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New York State Essential Businesses - Update

Governor Cuomo's Executive Orders 202.6 and 202.8 mandated that all non-essential business reduce the in-person workforce at all locations by 100%.

On March 27, 2020, the Empire State Development Corporation issued additional guidance as to the continuation of construction work under those Orders. The guidance provides as follows:

Construction work is permitted in three circumstances:

1. "Essential" construction, including roads, bridges, transit facilities, utilities, hospitals and health care facilities, affordable housing, and homeless shelters.
2. "Emergency" construction, including projects necessary to protect the health and safety of the occupants, and the continuation of projects that would be unsafe to remain undone, until such time as it is safe to shut the site.
3. Single-Worker Sites. The guidance provides that the term "construction work" does not include work performed by a single worker, who is the sole employee/worker on a job site.

The guidance provides that even during "essential" and "emergency" construction, social distancing and best safety practices must be maintained, including for purposes of elevators, meals and entry and exit. Sites that cannot maintain distance and safety practices must close.

The State will enforce these mandates in coordination with local governments. Enforcement includes fines of up to \$10,000.00 per violation.

If clients are unsure whether any of their projects or work sites are permitted to continue, they may request to be designated as "essential" by the Empire State Development Corporation.

Additionally, the New York State Department of Economic Development d/b/a Empire State Development has issued guidance for determining whether a business shall be deemed "essential." For purposes of Executive Order 202.6 "essential business," as of Friday, March 27, 2020 means:

1. Essential Health Care Operations Including:

- research and laboratory services
- hospitals
- walk-in-care health clinics and facilities
- emergency veterinary, livestock services
- senior/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
- licensed mental health providers
- licensed substance abuse treatment providers
- medical billing support personnel

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
- airports/airlines
- commercial shipping vessels/ports and seaports
- transportation infrastructure such as bus, rail, 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 including personal care products regulated by the Food and Drug Administration
- telecommunications
- microelectronics/semi-conductor
- food-producing agriculture/farms
- household paper products
- defense industry and the transportation infrastructure

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

5. Essential Services Including:

- 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
- automotive sales conducted remotely or electronically, with in-person vehicle 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

6. News media

7. Financial Institutions Including:

- banks or lending institution
- 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

- All non-essential construction must shut down 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 until it is safe to shut the site).
- Essential construction may continue and includes roads, bridges, transit facilities,

utilities, hospitals or health care facilities, affordable housing, and homeless shelters. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation.

- For purposes of this section construction work does not include a single worker, who is the sole employee/worker on a job site.

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 maintenance whether employed by the entity directly or a vendor
- automotive repair
- disinfection
- residential 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 on-line or distance learning or classes delivered via remote means