As each day of the coronavirus pandemic passes, more and more states, cities, and counties across the country are implementing stay-at-home (or shelter-in-place) orders and restrictions on individuals and businesses. These restrictions are impacting numerous persons and businesses, including those working in the construction industry. Smith Currie is keeping abreast of these restrictions and has developed this matrix identifying statewide and local restrictions in place. This matrix is by no means complete, and we will continue updating it as we become aware of additional orders. In the write ups below, you will find links to the applicable orders with more detailed information. Consult legal counsel for advice on the impact of a particular restriction or restrictions to your business.

ALABAMA

On March 27, 2020, Governor Kay Ivey issued an Executive Order requiring the closure of certain non-essential businesses beginning Saturday, March 28, 2020 at 5:00 p.m. No Stay at Home Order has been issued, but is being requested of residents. The list of businesses directed to shut down falls into four categories: entertainment venues; athletic facilities and activities; non-essential "close-contact" service establishments, and non-essential retail stores. The list of places ordered closed includes gyms, barber shops, theaters, casinos, book stores, department stores, clothing stores and nail salons. The Alabama Department of Public Health Order sets the full list of closures [here](#).

The Public Health Order does not include Construction or businesses such as manufacturing facilities, grocery stores, and restaurants that offer take-out. The Alabama Department of Public Health put out a document on its website to try to answer questions about the order, which reemphasizes that social distancing should be observed for those businesses not closed, including avoiding gatherings of ten or more. Click [here](#) to view the March 28, 2020 document.
ALASKA

Effective as of March 28, 2020 at 5:00 p.m., and through at least April 11, 2020, Alaska’s social distancing mandate requires everyone in Alaska to stay home unless performing an essential function. See the mandate here.

Essential functions include work in critical infrastructure as defined in Alaska’s Essential Services and Critical Workforce and Infrastructure Order. Critical infrastructure includes any business providing services or performing work necessary for public works construction and housing construction. Businesses that remain open are to take all reasonable precautions to guard the health of their employees, encourage social distancing, and facilitate working from home when reasonably possible. The order expressly supersedes any other local or tribal mandate, directive, or order.

The order imposes personal fines up to $25,000 for violations. A business may be subject to an order to cease operations for violating the mandate, and may be fined up to $500,000 for a failure to follow the order that does not result in death, and up to $2.5 million for a violation of the order that results in death.

CALIFORNIA

On March 16, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, effective “until further notice,” directing all residents to stay home, except as required to maintain continuity of operations of essential critical infrastructure sectors. In accordance with this Order, the State Public Health Officer has issued Orders identifying what is “essential,” and on March 19 set forth a list of “Essential Critical Infrastructure Workers.” The Public Health Officer also issues clarifications of the Orders in response to Frequently Asked Questions.

Identified as “Essential Critical Infrastructure Workers” are the 16 critical infrastructure sectors defined by the Department of Homeland Security, plus “Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, construction material suppliers, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues” and “Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction).” Also included are “Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, construction material sources, and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste).”

Under California law, the Governor’s Order has the full force of law and supersedes the enactments of local authorities. However, some local jurisdictions believe they may enact stricter ordinances. The Public Health Officer’s first clarification of his Order allowed this, stating: “This is a statewide order. Depending on the conditions in their area, local officials may enforce stricter public health orders. But they may not loosen the state’s order.” The following day, the Health Officer removed the part allowing local jurisdictions’ leeway, leaving only “This is a statewide order.” Our reading of the law is that what the Governor says is essential, the localities cannot overrule and say it is not essential. Since the Governor has said all construction is essential, localities do not have the power to trump that.

Organizations such as AGC and UCON have requested the Governor, so as to remove local jurisdictions’ doubts, state plainly that his order trumps the orders of local jurisdictions that have issued their own orders.

However, so long as a local jurisdiction prevents construction from proceeding, you must comply with the local jurisdiction’s orders.

COLORADO

Effective as of 6:00 a.m. on March 26, 2020, Governor Jared Polis issued Executive Order D 2020 017 restricting certain activities of Colorado residents and businesses due to the public health concerns caused by the COVID-19 emergency.

Colorado residents are required to stay at home and avoid social and other non-essential gatherings. These restrictions do not apply to individuals working at or providing services to Critical Businesses. The Executive Director of the Colorado Department of Public Health and Environment (“CDPHE”) was ordered to issue a public health order (“PHO”) defining critical emergency personnel,
framework, government functions, and other activities that will be exempt from this order.

All businesses not identified as “Critical Businesses” under Public Health Order 20-24 are to close, except as necessary to engage in minimum basic operations needed to protect assets and maintain personnel functions. Critical Businesses must comply with the guidance and directives for maintaining a clean and safe work environment issued by the CDPHE and any applicable local health department. **All Critical Businesses must comply with social distancing and related health guidelines, to the greatest extent possible.**

An amended PHO was issued on March 26, 2020, as ordered by the Governor. **“Critical Business” related to public and private construction includes the following:**

- Construction of housing and housing for low-income and vulnerable people;
- Skilled trades such as electricians and plumbers;
- Building code enforcement;
- Any manufacturing necessary to support a Critical Business;
- Performing work providing essential products and services for a Critical Business or Critical Government function as defined in Section III. C and D of the PHO;
- Building cleaning and maintenance;
- Utilities;
- Roads and highways;
- Oil and gas; and
- Others.

**Any local public authority may issue more protective orders** and any local order issued will remain in full force and effect.

To view the full executive order, click [here](#).

To view the full Public Health Order defining Critical Business, Activities, Government Functions and more, click [here](#).

**CONNECTICUT**

On March 20, 2020, Connecticut Governor Ned Lamont issued Executive Order 7H. Effective March 23, 2020, at 8:00 p.m. through April 22, 2020 – one month – all non-essential businesses and not-for-profit entities shall reduce their in-person workforces at any workplace locations by 100%. See the order [here](#).

As directed by this order, the Connecticut Department of Economic and Community Development issued its determination of essential businesses that are exempt from this order. These essential businesses comport with 16 critical infrastructure sectors defined by Department of Homeland Security, and include construction activities. A full list of essential business activities exempt from Governor Lamont’s order can be found [here](#).

**DELAWARE**

Effective as of 8:00 a.m. on March 24, 2020, and in effect until further notice, Governor John Carney issued the Fifth Amendment to the Declaration of a State Emergency restricting certain activities of Delaware residents and businesses due to the public health concerns caused by the COVID-19 emergency.

All residents of Delaware are ordered to stay in their homes except to perform **Essential Activities** or to perform work permitted by the Fourth Modification. These restrictions do not apply to individuals working at or providing services to **Essential Businesses**.

The order imposes specific responsibilities on all Essential Businesses, including an obligation to follow the coronavirus guidelines for public safety enumerated by the CDC and DPH.

Under the Fourth Amendment, **Essential Businesses, as related to construction**, include businesses that employ or utilize the following workers:

- Workers who provide construction of residential and/or nonresidential structures or infrastructure;
- Workers who provide critical maintenance to residential or non-residential structures;
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems...
infrastructure supporting public works operations, and other emergent issues;

- Workers at businesses that supply materials and hardware to those engaged in the construction of residential or non-residential structures;
- Workers involved in activities related to the design and apportionment of residential and non-residential structures; and
- Workers to ensure continuity of building functions.

Persons working for **Essential Businesses** are permitted to travel to and from their job and as otherwise permitted within the Amendments. Persons working for an Essential Business are encouraged to follow CDC and Delaware Public Health recommendations and guidance, including social distancing, sending sick employees home, actively encouraging sick employees to stay home, and separating and sending home employees who appear to have respiratory illness syndrome.

To view the Fourth Amendment to the Declaration of State Emergency, click [here](#).

To view the Fifth Amendment to the Declaration of State Emergency, click [here](#).

**DISTRICT OF COLUMBIA**

The Mayor of District of Columbia has issued an Order to cease temporarily all non-essential business activities in the District of Columbia other than those conducted safely from home. The Order is effective as of March 25, 2020 at 10:00 p.m., and remains in place until April 24, 2020 unless extended, amended or superseded. The District’s restrictions focus on business operations rather than individuals. See the full order [here](#).

