



## Guidance for New York Businesses in the Construction Industry Permitted to Operate During the COVID-19 Disaster Emergency

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### **GUIDANCE FOR BUSINESSES IN THE CONSTRUCTION INDUSTRY PERMITTED TO OPERATE DURING THE COVID-19 DISASTER EMERGENCY**

On May 14, 2020, New York issued guidelines applicable to all construction projects moving forward during the COVID-19 public health emergency to ensure that workers remain healthy at work sites. Under Executive Order 202.31 ("Executive Order"), starting May 15, 2020 construction sites identified as non-essential, by Executive Order 202.28, may re-open with strict social distancing guidelines. However, Executive Order 202.31 only applies to Central New York, Finger Lakes, Valley, North Country, and Southern Tier. Construction in other counties in New York cannot resume pursuant to Executive Order 202.2. These strict social distancing guidelines must be followed to prevent the spread of COVID-19 ("Coronavirus"). Executive Order 202.31 requires every company performing construction works in New York to cooperate fully with the guidelines laid out therein.

**Specifically, by Executive Order No. 202.31, Governor Cuomo mandates:**

"...[E]ffective at 12:01 a.m. on May 15, 2020, that the reductions and restrictions on the in-person workforce at non-essential businesses or other entities shall no longer apply to ... Construction."

The Executive Order in its entirety is accessible via this link:

[https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_202.31.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.31.pdf)

The New York guidelines do not place the burden of creating and/or enforcing guidelines on any specific party at a construction site, rather every company performing work at a construction site in the State of New York must follow the guidelines established in the Executive Order. New York State has issued an affirmation that any company performing construction must affirm to relating to its compliance with the safety guidelines.[1] No construction activity can occur without meeting the minimum State standards, as well as applicable federal requirements, including, but not limited to, such minimum standards of the Americans with Disabilities Act (ADA), Centers for Disease Control and Prevention (CDC), Environmental Protection Agency (EPA), and United States Department of Labor's Occupational Safety and Health Administration (OSHA).

**WHAT MUST YOUR SAFETY PLAN INCLUDE TO HAVE CONSTRUCTION WORK RESUME AT YOUR SITE?**

Executive Order 202.31 contains a non-exhaustive list of the CDC, EPA, DOH, ADA, and industry best practices and guidelines to address the hazards at a construction site due to Coronavirus. New Jersey is requiring all companies performing construction work to affirm that they will comply with required safety protocols.

Executive Order 202.31 provides the minimum standard that anyone performing construction in these counties: Central New York, Finger Lakes, Valley, North Country, and Southern Tier. State of New York must follow to resume non-essential construction. The guidelines include both mandatory and recommended best practices, for four categories or safety requirements, which are: (1) Physical Distancing, (2) Protective Equipment, (3) Cleaning, and (4) Communication. The mandatory safety requirements include :

- Physical Distancing:
  1. Ensure 6 ft. distance between personnel, unless safety, or core function of the work activity requires a shorter distance;
  2. Any time personnel are less than 6 ft. apart from one another, personnel must wear an acceptable face covering;

