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The Building Trades Employers Association (BTEA) is committed to keeping our members has been in constant discussions with the Governor's Office and Mayor's Office in order to determine how contractors should proceed with the various Executive Orders set forth by NYS Empire State Development Corporation and NYC Department of Buildings. Here is what we know as of the date of this publication.

We will continue these efforts in coordination with our Member Associations and report them to you through reports of this nature which you can find on the website we set up to focus on information relating to the Coronavirus. Please go to [www.bteany.com/covid19/](http://www.bteany.com/covid19/) where these updates will be posted and for other critical information designed for contractors.

## Questions?

Please submit any questions you may have and the BTEA will make every effort to get them answered and report it to the membership. Forward those questions to: [dranshte@bteany.com](mailto:dranshte@bteany.com)

## Disclaimer

**The information included in this BTEA Publication is for advisory purposes only. Please contact your attorney and other business advisors for legal advice.**

## Empire State Development Updates Guidance for Essential Construction

This morning, Empire State Development (ESD) updated its Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders. This guidance applies to each business location individually and is intended to assist businesses in determining whether they are an essential business.

With respect to businesses or entities that operate or provide both essential and non-essential services, supplies or support, only those lines and/or business operations that are necessary to support the essential services, supplies, or support are exempt from the workforce reduction restrictions.

You can read the full Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction Under Recent Executive Orders here: <https://esd.ny.gov/guidance-executive-order-2026>



### 9. Construction

All non-essential construction must safely 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, but only to the point that it is safe to suspend work).

Essential construction may proceed, to the extent that:

- the construction is for, or your business supports, roads, bridges, transit facilities, utilities, hospitals or healthcare facilities, homeless shelters, or public or private schools;
- the construction is for affordable housing, as defined as construction work where either (i) a minimum of 20% of the residential units are or will be deemed affordable and are or will be subject to a regulatory agreement and/or a declaration from a local, state, or federal government agency or (ii) where the project is being undertaken by, or on behalf of, a public housing authority;
- the construction is necessary to protect the health and safety of occupants of a structure;
- the construction is necessary to continue a project if allowing the project to remain undone would be unsafe, provided that the construction must be shut down when it is safe to do so;
- the construction is for projects in the energy industry in accordance with Question No. 14 in the FAQ at: [https://esd.ny.gov/sites/default/files/ESD\\_EssentialEmployerFAQ\\_033120.pdf](https://esd.ny.gov/sites/default/files/ESD_EssentialEmployerFAQ_033120.pdf);
- the construction is for existing (i.e. currently underway) projects of an essential business; or
- the construction work is being completed by a single worker who is the sole employee/worker on the job site.

At every site, it is required that the personnel working on the site maintain an appropriate social distance, including for purposes of elevators/meals/entry and exits. Sites that cannot maintain appropriate social distancing, as well as cleaning/disinfecting protocols must close. Enforcement will be conducted by state and local governments, including fines up to \$10,000 per violation.

Construction may continue solely with respect to those employees that must be present at the business location/construction site in support of essential business activities. No other employees/personnel shall be permitted to work in-person at the business location/construction site. Any other business activities being completed that are not essential are still subject to the restrictions provided by Executive Order 202.

As noted above, local governments, including municipalities and school districts, are allowed to continue construction projects at this time as government entities are exempt from these essential business restrictions. However, to the greatest extent possible, local governments should postpone any non-essential projects and only proceed with essential projects when they can implement appropriate social distancing and cleaning/disinfecting protocols.

Essential projects should be considered those that have a nexus to health and safety of the building occupants or to support the broader essential services that are required to fulfill the critical operations of government or the emergency response to the COVID-19 public health crisis.