The Order provides that

- All businesses with a facility in Washington, D.C., except “Essential Business” shall cease all activities at those facilities, except “Minimum Basic Operations;”
- All Essential Businesses are strongly encouraged to remain open;
- Non-Essential Businesses may continue telework operations consisting of employees or contractors performing work at their own residences and home-based businesses may continue to operate, to the extent such businesses do not involve individuals making physical contact with other persons and can be carried out in compliance with the Social Distancing Requirements;
- All Essential Government Functions shall continue;
- An individual who is suspected or confirmed to be infected with COVID-19 or any other transmissible infectious disease or who has symptoms of a cold or the flu may not be engaged in conducting Essential Business;
- Large gatherings of ten or more persons are prohibited in the District of Columbia;
- Essential Businesses that remain open shall comply with Social Distancing Requirements (separating staff by off-setting shift hours or days and maintaining separation of at least six (6) feet among employees and members of the public; and
- Essential and non-Essential businesses shall take all reasonable steps necessary for employees to work remotely from their residences.

Several types of construction fall within the definition of “Essential Businesses,” including:

- Communications and information technology infrastructure construction and restoration; and
- Construction and Building Trades including plumbers; pipefitters; steamfitters; electricians; boilermakers; exterminators; roofers; carpenters; bricklayers; welders; elevator mechanics; businesses that sell supplies and materials for maintenance of commercial and residential buildings and homes, including 'big box' supply stores, plumbing distributors, electrical distributors, and HVAC distributors; and other businesses that provide services that are necessary to maintaining the safety, sanitation, and operation of residences and Essential Businesses.

The Order defines “Essential Infrastructure” to include “public works, such as roads, sidewalks, street lighting, traffic control devices, railways, and government facilities; utilities, such as electricity, gas, telecommunications, water and wastewater, and drainage infrastructure, and solid waste collection and removal by private and public entities.” The Order also specifically references the Cybersecurity and Infrastructure Security Agency (CISA) Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, issued March 19, 2020, which identifies “Essential Critical Infrastructure” work for federal agencies. However, the
Order does not specifically tie any exemption to such Essential Infrastructure.

Minimum Basic Services which Non-Essential Businesses may perform include:

- The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, and related functions;
- The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences; and
- The minimum necessary activities to facilitate teleworking or the remote delivery of services formerly provided in-person by the business; to provide cleaning and disinfection of a business’s facilities; and to provide employee supervision of contractors or employees providing essential maintenance of the facility.

GEORGIA

In Georgia, DeKalb County and the City of Atlanta have issued Emergency Executive Orders.

For DeKalb County:
On March 23, 2020, DeKalb County Chief Executive Officer Michael Thurmond issued Executive Order No. 20-001, declaring a state of emergency. See the order here.

Effective as of March 24, 2020, at 12:01 a.m., DeKalb County places certain restrictions, including hours of operation for all but essential businesses. All non-essential businesses must be closed between 9:00 p.m. and 6:00 a.m. each day. Essential businesses not subject to this work hour restriction include “Essential Manufacturing/Construction to maintain public health, safety and welfare” and businesses performing “repair work for businesses and homes.” DeKalb County CEO also has discretion to deem any service “essential for the protection of public health, safety and welfare as an ‘Essential Business’.”

For the City of Atlanta:
On March 23, 2020, Atlanta Mayor Keisha Lance Bottoms issued Executive Order 2020-21, effective as of midnight on March 24, 2020. A Corrected Executive Order was issued on March 24, 2020, making an important clarification regarding the impact of the Order on construction. The Order requires Atlanta residents to stay in their residences and requires business facilities in the City of Atlanta to close. Certain “Essential” activities, businesses, and government functions are exempt from the Order as long as they comply with defined social distancing criteria. As corrected, the Order expressly exempts both “public works” and “construction.” A copy of the order can be found here.

The 21 Essential Businesses listed in the Order, and not subject to the stay-at-home order, are:

i. Healthcare Operations and Essential Infrastructure;

ii. Grocery stores, farmers markets, and other retail establishments selling food and household consumer products;
iii. Food cultivation, farming, livestock, and fishing;
iv. Businesses providing food, shelter, and social services;
v. Newspapers, television, radio, and other media;
vi. Gas stations and auto-supply/repair related facilities;
vii. Banks and related financial institutions;
viii. Hardware stores and lodging businesses (hotels, motels, conference centers);
ix. Plumbers, electricians, exterminators, and other service providers providing services necessary to maintain the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
x. Mailing and shipping service businesses;
xii. Educational institutions (K-12 public and private schools, colleges and universities);
xii. Laundromats, dry cleaners, and laundry service providers;
lii. Restaurants and food preparation facilities;
liv. Businesses supplying products people need to work from home;
lvi. Businesses supplying other essential businesses with support or supplies necessary to operate;
lvi. Businesses shipping or delivering groceries, food, goods, or services directly to residences;
lvii. Home-based care services for seniors, adults, or children;
lviii. Residential shelters for seniors, adults, or children;
lx. Professional services, such as legal or accounting;
lxi. Childcare facilities; and
lxii. Utility, water, sewer, gas, electrical, oil refining, roads and highways, railroads, public transportation, taxi/rideshare, solid waste collection and removal, internet, and telecommunication systems.

If ratified by the Atlanta City Council, the Order will be in effect for 14 days. If the City Council does not ratify the Order, it expires in 72 hours.

HAWAI‘I

Effective as of 12:01 a.m. on March 25, 2020 through 11:59 p.m. on April 30, 2020, Governor David Ige issued a Third Supplementary Proclamation (“Proclamation”) restricting certain activities of Hawai‘i residents and businesses due to the public health concerns caused by the COVID-19 emergency.

Residents of Hawai‘i are required to stay at home and avoid social and other non-essential gatherings. These restrictions do not apply to individuals working at or providing services necessary to maintain the continuity of operations of the federal critical infrastructure sectors, which can be accessed below, and as designated by the Director of the Hawai‘i Emergency Management Agency.

All operations at businesses not identified as essential in the Proclamation or by CISA, must cease. To view CISA’s list, click here.

Critical trades such as Building and Construction Tradesmen and Tradeswomen, including, but not limited to, plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, essential activities, and essential businesses and operations are defined as Critical Businesses.

The order DOES NOT read to permit construction unless that construction is necessary to a Critical Business.

To view the full Proclamation, click here.

IDAHO

The Director of the Idaho Department of Health and Welfare issued an order, effective as of 1:30 p.m. on March 25, 2020 through 11:59 p.m. on April 15, 2020.

Under the order, all businesses, except Essential Businesses as defined in Section 8 of the order, shall cease all activities except Minimum Basic Operations as defined in Section 8.g. Any business with employees, as defined by the Order, that can work exclusively from home may continue operations.

Additionally, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure” including, but not limited to:

- Public works construction, commercial construction, construction of housing (in particular afford-
able housing or housing for individuals experiencing homelessness);

- Airport operations;
- Water, sewer, gas, electrical;
- Oil refining;
- Mining;
- Roads and highways, public transportation;
- Solid waste collection and removal; and
- Internet and telecommunications systems.

Essential Businesses include, but are not limited to:

- Hardware stores and firearms businesses;
- Plumbers, electricians, exterminators, landscapers, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses; and
- Businesses that supply other Essential Businesses or Essential Government Functions with the support or supplies necessary to operate.

To view the full order and all definitions contained therein, click here.

ILLINOIS

On March 20, 2020, Governor JB Pritzker issued a stay-at-home order requiring all non-essential business and operations to cease and for individuals to stay at home. Business can continue with employees working from home. See the order here. The prohibition is effective as of 5:00 p.m. on March 21, 2020.

First responders, emergency management personnel, law enforcement personnel, healthcare workers, and others working to support Essential Businesses and Essential Government Functions like grocery stores and pharmacies are exempt from this stay-at-home order.

The order identifies businesses and activities that are essential and therefore exempt from the order. The order expressly exempts construction as “essential infrastructure,” which it defines as follows: “Working in food production, distribution and sale; construction; building management and maintenance; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical; distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems.”

INDIANA

Governor Eric J. Holcomb issued Executive Order 20-08, effective as of 11:59 p.m. on March 24, 2020, and remains in full force and effect until 11:59 p.m. on April 6, 2020. The order can be found here.

