



## Update on Essential Construction Projects During COVID-19

May 7, 2020

As part of its plan to reopen Ontario's economy, the Government of Ontario recently announced an expanded list of essential businesses and workplaces, including certain types of construction projects. As of May 4, 2020 at 12:01 a.m., the following types of construction projects may re-open:

- shipping and logistics;
- broadband, telecommunications, and digital infrastructure;
- projects that provide additional capacity for production and/or delivery of certain essential goods and services, depending on when the project started or is due to be completed;
- municipal projects;
- colleges and universities;
- schools;
- childcare centres; and
- site preparation, excavation, and servicing for institutional, commercial, industrial, and residential developments.

As of May 8, 2020 at 12:01 a.m., the Government of Ontario is also allowing construction of below-grade multi-unit residential construction projects such as apartment and condominium developments to begin and construction of existing above-grade multi-unit residential projects to continue.

In addition to these expanded categories, the following types of construction projects continue to be considered essential and can remain open:

- projects associated with the healthcare sector;
- critical provincial infrastructure, including transit, transportation, energy and justice sectors;
- critical industrial construction activities required for:
  - maintenance and operations of petrochemical plants and refineries;

- significant industrial petrochemical projects where preliminary work has already commenced; and
- construction and renovations limited to work necessary for the production, maintenance, and/or enhancement of Personal Protective Equipment, medical devices (such as ventilators), and other identified products directly related to combatting the COVID-19 pandemic;
- Residential construction projects where:
  - a footing permit has been granted for single family, semi-detached and townhomes;
  - an above grade structural permit has been granted for condominiums, mixed use and other buildings; or
  - the project involves renovations to residential properties and construction work was started before April 4, 2020; and
- Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure ongoing public safety.

This list of essential construction projects applies to work performed on construction sites and in offices. Any work that can be done remotely and at home is still permitted, whether or not the work relates to one of the essential categories of projects listed above.

While the Government of Ontario continues to refine and clarify the list of essential projects, many of the categories are still vague and it may be unclear exactly what types of work are permitted. The determination of whether a certain project or type of work is essential will depend on the nature of the specific project, as well as the project's current stage of development.

For example, the new list permits work related to "site preparation". This likely means that interior designers may attend on-site to perform preparation tasks such as assessments and inspections, and take measurements of a space. This applies to any type of construction project. However, actual construction may not be able to commence unless the project falls into one of the categories of essential projects.

Residential projects are another example of how the type and stage of the project is critical to determining whether it is essential. The Government of Ontario is allowing all construction of multi-unit residential buildings to continue, as well as construction of new multi-unit developments to begin. However, for other residential construction projects, such as detached single-family dwellings, work is only considered essential if it is site preparation work, or the project has already been granted a footing permit.

Other types of projects, such as those facilitating additional capacity in food, beverage, and agricultural products, or those facilitating distribution or information technology services, may be essential depending on when the project was commenced or when it is due to be complete.

All worksites that remain operational during the COVID-19 pandemic must adhere to the rules relating to workplace health and safety, including physical distancing and sanitation. All worksites are also subject to inspection at any time. Each employer on a worksite is responsible for compliance with government orders, and failure to comply may result in fines and/or criminal charges. While owners or contractors may agree to compensate subcontractors and consultants who are fined for working on a non-essential project or for failing to abide by health and safety rules, criminal charges cannot be assigned.

To assist in maintaining health and safety at operational workplaces while gradually reopening the economy, the Government of Ontario recently released a collection of health and safety guidance documents that provide protocols and best practices designed to ensure that the reopening process proceeds as safely as possible.<sup>1</sup> The Government of Ontario has also established the “Stop the Spread Hotline” at 1-888-444-3659 for inquiries regarding essential businesses and workplaces.

If you require assistance in understanding your rights and obligations, or determining whether a specific project or type of work is permitted during the COVID-19 crisis, Faren Bogach and Paul Conrod of WeirFoulds LLP would be happy to assist you.



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***The information and comments herein are for general information and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, please contact any of our lawyers for further guidance.***

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<sup>1</sup> <https://news.ontario.ca/opo/en/2020/04/health-and-safety-association-guidance-documents-for-workplaces-during-the-covid-19-outbreak.html>