

New York State COVID-19 Legislation and Governor Executive Orders

Reduction of Staff for Non-Essential Businesses

Effective on Friday, March 20 by 8:00 p.m., all businesses and not-for-profit entities in New York State are directed to reduce the in-person workforce at any work locations by 75%. These employers must also utilize, to the maximum extent possible, any telecommuting or work from home procedures that the employer can safely utilize.

Of note, all “essential businesses” and “entities providing essential services or functions” are exempt from the 75% in-person workforce restrictions.

Exemptions include:

- Essential health care operations, including research and laboratory services;
- Essential infrastructure, including utilities, telecommunication, airports, and transportation infrastructure;
- Essential manufacturing, including food processing and pharmaceuticals;
- Essential retail, including grocery stores and pharmacies;
- Essential services, including trash collection, mail, and shipping services;
- News media;

- Banks and related financial institutions;
- Providers of basic necessities to economically disadvantaged populations;
- Construction;
- Vendors of essential services necessary to maintain the safety, sanitation, and essential operations of residences or other essential businesses;
- 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.

This directive was included in Executive Order 202.6, which was issued on March 18, 2020, and originally called for a 50% reduction of the in-person workforce at non-exempted employers. During a press conference today, the Governor announced a revision to this directive, increasing the required percentage of employees required to work from home to 75%.

Any other business may be deemed essential after requesting an opinion from the Empire State Development Corporation (EDC). The EDC will review and grant such request if it determines that it

bolaños lowe client alert

is in the best interest of the State to have the workforce continue at full capacity in order to properly respond to this disaster. By 5:00 p.m. on March 19, 2020, the EDC will issue guidance as to which businesses are determined to be essential.

Paid Sick Leave Bill

On Tuesday, March 17, Governor Andrew Cuomo announced a three-way agreement with the New York Legislature on a bill providing paid leave and job protection for employees in New York who have been quarantined due to COVID-19.

The bill can be found at:

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/GPB_9_PAID_SICK_LEAVE_BILL.pdf.

As it relates to COVID-19, the program bill enacts measures to meet the needs of employees who are subject to mandatory or precautionary orders of quarantine or isolation. Specifically, the legislation provides the following:

- Employers with 10 or fewer employees and a net income of less than \$1 million in the previous tax year must provide unpaid, job protected sick leave for the duration of the quarantine order, and guarantee impacted workers access to Paid Family Leave and disability benefits for the period of quarantine. This includes wage replacement for employee salaries up to \$150,000.
- Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than \$1 million in the previous tax year must provide at least 5

days of paid sick leave, job protection for the duration of the quarantine, and guarantee access to Paid Family Leave and disability benefits for the period of the quarantine. This includes wage replacement for employee salaries up to \$150,000.

- Employers with 100 or more employees and public employers regardless of size must provide at least 14 days of paid sick leave and guarantee job protection for the period of the quarantine.

A few additional noteworthy components of the bill include the following:

- Quarantine is described as a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order.
- Sick leave related to quarantine is to be provided without loss of any previously accrued sick leave.
- Employees utilizing such leave must be restored to the same position with the same pay and other terms and conditions of employment, and are protected from discrimination and retaliation for taking such leave.
- Employees are not eligible for such leave if deemed asymptomatic or have not been diagnosed with any medical condition while



bolaños lowe client alert

in quarantine and are physically capable while working under a mandatory quarantine order.

- Employees will also be ineligible for paid sick leave if they are subject to quarantine or isolation after returning from non-business travel to a country with a CDC issued level 2 or level 3 travel notice, provided the employee had notice of the travel health notice before such travel.
- Benefits payable under this legislation shall be payable on the first day of unpaid quarantine.
- This legislation does not impede, infringe, diminish, or impair the rights of employees and employers under any collective bargaining agreement, nor does it interfere with the ability of employees and employers to engage in bargaining.
- The bill does not provide guidance and calculation of net revenue. We suggest you use your most recent tax return for this purpose and we will update when we have more information.

Notably, the legislation also includes the paid sick leave proposal advanced by the Governor's FY2021 Executive Budget, which shall become effective 180 days after enactment. Those provisions will be detailed in a subsequent alert.