

March 20, 2020

NEW YORK GOVERNOR ANDREW CUOMO INTRODUCES NEW EXECUTIVE ORDER RESTRICTING NON-ESSENTIAL BUSINESS ACTIVITY

To Our Clients and Friends:

In a press conference held on the morning of March 20, 2020, New York Governor Andrew Cuomo announced that he would be signing an executive order requiring businesses—with the exception of those providing “essential” services—to keep 100 percent of their workforce at home, effectively shuttering any non-essential business whose workforce cannot work from home. The executive order is expected to take effect at 8 p.m. on Sunday, March 22, 2020. Businesses that do not comply with the order may be required to pay civil fines and/or face mandatory closure.

The Governor’s executive order is the latest in a series of recent executive orders restricting “non-essential” business activity in New York State. These orders include a now-superseded mandate requiring non-essential employers to reduce their in-person workforce by 75 percent and an order requiring the closure of all barbershops, hair salons, and related personal care services, both of which come into effect at 8 p.m. on March 21, 2020.

The Governor’s latest in-person workforce restrictions, in addition to excluding all state and local governments and authorities, do not apply to businesses providing “essential” services. The New York State Empire State Development Corporation (“ESD”) has prepared [guidance](#) available online, which is intended to assist businesses in determining whether or not the services they provide qualify as “essential” and are therefore exempted from in-person workforce restrictions. As of the time of this alert, the ESD’s guidance excludes the following operations from the Governor’s restrictions, so long as the operations are related to the provision of essential services, supplies, or support:

- (1) Essential health care operations, such as hospitals, walk-in care facilities, emergency dental services, and medical supplies and equipment providers;
- (2) Essential infrastructure, including public utilities, data centers, and transportation;
- (3) Essential manufacturing, including food processing and manufacturing agents, pharmaceuticals, and telecommunications;
- (4) Essential retail, including all food and beverage stores, pharmacies, and hardware stores;
- (5) Essential services, including trash and recycling collection and mail and shipping services;
- (6) News media;

- (7) Financial institutions, including banks, insurance, payroll, accounting, and services relating to financial markets;
- (8) Providers of basic necessities to economically disadvantaged populations, including homeless shelters and food banks;
- (9) Construction, including skilled trades such as electricians and plumbers and other related construction firms and professionals for essential infrastructure or for emergency repair and safety;
- (10) Defense and national security-related operations supporting the U.S. government or its contractors;
- (11) Essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses, such as law enforcement; and
- (12) Vendors that provide essential services or products, including logistics and technology support, child care, and essential government services.

Businesses that operate or provide non-essential services in addition to essential services, support, or supplies, are currently exempt from in-person workforce restrictions only in relation to business operations needed to provide essential services, supplies, or support. Businesses whose functions are not covered in ESD's guidance but may qualify as essential may request designation as an essential business via ESD's website.



*Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact any member of the firm's **Coronavirus (COVID-19) Response Team**.*

*Gibson Dunn lawyers regularly counsel clients on the issues raised by this pandemic, and we are working with many of our clients on their response to COVID-19. Please also feel free to contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's **Public Policy Group**, or the authors:*

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