

# STATE UPDATES CONSTRUCTION ESSENTIAL WORK GUIDANCE, AMENDS SINGLE EMPLOYEE EXEMPTION

*Hodgson Russ Construction Alert*  
March 27, 2020

Earlier today New York State Empire State Development updated its Guidance for Determining Whether a Business Enterprise Is Subject To A Workforce Reduction Under Recent Executive Orders, in furtherance of Executive Order 202.6, as amended by Executive Orders 202.7 through 202.10, in response to the COVID-19 crisis.

Primarily, the updated Guidance has changed the definition of Construction and provides as follows:

## **9. Construction**

All 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. 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.

*The New York Times* reported that the State is giving builders time to wind down their operations and secure the job sites. However, the updated guidance issued by Empire State Development is silent on this point.

Also, please note that the following provision which was in the Guidance dated March 20, 2020, has been removed from the current Guidance:

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## **Practices & Industries**

Construction

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“Any business that only has a single occupant/employee (i.e. gas station) has been deemed exempt and need not submit a request to be designated as an essential business.”

This change (in the definition of which construction activities qualify as Essential Businesses for the purpose of Executive Order 202.6) is far reaching and its effects on the Construction Industry are still being analyzed.

Hodgson Russ remains on top of these circumstances as they develop. Our attorneys are working remotely, and ready, willing, and able to address the needs of our clients, so do not hesitate to contact us (attorney directory).

**Please check our Coronavirus Resource Center to view many other alerts our attorneys in various practice areas have published on topics related to the pandemic and New York State's related Executive Orders.**

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