The order requires Indiana residents to stay at their place of residence, except to perform defined essential activities. All businesses and operations in the State of Indiana, except for Essential Businesses and Operations must cease all activities except for minimum basic operations. Minimum basic operations include: the minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of its physical plant and equipment, ensure security, process payroll and employee benefits, or the minimum activities to facilitate employees of the business being able to continue to work remotely from their residences.

The Order identifies the exempt essential activities to include (a) engaging in activities to perform tasks essential to health and safety, such as, seeking emergency services, obtaining medical supplies, or medication, or visiting a health care professional; (b) obtaining necessary supplies and services, including groceries, household consumer products, supplies to work from home, automobile supplies, and products necessary to maintain the operation of the home; (c) outdoor activities as long as the six-foot social distancing guidelines are followed; (d) performing work providing essential products and services at Essential Businesses or Operations; and (e) taking care of others. Individuals may also leave their residences to work for, or to obtain services through, Healthcare and Public Health Operations.

For the purposes of this Executive Order, the phrase “Essential Businesses and Operations” means Healthcare and public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, as well as the following:

- Stores that sell groceries and medicine
- Food, beverages, and agriculture
Organizations that provide charitable and social services
- Religious entities
- Media
- Gas stations and businesses needed for transportation
- Financial and insurance institutions
- Hardware and supply stores
- Critical trades
- Mail, post, shipping, logistics, delivery and pick-up services
- Educational institutions
- Laundry services
- Restaurants for consumption off-premises
- Supplies to work from home
- Supplies for essential businesses and operations
- Transportation
- Home based care and services
- Residential facilities and shelters
- Professional services
- Manufacture, distribution, and supply chain for critical products and industries
- Critical labor union functions
- Hotels and motels
- Funeral operations

Essential Infrastructure includes, but is not limited to, the following: food production, distribution, fulfillment centers, storage facilities, marinas, and sale; construction (including but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, essential business construction, and housing construction); building management and maintenance; airport operations; operation and maintenance of utilities, including, for example, water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations, flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

Critical Trades are defined as: building, construction, and other trades, including, but not limited to, plumbers, electricians, exterminators, operating engineers, cleaning and janitorial staff for commercial and governmental properties, security staff, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operations of residences, Essential Activities, and Essential Businesses and Operations.

KANSAS
Effective as of 12:01 a.m. on March 30, 2020, through 11:59 p.m. on April 19, 2020, Kansas Governor Laura Kelly issued Executive Order No. 20-16 restricting certain activities of residents and businesses throughout the state due to the public health concerns caused by the COVID-19 emergency (“Order”). To view the full Order, click here.

Kansas State residents are required to stay at home and avoid social and other non-essential gatherings. These restrictions do not apply to individuals performing Essential Activities, including going to and coming from businesses or organizations covered by the Kansas Essential Function Framework (“KEFF”).

Any individuals or entities who are uncertain whether they perform functions exempted from the restrictions in this Order should contact KEFF@ks.gov to determine whether their functions are deemed essential. Business functions that can be completed through telework or by employees and contractors working exclusively from home may continue.

As related to public and private construction, Essential Activities under the KEFF include:
- Distribute, generate, and transmit electricity;
- Transport cargo and passengers by air, rail, road, and vessel;
- Transport materials by pipeline and passengers by mass transit;
- Manage hazardous materials, waste, and waste water;
- Develop and maintain Public Works;
- Perform government contracts;
- Manage or operate planning, cleanup, or other
emergency responses, including private entities, to prepare for and manage emergencies;
- Construct or repair roads;
- Construct, maintain, or clean buildings;
- Produce or distribute construction materials;
- Maintain specialized manufacturing or industrial equipment;
- Manufacture equipment used for Essential Function or Critical Infrastructure (as defined by DHS);
- Construct, supply, clean, or maintain single family homes or other housing;
- Provide material and operational support to defense; and
- Supply water.

While in effect, this Order supersedes all local “stay home” orders. No local order may be more or less restrictive than this Order, but any local order that is in effect longer than this Order shall go into effect at the expiration of this Order. Moving forward, the Secretary of Health and Environment may issue other orders restricting movement as necessary in any local jurisdiction.

Under this Order, individuals leaving their home for a permitted purpose shall not be required to carry or present any letter, identification card or other paper proving they may leave home. This supersedes all requirements in Executive Order 20-15 that state otherwise.

LOUISIANA

Effective as of March 23, 2020 at 5:00 p.m., and through at least April 13, 2020, Louisiana’s Stay-At-Home Order requires everyone in Louisiana to stay home unless performing an essential activity. See the order here.

Essential activity includes work in critical infrastructure as defined in the Department of Homeland Security Cybersecurity and Infrastructure Security Agency’s advisory memorandum identifying essential critical infrastructure, updated on March 28, 2020. Construction and related support work are considered critical and thus permitted to continue in the energy, public works, information technology and communications, and residential construction sectors. See Smith Currie’s analysis of the updated CISA guidance here. Louisiana has also clarified that essential infrastructure covers “[c]onstruction, including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, and housing construction[,]” as well as manufacturing, distribution, and supply chains supporting construction.

MARYLAND

Effective as of 8:00 p.m. on March 30, 2020, every person living in Maryland is ordered to stay in their home except to perform essential activities. Anyone working at an essential business may travel between home and work, and to deliver goods to or perform services for customers. The order is available here.

Essential activities are limited, and include obtaining necessary supplies and services to maintain the safety, sanitation, and essential maintenance of the home; seeking medical care, and caring for, family, friends, and pets; traveling to or from school to receive meals or instructional materials for distance learning; engaging in outdoor exercise while practicing appropriate social distancing; travel required by a law enforcement officer or court order; and traveling to and from government buildings for necessary purposes.

This order amends the March 23, 2020 order closing all non-essential businesses; the closures instituted by the March 23, 2020 remain in effect. Non-essential businesses are those not identified as part of the critical infrastructure sectors by the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency. See our previous analyses of CISA and other federal guidelines here and here. The CISA guidance published by the Department of Homeland Security can be found here.

The Maryland Office of Legal Counsel has provided an interpretation of the stay-at-home and business closure orders, including identification of specific essential businesses, here and here. The Office of Legal Counsel specifies that both commercial and residential construction companies may continue to operate.

Willful and knowing violation of the order is a misdemeanor, punishable by a fine of up to $5,000 and up to one year in jail.

MASSACHUSETTS

On March 16, 2020, Mayor Martin Walsh ordered all construction in the City of Boston to suspend all regular activity. The order is effective as of March 17, 2020. See the order here.
Construction businesses are allowed to maintain crews necessary to “keep their sites safe and secure, keep any materials from blowing away, and prevent trespassing.” The suspension allows for “emergency work” and case-by-case exceptions upon the approval of the Boston Inspectional Services Department. It exempts essential work, which includes:

- Emergency utility, road or building work, such as gas leaks, water leaks and sinkholes;
- New utility connections to occupied buildings;
- Mandated building or utility work;
- Work at public health facilities, healthcare facilities, shelters, including temporary shelters and other facilities that support vulnerable populations;
- Work which ensures the reliability of the transportation network; and
- Other work necessary to render occupied residential buildings fully habitable.

**MICHIGAN**

On March 23, 2020, Governor Gretchen Whitmer issued a stay-at-home order requiring all individuals in the state, with some exceptions, to stay at home. The order is available [here](#). The order is effective as of 12:01 a.m. on March 24, 2020, and continues through April 13, 2020, at 11:59 p.m. All public and private gatherings of any number of people, except people within a single household, are prohibited.

Workers cannot leave their homes unless they are necessary to sustain or protect life or to maintain minimum basic business operations. Businesses may continue in-person operations performed by “critical infrastructure workers,” who must be designated in writing, and who must practice social distancing. “Public works” are included in “critical infrastructure” but are not otherwise defined.

**MINNESOTA**

Governor Tim Walz issued Emergency Executive Order 20-20 effective as of 11:59 p.m. on March 27, 2020, through April 10, 2020, at 5:00 p.m. The full text of the order can be viewed [here](#).

Under the Order, Minnesotans are permitted to leave their homes only to engage in a specific list of activities. The list of approved activities includes performing work at a “Critical Sector,” if the activity cannot be performed from home.

