

Are Your Business and Construction Project Essential at This Time?

by Alex Hontos

With COVID-19 emergency orders in place, can you continue construction? This question is addressed on a jurisdiction-by-jurisdiction basis, evaluating the text of the emergency order to assess whether construction projects, general contractors, and trades are exempt from closure. Some jurisdictions consider construction non-life sustaining, meaning projects in that jurisdiction must close during the period the COVID-19 emergency order is in effect.

We have had success with clients performing federal construction work obtaining authorization to continue working. If you are concerned whether your Federal Government project is essential, we suggest you request the contracting officer issue a letter designating the project essential. The following is a sample request:

Dear Contracting Officer _____ [insert name],
On behalf of [Company], we request you deem the [name of project] essential to allow our workforce, including subcontractors and suppliers, access to the [name of project] site, and to continue work on Contract No. [Insert Contract No. and description], while COVID-19 emergency orders are in effect.

This Project is essential for the following reasons:
[Insert reasons]

Essential work may include, among others, work related to dams, locks, levees, bridges, water, sewer, main breaks, traffic, utilities, digital systems infrastructure, plumbers, electricians, exterminators, safety, sanitation, roads, transportation, energy, communications and waste. For federal guidance on essential workers see, <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>. States vary in their definition of essential workers.

If you receive a letter or notice from the Federal Government designating your project or company as essential, it should be posted at the project site and distributed to employees. It is unclear whether a state or local jurisdiction will respect the Federal

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Agency's essential designation, but such a letter may enable continued performance.

This suggested proactive approach can mitigate the impact to your business from the COVID-19 emergency orders. Dorsey is here to serve and advise you during this unusual and difficult time.