

# Is Your Construction Site an Essential Service?

May 15, 2020

By , and James De Melo, Student-at-Law

## UPDATED: May 15, 2020

As far as the construction industry is concerned, things are starting to get back to normal. Beginning Tuesday, May 19, 2020, the Government of Ontario has [announced](#) that all construction activities may resume and that all essential workplace limits on the construction industry will be lifted as part of the [Stage 1 Openings](#) across the Province.

Subject to changes between now and May 19, 2020, Tuesday will mark the end of restrictions on construction sites. Bearing this in mind, the most pressing question to be asked about many construction sites has now shifted from “Can I open up my worksite?” to, “How can I safely open up my worksite?”. The Government of Ontario has provided some [guidance](#) for protecting workers, customers and the public in relation to many industries, including the construction industry. While these recommendations represent a helpful starting point, they do not capture the specific needs of each unique construction site. For example, all construction sites will now need to develop policies for admitting staff and others to site, as well as protocols for dealing with an outbreak of COVID-19 on site. These policies and protocols will need to balance the privacy and human rights of employees and others with the need to prevent the spread of COVID-19, and will need to be tailored to the needs of the specific worksite.

For individualized advice and policies addressing the needs of your specific worksites, please contact [Faren Bogach](#), [Megan Mah](#) or [Paul Conrod](#).

## UPDATED: May 8, 2020

The Government of Ontario’s gradual re-opening of the Province’s economy continued on May 6, 2020, with the [announcement](#) that certain residential construction projects may resume on-site work. In particular, the announcement expands the scope of allowable construction activities to include below-grade, multi-unit residential construction projects like apartments and condominiums to begin, and for existing above-grade residential projects to continue, starting on May 11, 2020. These projects, just like other allowable construction activities, remain subject to the stringent health and safety requirements imposed by the Government of Ontario. All workplaces are advised to continue promoting social distancing, frequent handwashing and sanitization of high-traffic surfaces, as well as all other measures required to stop the spread of COVID-19.

In addition to the changes to the scope of allowable construction work, the Government of Ontario’s May 6, 2020 announcement also indicated that specified retail sectors may resume operations in accordance with the following timelines and restrictions:

**May 8, 2020:** In-store payments and purchases at garden centres and nurseries—subject to all applicable health and safety guidelines;

**May 9, 2020:** In-store payments and purchases at hardware and safety supply stores—subject to all applicable health and safety guidelines; and

**May 11, 2020:** Curbside pickup and delivery at all retail stores with a street entrance.

Both the changes to the scope of permissible construction activities and the changes to specified retail sectors operate alongside the already existing list of essential workplaces. No new workplaces will be closed as a result of the May 6, 2020 announcement.

For advice on how these changes may impact your workplace or for input on the health and safety procedures required for a specific workplace, please contact [Faren Bogach](#), [Megan Mah](#) or [Paul Conrod](#).

#### **UPDATED: May 1, 2020**

The Government of Ontario has expanded the list of essential workplaces, allowing more businesses and workplaces, including certain types of construction projects, to reopen. In addition to the list of existing essential construction projects, the following types of projects are also considered to be essential and may reopen effective Monday, May 4 at 12:01 a.m:

- shipping and logistics;
- broadband, telecommunications, and digital infrastructure;
- the improved delivery of goods and services;
- municipal projects;
- colleges and universities;
- schools; and
- site preparation, excavation, and servicing for institutional, commercial, industrial and residential development.

All worksites which remain operational during the COVID-19 pandemic remain are subject to strict guidelines designed to minimize the potential for transmission of the virus and inspections intended to ensure compliance with these guidelines. To assist with maintaining health and safety at operational workplaces while gradually reopening the Province's economy, the Ontario Government recently released a collection of health and safety guidance documents. These documents, which can be found [here](#), provide workplace specific protocols and best practices designed to ensure that the reopening process proceeds as safely as possible.

Although Ontario's health and safety guidance documents are a useful starting point for reopening construction sites, the guidance they provide is general in nature and may not respond to the specific needs of each worksite. For advice, and for the implementation of the specific protocols necessary to ensure compliance with health and safety requirements on your particular worksites, please contact [Faren Bogach](#), [Megan Mah](#) or [Paul Conrod](#).

#### **UPDATED: April 23, 2020**

As of April 23, 2020, the Government of Ontario has extended all emergency orders passed under the *Emergency Management and Civil Protection Act* until May 6, 2020. For the construction industry, this means that all restrictions on the operation of non-essential services will continue in effect until at least May 6, 2020. The announcement, which can be found [here](#), does not affect the scope of the emergency restrictions meaning that all workplaces previously considered essential will continue to be treated as such, while all non-essential workplaces must remain closed.

#### **UPDATED: April 13, 2020**

The Government of Ontario instituted two significant changes last week affecting the construction industry during the shutdown of non-essential services. First, as of April 7, 2020, the hours of operation on construction projects related to the healthcare sector have been extended to allow work to occur 24 hours a day. Work hours on non-healthcare sector construction projects have also been extended to 6 a.m. to 10 p.m. each day. The announcement, which can be found [here](#),<sup>[1]</sup> also temporarily prevents local noise by-laws

from applying to these construction sites.

These changes are intended to both expedite work on essential construction projects and to simplify the implementation of social distancing protocols on these sites. For example, under the new extended workday rules, shifts can more easily be staggered with trades being asked to start at different times throughout the day (and, on healthcare related projects, the night) instead of within a few hours of one another.