Critical Sector is defined to include, but is not limited to:

- Public Works as listed in the CISA guidance, in addition to construction material suppliers and workers providing services necessary to maintain construction material sources;
- Transportation and logistics workers who support homelessness-prevention;
- Workers supporting building code enforcement necessary to maintain public safety and health of essential infrastructure and any construction required in response to the COVID-19 peacetime emergency, including, but not limited to, construction of health care facilities and essential businesses and services, or construction as required for emergency repairs and safety purposes; and
- Construction and critical trades, including workers in the skilled trades such as electricians, plumbers, HVAC, elevator technicians, and other related construction of all kind. This includes exterminators, cleaning, and janitorial staff for commercial and governmental properties and others. A full list can be seen on page 8, section x, of the order.

As the order is further developed and clarified those clarifications can be found on the state’s website, [here](#).

**MISSISSIPPI**

Effective March 24, 2020, Governor Tate Reeves issued Executive Order 1463 restricting certain activities of Mississippi residents and businesses due to the public health concerns caused by the COVID-19 emergency. A copy of the order is [here](#).

Mississippi residents are required to avoid social and other non-essential gatherings in groups of more than 10 people where the gatherings are in a single space at the same time. This restriction does not apply to individuals working for defined **Essential Businesses or Operations**.

**Essential Businesses or Operations** related to public and private construction include:

- Construction and construction related services including building and construction, lumber, building materials and hardware, electricians, plumbers, exterminators, cleaning and janitorial, HVACR and water heating industry, painting, moving and
relocating services, other skilled trades, and other related construction firms and professionals for maintaining essential infrastructure;

- Defense Industrial Bases, including employees and personnel who support the essential products and services required to meet national security commitments to the Federal Government and the U.S. Military, including personnel working for companies and their subcontractors, who perform under contract for the Department of Defense providing materials and services to the Department of Defense and government-owned/contractor-operated and government-owned/government-operated facilities;

- Categories of workers and related industries identified by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) in its “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response” as it may be amended. See the memorandum here.

Persons working for **Essential Businesses or Operations** are not subject to the ten-person limitation, but are encouraged to follow CDC and Mississippi Department of Health recommendations and guidance, including social distancing, sending sick employees home, actively encouraging sick employees to stay home, and separating and sending home employees who appear to have respiratory illness syndrome.

The order pre-empts all similar orders issued by governing bodies or political subdivisions of the state that conflict with or impede the purpose of the statewide order.

**MISSOURI**

In Missouri, the following counties and/or cities have issued Stay-at-Home Orders: Platte County, Jackson County, the City of St. Louis, Cass County, the City of Belton, the City of Kansas City and Clay County.

**For Jackson and Platte Counties:**

The Orders are almost identical. To see the order for Jackson County, click here; to see the order for Platte County, click here. Both provide for limited isolation permitting residents to leave their homes only to perform “Essential Activities,” “Essential Government Functions,” or to operate “Essential Businesses.” All businesses who are not “Essential Businesses” or otherwise exempt from the order are required to cease all activities except those necessary to maintain “Minimum Basic Operations.” But if all employees and/or contractors already work from home, non-essential businesses may continue to operate. All permitted activities must be conducted in conformance with the “Social Distancing Orders.”

“Essential Activities” are defined in each order and include, but are not limited to:

- “Performing work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in the order, including Minimum Basic Operations.”

- “Providing any services or performing any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing, airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, Internet and telecommunications systems, provided that they carry out those services or that work in compliance with social distancing requirements.”

- “Essential Government Functions,” as determined by the government entity performing those functions.

Within each order, “Essential Businesses” include, but are not limited to: hardware stores; plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining safety, sanitation, any central operations of residences, Essential Activities and any Essential Businesses; and businesses that supply other Essential Businesses with the support or supplies necessary to operate.

The Orders are effective as of 12:01 a.m., March 24, 2020, and remain effective until 12:00 a.m. on April 24, 2020, unless otherwise extended.

**For the City of St. Louis:**

All businesses must cease all activities except those necessary to maintain the value of inventory and infrastructure, provide security, process payroll or employee benefits, or facilitate employees working remotely. Businesses exempt from the aforementioned restrictions include, but are not limited to: hardware stores; construction; and manufacture, distribution, and supply chains for exempt businesses.
St. Louis's Order is effective as of March 23, 2020, at 6:00 p.m. and will remain in effect until April 22, 2020, at 6:00 p.m., unless otherwise extended. See the order here.

The City of St. Louis has provided a Q&A publication that can be viewed here.

For Cass County, the City of Belton, the City of Kansas City, and Clay County:

While almost identical, each order does vary slightly. However, under each order, all businesses and “other operations” within each locale are required to cease all in-person operations, except as outlined below.

Residents of each area cannot leave their homes except to perform specific “Essential Activities.” In each order, an Essential Activity includes, but is not limited to: “Performing work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in each order, including Minimum Basic Operations ... at Non-Essential Businesses.”

As defined in each Order, Essential Businesses include, but are not limited to: “Essential Infrastructure”—defined below; hardware stores; plumbers, electricians, exterminators, cemetery workers, undertakers, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses; railroads and rail systems; and businesses that supply other Essential Businesses with the support or supplies necessary to operate.

Each order considers Essential Infrastructure to be an Essential Business exempt from the restrictions of the order. Essential Infrastructure as defined in each order includes, but is not limited to: public works construction; construction of housing; airport operations; utilities including water, sewer, gas, and electrical; oil refining; railroad and rail systems; roads and highways; public transportation; solid waste collection and removal; internet and telecommunications systems. All permitted services and/or work must be carried out in compliance with Social Distancing Requirements, to the extent possible.

The City of Belton has provided a Q&A publication that can be viewed here. Likewise, the City of Kansas City has provided a Q&A publication that can be viewed here.

The orders for Cass and Clay Counties are effective as of 12:01 a.m. on March 24, 2020, and expire at 11:59 p.m. on April 24, 2020, unless extended. To view the order for Cass County, click here. To view the order for Clay County, click here. The orders for the Cities of Kansas City and Belton City should be considered effective as of March 22, 2020, and will remain in effect until 11:59 p.m. on April 24, 2020, unless extended. To view the order for Kansas City, click here. To view the order for City of Belton, click here.

NEW JERSEY

On March 21, 2020, Governor Phil Murphy issued an order directing all residents to stay at home, except to report to work, obtain essential goods or services, seek medical attention, visit family or close friends, or engage in outdoor activities. See the order here.

The order requires all non-essential retail businesses to close, but allows businesses other than retail to remain open. Businesses that remain open “should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue.”

Governor Murphy followed by issuing an order expressly preempting and invalidating all orders, rules, regulations, ordinances, or resolutions of municipalities, counties, or any other agency or political subdivision which conflict with any provisions of the state’s order. Find the preemption order here.

NEW MEXICO

New Mexico Department of Health Cabinet Secretary Kathyleen M. Kunkel issued an order effective as of March 23, 2020, through April 6, 2020.

Only Essential Businesses may continue operations, provided they minimize operations to the greatest extent possible, adhere to social distancing protocols, maintain at least six-foot social distancing from other individuals, avoid person-to-person contact, and direct employees to wash their hands frequently. Further, all Essential Businesses shall ensure all surfaces are cleaned routinely.

An Essential Business includes, but is not limited to, Infrastructure operations including:

- Public works constructions, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and con-
struction of roads and highways, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

- Hardware stores;
- Utilities, including their contractors and suppliers, engaged in power generation, fuel supply and transmission, water and wastewater supply.

The full text of the New Mexico order can be viewed here.

**NEW YORK**

On March 20, 2020, Governor Andrew Cuomo issued what he entitled a “PAUSE” (Policies that Assure Uniform Safety for Everyone) order mandating the closure of all non-essential businesses, except for telecommuting. See order here, and additional information here. The order is effective as of 8:00 p.m. on Sunday, March 22, 2020.

Concentrations of individuals outside their homes must be limited to workers providing essential services. The Governor’s office provided guidance on what the state considers “essential businesses.” See that guidance here.

The guidance clarifies that construction is considered essential business: “9. Construction, including: skilled trades such as electricians, plumbers; other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes.” To the extent there is any question as to whether Category 9 (“Construction, including”) applies only to the “included” categories listed, rather than being inclusive of those categories, but not limiting others, the category of construction for “essential infrastructure” is very expansive: “2. Essential infrastructure: Utilities including power generation, fuel supply and transmission; public water and wastewater; telecommunications and data centers; airports/airlines; transportation infrastructure such as bus, rail, or for-hire vehicles, garages; hotels, and places of accommodation.”