3. For any work occurring indoors, limit workforce presence to no more than 1 worker per 250 sq. ft. on site, excluding supervisors in this calculation, unless additional personal protective measures are implemented (e.g., face coverings at all times);
  4. Tightly confined spaces (e.g., elevators, hoists) should be occupied by only one individual at a time unless all occupants are wearing face coverings. If occupied by more than one person, keep occupancy under 50% of maximum capacity;
  5. Construction sites must post social distancing markers using tape or signs that denote 6 ft. of spacing in commonly used and other applicable areas on the site (e.g., clock in/out stations, health screening stations); and
  6. Limiting in-person gatherings as much as possible and use tele- or video-conferencing whenever possible. Essential in-person gatherings (e.g., meetings) should be held in open, well-ventilated spaces with appropriate social distancing among participants.
- Protective Equipment:
    1. Employers must provide employees with an acceptable face covering at no cost to the employee and have an adequate supply of coverings in case of replacement;
    2. Acceptable face coverings include but are not limited to cloth (e.g., homemade sewn, quick cut, bandana) and surgical masks unless the work requires stricter PPE (e.g. N95 respirator, face shield);
    3. Face coverings must be cleaned or replaced after use or when damaged or soiled, may not be shared, and should be properly stored or discarded; and
    4. Limit the sharing of objects (e.g., tools, machinery, materials, vehicles) and discourage touching of shared surfaces; or, when in contact with shared objects or frequently touched areas, wear gloves (trade-appropriate or medical); or, sanitize or wash hands before and after contact.
  - Cleaning and Hygiene:
    1. Adhere to hygiene and sanitation requirements from the Centers for Disease Control and Prevention (CDC) and Department of Health (DOH) and maintain cleaning logs on-site that document date, time, and scope of cleaning;
    2. Provide and maintain hand hygiene stations for personnel, including handwashing with soap, water, and paper towels, as well as an alcohol-based hand sanitizer containing 60% or more alcohol for areas where handwashing is not feasible;
    3. Provide and encourage employees to use cleaning/ disinfecting supplies before and after the use of shared and frequently touched surfaces, followed by hand hygiene.
    4. Conduct regular cleaning and disinfection at least every day, and more frequent cleaning and disinfection of shared objects (e.g. tools) and surfaces, as well as high transit areas, such as

restrooms and common areas;

5. Cleaning and disinfecting of the site, shared surfaces, and other areas, as well as equipment and tools, should be performed using Department of Environmental Conservation (DEC) products identified by the Environmental Protection Agency (EPA) as effective against COVID-19;
  6. If cleaning or disinfection products or the act of cleaning and disinfecting causes safety hazards or degrades the material or machinery, personnel should have access to a hand hygiene station between use and/or be supplied with disposable gloves; and
  7. Prohibit shared food and beverages (e.g., buffet-style meals).
- Communication:
    1. Affirm you have reviewed and understand the state-issued industry guidelines, and that you will implement them.
    2. Post signage throughout the site to remind personnel to adhere to proper hygiene, social distancing rules, appropriate use of PPE, and cleaning and disinfecting protocols;
    3. Train all personnel on new protocols and frequently communicate safety guidelines;
    4. Establish a communication plan for employees, visitors, and clients with a consistent means to provide updated information;
    5. Maintain a continuous log of every person, including workers and visitors, who may have close contact with other individuals at the worksite or area; excluding deliveries that are performed with appropriate PPE or through contactless means;
    6. If a worker tests positive for COVID-19, the employer must immediately notify state and local health departments and cooperate with contact tracing efforts, including notification of potential contacts, such as workers or visitors with close contact with the individual, while maintaining confidentiality required by state and federal law and regulations;
    7. Conspicuously post completed safety plans on-site.

Together with these mandatory safety guidelines, New York has also issued recommended best practices. These recommended best practices include:

- Cleaning and Hygiene:
  1. Wherever possible, increase ventilation of outdoor air (e.g., opening windows and doors) while maintaining safety precautions.; and
  2. Encourage employees to bring lunch from home and reserve adequate space for employees to observe social distancing while eating meals.

- Screening:
  1. Perform screening remotely (e.g., by telephone or electronic survey), before reporting to the site, if possible.

#### **WHO WILL ENFORCE THE SAFETY PROTOCOL?**

As mentioned previously, Executive Order 202.31 requires that any company performing construction in one of the approved regions must affirm that they will comply with the above-referenced safety procedures. It will be incumbent upon all parties working on a project site to ensure that appropriate protocols are established to satisfy the mandated safety standards.

[1] The affirmation can be found at <https://forms.ny.gov/s3/ny-forward-affirmation>

To view a PDF, [click here](#).

#### **ATTORNEYS**

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