

Update on Executive Action in Trenton: "Non-Essential" Construction Projects to Cease; Additional Mitigation Requirements on Essential Retail Businesses and Industries

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On April 8, 2020, Governor Murphy signed an executive order (EO 122) that requires all "non-essential" construction projects to cease and that imposes additional mitigation requirements on essential retail businesses and industries. The order goes into effect at 8:00 p.m. on Friday, April 10, 2020, and shall remain in effect until revoked or modified by the governor. A copy of EO 122 is available [here](#).

EO 122 requires the "physical operations of all non-essential construction projects [to] cease" at 8:00 p.m. on April 10, 2020. However, "essential construction projects" may continue. EO 122 defines broadly "essential construction projects" as follows:

- 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 five 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.

The executive order's extremely broad definition of "essential construction projects" will allow a great number of construction projects to continue for the time being.

EO 122 also imposes new guidelines for essential retail businesses that continue to serve customers in-person. Among other things, essential retail businesses must

- Limit occupancy to no more than 50% of the stated maximum store capacity;
- Establish special hours of operation, where possible, solely for high-risk individuals;
- Install physical barriers, where feasible, between customers and cashiers/baggers to ensure six feet of separation, except at the moment of payment or the exchange of goods;
- Provide employees with break time to allow for repeated hand washing throughout the day;
- Arrange for contactless pay options, pickup, and/or delivery of goods, wherever feasible.

- Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- Mark out six feet of spacing in check-out lines to demonstrate appropriate spacing for social distancing;
- Require workers and customers to wear cloth face coverings while on the premises, except where doing so would inhibit that individual's health or where the individual is under two years of age, and require workers to wear gloves when in contact with customers or goods;
- Provide, at the business's expense, face coverings and gloves for their employees.

Additionally, EO 122 requires manufacturing businesses, warehousing businesses, and businesses engaged in essential construction projects to adopt policies that include, at minimum, the following requirements:

- Prohibit non-essential visitors from entering the worksite;
- Limit worksite meetings, inductions, and workgroups to groups of fewer than ten individuals;
- Require individuals to maintain six feet or more distance between them wherever possible;
- Stagger work start and stop times where practicable to limit the number of individuals entering and leaving the worksite concurrently;
- Stagger lunch breaks and work times where practicable to enable operations to safely continue while utilizing the least number of individuals possible at the site;
- Restrict the number of individuals who can access common areas, such as restrooms and breakrooms, concurrently;
- Require workers and visitors to wear cloth face coverings, in accordance with CDC recommendations, while on the premises, except where doing so would inhibit the individual's health or the individual is under two years of age, and require workers to wear gloves while on the premises. Businesses must provide, at their expense, such face coverings and gloves for their employees.
- Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- Limit sharing of tools, equipment, and machinery;
- Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to workers and visitors; and
- Require frequent sanitization of high-touch areas like restrooms, breakrooms, equipment, and machinery.

Essential retail businesses, warehousing businesses, manufacturing businesses, and businesses performing essential construction projects must also adopt policies that require sick workers to be separated and sent home, require workers to be notified of any known exposure to COVID-19 at the worksite, and require the worksite to be cleaned and disinfected in accordance with CDC guidelines when a worker at the worksite has been diagnosed with COVID-19.

Finally, owners of buildings used for commercial, industrial or other enterprises, including but not limited to facilities for warehousing, manufacturing, commercial offices, airports, grocery stores, universities, colleges, government, hotels, and residential buildings with at least 50 units, shall adopt policies that, at minimum, implement the specific cleaning protocols in certain areas.