



**Lipsitz Green
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SPECIAL ALERT FOR BUSINESSES ON

The Coronavirus

New York State Updates “Essential Business” Guidelines

As detailed in a [previous Special Alert](#) from Lipsitz Green Scime Cambria, Governor Andrew Cuomo signed the “New York on Pause” Executive Order, effective as of March 22, 2020, which required a 100% workforce reduction for any business or organization that is not “essential.”

On April 9, 2020, the [Empire State Development](#) (ESD) updated its guidelines by further clarifying and expanding the scope of businesses considered “essential” (Essential Business). Prior guidance issued by the ESD is now superseded by revised guidelines issued by the ESD yesterday and summarized below.

What is an “Essential Business”?

Updated as of April 9, 2020

1. Essential health care operations, including

- research and laboratory services
- hospitals
- walk-in-care health clinics and facilities
- emergency veterinary, livestock medical services
- senior/elder care
- medical wholesale and distribution
- home health care workers or aides for the elderly
- doctor and emergency dental
- nursing homes, 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
- emergency chiropractic services
- physical therapy, prescribed by medical professional
- occupational therapy, prescribed by medical professional

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
- airlines/airports
- commercial shipping vessels/ports and seaports
- transportation infrastructure such as bus, rail, for-hire vehicles, garages, hotels, and other 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 (FDA)
- telecommunications
- microelectronics/semi-conductor
- food-producing agriculture/farms
- household paper products
- defense industry and the transportation infrastructure
- automobiles
- any parts or components necessary for essential products that are referenced within this guidance

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
- telecommunications to service existing customers and accounts
- delivery for orders placed remotely via phone or online at non-essential retail establishments; provided, however, that only one employee is physically present at the business location to fulfill orders

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
- marine vessel repair and marinas, but only to support government or essential commercial operations and not for

recreational purposes

- 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 including dog walking, animal boarding
- landscaping, but only for maintenance or pest control and not cosmetic purposes
- designing, printing, publishing and signage companies to the extent that they support “essential businesses” or services
- remote instruction or streaming of classes from public or private schools or health/fitness centers; provided, however, that no in-person congregate classes are permitted

6. News media

7. Financial Institutions, including

- banks or lending institution
- insurance
- payroll
- accounting
- services related to financial markets, except debt collection

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

Essential construction may continue, provided that all non-essential construction must safely 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, but only to the point that it is safe to suspend work).

Essential construction may proceed, to the extent that:

- the construction is for, or the business supports, roads, bridges, transit facilities, utilities, hospitals or healthcare facilities, homeless shelters, or public or private schools;
- the construction is for “affordable housing”, defined in detail in the ESD’s updated guidance;
- the construction is necessary to protect the health and safety of occupants of a structure;
- the construction is necessary to continue a project if allowing the project to remain undone would be unsafe, provided that the construction must be shut down when it is safe to do so;
- the construction is for certain projects in the energy;
- the construction is for existing (i.e. currently underway) projects of an “essential business”; or the construction work is being completed by a single worker who is the sole employee/worker on the 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 online or distance learning or classes delivered via remote means

13. Recreation

- Parks and other open public spaces, except playgrounds and other areas of congregation where social distancing cannot be abided
- However, golf courses are not essential
- However, use of boat launches and marinas for recreational vessels is not considered essential

14. Professional services with extensive restrictions

- Lawyers may continue to perform all work necessary for any service so long as it is performed remotely. Any in-person work presence shall be limited to work only in support of “essential businesses” or services; however, even work in support of an “essential business” or service should be conducted as remotely as possible.
- Real estate services shall be conducted remotely for all transactions, including but not limited to title searches, appraisals, permitting, inspections, and the recordation, legal, financial and other services necessary to complete a transfer of real property; provided, however, that any services and parts therein may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing and cleaning/disinfecting protocols; and nothing within this provision should be construed to allow brokerage and branch offices to remain open to the general public (i.e. not clients).

Special Guidance on Construction Projects

While construction work deemed essential may continue, the ESD’s guidance specifically requires all construction sites, and all personnel working on the site, to maintain an appropriate social distance. If a construction site cannot maintain appropriate social distancing, as well as cleaning/disinfecting protocols, then the site must close. To the extent that construction is permitted to continue, only those employees whose presence is necessary to support “essential business” activities may be present at the business location of job site.

Moreover, local governments, including municipalities and school districts, are allowed to continue construction projects,

and contractors are permitted to continue work on such construction projects. However, the ESD's guidance directs local governments to postpone, to the greatest extent possible, any non-essential projects and only proceed with essential projects when appropriate social distancing and cleaning/disinfecting protocols can be implemented. The new guidance provides that essential projects should be considered those that have a nexus to health and safety of the building occupants or to support the broader essential services that are required to fulfill the critical operations of government or the emergency response to the COVID-19 public health crisis.

Applying for “Essential Business” Designation

Businesses and organizations that are not technically classified within the scope of the “Essential Business” guidelines may continue to apply to the ESD for designation as an “Essential Business.” In addition, businesses that support or provide goods or services to an otherwise “Essential Business” may obtain a limited exemption to the extent it supports the “Essential Business”.

Unable to Request “Essential Business” Status

Under the new ESD guidance, certain businesses and organizations are not eligible to request “Essential Business” status. Businesses unable to request an “Essential Business” designation are as follows:

- Any large gathering or event venues, including but not limited to establishments that host concerts, conferences, or other in-person performances or presentations in front of an in-person audience;
- Any dine-in or on-premise restaurant or bar service, excluding take-out or delivery for off-premise consumption;
- Any facility authorized to conduct video lottery gaming or casino gaming;
- Any gym, fitness centers, or exercise classes, except the remote or streaming service noted above;
- Any movie theater;
- Any indoor common portions of retail shopping malls with 100,000 or more square feet of retail space available for lease;
- All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions; and
- Any barbershops, hair salons, tattoo or piercing parlors and related personal care services, including nail technicians, cosmetologists and estheticians, and the provision of electrolysis, laser hair removal services.

Clean and Safe Work Environment

All “Essential Businesses” must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the New York Department of Health and maintain social distancing measures to the extent possible. The following is a link to a document prepared jointly by the U.S. Department of Labor and Department of Health and Human Services entitled “[Guidance on Preparing Workplace for COVID-19.](#)”

Additional Information

For additional questions on the new Essential Business guidelines or other legal issues related to COVID-19, contact [Michael Schiavone](#), [Diane Perri Roberts](#), or [Matthew Morey](#).

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