

COVID-19 Update: Non-Essential Construction in New York Suspended

March 27, 2020

On March 27, 2020, the New York State Department of Economic Development d/b/a Empire State Development (the "Department") issued guidelines revising the definition of "essential businesses" in New York State following Governor Cuomo's Executive Order 202.6, dated March 18, 2020 (the "Order").

The Order required, among other things, all businesses and not-for-profit entities in New York State to "utilize, to the maximum extent possible, any telecommuting or work from home procedures" that such businesses could safely utilize. The Order also required each employer to reduce the in-person workforce at any work locations by 50% (later increased to 75% by Governor Cuomo's Executive Order 202.7). However, the Order exempted "essential businesses or entities providing essential services or functions" from these restrictions. By the express terms of the Order, construction services and construction projects were deemed essential.

The Department's guidelines have revised the definition of "essential business" and, in so doing, "non-essential" construction projects are suspended except emergency construction, (e.g., a project necessary to protect the health and safety of the occupants or to continue a project until it is made safe to shut down). Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters.