



# NERCA NEWS

NORTH / EAST ROOFING CONTRACTORS ASSOCIATION INC.

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November 2020

## NERCA's Convention & Trade Show Date Change May 4-6, 2021

### OSHA Issues List of Common COVID-19 Citations

Since the start of the coronavirus pandemic through November, the Department of Labor's Occupational Safety and Health Administration (OSHA) has issued 204 citations arising from inspections for violations relating to coronavirus, resulting in proposed penalties of \$2,856,533.

In an effort to assist employers to avoid further citations, OSHA has [released a list](#) of the most commonly cited standards as well as resources that are available to help stay in compliance. It should come as no surprise that the most common citations were 1910.134 related to Respiratory Protection and Subpart 1904 related to Recordkeeping and Reporting.

### Dodge Data & Analytics Predicts 4% Rebound For Construction in 2021

Dodge released its 2021 Construction Outlook predicting total U.S. construction starts will increase 4% in 2021. Richard Branch, Chief Economist for Dodge Data & Analytics said, "While the recovery is underway, the road to full recovery will be long and fraught with potential potholes. After losing an estimated 14% in 2020 to \$738 billion, total construction starts will regain just 4% in 2021...The starts for residential buildings will increase 5% in 2021, nonresidential buildings will gain 3%, and nonbuilding construction will improve 7%."

### IRS and SBA Attach Strings to PPP

As businesses grappled with the impact of COVID-19, the Paycheck Protection Program (PPP) was a loan system designed to provide financial relief to businesses and encourage them to maintain or rehire their pre-pandemic workforce.

Many saw it as a bright spot during an uncertain time for businesses. However, some were wary of accepting loans from the federal government because they felt that there must be strings attached.



Now, [guidance released](#) by the Internal Revenue Service confirms that fear saying that if a business "reasonably believes" its loan will be forgiven, costs related to the loan are not deductible on federal taxes. The ruling means that contractors cannot write off expenses if they were paid for with PPP loan funds but will instead get hit with larger-than-usual tax bills.

In addition, the Small Business Administration (SBA) recently mandated that that borrowers with PPP loans of \$2 million or more complete a questionnaire regarding their operations and financial conditions during the pandemic. Form 3509 requests information about gross revenues, capital improvement projects, dividend payments and compensation, including whether any employees earn more than \$250,000. The completed form is due back to the lender within 10 business days of when the borrower receives it and is a point of contention for business groups worried about the information becoming public record.

Recently, a federal judge issued a temporary stay on the release of personal information including names and addresses of applicants to the loan program until at least November 27<sup>th</sup>.

## Rhode Island Governor Orders 2 Week Pause Throughout State

Governor Gina Raimondo told Rhode Island residents that the state will attempt to curb the spread of COVID-19



with a “two-week pause” beginning November 30. The pause includes ordering companies to have most employees work from home and closing gyms casinos and high schools and universities. Under the pause period, indoor dining will be limited to 33% capacity with one household per table.

### Rhode Island on PAUSE

11/30 - 12/13

OPEN	LIMITED	CLOSED
IN-PERSON PreK-8 SCHOOL CHILD CARE MANUFACTURING & CONSTRUCTION PERSONAL SERVICES HEALTH CARE	IN-PERSON HIGH SCHOOL SOCIAL GATHERINGS One household INDOOR DINING 33% capacity, early closures, one household per table RETAIL 1 person/100 sq. ft. (big box: 1 person/150 sq. ft.) HOUSES OF WORSHIP 25% capacity (max of 125)	IN-PERSON COLLEGES & UNIVERSITIES OFFICES (WHEN POSSIBLE) BAR AREAS RECREATIONAL VENUES INDOOR SPORT FACILITIES, GYMS & GROUP FITNESS, ORGANIZED SPORTS (excludes NCAA & professional sports)

In addition, Raimondo said the state has lowered social gathering limits to individual households to reinforce social distancing rules among extended family during the holiday season. Experts fear that the holidays are likely to bring increased transmission rates as people travel to be with family and try to adhere to past traditions.

These moves come as Rhode Island hospitals are at 97% capacity for their COVID-specific beds and hospitalizations are rising faster than they were in the spring with a record 55 COVID related hospitalizations on November 17<sup>th</sup> alone. The governor said that the state will likely need to open field hospitals in Cranston and at the Rhode Island Convention Center in the coming weeks. Raimondo hasn't ruled out a complete shutdown and will make the decision in early December ahead of Christmas. If the 2-week pause is ineffective there may be no choice as she expects the state to exceed capacity for hospital care, testing services, and other crucial infrastructure.

