

CUOMO ISSUES FURTHER ORDER ON WORKFORCE REDUCTION: EMPLOYERS NOW DOWN TO TWENTY-FIVE PERCENT

Hodgson Russ Labor & Employment Alert
March 19, 2020

Yesterday, we issued an alert on Gov. Andrew Cuomo's announcement that New York businesses would be prohibited from having more than fifty percent (50%) of their workforce report to work outside of the home. See a copy of our previous alert [here](#).

Earlier this morning, the Governor issued Executive Order No. 202.6 providing further guidance on the workforce reduction requirements he had announced the day prior. The Governor's Executive Order directs that all businesses and not-for-profit entities have until no later than March 20, at 8:00 p.m., to "reduce the in-person workforce at any work locations by fifty percent."

However, Gov. Cuomo's restrictions appear to have already been rendered obsolete by his most recent verbal directive requiring employers to reduce their in-person workforces to twenty-five percent (25%) in an effort to aid density reduction. This announcement appears to supersede earlier direction from the Governor's Office that fifty percent (50%) of employees would have to work from home. We expect another Executive Order will be issued on this topic in the near future.

Employers should note that Gov. Cuomo indicated that he remains open to imposing further restrictions based on the rate of transmission of the COVID-19 virus.

As promised, Executive Order 202.6 carved out an exception for "any essential business or entity providing essential services or functions." An employer who is considered to be an essential business or entity is not subject to the in-person restrictions set forth in the Order. We expect essential businesses and entities will also be exempt from the recently implemented 25% workforce cap.

The list of essential businesses included in Executive Order No. 202.6 include:

- essential health care operations including research and laboratory services;
- essential infrastructure including utilities, telecommunication, airports and transportation infrastructure;
- essential manufacturing, including food processing and pharmaceuticals;

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- essential retail including grocery stores and pharmacies;
- essential services including trash collection, mail, and shipping services;
- news media;
- banks and related financial institutions;
- providers of basic necessities to economically disadvantaged populations;
- construction;
- vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; and
- vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public.

Businesses not included in the above list may be deemed essential after requesting an opinion from the Empire State Development Corporation. The Empire State Development Corporation will grant a business's request when it determines that it would be in the best interests of the state to have the business's workforce continue at full capacity "in order to properly respond to this disaster."

The Empire State Development Corporation has until 5:00 p.m., on March 19, 2020, to issue further guidance as to which businesses will be considered essential.

Hodgson Russ is continually monitoring this and all other aspects of the COVID-19 pandemic as it affects employers. If you have any questions, please contact a member of our Labor & Employment team. Another alert will be issued when the Governor's Office provides further clarification on its most recent announcement and/or when the Governor issues an Executive Order memorializing his verbal directive.

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