

ESSENTIAL BUSINESS UPDATE:
FACE COVERINGS NOW REQUIRED FOR ALL ESSENTIAL EMPLOYEES

All New York employers remain subject to Governor Cuomo's Executive Orders 202.6 and 202.8 ("PAUSE Orders") which require the closure of all non-essential businesses through April 29, 2020. However, the PAUSE Orders permit "essential businesses" to remain in operation allowing employees to report to worksites. These businesses include health care, essential manufacturing, essential retail, law enforcement, and certain construction services, among others.

To ensure continued employee safety, on Monday April 13th Governor Cuomo issued Executive Order 202.16 which now requires all essential business employers to provide "face coverings" at their own expense to all employees reporting to work. The Order provides:

For all essential businesses or entities, any employees who are present in the workplace shall be provided and shall wear face coverings when in direct contact with customers or members of the public. Businesses must provide, at their expense, such face coverings for their employees.

This requirement is effective beginning on: **Wednesday, April 15 at 8 p.m.**

The Executive Order does not define or appear to direct employers to provide any specific kind of "face covering." However, the New York State Department of Health ("DOH") has since released guidance indicating "face coverings" include traditional cloth, surgical masks, N-95 respirators, or face shields approved for use by the Centers for Disease Control and Prevention as well as the New York State and New York City Departments of Health.

Furthermore and as it relates to obtaining masks for essential employees, the April 14th guidance released by the DOH states:

If an employer is unable to procure, fashion, or otherwise obtain face coverings for their employees, they may consult with their local office of emergency management to determine if extra supplies exist within the municipality for this purpose and, if so, they may submit a request for face coverings....*Not being able to source face coverings does not relieve an employer's obligation to provide such face coverings to their employees.*

Additional guidance regarding Executive Order 202.16 can be found at http://dmna.ny.gov/covid19/docs/all/DOH_COVID19_EO20216EmployeeFaceCovering_041420.pdf

Employers must be aware that businesses that do not comply with this new directive, or the PAUSE Orders, are subject to a \$2,000 civil penalty for every violation pursuant to the penalty provisions of the New York Public Health Law.

Please do not hesitate to contact your Meltzer Lippe attorney or the co-chairs of the Labor & Employment Group Jonathan D. Farrell or Larry R. Martinez with any further questions. We wish you continued personal and business health.

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