

Governor Murphy Issues Executive Order 122 Shutting Down Non-Essential Construction Projects in New Jersey

In an intensifying effort to combat the impacts of COVID-19 as it spreads in New Jersey, Governor Phil Murphy issued Executive Order 122 on April 8, 2020, shutting down the "physical operations" of all "non-essential" construction in the state as of Friday, April 10, 2020 at 8:00pm.

According to Executive Order 122, exceptions or "essential" construction include:

Executive Order 122 notes that "construction sites are inherently difficult environments for social distancing to occur, as they frequently require large numbers of individuals to touch the same surfaces, gather closely together in area such as service elevators, an use common facilities such as portable restrooms" Yet, it acknowledges that "some construction is needed to expand our health care system's capacity, address immediate infrastructure deficiencies, and prevent future disruptions in various areas such as education, housing, and transportation, which are themselves tied to the public health and safety"

The Executive Order attempts to balance the competing interests of worker health and safety with the need for "essential" construction by requiring essential construction projects to comply with certain minimum requirements:

Executive Order 122 attempts to meet the practical reality of construction in New Jersey as many projects struggle in the face of COVID-19. While construction workers have continued to show up for work on New Jersey projects before this latest Executive Order, sailing has been anything but smooth. Projects throughout New Jersey have been facing labor shortages as a result of skittish workers concerned that they cannot effectively maintain the requisite social distancing as they carry out their work. Laborers are worried about their personal health, as well as the health of their family members. As a result, some workers have simply stopped showing up to jobsites. Other construction workers have shown up but have been quietly disgruntled, demoralized or just plain fearful as they attempt to comply with social distancing requirements at a cramped construction site.

While Executive Order 122 does not change the reality for "essential" construction workers, it does offer several prophylactic measures beyond merely complying with the requisite social distancing and CDC guidelines.

With Executive Order 122, New Jersey now joins New York, which late last month narrowed the definition of "essential" construction projects. New York Governor Andrew Cuomo shuttered most New York projects following concerns about the spread of COVID-19 throughout in that state. The Empire State Development Corporation (ESD) issued guidelines following Governor Cuomo's issuance of revised Executive Order 202.6. The ESD noted that all non-essential construction must shut down except emergency construction, which can continue. According to the ESD, "essential" construction in New York includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters.

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