

Is Your Business Exempt from New York State's 75% Workforce Reduction Mandate?

March 19, 2020 | **CLIENT ALERTS**

In follow up to our client alert issued earlier today, this evening the Empire State Development Corporation (the "ESDC") issued further guidance to inform businesses in New York State whether they are subject to the 75% in-person workforce reduction mandate issued by Governor Cuomo.

By Executive Order 202.6, Governor Cuomo directed that by Friday, March 20, 2020, at 8:00 p.m., all businesses and not-for-profit entities in New York State shall reduce their in-person workforce at each individual business/work location within the state by 75%. Essential businesses are exempt from this workforce reduction mandate. While the Executive Order listed certain industries, the Governor instructed the ESDC to provide further guidance on what constitutes an "essential business." For the purpose of this Executive Order, the ESDC provided the following additional guidance on what "Essential Business" means:

1. 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
- medical supplies and equipment 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

3. 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

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

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 natural 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
- disinfection
- doormen

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

In addition, the ESDC guidance provides that any business with only a single occupant/employee is deemed exempt regardless of the industry.

The ESDC's guidance further clarifies that for businesses that have both essential and non-essential services, supplies or support, only those lines and/or business operations that are necessary to support the essential services, supplies, or support are exempt from the restrictions.

If the ESDC's guidance does not address the function of your business and you believe it should qualify for an exemption as an "Essential Business," you may request designation as an "Essential Business" by submitting this request form to ESDC:

https://esd.ny.gov/sites/default/files/Request%20for%20Designation%20Form_0.pdf

The form requires the following information: business name, address, contact information, number of employees, description of business function, industry, and a brief description of the business. The form must be signed under penalty of perjury that the information provided is true and accurate.

We anticipate that New York State will continue to take action that impacts employers as it continues to respond to the COVID-19 outbreak. We will continue to monitor and update you on these changes.

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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