

# *In Brief*

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March 21, 2020

## **EXECUTIVE ORDER 2020-10'S EFFECT ON CONSTRUCTION PROJECTS**

On March 20, 2020, Governor Pritzker issued Executive Order 2020-10 ordering Illinois citizens to stay at home, with certain exceptions, in an effort to stop the spread of the Coronavirus (COVID-19). To be sure, the Order will have a dramatic effect on public and private entities, let alone on individuals, and Robbins Schwartz will have much more comprehensive guidance in the days to come. However, due to the number of questions from clients regarding the status of ongoing construction projects, this law alert focuses only on Executive Order 2020-10's impact on ongoing and upcoming construction projects.

### **I. Analysis of Executive Order 2020-10.**

In addition to requiring Illinoisans to stay at home, Executive Order 2020-10 also requires non-essential businesses and operations to cease. However, the Order states that “[a]ll Essential Businesses and Operations are encouraged to remain open.” The Order also allows individuals to leave their home to perform work for Essential Businesses and Operations. Those Essential Businesses and Operations that remain open must take proactive measures, where possible, including: (i) maintaining six foot distancing; (ii) having hand sanitizer and sanitizing products for employees and customers; and (iii) implementing separate hours, or remote work, for elderly or vulnerable individuals.

In short, construction and many construction-related activities are included in “Essential Businesses and Operations” and projects may continue.

The Order enumerates a number of “Essential Businesses and Operations,” including “Essential Governmental Functions” and “Essential Infrastructure.” Each governmental body shall determine its Essential Governmental Functions and identify “employees and/or contractors necessary to the performance of those functions.” “Essential Infrastructure includes ... construction (including, but not limited to construction required [for a COVID-19 response], public works construction ... housing construction); [and] building management and maintenance.” The Order also states that Essential Infrastructure is to be broadly construed. The Order reiterates that individuals may leave their home to perform any services for Essential Businesses and Operations, including “critical trades” and governmental employees working for and/or supporting Essential Businesses and Operations.

The Order also specifies that some limited services that are not Essential Businesses and Operations can continue. Governmental bodies and private businesses can and should continue

Minimum Basic Operations including preserving physical plant and equipment, maintaining the value of inventory, ensuring security, processing payroll, facilitating work from home conditions for others, and related functions.

## **II. Recommendations for Public and Private Construction Projects.**

Considering Executive Order 2020-10, the necessity of its projects, and most importantly the health and safety of its employees and contractors, each public body and private entity can and should use its own judgment in determining whether to commence, continue, suspend, or terminate each of its existing and future projects. Projects related to health, safety and security may, and likely should, continue. Cosmetic improvements and other nonessential projects may be candidates for cancellation, postponement, suspension or termination on a case by case basis. Other projects will require a business judgment decision by the project owner.

In the case of public bodies, the governing board should, when possible, make the decision whether to proceed, suspend, or terminate the project. Considering that many boards have cancelled meetings, the administration may make the initial decision to proceed and notify the governing board of their intent to do so. If any board member objects to that decision, the board member should notify the administration individually so as not to violate the Open Meetings Act. The governing board should ratify the administration's decision at the next board meeting.

If a contractor is unable to perform during this time due to staffing issues, we recommend consultation with legal counsel for available remedies. Robbins Schwartz remains [available](#) to assist its clients with such projects or other legal issues that may arise.