



FAQs: Companies located or operating in New York State

updated March 28, 2020

DISCLAIMER:

Many states and local jurisdictions have or are in the process of issuing directives effecting employers and various business establishments. At NESPA and PHTA we are doing our best to monitor the situation and provide updates as time and resources permit. By accessing this document you are agreeing that 1) the document does NOT constitute legal advice, 2) that neither NESPA, PHTA, nor their respective employees, retained professionals or volunteer members are liable in any way for any inaccuracies or errors in this document, or for any damages allegedly incurred as a result of any claimed reliance on this document.

ALL MEMBERS ARE ADVISED TO SEEK THEIR OWN LEGAL COUNCIL AND/OR SPECIFIC GUIDANCE FROM THE APPROPRIATE GOVERNMENT AUTHORITY

On March 27, 2020 New York State revised its definition of essential business as follows:

“All non-essential construction must shut down except emergency construction, (e.g. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site).

Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation.

For purposes of this section construction work does not include a single worker, who is the sole employee/worker on a job site."

After reviewing the above, NESPA and PHTA have prepared the following FAQs

Q. *Can I commence a new construction project as of today?*

A. No. Unless the project can be completed with no more than one person at the site at a time

Q. *Can I continue to open and service or maintain pools?*

A. Yes. That has not changed.

Q. *Can I complete a project I commenced prior to March 27?*

A. Per the ESDC guidance, all non-essential construction must shut down except emergency construction or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site. It is the position of PHTA and NESPA that the installation of code compliant barriers, and the shoring or completion of an excavation (ie. Shotcrete or completing liner or fiberglass shell installation) should be treated as necessary under this directive. However we cannot guarantee how this will be applied by the applicable state or local authorities.

Q. *What is the standard for safety a contractor should use to determine if they can work?*

A. Contractors should use common sense safety principles in determining what work should continue. As noted above, It is the position of PHTA and NESPA that the installation of code compliant barriers, and the shoring or completion of an excavation (ie. Shotcrete or completing liner or fiberglass shell installation) should be treated as necessary under this directive. However we cannot guarantee how this will be applied by the applicable state or local authorities.

Q. *Can I continue to work on existing jobs if I only have a single employee on site?*

A. Yes.

Q. *Can I have deliveries made to job sites?*

A. If the delivery is necessary to make the site safe, then yes. Or if the delivery will only introduce a single employee to the site.

Q. *Can I (and should I) continue to monitor a site once work has been suspended?*

A. Provided that only one employee is present on the site at any time, companies should consider monitoring sites and documenting their visits.

Q. *If a customer complains that the site is unsafe, should the contractor approach the town about continuing work?*

A. A complaint from a customer about safety may be helpful in convincing the relevant official that work must continue to a certain point. However, the customer is not the final authority on whether additional work is required.

Q. *What is my liability if I do not complete work on a project and injury or property damage results?*

A. If additional work is required to ensure the safety of the site, it can and should be completed. If a contractor is prohibited by the local authorities from continuing work on the site, it should secure that directive in writing, to show that they were not permitted to complete the work, to protect against any liability claim.

Important Resources

- [NESPA COVID-19 Webpage](#)
- [PHTA COVID-19 Webpage](#)