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April 30, 2020

Washington Restarts Construction Projects



Note: On April 29, 2020, Governor Jay Inslee issued a memorandum to provide additional guidance on construction projects authorized to restart.

Washington Governor Jay Inslee signed an addendum to the [Stay Home, Stay Healthy Order](#) (Proclamation 20-25) on April 24, 2020, to allow certain construction to resume, provided projects institute a COVID-19 safety plan and workers use personal protective equipment and can socially distance, among other requirements. While the initial order allowed only a limited number of construction projects to continue, the [recently announced update](#) to the initial order allows all construction projects to resume that comply with a 30-point list issued by Governor Inslee in his Phase I Construction Restart COVID-19 Job Site Requirements. Key elements of the addendum and its Phase I Construction Restart requirements include:

- **Social Distancing.** If a work activity requires workers to be closer than six feet, it is not authorized with very limited exceptions.
- **COVID-19 Safety Plan.** Each project must have a comprehensive COVID-19 safety plan that includes policies regarding PPE utilization; on-site social distancing; hygiene; sanitation; symptom monitoring; incident reporting; site decontamination procedures; COVID-19 safety training; exposure response procedures; and a post-exposure incident recovery plan. A copy of the plan must be available at each job site while construction is ongoing and available for inspection by state and local authorities.
- **COVID-19 Site Supervisor.** Each site must have a COVID-19 supervisor to monitor the health of employees and enforce the COVID-19 safety plan; this supervisor must be present at all times during construction, except on single-family residential job sites with six or fewer workers on site.
- **Employer-Provided Personal Protective Equipment (PPE).** Each employer is required to provide necessary PPE, depending on the type of work being performed. Eye protection must be worn at all times and masks must be worn consistent with Department of Health guidelines. The requirements include specific standards for providing sanitation and maintaining a clean worksite.

No job site may operate until the contractor can meet and maintain all of the Phase 1 Construction Restart requirements. Starting May 1, these new requirements will also apply to projects that were allowed to continue under the original Stay Home, Stay Healthy Order. In limited circumstances where six-foot separation cannot occur on previously-authorized projects, a hazard assessment and control plan must be implemented to identify appropriate PPE in accordance with Department of Labor & Industries requirements. Newly authorized projects must comply with the six-foot separation requirement.

The Governor's [April 29, 2020, guidance](#) and frequently asked questions clarify what is "authorized" and "existing."

- **"Previously authorized construction"** refers to construction that was previously permitted under Proclamation 20-25 and subsequent guidance.
- **"Authorized construction"** means construction that was *existing* on March 23, 2020, but not previously authorized under the proclamation and guidance.
- **"Existing construction"** means construction activity that is (a) needed to fulfill an obligation under a contract effective prior to March 23, 2020, or (b) authorized by a government-issued permit obtained prior to March 23, 2020. Pre-leases, construction contracts, design contracts, and sale contracts are all included in the meaning of a contract.

Construction projects that were not existing prior to March 23, 2020, or previously authorized are not permitted to resume. Additionally, landscape construction projects, which were not addressed in the Governor's April 24, 2020, update, are treated the same as structural projects.

While the announcement of the construction restart is welcome news for the building industry and for the state's economy, it also raises questions about future phases. For example, what is Phase II of the construction restart, what will that phase allow, and when could it be implemented? At this point, the Governor has not provided details about future guidance.

Historically, the Governor's office has provided clarification in the days and weeks after a new order to respond to questions and address ambiguities, and we can expect that builders around the state will continue to seek clarification about the implementation of the Phase I Construction Restart.

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