**NORTH CAROLINA**

On March 27, 2020, North Carolina Governor Roy Cooper issued Executive Order No. 121, called the “Stay At Home Order and Strategic Direction for North Carolina In Response to Increasing COVID-19 Cases,” restricting certain activities of North Carolina residents and businesses due to the public health concerns caused by the COVID-19 emergency, making violations a Class 2 misdemeanor. The order is effective as of Monday, March 30, 2020 at 5:00 p.m., and remains in effect for thirty (30) days. It **DOES NOT** preempt cities or counties in North Carolina from imposing greater restrictions. A copy of the order is here.

The order requires all individuals in North Carolina to stay at home, their place of residence, or current place of abode. Individuals may engage in outdoor activity, but when using shared outdoor space in North Carolina, they must comply with defined social distancing requirements.

Other than outdoor activity, individuals may only leave their home or residence for defined: Essential Activities, Essential Governmental Operations, or to participate in or access COVID-19 Essential Businesses and Operations.

Under the order, **Essential Businesses and Operations** include construction-related activities, stated as:

- Businesses operating in CISA Identified Sectors. See the CISA March 28, 2020 Guidelines here.
- **Essential Infrastructure**. As it relates to construction, this defined term includes, **construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care and assisted living facilities, public works construction, school construction and essential commercial and housing construction);** building and grounds management and maintenance, including landscaping; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video and telecommunications systems. **Essential Infrastructure Operations is to be construed broadly to avoid any impacts to essential infrastructure, which is broadly defined.**
- **Essential Governmental Operations** – the Order does not prohibit anyone from performing or accessing Essential Governmental Operations at the local or state levels, and does not apply to the United States Government, nor does it prohibit anyone
performing or accessing Essential Government Operations at the Federal Level.

- **Home improvement, hardware and supply stores.** Home improvement, building supply, hardware stores, and businesses that sell building materials and supplies, electrical, plumbing, and heating materials.

- **Critical trades.** Building and construction tradesmen and tradeswoman, and other trades, including, but not limited to, plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, cleaning services, moving and relocation services, landscaping and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences and COVID-19 Essential Businesses and Operations. This includes organizations that represent employees.

- Businesses that sell, manufacture, support or supply other COVID-19 Essential Businesses and Operations with the service or materials necessary to operate.

- Transportation; home-based care services; professional services; manufacture, distribution, and supply chain for critical products and industries; defense and military contractors; hotels and motels; funeral services and Essential Retail Businesses.

**OHIO**

On March 22, 2020, Amy Acton, Director of the Ohio Department of Health issued a statewide stay at home order, effective as of March 23, 2020, at 11:59 p.m. The order will remain in place until 11:59 p.m. on April 6, 2020. See the order here.

All persons in Ohio can only leave their home or place of residence for Essential Activities, Essential Governmental Functions, or to participate in Essential Businesses and Operations. The order lists 25 separate Essential Businesses and Operations. Construction activities are included in at least two of these: U.S. Department of Homeland Security, CISA List; and Critical Trades, which includes building and construction trades.

**OKLAHOMA**

Effective as of March 25, 2020, at 11:59 p.m. through April 16, 2020, Governor J. Kevin Stitt issued a safer-at-home order for all residents of Oklahoma. The order requires all non-essential businesses to close until April 16, 2020, when the order will be re-evaluated. The order was issued through Fourth Amended Executive Order 2020-07, filed March 24, 2020, and an Amended Executive Memorandum 2020-01, filed March 25, 2020, expanding the list of essential businesses not identified by the U.S. Department of Homeland Security as critical infrastructure (together the “Order”).

The Order includes provisions requiring the state’s “vulnerable individuals” to stay home, unless they are “working in a critical infrastructure sector” or conducting essential errands. The Order also prohibits social gatherings of more than 10 people, including for those “businesses within a critical infrastructure sector.”

The Order identifies the following within the Construction Industry as “critical infrastructure”:

- Any services identified by the U.S. Department of Homeland Security as critical infrastructure;

- Pipeline maintenance and construction workers who may be required to traverse state lines to maintain facilities that cross state lines;

- Construction Workers, including residential and commercial, and workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction and heavy and civil engineering construction);

- Businesses and workers that support the supply chain for commercial and/or residential construction and development;

- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, construction material sources, and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste).

- Workers supporting the Defense Industrial Base, including explosives manufacturing, national security and international affairs.
OREGON

On March 23, 2020, Oregon Governor Kate Brown issued Executive Order 20-12, effective as of March 24, 2020, at 12:01 a.m., requiring closure of certain businesses where social distancing is not reasonably feasible. While the businesses listed for closure do not include construction businesses, construction related retail stores are affected, see page 5 of the Order. To view the complete order, click here.

Construction businesses with offices in the state of Oregon, are required to facilitate telework to the maximum extent necessary. If telework is not available, businesses must designate an employee or officer to establish, implement, and enforce social distancing policies, consistent with guidance from the Oregon Health Authority, which can be found here. These policies must also address how the business will maintain social distancing protocols for business-critical visitors.

Lastly, all state executive branch offices and buildings are closed to the public to the maximum extent possible, but will provide services over the phone and online during normal business hours. This includes land use, permitting, inspection, and other relevant state offices. If the office cannot conduct business over the phone or online, in-person operations will continue by appointment only.

At this time, construction businesses must comply with paragraph two above. However, the Oregon Health Authority has the authority to determine if additional business closures will be necessary during the ongoing state of emergency.

PENNSYLVANIA

Governor Tom Wolf and Secretary of Health Dr. Rachel Levine have revised the Pennsylvania “Stay at Home” Orders to include nine additional counties - Berks, Butler, Lackawanna, Lancaster, Luzerne, Pike, Wayne, Westmoreland and York. The Order now includes these nineteen (19) counties: Allegheny, Berks, Bucks, Butler, Chester, Delaware, Erie, Lackawanna, Lancaster, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Wayne, Westmoreland and York. This amended Order took effect on Friday, March 27, 2020 at 8:00 p.m., and will continue until April 6, 2020. See the amended Order here. Secretary of Health Dr. Rachel Levine’s original Order is located here.

On March 24, 2020, the state of Pennsylvania issued guidance of defining “life-sustaining businesses” that are not subject to the Stay at Home Order. A copy of this guidance is located here. The Pennsylvania Stay at Home Order has the following impact upon construction:

<table>
<thead>
<tr>
<th>Subsector</th>
<th>Industry Group</th>
<th>May Continue Physical Operations</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of Buildings</td>
<td>Residential Building Construction</td>
<td>No</td>
<td>Except emergency repairs permitted</td>
</tr>
<tr>
<td>Nonresidential Building Constr.</td>
<td>No</td>
<td>Except emergency repairs permitted</td>
<td></td>
</tr>
<tr>
<td>Heavy and Civil Engineering Construction</td>
<td>Utility Subsystem Construction</td>
<td>No</td>
<td>Except emergency repairs permitted</td>
</tr>
<tr>
<td>Land Subdivision</td>
<td>No</td>
<td></td>
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<tr>
<td>Highway, Street, and Bridge Constr.</td>
<td>Other Heavy and Civil Engineering Construction</td>
<td>No</td>
<td>Except emergency repairs permitted</td>
</tr>
<tr>
<td>Specialty Trade Contractors</td>
<td>Foundation, Structure, and Building Exterior Contractors</td>
<td>No</td>
<td>Except emergency repairs permitted</td>
</tr>
<tr>
<td>Building Equipment Contractors</td>
<td>No</td>
<td>Except emergency repairs permitted</td>
<td></td>
</tr>
<tr>
<td>Building Finishing Contractors</td>
<td>No</td>
<td>Except emergency repairs permitted</td>
<td></td>
</tr>
<tr>
<td>Other Specialty Trade Contractors</td>
<td>No</td>
<td>Except emergency repairs permitted</td>
<td></td>
</tr>
</tbody>
</table>

SOUTH CAROLINA

For the City of Charleston:

The City of Charleston, South Carolina passed an Emergency Stay-at-Home Ordinance effective as of 12:01 a.m. on Thursday, March 26, 2020. This does not apply to the County of Charleston or surrounding towns. Construction is an Essential Service. See the full ordinance here.

