

Practice Update

# Keep Calm and Carry On: North Carolina Construction in the Age of Coronavirus Stay at Home Orders

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In these uncertain and uncharted times, new effects of the COVID-19 pandemic continue to unfold. Many state and local governments have issued “stay at home” or “shelter in place” orders requiring non-essential businesses closed to the public and ordering individuals not to leave their homes except for certain essential activities like obtaining groceries and medical supplies. North Carolina municipalities are beginning to issue stay at home orders, with Mecklenburg County, Buncombe County, Guilford County, the City of Durham, the Village of Clemmons, and the City of Winston-Salem all issuing orders over the past two days. More local governments, including Wake County, are expected to follow in the coming days. Other counties, like Dare and Graham Counties, have not issued stay at home orders, but have issued declarations closing the county borders to most outside visitors. At the state level, Governor Roy Cooper is also under pressure from the North Carolina Healthcare Association and others to issue a statewide stay at home order.

So what do these stay at home orders mean for the construction industry? So far, construction can continue as planned in most areas of North Carolina, provided social distancing recommendations are followed. Stay at home orders in Mecklenburg

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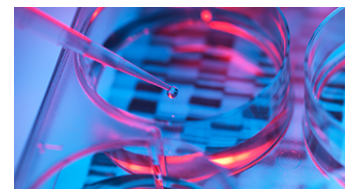
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County, Pitt County, Buncombe County, the Town of Beaufort, the City of Durham, the Village of Clemmons, and the City of Winston-Salem all include broad exceptions that should allow the construction industry to continue functioning. Similarly, the travel restrictions in Graham County contain exceptions for contractors and subcontractors. Guilford County, on the other hand, significantly limits the circumstances under which construction businesses may continue working, and the travel restrictions in Dare County could prevent workers from outside the county entering to work on a construction project.

In Mecklenburg County, Buncombe County, and the City of Winston-Salem, the construction industry is considered “Essential Infrastructure” that may continue. Mecklenburg County and the City of Winston-Salem also define “Building and Construction Tradesmen and Tradeswomen” as “critical trades” that are permitted to continue working as “Essential Businesses and Operations.” Material suppliers and fabricators should also remain unaffected under an exception for “[m]anufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as... construction...”

The Town of Beaufort, Pitt County, Village of Clemmons, and the City of Durham orders do not contain an “essential infrastructure” exception for the construction industry, but do exempt critical construction trades as essential businesses and also allow construction to continue as “Outdoor Services,” which includes work “in structures under construction.” Businesses supporting the construction industry should be able to continue operating as “[s]ervices and supplies for Essential Businesses.”

In Guilford County, the order may impact construction operations far greater than in other areas of North Carolina. The Guilford County order

does not close businesses per se, but broadly prohibits all assembly of more than 10 persons in a single room or single space (indoor or enclosed outdoor) at the same time. Certain exempt businesses are excluded from this prohibition, but unlike most other municipalities, Guilford County does not provide a blanket exception for construction industry participants. Within the construction industry, only hardware stores, plumbers, electricians, exterminators, 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 defined in the order are exempt. It appears that the County's intent is to limit all construction activity involving more than 10 people in a confined space, with a broad exception for service calls to keep people safe in their homes or to facilitate businesses deemed essential elsewhere in the order.

Of note, the City of Durham's mayor stated that he has spoken with mayors of most of the state's largest cities and they are "of the same mind" about issuance of these orders. It seems certain more are coming this week. As of this writing, Wake County (Raleigh) has also announced plans to release a stay at home order this week.

As more cities and counties issue orders to slow the spread of the virus, construction businesses should review the local COVID-19 resources for their jobsites to verify whether work can continue as planned. Government responses have been fluid, and it is important to revisit local stay at home orders regularly to ensure they are not broadened. Other states, like Pennsylvania, have already entered orders prohibiting all construction other than emergency repairs and construction of healthcare facilities. North Carolina could follow suit.

More than ever, consistent communication between project owners, general contractors, and subcontractors is crucial to ensure the project team

is prepared to adapt to these ever-changing circumstances.

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