

Executive Order 202.8: Reduction of In-Person Workforce by 100%

March 21, 2020 | **CLIENT ALERTS**

As anticipated, Governor Cuomo just issued his most recent Executive Order 202.8, which, among other directives, orders that all businesses and not-for-profits must reduce their in-person workforce by 100% by 8:00 p.m. on Sunday, March 22, 2020. Essential Businesses are exempt from this in-person workforce reduction. The Empire State Development Corporation (the "ESDC") previously issued guidance on what constitutes "Essential Business." However, the ESDC has made modifications to the guidance since we last reported on March 19th. Here is the link to the most recent guidance: <https://esd.ny.gov/guidance-executive-order-2026>

We have marked (*in italics* and redline) the modifications made to the list of Essential Businesses below.

1. Essential health care operations including:

- research and laboratory services
- hospitals
- walk-in-care health facilities
- ~~emergency~~ veterinary and ~~animal health~~ ~~livestock~~ services
- elder care
- medical wholesale and distribution
- home health care workers or aides *for the elderly*
- doctor and ~~dentist offices~~ *emergency dental*
- nursing homes, or residential health care facilities or congregate care facilities
- medical supplies and equipment *manufacturers and providers*

2. 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
- *hotels, and places of accommodation*

3. Essential manufacturing including:

- food processing, *manufacturing agents*, including all foods and beverages
- chemicals
- medical equipment/instruments
- pharmaceuticals
- ~~safety and~~ sanitary products

- telecommunications
- microelectronics/semi-conductor
- agriculture/farms
- *household* paper products

4. 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

5. Essential services including:

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

6. News Media

7. Financial institutions including:

- banks
- insurance
- payroll
- accounting
- *services related to financial markets*

8. 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

9. Construction including:

- skilled trades such as electricians, plumbers

- other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes

10. Defense:

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

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 whether employed by the entity directly or a vendor
- automotive repair
- doormen
- disinfection

12. 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 *for online services*
- child care programs and services
- government owned or leased buildings
- essential government services

The updated ESDC guidance also now requires that all Essential Businesses must implement rules that help facilitate social distancing of at least six feet.

Executive Order 202.8 provides that this directive is for the period commencing March 22, 2020 through April 19, 2020. Governor Cuomo indicated in his statement yesterday that civil penalties will be assessed for businesses that violate his order. The Executive Order provides that any violations are subject to Section 12 of the Public Health Law, which provides for civil penalties ranging from \$2,000 to \$10,000 per violation and injunctive relief. In addition to the civil penalties, employers may face other exposure, including insurance coverage issues should occurrences happen to employees and others in work sites that remain operational but do not qualify as an Essential Business.

We are available to assist with interpreting the guidance as well as preparing requests to the ESDC to be designated as an "Essential Business."

Please contact [Amy Habib Rittling \(ahabibrittling@lippes.com\)](mailto:ahabibrittling@lippes.com) or [Vincent M. Miranda \(vmiranda@lippes.com\)](mailto:vmiranda@lippes.com) with any questions regarding this Executive Order or any other employment-related issues your business may be facing.

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