The measure, effective as of 12:01 a.m. on Thursday, March 26, 2020, states that “individuals shall stay in their homes and not travel through or congregate in the streets, sidewalks, waterways and/or public spaces in the City of Charleston” except for conducting essential business or to engage in certain recreational activities. Construction
is listed as an Essential Service and provides in relevant parts:

**Construction**, including skilled trades such as electricians, plumbers, other related construction firms and professional services for essential infrastructure or for emergency repair and safety purposes where the contractor can ensure social distancing.

**Essential infrastructure operations** including utilities including power generation, fuel supply and transmission, public water and wastewater, telecommunications and data centers, airports/airplanes, transportation infrastructure such as bus, rail or for-hire vehicles, garages, hotels, places of accommodation, and the S.C. Port Authority.

The ordinance states that it expires fourteen (14) days from the date of ratification, unless otherwise extended.

**For the City of Columbia:**

Mayor Steve Benjamin issued an Emergency Order (Ordinance 2020-034) for Residents to Stay-at-Home, effective as of 12:01 am, March 29, 2020, and continuing for fourteen (14) days. See the order here. The City Manager and City Council subsequently approved this Ordinance. Residents may leave their homes for Essential Services, or to engage in individual outdoor recreational activities that allow for social distancing of at least six feet and do not entail coming in to close contact with other people or involve the sharing of equipment. Others may enter the City to perform Essential Services.

**Essential Services** include, among many others:

Essential Infrastructure operations, including utilities such as power generation, fuel supply and transmission, public water and wastewater, telecommunications and data centers; airports/airplanes; transportation infrastructure such as bus, rail or for-hire vehicles; garages; vehicle sales and services; hotels and places of accommodation; and, the South Carolina Ports Authority.

**Commercial and residential construction**, including skilled trades such as electricians, plumbers, landscape services, pool maintenance, nurseries, other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes, or other construction where the contractor can ensure social distancing.

Under Essential retail operations, hardware and building material stores and online retailers delivering products and services to homes and businesses are expressly included as Essential Services.

Also included as Essential Services are Defense operations such as defense and national security-related operations supporting the U.S. Government, or a contractor to the U.S. Government.

**TENNESSEE**

**For the City of Chattanooga:**

On March 23, 2020, Mayor Andy Berke issued an Executive Order effective midnight, March 25, 2020 until withdrawn, proclaiming a civil emergency. The Order prohibits public and private gatherings of more than ten people and closes businesses within the City that are Non-Essential, except Minimum Basic Operations, as defined in the Order. Individuals are to remain at their residences other than for Essential Activities.

The Order does not prohibit an employee, contractor, vendor, or supplier of subject establishments from entering exiting, using, or occupying an establishment in their professional capacity.

The Order defines Essential Activities as (i) performing tasks essential to health and safety, for oneself, family, or household member, including pets, such as obtaining medical supplies, visiting a health care professional, or obtaining supplies in order to work from home; (ii) obtaining necessary services or supplies for oneself, family or household member, or to deliver to others in need; (iii) outdoor activity such as walking, hiking, dog walking, or running; (iv) working to provide products and services at a Non-Essential Business, or to otherwise carry out activities which are not specifically prohibited in this Order, including Minimum Basic Operations; (v) caring for a family member or pet in another household.


Persons may leave their residence to provide any services or perform any work necessary to the operations and maintenance of Essential Infrastructure. Essential Infrastructure includes, but is not limited to, public works construction, construction of housing (in particular,
affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, grass mowing, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

Not all construction is allowed. It is recommended to check with the City to see if the project you are performing is considered Essential Infrastructure.

A complete copy of the Chattanooga Order can be found here.

For the City of Memphis:

On March 23, 2020, Mayor Jim Strickland issued an Order effective March 24, 2020 through April 7, 2020, unless otherwise extended, declaring a civil emergency and directing all individuals currently living within the City of Memphis to stay at their place of residence unless engaged in Essential Activities.

The Order defines Essential Activities as (i) performing tasks essential to health and safety, for oneself, family, or household member, including pets, such as obtaining medical supplies, visiting a health care professional, or obtaining supplies in order to work from home; (ii) obtaining necessary services or supplies for oneself, family or household member, or to deliver to others in need; (iii) outdoor activity such as walking, hiking, dog walking, or running; (iv) working to provide essential products and services at an Essential Business, or Minimum Basic Operations; (v) performing payroll and other critical administrative functions for any business, including non-essential; (vi) caring for a family member or pet in another household.

Essential Business in relevant part is defined as hardware stores, home and business repair, construction (commercial and residential), and facilities design businesses; plumbers, electricians, exterminators, cleaning, janitorial, property management, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses; and all other critical infrastructure businesses not otherwise listed, but identified in the U.S. Department of Homeland Security’s Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, issued on March 19, 2020.

Essential Infrastructure is also excluded, provided that Social Distancing Requirements are met. Essential Infrastructure includes, but is not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, grass mowing, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

A complete copy of the Memphis Order can be found here.

TEXAS

Bexar County Judge Nelson W. Wolff issued an Executive Order effective as of 11:59 p.m. on March 24, 2020, through 11:59 p.m. on April 9, 2020, unless extended. All businesses within incorporated or unincorporated areas of Bexar county must cease all activities unless the business is an “Exempt Business,” all employees and contractors work from their homes; the ongoing operations are solely to maintain security, upkeep, and maintenance of premises, equipment or inventory; or the business activity is related to IT or other operations that facilitate employees working from home. Individuals can leave their homes to participate in Exempted Activities, which include working at an Exempted Business.

Exempted Businesses include, but are not limited to:

- Public works construction; construction of housing or other types of construction including commercial;
- Manufacturing;
- Airport operations and aircraft manufacturing;
- Maintenance or repair;
- Utilities including water, sewer, gas, and electrical;
- Oil refining;
- Roads and highways;
- Public transportation;
- Solid waste collection and removal;
- Internet and telecommunications systems;
• Businesses related to the operation, maintenance, construction, and manufacture of transportation services; and

• Building maintenance and cleaning which includes plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintain essential operations of residences, Essential Activities, and Exempted Businesses.

The Bexar County Order can be read in full here.

Collin County Judge Chris Hill issued an order requiring businesses to implement additional COVID-19 preventative measures and to protect the “at-risk” population. The order does not close businesses. You can view the full order here.

Dallas and Galveston Counties issued shelter in place orders effective as of 11:59 p.m. on March 23, 2020, through 11:59 p.m. on April 3, 2020, unless extended. Both orders, while almost identical, do have variations from one another and should be reviewed in full. The Dallas Order and a list of the Social Distancing Requirements can be found here. The Galveston Order and a list of the Social Distancing Requirements can be found here.

Under both orders, all businesses within Dallas and Galveston Counties are to cease all operations unless all employees and contractors work from home or the business is defined as an “Essential Business,” which includes, among other things, “Essential Critical Infrastructure.”

Individuals may provide any services or perform any work necessary to offer, operate, maintain and repair, “Essential Critical Infrastructure” including, but not limited to:

• The 16 critical infrastructure sectors identified by the National Cybersecurity and Infrastructure Agency (CISA) including public works construction, residential, commercial, and school construction;

• Airport operations;

• Utilities including water, sewer, gas and electrical;

• Oil refining;

• Roads and highways;

• Public transportation;

• Solid waste collection and removal;

• Internet and telecommunications systems;

• Defense and national security-related operations;

• Essential manufacturing operations; and

• Others

Essential Businesses providing essential infrastructure should implement screening precautions to protect employees and all activity shall be performed in compliance with social distancing guidelines attached.”

Also identified as Essential Businesses are Essential Services Necessary to Maintain Essential Operations of Residences or Other Essential Businesses, including, but not limited to: trash and recycling collection, processing and disposal; building cleaning and maintenance; warehouse/distribution and fulfillment; storage for essential businesses; funeral homes; crematoriums and cemeteries; plumbers; electricians; exterminators; and other service providers providing services necessary to maintain essential operations of residences, Essential Businesses and Businesses that supply other essential businesses with the support of supplies needed to operate.

If you are a manufacturer who retools so that a substantial part of your business is to manufacture and produce ventilators, you may apply for an “essential business” exemption.

Additionally, if anyone in your household has tested positive for coronavirus, you cannot go to work, school, or any other community function.

