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GUIDANCE FOR DETERMINING WHETHER A BUSINESS ENTERPRISE IS SUBJECT TO A WORKFORCE REDUCTION UNDER RECENT EXECUTIVE ORDERS

(enacted to address the COVID-19 Outbreak)

FOR GUIDANCE RELATED TO DETERMINING WHETHER A BUSINESS ENTERPRISE IS SUBJECT TO A WORKFORCE REDUCTION UNDER EXECUTIVE ORDER 202. 68, RELATED TO NEW YORK'S CLUSTER ACTION INITIATIVE TO ADDRESS COVID-19 HOTSPOTS, CLICK HERE.

Please review our Frequently Asked Questions here.

UPDATED: October 23, 2020 at 10:10 AM

ESSENTIAL BUSINESSES OR ENTITIES, including any for-profit or non-profit, regardless of the nature of the service, the function they perform, or its corporate or entity structure, are not subject to the in-person restriction. *Essential Businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health (DOH) and every business, even if essential, is strongly urged to maintain social distancing measures to the extent possible.*

This guidance is issued by the New York State Department of Economic Development d/b/a Empire State Development (ESD) and applies to each business location individually and is intended to assist businesses in determining whether they are an essential business. With respect to business or entities that operate or provide 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 workforce reduction restrictions.

State and local governments, including municipalities, authorities, and school districts, are exempt from these essential business reductions, but are subject to other provisions that restrict non-essential, in-person workforce and other operations under Executive Order 202.

On April 26, 2020, Governor Cuomo announced a phased approach to reopen industries and businesses in New York in phases based upon a data-driven, regional analysis. On May 4, 2020, the Governor provided that the regional analysis would consider several public health factors, including new COVID-19 infections, as well as health care system, diagnostic testing, and contact tracing capacity. On May 11, 2020, Governor Cuomo announced that the first phase of reopening would begin on May 15, 2020 in several regions of New York, based upon available regional metrics and indicators. This essential business guidance shall remain in effect for the regions and industries that are not yet within the reopening phases.

For purposes of Executive Order 202.6, "Essential Business," shall mean businesses operating in or as:

1. Essential health care operations including

- research and laboratory services
- hospitals
- walk-in-care health clinics and facilities
- veterinary and livestock medical services
- senior/elder care
- medical wholesale and distribution
- home health care workers or aides for the elderly
- doctors and doctors' offices
- dentists and dental practices
- nursing homes, residential health care facilities, or congregate care facilities
- medical supplies and equipment manufacturers and providers
- licensed mental health providers
- licensed substance abuse treatment providers
- medical billing support personnel
- speech pathologists and speech therapy
- chiropractic services
- acupuncture
- physical therapy
- occupational therapy

2. Essential infrastructure including

- public and private utilities including but not limited to power generation, fuel supply, and transmission
- public water and wastewater
- telecommunications and data centers
- airlines/airports
- commercial shipping vessels/ports and seaports
- transportation infrastructure such as bus, rail, for-hire vehicles, garages
- hotels, and other places of accommodation, including campgrounds. Campgrounds must take precautions to ensure campers maintain appropriate social distancing and adhere to proper cleaning and disinfecting protocols, including but not limited to maintaining six feet of distance between campers, unless wearing an acceptable face covering, excluding persons from the same household who are camping together.

3. Essential manufacturing including

- food processing, manufacturing agents including all foods and beverages
- chemicals
- medical equipment/instruments
- pharmaceuticals
- sanitary products including personal care products regulated by the Food and Drug Administration (FDA)
- telecommunications
- microelectronics/semi-conductor
- food-producing agriculture/farms
- household paper products
- defense industry and the transportation infrastructure
- automobiles
- any parts or components necessary for essential products that are referenced within this guidance

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, appliance, and building material stores
- pet food
- telecommunications to service existing customers and accounts
- in regions that are not yet within the first phase of the state's regional reopening plan, delivery for orders placed remotely via phone or online at non-essential retail establishments; provided, however, that only one employee is physically present at the business location to fulfill orders

