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NYC DOB and SCA Issue Guidance on Enforcement of Governor’s Workforce Reduction On Construction

As KD ?has previously reported, all ?"non-essential" construction was suspended in New York by Governor Cuomo during the COVID-19 state of emergency.

Since then, NYS ESD has put forth further guidelines as to what construction is deemed "essential" or "emergency" and therefore exempt, which ESD Guidance was ratified ?Monday by the Governor's updated Executive Order 202.13.

While construction firms across the State try to determine whether their projects fall within or without the exception and how to continue safely working or document delays caused by workforce reduction, local governments and agencies are directly responding and addressing the impact of the State's directives at the local level.

NYC Department of Buildings issued direction to further define 'essential' and 'emergency' construction, as set forth in ESD's Guidance. Per NYC DOB, emergency construction includes only those Projects necessary to protect health and safety (i.e. directed work, restoration of essential services like heat, hot water, etc.; and corrective work severely affecting the welfare of persons and property). NYC DOB also defined "essential" work through a similar narrow lens, and provided much needed clarity on what work constitutes exempt "affordable housing" work.

DOB also issued a Service Notice stating that starting this week it will regularly inspect all construction sites to ensure compliance, and issue fines up to $10,000 for each violation. If nonessential-work is exempt, the Engineers/Architects of Record must submit an Essential/Emergency Construction request to DOB. Appeal procedures have also been put in place. DOB further detailed requirements to safely secure suspension of active sites, which should be carefully followed. Finally, DOB rescinded all After Hours Variance Permits.

DOB will make determinations, upon request, whether work is essential or emergent under the State and City laws.

The New York City School Construction Authority similarly issued a Notice confirming all non-essential SCA work be put on "pause" and inviting contractors to seek a determination whether their specific project is suspended. It is expected that other agencies will take a similar hands-on approach.

The attorneys in KD's Construction Law Practice Group continue to closely monitor developments on the law and update employers as the legal landscape continues to evolve. If you have questions about these developments, complying with the above regulations or are in need assistance in implementing the new policies, please contact one of the experienced Construction Law attorneys - Andrew Richards ((516) 283-8717, email: arichards@kaufmandolowich.com), Erik Ortmann ((516) 283-8730, email: eortmann@kaufmandolowich.com), Elizabeth Marchionni ((516) 283-8723, email: emarchionni@kaufmandolowich.com) or call Kaufman Dolowich & Voluck at (516) 681-1100.

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