

New York State Mandates That Non-Essential Workers Must Stay Home

Law and the Workplace Blog on March 20, 2020

Beginning Sunday, March 22, 2020 at 8:00 PM, in accordance with [Executive Order 202.8](#) issued by Governor Andrew Cuomo, only essential businesses and not-for-profit entities in New York State may utilize an in-person workforce. This extends Governor Cuomo's previous [Executive Order 202.7](#), which required all businesses and not-for-profit entities not otherwise deemed essential to (1) reduce their in-person workforce by 75%, and (2) utilize teleworking arrangements to the greatest extent possible.

The New York State Department of Economic Development d/b/a Empire State Development has issued [guidance](#) for determining whether a business enterprise is essential. According to the guidance, the following are considered "essential businesses" and are thus exempt from the Order:

1. **Essential health care operations** – including research and laboratory services, hospitals, walk-in health care facilities, veterinary and animal health services, elder care, medical wholesale and distribution, home health care workers or aides, doctor and dentist offices, nursing homes and similar facilities, and medical supplies and equipment providers.
2. **Essential infrastructure** – including utilities such as power generation and fuel supply, public water and wastewater, telecommunications and data centers, airports/airlines, and other transportation infrastructure.
3. **Essential manufacturing** – including food processing, chemicals, medical equipment/instruments, pharmaceuticals, safety and sanitary products, telecommunications, microelectronics/semi-conductor, agriculture/farms, and paper products.
4. **Essential retail** – including grocery stores, food and beverage stores, pharmacies, convenience stores, farmer's markets, gas stations, restaurants and bars for take-out only, and hardware and building material stores.
5. **Essential services** – including trash and recycling services, mail and shipping services, laundromats, dry cleaning, building cleaning and

maintenance, child care services, auto repair, warehouse distribution and fulfillment, funeral homes, crematoriums, cemeteries, storage for essential businesses, and animal shelters or animal care or management.

6. **News media.**
7. **Financial institutions** - including banks, insurance, payroll, accounting, and services related to financial markets.
8. **Providers of basic necessities to economically disadvantaged populations** - including homeless shelters, congregate care facilities, food banks, and other human service providers.
9. **Construction** - including skilled trades such as electricians and plumbers, and other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes.
10. **Defense and national security-related operations.**
11. **Essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses** - including law enforcement, fire prevention and response, building code enforcement, security, emergency management and response, building cleaners or janitors, general maintenance, auto repair, disinfection, and doormen.
12. **Vendors that provide essential services or products needed to ensure the continuing operation of government agencies and to provide for the health, safety and welfare of the public** - including logistics, technology support, child care services, government owned or leased buildings, and essential government services.

If an employer's business is not listed above, but they believe that it is essential or that it is an entity providing essential services, the employer may request a designation as an essential business on the state's website. However, businesses with only one employee are automatically deemed exempt and need not request a designation. In addition, businesses ordered to close based on the state's restrictions on gatherings with more than 500 participants (e.g., gyms, movie theatres, sporting events) must remain closed and should not request an essential business designation.

The Guidance also clarifies that the order applies to each business location individually, rather than the business as a whole. In addition, if a business or entity provides both essential and non-essential services, only those services that are necessary to support essential services are exempt from the restrictions.

Also effective March 21, 2020 at 8:00 PM (and until further notice), all barbershops, hair salons, tattoo or piercing parlors and related personal care services must close to members of the public. This also includes: (1) nail technicians; (2) cosmetologists and estheticians; and (3) the provision of electrolysis or laser hair removal services.

Our team is closely monitoring the directives being issued by the Governor and will provide updates to this post as they become available.

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