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**AUTHORS**

DONALD A. REA

GREGORY M. BOUCHER

JAMES E. GOODRICH

JOSHUA M. ATLAS

W. MATTHEW BRYANT

# Coronavirus Shutdown Orders Allow Construction Work to Proceed in Some States but Not in Others

## SUMMARY

This update tracks COVID-19 shutdown orders as of April 2, 2020, 12:00 p.m. ET that affect construction projects in Delaware, the District of Columbia, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York and Pennsylvania – jurisdictions in which Saul Ewing Arnstein & Lehr LLP offices are located.

### **Jurisdictions Limiting Construction Work**

**Massachusetts:** On March 17, 2020, the City of Boston shut down all construction in the City for two weeks. A few other Massachusetts localities (such as Cambridge, Somerville, and Martha's Vineyard towns of West Tisbury and Chilmark) adopted similar restrictions. The governor of Massachusetts initially allowed most construction to proceed statewide. However, a March 31, 2020 order severely limited commercial construction work to certain "essential" sectors, but allowed residential construction to continue.

**New York:** New York's initial shutdown order deemed construction an "essential business" that may remain open. However, the governor issued an updated order: "[a]ll non-essential construction must 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 until it is safe to shut the site). Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters."

**Pennsylvania:** The Commonwealth of Pennsylvania stopped all residential and commercial construction except for health care facilities and emergency repairs. The order halted on-site work for all "non-life sustaining businesses" in Pennsylvania. Construction projects other than those for health care facilities and emergency repairs were deemed to be "non-life sustaining businesses" and thus are shut down. If a business believes that it should be allowed to proceed with construction, it may apply to the governor's office for a waiver. An application form can be found [here](#).

### **Jurisdictions Allowing Projects to Proceed**

**Delaware:** The State of Delaware directed the shutdown of "Non-Essential Businesses" but is allowing "Essential Businesses" to remain open. The order classifies "construction" as an "Essential Business" if it fits in any of the following categories or employs or utilizes the following types or workers:

1. Workers who are engaged in the construction of residential or non-residential structures or infrastructure, or any workers who provide critical maintenance to residential or non-residential structures.
2. Businesses that supply materials and hardware to those engaged in the construction of residential or non-residential structures.
3. Workers involved in activities related to the design and apportionment of residential and non-residential structures.

**The District of Columbia:** On March 24, 2020, the District of Columbia issued an order directing the closure of “Non-Essential Business” but allowing “Essential Businesses” to remain open. Among the “Essential Business” are: “Construction and Building Trades, including 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, and HVAC distributors; and other businesses that provide services that are necessary to maintaining the safety, sanitation, and operation of residences and Essential Businesses[.]”

**Florida:** On April 1, 2020, Florida’s governor issued a broad “stay-at-home” order. However, construction is deemed to be an “essential service” under the new order and is allowed to proceed. Although construction is generally permitted, some local jurisdictions have implemented additional site safety requirements related to social distancing and worker hygiene, while other jurisdictions have modified their permitting and building inspection processes to address the COVID-19 risks.

**Illinois:** By an executive order dated March 20, 2020, the governor ordered the closure of “all businesses and operations in the state except “Essential Businesses and Operations.” The order’s definition of “Essential Businesses” that are allowed to remain open includes “Essential Infrastructure.” The order permits individuals to “leave their residence to provide any services or perform any work necessary to offer, provision, operate, maintain and repair Essential Infrastructure.” “Essential Infrastructure” includes “construction (including, but 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)” and “building management and maintenance[.]” On April 1, 2020, the governor extended the order through April 30, 2020.

**Maryland:** The governor of Maryland issued a “stay-at-home” order that went into effect on March 30, 2020 at 8:00 p.m. That order references the U.S. Cybersecurity and Infrastructure Security Agency (CISA) guidelines on essential and non-essential businesses. We have confirmed with the Governor’s Office of Legal Counsel that, notwithstanding the stay-at-home order, “commercial and non-residential construction companies” may continue operations.

**Minnesota:** On March 25, 2020 Minnesota’s governor issued an executive order directing Minnesotans to stay at home. The order identified as exempt critical workers, who are any workers performing “any construction as required in response to the COVID-19 peacetime emergency including but not limited to construction of health care facilities and essential businesses and services, or construction as required for emergency repairs and safety purposes[.]” The order also referenced as to essential critical infrastructure workers the CISA guidelines and a Minnesota list of critical sector workers. That Minnesota list of critical workers includes workers engaged in residential building construction, non-residential building construction, architectural, engineering, and related services, and foundation, structure and building exterior construction.

**New Jersey:** New Jersey’s shutdown order allows “a business or non-profit that has employees that cannot perform their functions via telework or work-from-home arrangements” to remain open. Among the employees whom the order specifies need to be at their work sites in order to perform their jobs are “construction workers.” The order directed businesses to “make best efforts to reduce staff on-site to the minimal number necessary to ensure that essential operations can continue.”

Further updates will be provided as these unprecedented circumstances unfold. Please visit our [COVID-19 Resource Page](#) or contact attorneys in Saul Ewing Arnstein & Lehr’s Construction Practice Group for further information.

This alert was written by Donald A. Rea, chair of the Firm’s Construction Practice; Gregory M. Boucher, James E. Goodrich and Joshua M. Atlas, vice chairs of the practice; and W. Matthew Bryant, a member of the practice. Donald can be reached at (410) 332-8680 or at [Don.Rea@saul.com](mailto:Don.Rea@saul.com). Gregory can be reached at (617) 912-0931 or at [Gregory.Boucher@saul.com](mailto:Gregory.Boucher@saul.com). James can be reached at (410) 332-8759 or at [Jim.Goodrich@saul.com](mailto:Jim.Goodrich@saul.com). Joshua can be reached at (561) 650-8475 or at [Joshua.Atlas@saul.com](mailto:Joshua.Atlas@saul.com). Matthew can be reached at (312) 876-6679 or at [Matthew.Bryant@saul.com](mailto:Matthew.Bryant@saul.com). This alert has been prepared for information purposes only.

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