

Mandatory Non-Essential Business In-Person Workforce Reductions

Yesterday, as part of the New York State on Pause executive order, Governor Andrew Cuomo announced that all “non-essential” businesses and non-profits must keep all of their workers home. This in-person workforce reduction is effective at 8:00pm on March 22, 2020.

This announcement comes on the heels of two executive orders issued earlier this week mandating in-person workforce reductions. The first order -- issued on March 18, 2020 -- mandated all non-essential businesses and non-profits reduce their in-person workforce by 50%. The second order -- issued on March 19, 2020 -- required a 75% in-person workforce reduction.

Importantly, as discussed below, these executive orders exempt “essential” businesses and non-profits from the in-person reduction requirement.

Non-Essential Business Workforce Reductions:

On March 18, 2020, Governor Cuomo signed Executive Order No. 202.6. That order required all non-essential businesses and non-profits in New York State to utilize telecommuting or work from home procedures, to the maximum extent possible. The order also required those entities to reduce by 50% their in-person workforce at any of their work locations.

A day later, on March 19, 2020, Governor Cuomo issued Executive Order No. 202.7, requiring non-essential entities to reduce their in-person workforce by at least 75%.

Yesterday, Governor Cuomo announced all non-essential entities must reduce their in-person workforce to zero. That is, all non-essential businesses statewide must close in-office personnel functions. All non-essential gatherings of any size for any reason are also temporarily banned.

In-person workforce: The executive orders do not define the term, “in-person workforce.” Nor has the State issued additional guidance concerning that term. Until further guidance is made available, for the purposes of determining their “in-person workforce,” employers should consider all workers—full-time, part-time, and temporary—to the extent those workers work, or have worked, onsite as members of the “in-person workforce.”

Essential Businesses: The executive orders expressly exempt “essential” businesses and non-profit entities from the workforce reduction requirement. According to State guidance, “essential” business and non-profit entities include the following:

- **Essential Health Care Operations:** includes 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, residential health care facilities, congregate care facilities, medical suppliers, and equipment providers.
- **Essential Infrastructure:** includes utilities, power generation, fuel supply and transmission, public water and wastewater, telecommunications and data centers, airports and airlines, and transportation infrastructure (bus, rail, etc.).

- **Essential Manufacturing:** includes food processing, chemicals, medical equipment/ instruments, pharmaceuticals, safety and sanitary products, telecommunications, microelectronics/semi-conductor, agriculture/farms, paper products.
- **Essential Retail:** includes grocery stores (food and beverage stores), pharmacies, convenience stores, farmer's markets, gas stations, restaurants/bars (only for take-out/delivery), hardware, and building material stores.
- **Essential Services:** includes trash and recycling, mail and shipping, laundromats/dry cleaning, building cleaning and maintenance, child care services, auto repair, warehouse/distribution fulfillment, funeral homes, and animal shelters or animal care or management.
- **News Media**
- **Financial Institutions:** includes banks, insurance, payroll, and accounting.
- **Providers of basic necessities to economically disadvantaged populations:** includes homeless shelters, food banks, and human service 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:** includes skilled trades such as electricians and plumbers and other related construction firms and professions for essential infrastructure or emergency repair and safety purposes.
- **Defense:** defense and natural security-related operations supporting the U.S. Government or a contractor to the U.S. Government.
- **Essential services necessary to maintain the safety, sanitation, and essential operations of residences or other essential business:** includes law enforcement, fire prevention and response, building code enforcement, building cleaners or janitors, disinfection, security, and doormen.
- **Vendors that provide essential services or products:** includes logistics and technology support, child care, and services needed to ensure the continuing operation of government agencies and provide for 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 respond to this disaster." Notably, any business that only has a single occupant/employee has been deemed exempt and need not submit a request to be designated as an essential business.

Essential businesses or entities must implement rules that help facilitate social distancing of at least six feet. Also, if businesses or entities provide both essential and non-essential services, supplies or support, only those business operations that are necessary to support the essential services, supplies, or support are exempt from the restrictions.

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