## NYC Unions Make Push to Compete for Multi-unit Affordable Housing

The building trades in the northeast are searching for ways to become more competitive for multi-unit mixed-use projects including residential and affordable housing. This market has long been one where the premium for union labor was difficult to justify for developers hoping to keep prices low enough to entice high occupancy or public entities looking to ensure that the cost of constructing new housing doesn't lead to ballooning subsidies for low income tenants.

Now, a [Wall Street Journal Article](#) reports that NYC Laborers Local 79 has reached an agreement with a local developer which would put them on affordable housing projects at a lower tiered residential rate.



The WSJ article reported that, “Under the agreement, these workers will be paid in tiers between \$30 and \$56 an hour, including benefits, which works out to about 35% lower than the union's rates for nonresidential projects. By contrast, nonunion laborers make about \$20 an hour on average, according to Local 79.”

The deal is with L+M Development Partners a major player in the affordable housing sector in New York. However, the Laborers Local 79 hopes that this agreement could inspire cooperation with other developers who have tended to favor non-union labor simply due to the lower cost.

Much like their counterparts in Boston, union labor would actually be preferred by developers who see value in the superior quality, training, and safety being offered. In addition, in New York City, union workers tend to be more diverse and actual city residents which is appealing to developers who must get political and community support to move many of their projects forward.

As a result of the pandemic, NYC construction is forecast to be down almost 10% in 2020. However, this initiative by Local 79 was in the works well before the pandemic and points to a larger strategy by the union building trades to try and capture more of that market which is projected to grow quickly as cities all over the northeast struggle to grow their stock of affordable housing due to gentrification and high real estate costs.

## Connecticut Paid Family and Medical Leave Law

Last summer Connecticut enacted two laws regarding employment leave. One law amended an existing Family and Medical Leave law and the other enacted paid leave benefits.

Employers must keep this distinction in mind because the interaction between the laws can be complicated. For example, going on paid leave does not guarantee job protection unless the leave is protected under the CT FMLA benefits.

Under the law, paid leave benefits are applicable to nearly all employers and employees in Connecticut. There is no minimum length of employment before being eligible, but employees must meet an earnings threshold like unemployment.

The benefits themselves provides up to 12 weeks of paid leave for reasons covered by the amended CT FMLA as of January 2022. An additional 2 weeks will be available for an incapacitating serious health condition related to pregnancy.

The maximum weekly paid leave compensation of \$780 per week will be paid by the state through a payroll tax funded by a 0.5% employee payroll tax (up to the Social Security contribution limit of \$142,800 for 2021).

Over the next few months, major portions of the laws will go into effect including the following:

- November 2020: employers may begin registration process for online accounts with the [Connecticut Paid Leave Authority](#)
- By December 31, 2020: register with the Paid Leave Authority
- January 1, 2021: employee payroll withholdings (0.5%) begin for the paid leave benefit
- March 31, 2021: deadline for employers to submit first quarterly payment of withholdings to the Paid Leave Trust

Employers should keep in mind that while there are no actual notification requirements for employees, it might be best to let employees know that payroll deductions will begin January 2021. Also, employers should review their own paid leave or short-term disability policies since these would run concurrently with the state provided benefit up to the level of the employee's regular pay.

## New Jersey Voters Approve Ballot Initiative to Amend Constitution and Legalize Marijuana

New Jersey voters approved by a 2-to-1 margin to pass [Public Question No. 1](#), an amendment to the New Jersey Constitution to legalize the possession and recreational use of marijuana for adults 21 and over.

This comes on the heels of a bill signed into law last summer which provides employment protections for medical marijuana users. That bill, the Honig Act, makes it unlawful for an employer to take any adverse employment action against an employee who is a registered marijuana patient "based solely on" the employee's status as a user of medical marijuana.

The Honig Act also establishes a procedure that an employer must follow after a positive drug test for marijuana. In that case, the employer is required to provide written notice of the right to provide a valid medical explanation for the result. The applicant or employee then has three working days after receipt to explain the result or request a retest of the original sample at their own expense.

The Honig Act also includes language permitting an employer to take an adverse employment action against a medical marijuana user if the employer's accommodation of the applicant's or employee's use of medical marijuana "would cause the employer to be in violation of federal law ... or ... would result in the loss of a federal contract or federal funding." This would be the case for "drug free" employers who bid on federal contracts over \$100,000.

Despite the Honig Act and legalization of recreational use, employers would likely be justified in taking adverse employment action against an applicant or employee for the recreational use of marijuana. This is because, unlike other states, New Jersey does not have any off-duty conduct law that protects employees from adverse employment action based on their off-duty conduct.

Therefore, New Jersey employers must be careful to follow the rules regarding medical marijuana usage as set out in the Honig Act. However, as long as employee policies are clear and uniformly applied regarding the treatment of recreational marijuana, employers should be well within their rights to continue barring those who test positive without a prescription from employment.

