

New York State Pauses All Non-Essential Business

On Friday, March 20, Governor Cuomo announced "New York State on PAUSE." NYS on PAUSE is a 10-point policy to ensure uniform, statewide safety measures to stop the spread of COVID-19. NYS on PAUSE also clarifies Executive Order 202.6 which significantly limited business activity for non-essential businesses and entities. Pursuant to NYS on PAUSE, all non-essential businesses and entities across the State of New York must close 100% of in-office personnel functions effective at 8PM on Sunday, March 22. On Saturday afternoon, March 21, NYS on PAUSE was further clarified by Executive Order 202.8.

Essential Businesses or Entities Are Exempt

Essential businesses or entities **are not** subject to the in-person restriction. Essential businesses or entities include both for-profit and not-for-profit entities, regardless of the nature of the service, the function they perform, or corporate structure.

Essential businesses and entities must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by state and local health departments. At Bolaños Lowe PLLC, we recommend implementing a "COVID-19 Employee Safety Policy" which adopts CDC, state, and local health department guidelines and/or requirements, as well as OSHA and EEOC standards applicable to pandemics. Please contact us if you are interested in obtaining our model.

Essential Businesses or Entities Defined

After the Governor announced NYS on PAUSE, he directed Empire State Development (ESD) to issue guidance to assist businesses and entities in determining whether they are an essential business or entity.

ESD has created a form for employers to use to request designation as an essential business or entity. This form may be used if a business/entity believes it is essential but was not listed as essential in the ESD guidance. After reviewing the submission, ESD will notify the business whether the request for designation as an essential business is approved or disapproved. The form is available at:

https://esd.ny.gov/sites/default/files/Request%20for%20Designation%20Form_0.pdf

Guidance for Mixed Businesses or Entities

For businesses or entities operating both essential and non-essential services, supplies, or support, the businesses/entities may only operate the functions of the business/entity that are necessary to support the essential services, supplies, or support.

If a non-essential business typically employs individuals who perform services that are performed by essential businesses and entities (as defined by ESD), such as technology support, security, finance, and payroll, it appears that these personnel may not perform in-office functions. However, non-essential businesses may still contract with essential businesses for services such as telecommunications,

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security, or tech support for online systems, in order to keep their remote operations running. This issue seems to be clarified by Executive Order 202.8. In sum, a 100% shutdown for a non-essential business means absolutely no employees in the workplace—all work must be performed remotely or shut down.

Definition of "Essential Business"

For purposes of Executive Order 202.6, "Essential Business" has now been specifically spelled out by the ESD guidance. The following sections of this alert list the ESD categories of essential businesses and entities.

Essential Health Care Operations

Essential Health Care Operations include the following:

- 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

Essential Infrastructure

Essential infrastructure includes the following:

- 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

Essential Manufacturing

Essential manufacturing includes businesses that manufacture the following:

- 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

Essential Retail

Essential retail includes the following:

- Grocery stores including all food and beverage stores

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- Pharmacies
- Convenience stores
- Farmer's markets
- Gas stations
- Restaurants/bars (but only for take-out/delivery)
- Hardware and building material stores

Essential Services

Essential services are:

- Trash and recycling collection, processing and disposal
- Mail and shipping services
- Laundromats
- Building cleaning and maintenance
- Childcare services
- Auto repair
- Warehouse/distribution and fulfillment
- Funeral homes, crematoriums and cemeteries
- Storage for essential businesses
- Animal shelters

Financial Institutions

Financial Institutions include the following:

- Banks
- Insurance
- Payroll
- Accounting

- Services related to financial markets

Providers of Basic Necessities to Economically Disadvantaged Populations

These providers include:

- 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

Construction

The scope of this exemption is not clear. According to the guidance, the following construction entities are exempted as essential:

- Skilled trades such as electricians, plumbers
- Other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes

Essential Services Necessary to Maintain the Safety, Sanitation and Essential Operations of Residences or Other Essential Businesses

These essential services are:

- Law enforcement

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- 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

Vendors Providing Essential Services or Products, Including Logistics and Technology Support, Child Care and Services

Applicable vendors provide the following services/support:

- Logistics
- Technology support for online services
- Childcare programs and services
- Government owned or leased buildings
- Essential government services

Other Entities

News media is also an essential business/entity, as are defense and national security-related operations supporting the U.S. Government or a contractor to the U.S. government. Any business that only has a single occupant/employee has been deemed exempt and need not submit a request to ESD to be designated as an essential business.

Houses of worship are not ordered closed; however, the State has ordered no services of 50 or more people, and the State has strongly recommended that no in-person congregante services be held whatsoever, and that social distance be utilized in all houses of worship.

Social Distancing Required

Essential businesses and entities must implement rules that help facilitate social distancing of at least six feet.

Businesses That Were Ordered Closed Are Still Ordered Closed

Businesses ordered to close by the Executive Order issued on Monday, March 15, 2020, under the restrictions on any gathering with 50 or more participants, including but not limited to bars, restaurants, gyms, movie theaters, casinos, auditoriums, concerts, conferences, worship services, sporting events, and physical fitness centers, must remain closed and are not eligible for designation as an essential business.