El Paso County Judge Ricardo Samaniego issued an order effective as of 11:59 p.m. on March 24, 2020, and will continue unless terminated by subsequent order (“Order”).

Residents may only leave their homes to perform certain Essential Activities, to perform work or operate in an Essential Business, Essential Governmental Functions, or in Critical Infrastructure, to engage in Essential Travel, or to perform Minimum Basic Operations all defined within the Order.

All non-essential businesses and operations must cease unless the business is defined as essential, all employees and contractors work exclusively from home, or the business satisfies the conditions in Section 2, on page 8 of the Order.

Travel to perform Essential Activities and to perform work at an Essential Business, Government Service or Essential Critical Infrastructure is permitted (page 2, section 4 of the Order).
Essential Critical Infrastructure includes, but is not limited to:

- The 16 critical infrastructure sectors identified by the U.S. Department of Homeland Security National Cybersecurity and Infrastructure Security Agency (CISA);
- Public works construction;
- Residential and commercial construction;
- Airport operations and aircraft manufacturing;
- Water, sewer, gas, electrical;
- Oil refining;
- Roads and highways;
- Public transportation;
- Solid waste collection and removal;
- Internet and telecommunications systems;
- Defense and national security-related operations; and
- Essential manufacturing operation.

Essential Business includes, but is not limited to, Essential Services Necessary to Maintain Essential Operations of Residences or Other Essential Businesses (page 4, section iv of the Order).

To view the complete El Paso County Order, click here.

**Fort Bend County** Judge KP George issued an order effective as of 12:01 a.m. on March 25, 2020, through 11:59 p.m. on April 3, 2020, unless the state of emergency is lifted (“Order”).

Residents are only permitted to leave their homes to perform Essential Activities, to perform Essential Governmental Functions, or to operate Essential Businesses. All non-essential businesses with offices in the county must cease operations unless all employees and contractors can work from home.

An Essential Activity includes, but is not limited to, performing work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in the Order.

An Essential Business includes, but is not limited to, Essential Services Necessary to Maintain Essential Operations of Residences or Other Essential Businesses (see page 5, section (vi) of the Order) and Essential Critical Infrastructure, which includes, but is not limited to, work necessary to the operations and maintenance of:

- The 16 critical infrastructure sectors identified by the U.S. Department of Homeland Security National Cybersecurity and Infrastructure Security Agency (CISA);
- Public works construction;
- Residential and commercial construction;
- Airport operations and aircraft manufacturing;
- Water, sewer, gas, electrical;
- Oil refining;
- Roads and highways;
- Public transportation;
- Solid waste collection and removal; and
- Internet and telecommunications systems.

Essential Businesses shall “comply with the necessary precautions, to the greatest extent possible to reduce the transmission of COVID-19, including the practice of Social Distancing of at least six feet and other measures in accordance with current CDC guidelines. Essential Businesses providing Essential Infrastructure should implement screening precautions to protect employees.

Fort Bend county offices and facilities are limited to the public. The order directs the public to contact the appropriate department or court for authorization to appear. A list of those departments starting in the letters A-D can be found here, departments starting with the letters E-N can be found here and departments starting with the letters O-Z can be found here.

To view the complete Fort Bend County Order, click here.

**Hunt County** Judge Stovall issued an order effective as of 11:59 p.m. on March 24, 2020, and will continue through 11:59 p.m. April 3, 2020 (“Order”).

Residents may only leave their homes to perform certain Essential Activities and to perform work or operate in an Essential Business or Essential Governmental Function.

All non-essential businesses and operations must cease unless the business is defined as essential or all employees and contractors work exclusively from home.

An Essential Business includes, but is not limited to, Essential Services Necessary to Maintain Essential Operations of Residences or Other Essential Businesses and Es-
ential Critical Infrastructure including, but not limited to:

- The 16 critical infrastructure sectors identified by the U.S. Department of Homeland Security National Cybersecurity and Infrastructure Security Agency (CISA);
- Public works construction;
- Residential and commercial construction;
- Airport operations and aircraft manufacturing;
- Water, sewer, gas, electrical;
- Oil refining;
- Roads and highways;
- Public transportation;
- Solid waste collection and removal;
- Internet and telecommunications systems;
- Defense and national security-related operations; and
- Essential manufacturing operation.

To view the complete Hunt County Order, click here.

Tarrant County Judge B. Glen Whitley issued an order effective as of 11:59 p.m. on March 24, 2020, through April 7, 2020, unless terminated by subsequent order (“Order”).

Residents are only permitted to leave their homes to perform Essential Activities, to perform Essential Governmental Functions, to perform Minimum Basic Operations or to operate Essential Businesses. All non-essential businesses with offices in the county must cease operations unless all employees and contractors can work from home.

An Essential Activity includes, but is not limited to, performing work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in the Order. Travel to work at an Essential Business is “Essential Travel” and is permitted under the Order.

The list of Essential Businesses includes, but is not limited to, Essential Government Functions (page 2, section ii), Essential Critical Infrastructure (page 2, section iii), Essential Services Necessary to Maintain Essential Operations of Residences or Other Essential Businesses (page 4, section vi) and Construction—under a valid permit issued by a governmental entity (page 4, section xii).

To view the complete Tarrant County Order and list of Disaster Restrictions, click here.

UTAH
Effective as of 12:01 a.m. on March 30, 2020, businesses in Utah are expected to follow Governor Gary Herbert’s Stay Safe, Stay Home Directive. Utah’s directive establishes “minimum statewide standards” for reducing the spread of COVID-19, but, unlike similar orders in other states, contains no enforcement mechanism. The directive will remain in effect at least through April 13, 2020.

Businesses are encouraged to implement remote work capabilities where possible, and practice appropriate social distancing and health precautions where remote work is not feasible. The directive recommends that employees presenting symptoms of COVID-19 be required to stay home. Essential services, which are exempt from the directive, are limited to healthcare, law enforcement and first response, faith-based work, and charitable and social services. The directive does not address or prohibit construction and related services.

For the City of Salt Lake:
Salt Lake City Mayor Erin Mendenhall has issued a similar order implementing the statewide order in Salt Lake City, and it includes an enforcement provision. However, like the statewide directive, it does not address or prohibit construction and related services.

VERMONT
The Executive Department of the State of Vermont issued Addendum 6 to Executive Order 01-20 effective as of March 25, 2020 at 5:00 p.m. through April 15, 2020. A full copy of the order can be viewed here.

As previously directed, all workers shall work remotely when possible. Otherwise, all Vermonter members are directed to stay at home, leaving only for essential reasons including, but not limited to, performing services or functions critical to public health and safety including:

- Construction necessary to support the COVID-19 response and maintain critical infrastructure;
- Critical manufacturing, including food and animal feed manufacturing, processing and supply, pharmaceuticals and other manufacturing necessary to support the COVID-19 response, as well as economic and national security;
- Operation of hardware stores;
- Trash collection and disposal;
- Recycling;
- Operations and maintenance of drinking water and wastewater/drainage infrastructure; and
- Others.

The ACCD may determine that other building and property services for the safety, sanitation and operations of residences or other businesses are critical.

**VIRGINIA**

Construction activities in Virginia were not directly affected by recent state actions to address the coronavirus threat. In comparison to other states, Governor Ralph Northam issued a more relaxed standard to closures in the Commonwealth, closing schools, restaurants, gyms, malls, and recreational facilities, but allowing almost all other businesses to remain open.

On March 23, 2020, Governor Northam issued Executive Order No. 53 (“Order”), titled Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), effective as of 11:59 p.m. on March 24, 2020 until 11:59 p.m. on April 23, 2020. A full copy of the order can be viewed here. Governor Northam issued an additional Executive Order No. 55 (“March 30 Order”), titled Temporary Stay at Home Order due to Novel Coronavirus (COVID-19), effective until June 10, 2020. A full copy of the March 30 order can be viewed here.

Although construction projects in the Commonwealth are not expressly carved out as “essential” in the Order, the Governor’s office has verbally advised that all construction projects are, in fact, essential and will continue without interruption. The Order sets forth a number of businesses as “essential,” which include grocery stores, pharmacies, banks, home improvement stores, and others that will remain open. The March 30 Order incorporates by reference the previous Order.

Any brick and mortar retail business not specifically identified in the Order is permitted to remain in operation, but in-person shopping must be limited to no more than 10 patrons per establishment. The staff members of the business are not considered in the limit of 10 patrons.

