

## West Coast States Close Businesses Due to COVID-19

Over the past few days, state governments have been taking action in response to the growing novel coronavirus (COVID-19) pandemic. On the West Coast, governors in California, Oregon, and Washington have issued orders that close certain businesses and/or require residents in non-essential industries to stay home. Currently, many construction operations have been categorized as “essential” and are permitted to remain open. However, numerous projects and construction-related businesses have been required to close.

Whether a particular job site or project remains open should be determined on a case-by-case basis in accordance with applicable governmental action and guidance, including municipal restrictions that could be stricter than state or federal orders. Governmental responses to COVID-19 are constantly changing, so it is imperative to stay up-to-date on new restrictions and guidance as they are released.

### CALIFORNIA

On March 19, 2020, California Governor Gavin Newsom, issued Executive Order N-33-20 ordering all residents to stay at their homes except as needed to maintain operations of the federal critical infrastructure sectors. The order went into effect immediately upon issuance for an indefinite period of time. Businesses and individuals who violate the order may be subject to fines and/or imprisonment.

At this time, many construction projects and related businesses qualify as essential, critical infrastructure under the California order and may remain open. Specifically, the California State Government released a list of Essential Critical Infrastructure Workers that provides:

- “Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing projects)” are exempt from the stay-at-home order.
- “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” are permitted to continue to operate according to the list.
- Critical manufacturing companies as well as commercial retail hardware and home improvement stores can stay open.

It is possible, however, that some businesses that support the construction industry may be required to close. It is also possible that municipalities have already, or will in the future, impose stricter restrictions on the definition of “essential” that will shut down additional construction projects and related companies that would otherwise be allowed to continue operations under Governor Newsom’s order.

For example, the City and County of San Francisco limited essential construction to “public works construction, [or] construction of housing (in particular affordable housing or housing for individuals experiencing homelessness) ....”

Most commercial construction projects in the Bay Area have shut down, while key public works and housing construction are continuing. Contractors must therefore carefully track the latest orders in the states, counties, and cities in which their projects are located to ensure compliance.

### OREGON

On March 23, 2020, Oregon Governor, Kate Brown issued Executive Order No. 20-12 requiring



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closure of certain businesses where “close personal contact is difficult or impossible to avoid.” Businesses required to close include, but are not limited to, amusement parks, salons, indoor and outdoor malls, gyms and fitness studios, and museums. The order also requires teleworking where possible and notes that additional business closures may be necessary in the future to further address the spread of COVID-19. Businesses that do not comply with this order will be closed until they demonstrate compliance, and individuals who violate the order may be subject to jail time and/or fines. These restrictions went into effect immediately upon issuance of the order on March 23, 2020, and will last until the order is terminated by the governor.

Right now, most businesses within the construction industry can remain open. Although construction companies and manufacturers are not explicitly addressed in the order, the Governor’s Office issued a [press release](#) related to the order advising manufacturers and the construction industry to ensure that their employees are maintaining social distancing measures, which suggests that these companies can continue to operate.

## WASHINGTON

On March 23, 2020, Washington Governor Jay Inslee issued a [proclamation](#) closing all non-essential businesses that will be effective as of midnight on March 25, 2020, and will stay in place until midnight on April 8, 2020. The proclamation encourages [essential](#) businesses to remain open but requires these businesses to implement social distancing and sanitation measures in accordance with [federal](#) and [state](#) guidelines. Violations of the proclamation may be punished by criminal penalties.

Presently, construction may continue only if it is related to [essential](#) activities in critical infrastructure sectors or related to a public purpose. All nonessential construction can continue to the extent necessary to prevent damage or unsafe conditions or complete emergency repairs. An [appendix](#) to the proclamation specifically provides that “Construction workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction) for all essential facilities, services, and projects included in this document, and for residential construction related to emergency repairs and projects that ensure structural integrity” are essential. The appendix identifies “critical infrastructure sectors” as health care, emergency services, food and agriculture, energy, water and wastewater, transportation, and communications and information technology.

The [appendix](#) further provides that workers who support critical infrastructure projects “such as plumbers, electricians, exterminators, and other service providers” can remain open, as well as commercial retail stores such as hardware and home improvement stores. Moreover, “critical manufacturing” companies that are essential to critical infrastructure sectors may continue to operate.

On March 25, 2020, Governor Inslee issued a [Construction Guidance Memorandum](#) clarifying that generally, “commercial and residential construction is not authorized under the Proclamation because construction is not considered to be an essential activity.” The [memorandum](#) does, however, provide that an exception to the proclamation “allows for construction in the following limited circumstances:

1. Construction related to essential activities as described in the order;
2. 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
3. To prevent spoliation and avoid damage or unsafe conditions, and address emergency repairs at both non-essential businesses and residential structures.”

The memorandum further provides that workers in trades that support the construction allowable under the exception may continue to operate and also states that “[a]ll construction activity must meet social distancing and appropriate health and worker protection measures before proceeding.”

## BEST PRACTICES

The federal and local governmental response to the COVID-19 outbreak will likely change from the date of this publication. The best practices for construction companies that are still permitted to operate are to implement and maintain social distancing to the extent possible without sacrificing

safety or quality. Sanitation and deep-cleaning procedures should be implemented and maintained as well. Teleworking should be utilized to the extent possible, and in-person meetings should be eliminated and/or reduced while maintaining necessary safety and supervision. To the extent any contractors or suppliers are impacted by executive orders and related business closures, it is critical that they promptly notify both upstream and downstream contracting partners. In particular, contractors should reach out to their supply chain and confirm whether they anticipate any changes in delivery times or methods for materials and equipment.

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**For strategies on responding to and documenting impacts from these government actions and COVID-19 in general, please refer to our previous client alert, [COVID-19 Strategies for the Construction Industry](#). Additionally, visit [Cozen O'Connor's COVID-19 website](#) for new updates. For additional guidance on whether your company may continue to operate as a result of governmental action, and/or for advice on preparing for and responding to pandemic-related construction cost and schedule impacts, please contact any one of Cozen O'Connor's Construction Group attorneys who can help guide you through the legal challenges.**