5. Essential services including

- 2020 Census operations and activities
- trash and recycling collection, processing, and disposal
- mail and shipping services
- laundromats and other clothing/fabric cleaning services
- building cleaning and maintenance
- child care services
- bicycle repair
- auto repair and maintenance
- automotive sales conducted remotely or electronically, with in-person vehicle showing, return, and delivery by appointment only
- warehouse/distribution and fulfillment
- funeral homes, crematoriums and cemeteries
- storage for essential businesses
- maintenance for the infrastructure of the facility or to maintain or safeguard materials or products therein
- animal shelters and animal care including dog walking, animal boarding and pet grooming but only to the extent necessary to ensure animal health
- landscaping, gardening and horticulture
- designing, printing, publishing and signage companies to the extent that they support essential businesses or services

- remote instruction or streaming of classes from public or private schools or health/fitness centers; provided, however, that no in-person congregate classes are permitted

6. News media

7. Financial Institutions including

- banks or lending institution
- insurance
- payroll
- accounting
- services related to financial markets, except debt collection

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

All non-essential construction is limited to only staging activities in regions that are not yet within the first phase of the state's reopening plan, except emergency construction, (e.g. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone, but only to the point that it is safe to suspend work).

Essential construction includes:

- construction for, or your business provides necessary support for construction projects involving, roads, bridges, transit facilities, utilities, hospitals or healthcare facilities, homeless shelters, or public or private schools;
- construction for affordable housing, as defined as construction work where either (i) a minimum of 20% of the residential units are or will be deemed affordable and are or will be subject to a regulatory agreement and/or a declaration from a local, state, or federal government agency or (ii) where the project is being undertaken by, or on behalf of, a public housing authority;
- construction necessary to protect the health and safety of occupants of a structure;
- construction necessary to continue a project if allowing the project to remain undone would be unsafe, provided that the construction must be shut down when it is safe to do so;
- construction for existing (i.e. currently underway) projects of an essential business; or
- construction work that is being completed by a single worker who is the sole employee/worker on the job site.

At every site, it is required that the personnel working on the site maintain an appropriate social distance, including for purposes of elevators/meals/entry and exits. Sites that cannot maintain appropriate social distancing, as well as cleaning/disinfecting protocols must close. Enforcement will be conducted by state and local governments, including fines up to $10,000 per violation.

Construction may continue solely with respect to those employees that must be present at the business location/construction site in support of essential business activities. No other employees/personnel shall be permitted to work in-person at the business location/construction site. For staging activities, an in-person workforce may be present on-site to:

- Clean, sanitize, and/or disinfect common and work areas;
- Test run hoists, elevators, cranes, and other equipment;
- Establish new and multiple entrances/exists to control the movement of personnel and allow for health screening, including temperature taking;
- Install hand hygiene/wash stations or retrofit existing ones with touchless faucets and dispensers;
- Install health screening stations or devices at entrances;
- Affix social distancing, hygiene, and cleaning/disinfection signage, including posters, markers, and directional arrows;
- Deliver and stockpile personal protective equipment (e.g. face coverings, face shields, gloves); and
- Order, unload, and rough set materials that specialty contractors or subcontractors need to perform work (e.g. structural supports, piping, conduits, drywall).

As noted above, local governments, including municipalities and school districts, are allowed to continue construction projects at this time as government entities are exempt from these essential business restrictions. However, to the greatest extent possible, local governments should postpone any non-essential projects and only proceed with essential projects when they can implement appropriate social distancing and cleaning/disinfecting protocols. Essential projects should be considered those that have a nexus to health and safety of the building occupants or to support the broader essential services that are required to fulfill the critical operations of government or the emergency response to the COVID-19 public health crisis.

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 businesses including

- law enforcement, including corrections and community supervision
- fire prevention and response
- building code enforcement
- security
- emergency management and response, EMS and 911 dispatch
- building cleaners or janitors
- general and specialized maintenance whether employed by the entity directly or a vendor, including but not limited to heating, ventilation, and air conditioning (HVAC) and pool maintenance
- automotive repair
- cleaning, disinfection, and sanitation services
- occupational safety and health professionals
- residential and commercial moving services

12. Vendors that provide essential services or products, including logistics and technology support, child care and services including but not limited to:

- logistics
- technology support for online services
- child care programs and services
- government owned or leased buildings
- essential government services
- any personnel necessary for online or distance learning or classes delivered via remote means

