

Client Alert

UPDATE - New York Workforce Reduction Increased to 100%

March 22, 2020

Governor Cuomo has signed three Executive Orders (202-6, 202-7 and 202-8) (the "**Orders**"), that require employers in New York State to reduce their in-person workforce by **100%**, effective Sunday, March 22 at 8:00 p.m. There are limited exceptions to the workforce reduction rules for "essential businesses". The Orders are currently in effect through April 19, 2020.

Exceptions:

- The Orders continue to provide that businesses designated as "essential businesses" can maintain employment at "full capacity", despite the mandatory 100% workforce reduction. A list of those businesses is included at the end of this Alert.
- The scope of the original exceptions has been expanded to entities "*providing essential services* or functions whether to an essential business *or a non-essential business*".
 - Businesses in this new category may "operate at the level necessary to provide such service or function" – not at full capacity the way "essential businesses" can.
 - This new category appears to allow *on-site* support for services such as logistics, mail and shipping, technology support for online services and general maintenance, even for non-essential businesses, although this is not entirely clear.
 - Further guidance is expected that could expand or narrow the new exception. A continued surge in reported COVID 19 cases may lead to greater restrictions.
 - In the interim, any request that employees report for work on-site, (*i.e.* not remotely) should be strictly limited to essential services. The New York Attorney General has urged employees to file complaints against employers who violate the Orders. See: <https://ag.ny.gov/press-release/2020/attorney-general-james-urges-employees-file-complaints-against-employers-ignoring>

If your business is not on the list below, you can still seek a designation as an "essential business" from the Empire State Development Corporation. The form for requesting such a designation is at https://esd.ny.gov/sites/default/files/Request%20for%20Designation%20Form_0.pdf. We are glad to assist if you intend to seek a formal designation.

Should you have any questions about the Orders, including whether your business falls within one of the exceptions to the Orders, or any other employment issue related to COVID-19, please contact any of the lawyers listed below. We are here to help.

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Morrison Cohen LLP has also created the COVID-19 Resource Taskforce, a multidisciplinary taskforce comprised of attorneys with deep expertise in a broad range of legal areas, to assist clients navigating the challenging and uncertain business and legal environment caused by the COVID-19 pandemic. We encourage clients to utilize our capabilities by reaching out to their primary Morrison Cohen attorney contact, who will put you in touch with the appropriate Taskforce person. You may also reach out directly to Joe Moldovan and Alec Nealon, the Taskforce co-chairs:

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Current List of Essential Businesses *(as of March 22, 2020)*

1. *Essential Health Care Operations*, including

- research and laboratory services
- hospitals
- walk-in-care health 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, 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
- 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

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 US 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

12. *Vendors that Provide Essential Services or Products, Including Logistics and Technology Support, Child Care and Services*:

- logistics
- technology support for online services
- child care programs and services
- government owned or leased buildings
- essential government services