businesses that are not "critical infrastructure" except for minimal basic operations. The state has also ordered that all residents stay home unless conducting or participating in "essential services."

"Critical infrastructure" refers to businesses defined as "essential critical infrastructure workforce" per the CISA Guidance. As explained above, many construction activities have been

deemed to be “essential” per CISA and in general, construction and construction supply companies may continue operations. However, construction businesses should evaluate projects on a case-by-case basis.

Atlanta:

Atlanta has ordered that all nonessential businesses close and that residents of Atlanta stay at home unless engaging in essential activities. One exception is for residents to leave to “work for essential businesses.”

Construction was deemed essential infrastructure per the Atlanta order, but the state’s order preempts the Atlanta order. Construction businesses should follow state guidance.

Illinois:

Illinois ordered the closure of all nonessential businesses. Illinois has also ordered that all residents stay home unless leaving to perform an “essential function.”

The order categorizes construction as essential infrastructure. Therefore, construction companies may continue to operate and construction workers may go to work.

It specifically includes, but is not limited to: construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction and housing construction.

Chicago:

Chicago joined in the announcement of the statewide order, which is more expansive and preempts its local orders.

Maryland:

Maryland ordered the closure of all nonessential businesses that are not part of the critical infrastructure sectors identified by the CISA guidance.

The Maryland Office of Legal Counsel published interpretive guidance, which includes “commercial and residential construction companies” in the list of businesses that are not required to close under the category of commercial facilities. Therefore, construction companies may continue to operate.

Massachusetts:

Massachusetts ordered the closure of all nonessential businesses.

Generally, construction is “essential” to critical infrastructure and construction companies may continue to operate.

Specifically designated as essential are:

- Construction workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction);
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including roads and bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations and other emergent issues;
- Workers—including contracted vendors—involved in the construction of critical or strategic infrastructure including public works construction, airport operations, water, sewer, gas, electrical, nuclear, oil refining and other critical energy services, roads and highways, public transportation, solid waste collection and removal, and interne, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services);
- Workers such as plumbers, electricians, exterminators, inspectors and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, construction sites and projects, and needed facilities;
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables.

Boston:

Boston suspended all regular activity at construction sites.

Boston provided the following guidance:

- Employers should maintain the necessary crews to keep their sites safe and secure, keep any materials from blowing away, and prevent trespassing.

- After sites have been secured, skeleton crews will be permitted for the remainder of this suspension to ensure safety.
- The only work that will be permitted moving forward will be emergency work, which will need to be approved by the city's Inspectional Services Department.

That essential work includes:

- Emergency utility, road or building work, such as gas leaks, water leaks and sinkholes;
- New utility connections to occupied buildings;
- Mandated building or utility work;
- Work at public health facilities, healthcare facilities, shelters, including temporary shelters and other facilities that support vulnerable populations;
- Work which ensures the reliability of the transportation network, and
- Other work necessary to render occupied residential buildings fully habitable.

Boston has a process to review requests for exceptions to the temporary construction moratorium. The Commissioner of Inspectional Services for building-related work or the Commissioner of Public Works for street-related work will grant exceptions if the construction will support increased public health and safety.

The Massachusetts order specifically supersedes any local order that interferes with the continued operations of COVID-19 Essential Services, and therefore likely preempts Boston's suspension.

Nevada:

Nevada ordered the closure of "nonessential" businesses that either "promote recreational gatherings" or "promote extended periods of public interaction where risk of transmission is high." The state also ordered all resident to stay home, subject to certain exceptions, which include performing work for Essential Infrastructure.

The order specifically permits the construction labor force to continue operating, with social distancing measures.

Las Vegas:

Las Vegas listed construction as an essential business, per the governor's order.

New Jersey:

New Jersey ordered the closure of all nonessential construction.

"Essential construction projects" are defined as:

- Projects necessary for the delivery of health care services, including but not limited to hospitals, other health care facilities, and pharmaceutical manufacturing facilities;
- Transportation projects, including roads, bridges, and mass transit facilities or physical infrastructure, including work done at airports or seaports;
- Utility projects, including those necessary for energy and electricity production and transmission, and any decommissioning of facilities used for electricity generation;
- Residential projects that are exclusively designated as affordable housing;
- Projects involving pre-K-12 schools, including but not limited to projects in Schools Development Authority districts, and projects involving higher education facilities;
- 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;
- 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;
- Projects involving data centers or facilities that are critical to a business's ability to function;
- Projects necessary for the delivery of essential social services, including homeless shelters;

- Any project necessary to support law enforcement agencies or first responder units in their response to the COVID-19 emergency;
- 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;
- 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; and
- Any emergency repairs necessary to ensure the health and safety of residents.

Though essential construction is broadly defined, not all types of construction are included. Therefore, construction businesses should evaluate projects on a case-by-case basis.

