COVID-19: GOVERNOR CUOMO ISSUES EXECUTIVE ORDER DIRECTING ALL NON-ESSENTIAL WORKERS TO STAY HOME

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Labor, Employment and Workplace Safety Alert

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In a further effort to stem the spread of COVID-19, on March 18, 2020, Governor Cuomo directed all businesses and not-for-profit entities to utilize teleworking processes to the maximum extent possible. Following on that directive, and per Executive Orders 202.6 - 202.8, **all** businesses should use telecommuting or work from home procedures to the maximum extent they can safely utilize them. All workers at "non-essential" businesses must stay home; to the extent a non-essential business cannot be operated remotely through telework only, the business must close. Any entity providing essential services or functions, whether to an essential business or a non-essential business, is exempt and may operate at the level necessary to provide such service or function.

Executive Order 202.8, amending 202.6 and 202.7, states that these directives shall be in place through April 19, 2020.

Guidance published by the Empire State Development Corporation on March 19, 2020 ("ESDC Guidance"), sets forth the full list of what is considered an "essential" business and therefore exempt. The current list of essential businesses is set forth below. If a business is not clearly covered as an "essential" business as set forth in the ESDC Guidance, the business may apply for an exemption at the following webpage: https://esd.ny.gov/guidance-executive-order-2026 by filing out the form and emailing the completed form to covid19designations@esd.ny.gov. The ESDC Guidance asks that only businesses that do not fall within the essential business definitions set forth below request an exemption. "Essential" businesses need not (and should not) apply for exceptions to continue operating at full workforce levels. Of course, they must continue to comply with all guidance and directives issued by the Department of Health to maintain a clean and safe work environment and implement rules that help facilitate social distancing of at least six feet.

Businesses that provide both essential and non-essential services, supplies or support, may only continue the lines and/or business operations providing the essential services, supplies, or support, and the lines and/or business operations necessary to support the same, at full in-person workforce capacity.

Businesses that only have a single occupant/employee, such as a gas station are deemed exempt, as are houses of worship. However, it is strongly recommended no congregate services are held and social distancing is observed.

All businesses that were previously ordered to close, per Executive Orders 202.1, 202.3 and 202.5, such as concert venues, movie theaters, amusement parks, bowling alleys, and gyms, must continue to stay closed and are not permitted to apply for an exemption. In addition, effective March 21, 2020 at 8 p.m. and until further notice, all barbershops, hair salons, tattoo or piercing parlors, and related personal care services will be closed to

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members of the public. This shall also include nail technicians, cosmetologists, estheticians, and the provision of electrolysis and laser hair removal services, as these services cannot be provided while maintaining social distance.

As with all other COVID-19 related Executive Orders issued by Governor Cuomo in the past week, this directive is made pursuant to the authority granted to the governor in times of emergencies, which allows the "governor, by executive order, to issue any directive during … epidemic, disease outbreak" provided "such directive must be necessary to cope with the disaster and may provide for procedures reasonably necessary to enforce such directive."[1] In accordance thereof, any business that violates Executive Order 202.8 will be treated as having violated Section 12 of New York's Public Health Law, which imposes civil fines of $50 for a first offense and for a second or subsequent offense, guilty of a misdemeanor and fines of up to $500 or six months imprisonment.

Below is the current list of designated "essential" businesses:

1. ESSENTIAL HEALTH CARE OPERATIONS INCLUDING:

- Research and laboratory services
- Hospitals
- Walk-in-care facilities
- Emergency veterinary and livestock services
- Elder care
- Medical wholesale and distribution
- Home health care workers or aides for the elderly
- Doctor and emergency dental
- Nursing homes, 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:

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- Food processing, manufacturing agents, including all foods and beverages
- Chemicals
- Medical equipment/instruments
- Pharmaceuticals
- 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
- Building cleaning and maintenance
- Child care services
- Auto repair
- Warehouse/distribution and fulfillment
- Funeral homes, crematoriums and cemeteries
- Storage for essential businesses
- Animal shelters

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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 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

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- Emergency management and response
- Building cleaners or janitors
- General maintenance whether employed by the entity directly or a vendor
- Automotive repair
- 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

Notes:

[1] Section 29A-a of Article 2-B of the Executive Law.

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