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## LEGISLATIVE CORNER

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### **NATION: Total Cases – 12,450,666** **Monthly Increase in Cases % = 41%**

The election was almost one month ago, but President Trump still refuses to concede after all major news outlets and election law experts have called the election for President-Elect Joe Biden. In Congress, it appears that Georgia's two Senate seats will be the battleground for control. In the unlikely event that Democrats sweep the two seats, they would have complete control over Congress and the White House.



### **CONNECTICUT: Total Cases – 101,469** **% Increase – 44.2%**

Gov. Ned Lamont announced that Connecticut will roll back to Phase 2.1. Under this phase, restaurants may serve 50% of capacity with a maximum of 8 people per table and must close by 9:30 p.m. However, food takeout and delivery services will be allowed to continue after that time. Personal services, like hair salons and barber shops, will remain at 75% capacity while event venues will be limited to 25 people indoors and 50 people outdoors. Performing arts venues and movie theaters will have a cap of 100 people and religious gatherings will be limited to 50% capacity or 100 people maximum.

### **MAINE: Total Cases – 10,123** **% Increase – 47.6%**

Democrats maintained control of the state legislature following the November election. The new legislature will be sworn in on December 2<sup>nd</sup> at the Maine Civic Center which allows for greater social distancing than the statehouse. Lawmakers have promised to tackle coronavirus immediately after failing to convene a special session prior to the election.

### **MASSACHUSETTS: Total Cases – 204,155** **% Increase – 36.0%**

Following a Democratic rout of state Republicans in an election which saw almost 80% turnout, the state Senate quickly passed a \$46 Billion budget which is almost 6% higher than 2020. The budget includes few policy measures, but does include funding for public information campaign regarding the distribution of a COVID-19 vaccine. Ignoring lagging revenues in a time of crisis, the budget seeks to use more than half of the state's rainy day fund in order to cover the shortfall.

### **NEW HAMPSHIRE: Total Cases - 17,281** **% Increase – 52.7%**

Gov. Chris Sununu signed an emergency order implementing a statewide mask mandate to try to mitigate the spread of coronavirus. New Hampshire recorded a record high 529 new cases last week. "With rising cases, substantial statewide community transmission, and an increase in hospitalizations – the data supports enacting a statewide mask mandate," said Governor Chris Sununu. The governor may take comfort in making this move after an election in which state Republicans unexpectedly swept the legislature.

### **NEW JERSEY: Total Cases – 308,326** **% Increase – 32.7%**

Gov. Phil Murphy announced that restaurants, bars and other businesses that serve food or drinks will have to end indoor dining by 10 p.m. Outdoor dining can continue after 10 p.m., as can takeout and delivery services. Additionally, nonessential retail, food and beverage, and recreation and entertainment businesses must close by 8 p.m. Indoor gatherings will be limited to 10 people, down from 25, while outdoor gatherings will be limited to a maximum of 150 people, down from 500.

### **NEW YORK: Total Cases – 628,808** **% Increase – 22.1%**

The relationship between state and city officials continues to fray as control over the response to COVID-19 is claimed by both sides. This was never more evident than on November 18<sup>th</sup> when Governor Andrew Cuomo insisted that the NYC Mayor Bill de Blasio would not close schools until there was a 3% positivity rate as they had agreed upon which state officials insist had not yet been reached. Hours later the Mayor closed down schools in NYC with little advanced warning. The confusion came about because that the state and city measure positivity rates according to different metrics.

### **PENNSYLVANIA: Total Cases – 307,247** **% Increase – 47.5%**

A Republican-backed proposal to make it harder to sue schools, health care providers and others over COVID-19 claims is headed to the desk of Democrat Governor Tom Wolf. The 104 to 98 vote sent House Bill 1737 to the governor's desk. All House Democrats were opposed, joined by five moderate Republicans. It is unclear but thought unlikely that the bill will be signed by the Governor during the lame duck session.

### **RHODE ISLAND: Total Cases – 48,001** **% Increase – 49.6%**

Facing the prospects of a major revenue shortfall and cuts in social programs, progressive advocates are starting to push for additional taxation of top earners in the state. Progressive groups were joined by lawmakers in their call to raise the top income tax rate from 5.99% to 8.99% on earnings above a projected \$475,000. This move could provide a potential \$128 million in new dollars for government spending.

### **VERMONT: Total Cases – 3,546** **% Increase – 50.1%**

A survey of school districts across Vermont revealed a backlog of more than half a billion dollars in unmet building needs. The Vermont Superintendents Association conducted the survey finding school districts are planning or proposing \$565 million worth of maintenance and construction projects between now and 2023. However, many districts do not have revenue to cover the expenses after the state halted spending on school construction in 2007.