If the business cannot adhere to the 10 patron limit, the business must close until April 23, 2020. Noncompliance is a Class 1 Misdemeanor.

The Order encourages social distancing, sanitizing practice of common areas, and teleworking, if possible. The limitations and restrictions in the Order do not affect: healthcare or medical services, in addition to, access to essential services for low-income residents, the operations of the media, law enforcement agencies, and the operation of the government.

**WASHINGTON**

Governor Jay Inslee has issued a Stay Home – Stay Healthy Order “prohibiting all people in Washington State from leaving their homes or participating in social, spiritual, and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business,” with some limited exceptions. The order includes the continued mobilization of the Washington National Guard and State Guard. The prohibitions remain in effect until midnight on April 6, 2020; Governor Inslee has stated that the order will be extended soon. The order can be found here.

Effective as of midnight on March 25, 2020, all non-essential businesses are to cease operations except to maintain basic minimum operations. This specific prohibition remains in effect until April 8, 2020.

Essential activities are limited to 1) obtaining necessary supplies and services for family or household use, to facilitate working from home, and maintain the safety and sanitation of the home; 2) engaging in activities essential for health and safety of family and members of the household; 3) caring for a family member or friend in another household; and 4) engaging in outdoor exercise while using appropriate social distancing practices.

The order differentiates between essential activities and essential businesses, the latter defined by a list of Essential Critical Infrastructure Workers available here. The order is not entirely clear how much construction is allowed. However, subsequent guidance, available here, places significant restrictions on construction activities. Construction is permissible in the following circumstances:

a. Construction related to essential activities as described in the order;
b. To further a public purpose related to a public entity or governmental function or facility, including, but not limited to, publicly financed low-income housing; or

c. To prevent spoliation and avoid damage or unsafe conditions, and address emergency repairs at both non-essential businesses and residential structures.

Any construction activities must use appropriate social distancing and health and worker protection measures.

**WEST VIRGINIA**

On March 23, 2020, Governor Jim Justice issued Executive Order 9-20, effective as of March 24, 2020 at 8:00 p.m., requiring residents to stay at home, except to perform an essential activity. The order can be found [here](#).

The Order identifies the exempt essential activities to include (a) obtaining food, medicine, and similar goods for the individual or a family member; (b) obtaining non-elective medical care for the individual or a family member; (c) going to or from a workplace for an Essential Business and Operation; (d) going to or from the home of a family member; (e) going to the home of another who is entitled to visitation with, or care of, a child; (f) going to or from a place of worship; and (g) engaging in outdoor activity, provided social distancing is observed.

The Order requires all non-essential businesses to cease operations in the State of West Virginia, except to perform minimum basic operations necessary to maintain the value of inventory, preserve the business's physical plant and equipment, ensure security, process payroll and employee benefits, or related functions, and to facilitate employees working from home.

Essential Businesses and Operations shall remain open. Essential Businesses and Operations are defined to include all industries and workers described in the U.S. Department of Homeland Security's CISA March 19, 2020 guidance memorandum, *Identification of Essential Critical Infrastructure Workers During COVID-19 Response*, as well as industries, businesses, and workers in the following:

- Healthcare, public health operations and health insurance companies
- Grocery stores and pharmacies
- Food, beverage and agriculture
- Essential Government Functions
- Human services organizations and childcare facilities providers
- **Essential Infrastructure**
  - Coal mining and coal-fired electric generation facilities
  - Manufacturing, distribution, and supply chain for critical products and industries
  - Transportation and travel related businesses and gas stations
  - Financial and insurance institutions
  - Hardware and supply stores and businesses that sell construction, electrical, plumbing, and heating materials
- **Critical Trades**
  - Mail, post, shipping, logistics, and pick-up services
  - Religious entities
  - Educational institutions
  - Laundry services
  - Supplies to work from home
  - Supplies for Essential Businesses and Operations
  - Home-based care and services
  - Residential facilities and shelters
  - Professional services
  - Media and first amendment protected speech
  - Hotels and motels
  - Funeral services

Essential Infrastructure includes food production, distribution, storage, preparation, and sale, construction (including without limitation construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, essential business construction, and housing construction), business management and maintenance, airport operations, operation, maintenance, and supply of utilities, including water, sewer, and gas, electrical (including power generation, distribution, and production of raw materials including without limitation coal, oil and natural gas), distribution centers, oil and biofuel refining, roads, highways, railroads, and public transportation, cyber and other security operations and services, flood control, solid waste and recycling collection and removal, and internet, video, and telecommunications systems (including the
provision of global, national, and local infrastructure for computing services, business infrastructure, communications and web-based services) and telecommunications workers. The order expressly states that Essential Infrastructure shall be defined and construed broadly.

Critical trades include building and construction tradesmen and tradeswomen and other trades, such as electricians, plumbers, HVAC engineers, operating engineers, painters, and other related service providers necessary to maintain safety, sanitation and essential operation of residences, essential activities, and Essential Businesses and Operations.

**WISCONSIN**

Governor Tony Evers issued Executive Order #12, called the “Safer at Home Order,” restricting certain activities of Wisconsin residents and businesses due to the public health concerns caused by the COVID-19 emergency. The order became effective on March 25, 2020 at 8:00 a.m., and remains in effect until 8:00 a.m., April 24, 2020. A copy of the order is [here](https://www.evers.legis.wisconsin.gov/Legislation/executeOrderFs.do?execOrderFsid=12).

The order requires all individuals in Wisconsin to stay at home or their place of residence. Individuals using shared or outdoor space in Wisconsin must comply with defined social distancing requirements.

Individuals may leave their home or residence only for defined: Essential Activities, Essential Government Functions; Essential Business and Operations; Minimum Basic Operations; Essential Travel; and Special Situations.

Under the order, Special Situations include construction-related activities, stated as:

**Essential Infrastructure.** As relates to construction, this defined term includes, “construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care and assisted living facilities, public works construction, school construction, Essential Business and Operations construction, construction necessary for Essential Governmental Functions, and housing construction. Essential Infrastructure also includes building maintenance.

**Essential Governmental Functions** for which construction may be performed as an exception to the order, is defined as: “all services provided by the State, tribal, or local governments needed to ensure the continuing operation of the government body and provide and support the health, safety, and welfare of the public. Each government body shall determine its Essential Government Function, if any, and identify employees and contractors necessary to the performance of those functions. For purposes of this Order, all paid or volunteer first responders including law enforcement, EMS, and firefighters; first responder training academies; building inspectors; emergency management personnel; emergency dispatchers; court personnel, jurors and grand jurors; corrections personnel; hazardous materials responders; child protection and child welfare personnel; housing and shelter personnel; National Guard and military; and others working for or to support Essential Businesses and Operations.”

**Essential Businesses and Operations** include Healthcare and Public Health Operations, Human Services Operations, Essential Infrastructure, and Essential Governmental Functions. They also include:

- Essential Critical Infrastructure Work as defined by the Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA), Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, updated March 23, 2020, and any subsequent versions of this Memorandum;
- Stores selling groceries and medicine;
- Food and beverage production transport, and agriculture;
- Restaurants (food take-out or delivery only);
- Bars, but only for carry out, delivery, or direct shipment;
- Child care;
- Charitable and social service organizations;
- Weddings, funerals, and religious entities of fewer than ten people in a room;
- Funeral establishments (fewer than ten people in a room);
- Media;
- Gas stations and transportation-related supplies;
- Financial institutions and services;
- Hardware and supply stores;
- Critical trades, defined as: Building and Construction Tradesmen and Tradeswomen, and other trades, including, but not limited to plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers, exterminators.
tors, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, forestry and arborists, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations;

- Mail, post, shipping, logistics, delivery, and pick-up services;
- Laundry services;
- Supplies to work from home;
- Supplies for Essential Businesses and Operations and Essential Governmental Functions;
- Transportation;
- Home-based care services;
- Professional services;
- Manufacture, distribution, and supply chain for critical products and industries;
- Critical labor union functions;
- Hotels and motels; and
- Higher educational institutions.

Not all construction activities are exempt from the order. Specifically, “optional or aesthetic construction should be avoided.”

The order supersedes any local order in the state that is in conflict.

Smith Currie will continue to monitor developments and clarifications related to these orders and will update this publication accordingly.