

NYS OFFERS FURTHER CORONAVIRUS WORKFORCE RESTRICTIONS GUIDANCE

Hodgson Russ Labor & Employment Alert
March 20, 2020

On March 18, 2020, Governor Cuomo issued Executive Order 202.6 requiring businesses to reduce their in-person workforce to 50%. Shortly after the Executive Order was published, Governor Cuomo issued a verbal directive instructing all businesses and not-for-profit employers to further reduce their in-person workforce at any work location by 75% no later than Saturday, March 21st at 8:00 p.m.

During a press conference earlier today, the Governor issued further restrictions on employers' business operations—for the foreseeable future, only businesses that qualify as an “essential business or entity” pursuant to guidance issued by the Empire State Development Corporation are permitted to have any employees in the workplace.

During today's conference, Governor Cuomo recognized that “society has to function” but also stated that his restrictions “are not helpful hints” and may be enforced by “civil fines and mandatory closures for any business that is not compliance.”

As stated above, any essential business or entity providing essential services or functions is not subject to the in-person restrictions. The guidance recently issued by the Empire State Development Corporation (available here: <https://esd.ny.gov/guidance-executive-order-2026>) indicates that essential businesses include:

Essential health care operations, including:

- research and laboratory services
- hospitals
- walk-in-care health facilities
- veterinary and animal health services
- elder care
- medical wholesale and distribution
- home health care workers or aides
- doctor and dentist offices
- nursing homes, or residential health care facilities or congregate care facilities

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- medical supplies and equipment providers

Essential infrastructure, including:

- utilities including power generation, fuel supply and transmission
- public water and wastewater
- telecommunications and data centers
- airports/airlines
- transportation infrastructure such as bus, rail, or for-hire vehicles, garages

Essential manufacturing, including:

- food processing, including all foods and beverages
- chemicals
- medical equipment/instruments
- pharmaceuticals
- safety and sanitary products
- telecommunications
- microelectronics/semi-conductor
- agriculture/farms
- paper products

Essential retail, including:

- grocery stores including all food and beverage stores
- pharmacies
- convenience stores
- farmer's markets
- gas stations
- restaurants/bars (but only for take-out/delivery)
- hardware and building material stores

Essential services, including:

- trash and recycling collection, processing and disposal
- mail and shipping services

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- laundromats/dry cleaning
- building cleaning and maintenance
- child care services
- auto repair
- warehouse/distribution and fulfillment
- funeral homes, crematoriums and cemeteries
- storage for essential businesses
- animal shelters or animal care or management

News media

Financial Institutions, including:

- banks
- insurance
- payroll
- accounting

Providers of basic necessities to economically disadvantaged populations, including:

- homeless shelters and congregate care facilities
- food banks
- human services providers whose function includes the direct care of patients in state-licensed or funded voluntary programs; the care, protection, custody and oversight of individuals both in the community and in state-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support

Construction, including:

- skilled trades such as electricians and plumbers
- other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes

Defense

- defense and natural security-related operations supporting the U.S. Government or a contractor to the US government

Essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses, including:

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- law enforcement
- fire prevention and response
- building code enforcement
- security
- emergency management and response
- building cleaners or janitors
- general maintenance whether employed by the entity directly or a vendor
- automotive repair
- disinfection
- doormen

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, including:

- logistics
- technology support
- child care programs and services
- government owned or leased buildings
- essential government services

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."

If you have any questions about the categories exempt, reducing your workforce, or your COVID-19 response more generally, please contact any member of our Labor & Employment team.

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