The Government of Ontario also announced that it will be expanding the essential services list in the near future to include certain short-term construction projects. Specifically, the incoming update will classify all construction projects providing additional capacity for the production, manufacturing or distribution of food and beverages or agricultural products, and which are scheduled to be completed by October 4, 2020, as essential services. This addition will operate alongside the existing essential services list, and will not result in the shutdown of any additional construction sites. The only impact of this amendment will be to classify certain short-term construction projects taking place in the food and beverage or agricultural sectors as essential, allowing work to continue on more construction sites during the shutdown. Once enacted, the regulation expanding the essential services list will be available [here](#).

If you have any questions as to how these changes may affect your projects, and to ensure that your sites are keeping up with the latest health and safety requirements, please consult the health and safety resources we have collected [here](#), and contact [Faren Bogach](#) or [Paul Conrod](#).

#### **UPDATED: April 4, 2020**

As of 11:59 p.m. Saturday April 4, 2020, the earlier list of construction-related essential workplaces will have been replaced with the following, significantly more limited scope of activities:

*Businesses that supply other essential businesses or essential services within Ontario, or that supply businesses or services that have been declared essential in a jurisdiction outside of Ontario, with the support, products, supplies, systems, or services, including processing, packaging, warehousing, distribution, delivery, and maintenance necessary to operate.*

...

*Maintenance, repair and property management services strictly necessary to manage and maintain the safety, security, sanitation and essential operation of institutional, commercial, industrial and residential properties and buildings.*

*Construction projects and services associated with the healthcare sector, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space.*

*Construction projects and services required to ensure safe and reliable operations of, or to provide new capacity in, critical provincial infrastructure, including transit, transportation, energy and justice sectors beyond the day-to-day maintenance.*

*Critical industrial construction activities required for,*

- i. the maintenance and operations of petrochemical plants and refineries,*
- ii. significant industrial petrochemical projects where preliminary work has already commenced,*

*iii. industrial construction and modifications to existing industrial structures limited solely 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,*

*iv. a footing permit has been granted for single family, semi-detached and townhomes*

*v. an above grade structural permit has been granted for condominiums, mixed use and other buildings, or*

*vi. the project involves renovations to residential properties and construction work was started before April 4, 2020.*

*Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure ongoing public safety.*

The updated list is more restrictive, allowing only critical infrastructure, industrial, and already started residential work to continue in addition to essential maintenance work. There is still uncertainty as to the types of work that would be considered critical infrastructure work (aside from transit). The penalties for operating a non-essential workplace during the temporary shutdown are severe.

In addition to limiting the scope of construction activities that can continue, the provincial government has warned those few sites that can remain open that they will be placed under significant scrutiny. Inspectors will frequently be attending open construction sites to ensure that the latest health and safety guidelines are being complied with and that adequate social distancing measures have been established. To ensure that your site is keeping up to date with the latest health and safety requirements, or to determine whether your site fits within one of the exempted categories set out on this list, please consult the health and safety resources we have collected [here](#), and contact [Faren Bogach](#) or [Paul Conrod](#).

**March 24, 2020**

### **Construction Workplaces Deemed “Essential Services”**

Starting Tuesday March 24, 2020 at midnight, all “non-essential services” are required to shut down in response to the COVID-19 pandemic in Ontario. This mandatory closure will be in effect for at least 14-days, with the possibility of further extensions left to the discretion of Premier Ford.

On the evening of March 23, 2020, the Ontario Government clarified exactly which services and business are considered “essential services” and will be able to remain open throughout the 14-day shutdown period. A complete list of the essential services can be found at <https://news.ontario.ca/opo/en/2020/3/list-of-essential-workplaces.html>.

For the construction industry, the following workplaces qualify as essential, meaning that they may continue throughout the shutdown period:

*Businesses that supply other essential businesses or essential services with the support, supplies, systems or services, including processing, packaging, distribution, delivery and maintenance necessary to operate*

...

*Construction projects and services associated with the healthcare sector, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space*

*Construction projects and services required to ensure safe and reliable operations of critical provincial infrastructure, including transit, transportation, energy and justice sectors beyond the day-to-day maintenance*

*Construction work and services, including demolition services, in the industrial, commercial, institutional and residential sectors*

*Construction work and services that supports health and safety environmental rehabilitation projects*

This order names broad categories of construction-related workplaces, and appears to include almost any construction project operating in Ontario. This likely includes anyone working on construction sites in Ontario, including general contractors, subcontractors, and sub-contractors.

The inclusion of businesses in the supply chain and businesses supplying services to essential workplaces likely means that other businesses supplying materials, equipment, and services to construction projects – such as suppliers and consultants – can also continue to operate during the shutdown period.

Although construction projects can remain open during the shutdown period, Premier Ford warned that employers must maintain safe workplaces and ensure that working conditions are compliant with the Government's social distancing and hygiene standards.

The questions of whether certain work or operations falls within the scope of this list, or how to comply with the Government's social-distancing and hygiene standards apply are will depend on your workplace. If you have any questions as to how this order and other COVID-19 related issues may affect your workplace, please contact [Faren Bogach](#) or [Paul Conrod](#).

[\[1\]](#) The associated regulations which may be found [here](#) (for the Province) and [here](#) (for the City of Toronto)

***The information and comments herein are for the general information of the reader 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, the reader should seek professional advice.***

For more information or inquiries:

Toronto

Email:

Toronto

Email:

**WeirFoulds**<sup>LLP</sup>

[www.weirfoulds.com](http://www.weirfoulds.com)

**Toronto Office**

4100 – 66 Wellington Street West  
PO Box 35, TD Bank Tower  
Toronto, ON M5K 1B7

Tel: 416.365.1110  
Fax: 416.365.1876

**Oakville Office**

1320 Cornwall Rd., Suite 201  
Oakville, ON L6J 7W5

Tel: 416.365.1110  
Fax: 905.829.2035