13. Recreation

- Parks and other open public spaces, including playgrounds and other areas of congregation within the discretion of the state or local government so long as appropriate social distancing of at least six feet among individuals can be abided, acceptable face coverings are worn by individuals who are over the age of two and able to medically tolerate such coverings, and frequent cleaning/disinfection measures are in place for hard surfaces and objects frequently touched by multiple people (e.g., handrails, benches)
- Outdoor, low-risk recreational activities are permitted so long as social distancing and cleaning/disinfecting measures are in place:
    - tennis;
    - non-motorized boat use and rentals, such as row boats, kayaks, canoes;
    - golf and driving ranges, except miniature (mini) golf, with food and retail services subject to the restrictions that are currently in effect within the region;
    - racket games, such as badminton, pickleball, racquetball;
    - toss/bowl games, such horseshoes, bocce, bean bag toss, croquet;
    - flying disc games, such as disc golf and frisbee;
    - shuffleboard;
    - aerial rope courses or zip lining;
    - rope courses including aerial rope courses;
    - batting cages;
    - shooting ranges; and
    - swim classes and swim instruction.
- Drive-in movie theaters so long as social distancing and cleaning/disinfecting measures are in place
- Marinas, boatyards, and recreational marine manufacturers, for ongoing marina operations and boat repair/maintenance, where such facilities adhere to strict social distancing and sanitization protocols. In regions that are not within the first phase of the state's regional reopening plan, use of such sites for the purposes of personal use or operation of boats or other watercraft is permissible, provided that no establishment offer chartered motorized watercraft services or motorized boat rentals. Restaurant activity at such sites are limited to take-out or delivery only.

14. Professional services with extensive restrictions

- Lawyers may continue to perform all work necessary for any service so long as it is performed remotely. Any in-person work presence shall be limited to work only in support of essential businesses or services; however, even work in support of an essential business or service should be conducted as remotely as possible.
- Real estate services shall be conducted remotely for all transactions, including but not limited to title searches, appraisals, permitting, inspections, and the recordation, legal, financial and other services necessary to complete a transfer of real property; provided, however, that any services and parts therein may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing and cleaning/disinfecting protocols; and nothing within this provision should be construed to allow brokerage and branch offices to remain open to the general public (i.e. not clients).

Pursuant to Executive Order 202.42 and 202.45, all non-essential gatherings of individuals of any size for any reasons (e.g., parties, celebrations, or other social events) are limited to no more than twenty-five (25) or fewer people in regions that have reached Phase Three of reopening, and no more than fifty (50) people in regions that have reached Phase Four of reopening, so long as appropriate social distancing and face covering requirements are followed. Under Executive Order 202.41, any region that has not yet entered Phase Three of reopening, non-essential gatherings cannot exceed ten (10) people, and social distancing and face covering requirements must be adhered to.

If the function of your business is listed above, you do not need to request any special designation or approval to operate.

If you have reviewed this guidance and require additional assistance in determining whether or not your business is permitted to operate on-site, you may consult the New York Forward Business Reopening Lookup Tool **here**.

Restrictions on requesting designation as an essential business:

Pursuant to the Governor's Executive Orders, the following businesses are specifically enumerated as non-essential and are, therefore, unable to request a designation, but should continue to monitor the New York Forward website for additional developments:

- Any large gathering or event venues, including but not limited to establishments that host concerts, conferences, or other in-person performances or presentations in front of an in-person audience, except as otherwise permitted below;
- All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions;

Certain businesses and places of arts and entertainment, including but not limited to multi-disciplinary event venues and theater spaces, may reopen to the public only for the limited purpose of conducting activities and operations that have been permitted as a part of the State's phased reopening (e.g., low-risk indoor arts and entertainment, media production). Please consult the specific New York Forward guidance as it applies to the currently permitted activities and operations.

For more information on New York's response to COVID-19 and guidance on cleaning and disinfection of facilities, please refer to the New York State Department of Health's webpage at: https://coronavirus.health.ny.gov/home.

Additional information from the United States Centers for Disease Control and Prevention can be found at: https://www.cdc.gov/coronavirus/2019-ncov/.

Frequently Asked Questions

Click here

Business Reopening Lookup Tool

The NY Forward Business Reopening Lookup tool will help determine whether your business is able to reopen and the public health and safety standards with which your business must comply.
Learn More

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