New York:

New York ordered the closure of all nonessential businesses. Initial guidance categorized construction as essential, but the state has since updated the guidance twice, narrowing the type of construction that is essential.

The most recent modification on April 9 and states that all non-essential construction must safely 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, but only to the point that it is safe to suspend work).

Essential construction may proceed, to the extent that:

- the construction is for, or your business supports, roads, bridges, transit facilities, utilities, hospitals or healthcare facilities, homeless shelters, or public or private schools;
- the construction is for affordable housing, as defined as construction work where either (i) a minimum of 20% of the residential units are or will be deemed affordable and are or will be subject to a regulatory agreement and/or a declaration from a local, state, or federal government agency or (ii) where the project is being undertaken by, or on behalf of, a public housing authority;
- the construction is necessary to protect the health and safety of occupants of a structure;

- the construction is necessary to continue a project if allowing the project to remain undone would be unsafe, provided that the construction must be shut down when it is safe to do so;
- the construction is for projects in the energy industry in accordance with Question No. 14 in the FAQ at: https://esd.ny.gov/sites/default/files/ESD_EssentialEmployerFAQ_033120.pdf;
- the construction is for existing (i.e. currently underway) projects of an essential business; or
- the construction work is being completed by a single worker who is the sole employee/worker on the job site.

At every site, it is required that the personnel working on the site maintain an appropriate social distance. Sites that cannot maintain appropriate social distancing, as well as cleaning/disinfecting protocols must close.

Enforcement will be conducted by state and local governments, including fines up to \$10,000 per violation.

Construction may continue solely with respect to those employees that must be present at the business location/construction site in support of essential business activities. No other employees/personnel shall be permitted to work in-person at the business location/construction site. Any other business activities being completed that are not essential are still subject to the restrictions provided by Executive Order 202.

As noted above, local governments, including municipalities and school districts, are allowed to continue construction projects at this time as government entities are exempt from these essential business restrictions. However, to the greatest extent possible, local governments 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 should be considered those that have a nexus to health and safety of the building occupants or to support 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.

New York City:

The city has adopted the governor's order. The New York City Department of Buildings issued guidance to owners and contractors regarding enforcement of essential versus nonessential construction in accordance with the order. The guidance was issued prior to the April 9 state guidance update, but appears to still be in effect.

Per the guidance, only the following projects will be permitted by the New York City Department of Buildings until further notice:

Emergency construction:

1. Project necessary to protect the health and safety of the occupants:
 - a. Emergency work ordered by the New York City Department of Buildings;
 - b. Restoration of essential services – heat, hot water, cold water, gas, electricity or other utility services; or
 - c. Work necessary to address any condition requiring immediate corrective action that severely affects life, health, safety, property or significant number of persons.
2. Project required to continue to the extent it would be unsafe to allow work to remain undone. Such projects may continue only until it is safe to shut the site.

Essential construction:

1. Utilities;
2. Hospitals or healthcare facilities;
3. Transitional and/or homeless shelters;
4. Affordable housing: Construction work on public housing, or a private or multiple dwelling or real property that is a new building (NB) or that is 100 percent vacant; or is work on unoccupied public housing units for the designation as housing for specific populations (i.e., shelter set aside, domestic violence referrals), or work on the exterior to address emergency conditions requiring immediate corrective action, set forth in Section 1(a)(iii) or within public housing, correction of critical systems for seasonal preparedness for the 2020-2021 heating season of an existing public housing building. Construction work on a private or multiple dwelling or real property that is a new building or that is 100 percent vacant that is now used or will be converted to such use: (i) For the provision of affordable inclusionary housing or mandatory inclusionary housing pursuant to the New York City zoning resolution; or (ii) Where no less than 30 percent of the residential units are subject to a regulatory agreement, restrictive declaration, or similar instrument with a local, state or federal governmental entity or a local housing authority in a city with a population of one million or more.

5. Other essential construction as approved by the New York City Department of Buildings.

Solo work- Work that is limited to a single worker, who is the sole employee/worker on a job site.

Pennsylvania:

Pennsylvania has ordered the closure of all non-life-sustaining businesses. The state has also ordered all residents to stay home, unless supporting a life-sustaining business.

Construction, as a general category, is not “life-sustaining” per Pennsylvania’s published list of industry types. The state is permitting construction, but only for emergency repairs and for building healthcare facilities. Therefore, construction companies may not operate unless they fall under an exception or obtain a waiver from the state.

Philadelphia:

The state’s order preempts all prior Philadelphia orders, and therefore construction companies may not operate unless they fall under an exception or obtain a waiver from the state.

Texas:

Texas has closed only bars, dining establishments and gyms. Therefore, construction companies may continue to operate.

Various localities in Texas have enacted expansive business restrictions. As with all states, it is important to analyze local law to determine if there are restrictions for business operations.

Virginia:

Virginia has only ordered the closure of specific types of retail, recreational and entertainment businesses.

Therefore, construction companies may continue to operate.

