



GUIDANCE FOR BUSINESSES IN THE CONSTRUCTION INDUSTRY PERMITTED TO OPERATE DURING THE COVID-19 DISASTER EMERGENCY

On May 13, 2020, New Jersey issued guidelines applicable to all construction projects moving forward during the COVID-19 public health emergency to ensure that workers remain healthy at work sites. Under Executive Order 142 (“Executive Order”), starting May 18, 2020 construction sites identified as non-essential, by Executive Order 122, may re-open with strict social distancing guidelines. These strict social distancing guidelines must be followed to prevent the spread of COVID-19. Executive Order 142 requires every person doing business in New Jersey to cooperate fully with the guidelines laid out therein. Specifically, by Executive Order No. 142, Governor Murphy mandates: The physical operations of all construction project that were not designated as essential in Executive Order No. 122 (2020) are permitted to resume, subject to the conditions in paragraph 2 of this Order.

The Executive Order in its entirety is accessible via this link:

<https://nj.gov/infobank/eo/056murphy/pdf/EO-142.pdf>

The New Jersey guidelines do not place the burden of creating and/or enforcing guidelines on any specific party at a construction site, rather every individual who is performing work at a construction site in the State of New Jersey must follow the guidelines established in Executive Order. The Executive Order states, “Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.” Violators of N.J.S.A. App. A: 9-49 and -50 are subject to imprisonment for up to 6 months and/or a fine not to exceed \$1,000.00 or to both a fine and imprisonment, in the discretion of the court.

WHAT MUST YOUR SAFETY PLAN INCLUDE TO HAVE CONSTRUCTION WORK RESUME AT YOUR SITE?

Executive Order 142 contains a non-exhaustive list of the CDC and industry best practices and



guidelines to address the hazards at a construction site due to COVID-19. New Jersey is requiring all persons doing business in New Jersey to adopt policies that address both CDC, and New Jersey safety requirements.

Executive Order 142 provides the minimum standard that anyone doing business in the State of New Jersey must follow in order to resume non-essential construction and avoid violating N.J.S.A. App. A: 9-49 and -50. Executive Order 142 contains numerous safety requirements. The safety requirements include:

- (1) No non-essential visitors at the work site;
- (2) Engage in appropriate social distancing measures when picking up or delivering equipment/materials;
- (3) All meetings/inductions, and workgroups at the site must consist of fewer than 10 people;
- (4) Workers must stay 6 feet apart at the site;
- (5) Staggered work start and stop times;
- (6) Limit the amount of people in congested “high risk areas,” including, but not limited to, lunchrooms, breakrooms, portable rest rooms, and elevators;
- (7) Staggered breaks and lunch times while maintaining the least number of individuals at a site;
- (8) All workers and visitors must wear cloth face coverings, and gloves, in accordance with CDC recommendations ;
- (9) Requiring infection control practices , such as regular hand washing, and coughing and sneezing etiquette to prevent the spread of Coronavirus on a site;
- (10) Limit the sharing of tools, equipment, and machinery;
- (11) If running water is unavailable, worksite must have portable washing stations with soap or alcohol based hand sanitizers, with more than 60% ethanol or 70% isopropanol;
- (12) Frequently sanitize high touch areas, including, but not limited to, restrooms, breakrooms, equipment, and machinery;
- (13) If the worksite is an occupied residence, workers must sanitizer work areas and maintain a six foot distance from all occupants; and
- (14) Worksites must display signage at the entrances, exits and throughout worksite that detail the above-referenced safety protocols.

WHO WILL ENFORCE THE SAFETY PROTOCOL?

As mentioned previously, Executive Order 142 does not identify who must enforce the above

¹ If a visitor or worker refuses to wear a cloth mask or gloves they will be unable to enter the work site.



guidelines, rather it merely states that anyone doing business in the State of New Jersey must abide by these safety protocols. Therefore, the owner and the contractor must negotiate to decide who will either appoint someone to enforce the guidelines or hire a third-party enforcement company. First, the owner and contractor should review the contract to determine whether any contractual provisions dictate who will enforce these safety protocols. While the site owner can request the contractor perform the extra service of enforcing the safety protocols, the general standard is that the owner must ensure a safe workplace in New Jersey. Thus, if the contractor refuses to be wholly responsible for enforcing the guidelines, the owner and the contractor will have to negotiate to successfully allocate the risk of enforcing the safety protocols at the site. If both the owner and contractor agree to retain a third-party enforcement company, both parties must ensure that they are included as additional insureds and indemnified parties in the contract with the enforcement company. Not only will the owner and contractor be responsible for enforcing the guidelines for workers at the site, but they must also ensure that third-parties on the site also follow the guidelines and maintain proper safety protocols. Owners should restrict the number of third-parties at a construction site as much as possible until the government relaxes the safety protocols.

