Massachusetts Issues New Guidance on “Essential” “Construction-Related Activities” — Appears More Narrow

Article By
R. Thomas Dunn
Pierce Atwood LLP
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On March 31, 2020, Massachusetts Governor Baker replaced its prior list of “Essential Services” with a new list available online.

Missing from the new listing of “Essential Services” was the prior bullet point that stated construction workers who support the construction of projects was essential. That language from the March 23, 2020 Order is below:

- Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)

While construction is mentioned a number of times as supporting other essential services, a new section titled “Construction-Related Activities” was added. This appears to be more narrow than the bullet-point above in that it refers to specific industries as opposed to a blanket “construction project.” The new section is below.
Construction-Related Activities

- Workers such as plumbers, electricians, exterminators, builders, contractors, HVAC Technicians, landscapers, inspectors and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, businesses and buildings such as hospitals, health care facilities, senior living facilities, and any temporary construction required to support COVID-19 response.

- Workers - including contracted vendors - who support the operation, inspection, maintenance and repair of essential public works facilities and operations, including roads and bridges, water and sewer, laboratories, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, and maintenance of digital systems infrastructure supporting public works operations. Critical or strategic infrastructure includes public works construction including construction of public schools, colleges and universities and construction of state facilities, including leased space, managed by the Division of Capital Asset Management; airport operations; water and sewer; gas, electrical, nuclear, oil refining and other critical energy services; roads and highways; public transportation; steam; solid waste and recycling collection and removal; and internet and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services).

- Workers who support infrastructure, such as by road and line clearing and utility relocation, to ensure the availability of and access to needed facilities, transportation, energy and communications.

- Workers performing housing construction related activities, including construction of mixed-use projects that include housing, to ensure additional units can be made available to combat the Commonwealth’s existing housing supply shortage.

- Workers supporting the construction of housing, including those supporting government functions related to the building and development process, such as inspections, permitting and plan review services that can be modified to protect the public health, including allowing qualified private third-party inspections accountable to government agencies.

While guidance/explanation is not currently available as to the scope of this change from the Governor, the new policy of “Essential Services” appears to be more narrow than the Exhibit A list of “Essential Services” issued on March 23, 2020. Those
industries that fall within March 31st listing of essential services include:

- Energy Projects
- Public works and transportation projects and projects managed by DCAMM
- Construction and maintenance services required for buildings supporting essential infrastructure, COVID-19 relief efforts, residences, hospitals, health care facilities, senior living facilities
- Housing related projects

Reference to the [updated listing of essential businesses](https://www.natlawreview.com/article/massachusetts-issues-new-guidance-essential-construction-related-activities-appears) should be followed to make a complete determination. The Order provides that that companies may request a designation as an essential business by visiting [HERE](https://www.natlawreview.com/article/massachusetts-issues-new-guidance-essential-construction-related-activities-appears).

The new Order goes into effect on April 1, 2020 and continues through May 4.

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