

New York Governor Expands Closure of Many (But Not All) Construction Projects Due to COVID-19

March 27, 2020

Client Advisory

March 27, 2020 by Michael H. Bauscher, Karen E. Meara and Christopher Rizzo

On March 27, 2020, Empire State Development (“ESD”) updated its interpretive guidance on Executive Order 202.6 to require that all non-essential construction projects shut down, except for emergency construction, which ESD defined as “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.”

The guidance now states: “Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation. For purposes of this section construction work does not include a single worker, who is the sole employee/worker on a job site.”

ESD’s guidance further provides that all construction sites, whether essential or emergency non-essential, must maintain social distancing measures, “including for purposes of elevators/meals/entry and exit.”

It is this firm’s guidance to clients to consider suspending construction unless (1) it clearly falls into one of the exceptions above or (2) work is in progress that must be completed to keep the site safe. For example, projects in the middle of demolition may need to complete that work in order to maintain safe conditions.

The rules governing business operations during the COVID-19 emergency continue changing on a daily and sometimes hourly basis. The Carter Ledyard COVID-19 Response Group is monitoring developments in this area and will continue providing updates as the situation evolves.

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Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists

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