

GUIDANCE FOR DETERMINING WHETHER A BUSINESS ENTERPRISE IS SUBJECT TO A WORKFORCE REDUCTION UNDER EXECUTIVE ORDER 202.6

(enacted to address the COVID-19 Outbreak)

If your question is not answered below, please contact ESD at our website at: <https://esd.ny.gov/covid-19-help>

Requests by businesses to be designated an essential function as described below, should only be made if they are NOT covered by the following guidance.

BACKGROUND

On March 18, 2020, [Executive Order 202.6](#) (or as revised) directed that all businesses and not-for-profit entities in New York State, shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize.

It is **directed** that, no later than March 21, 2020 at 8 p.m., each for-profit or not-for profit employer (excluding state and local governments and authorities) shall reduce the in-person workforce at each business/work location by 75% from pre-state of emergency declaration employment levels.

It is further directed that, no later than March 22, 2020 at 8 p.m., each or-profit or not-for profit employer (excluding state and local governments and authorities) shall reduce the in-person workforce at each business/work location by 100% from pre-state of emergency declaration employment levels.

ESSENTIAL BUSINESSES OR ENTITIES, including any for profit or non-profit, regardless of the nature of the service, the function they perform, or its corporate or entity structure, are not subject to the in-person restriction. (Essential Businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health).

This guidance is issued by the New York State Department of Economic Development d/b/a Empire State Development and applies to each business location individually and is intended to assist businesses in determining whether they are an essential business and steps to request such designation. With respect to business or entities that operate or provide both essential and non-essential services, supplies or support, only those lines and/or business operations that are necessary to support the essential services, supplies, or support are exempt from the restrictions.

For purposes of Executive Order 202.6, "Essential Business," means:

1. Essential health care operations including
 - 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

2. Essential infrastructure including

- 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

3. Essential manufacturing including

- 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

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 and building material stores

5. Essential services including

- trash and recycling collection, processing and disposal
- mail and shipping services
- laundromats
- building cleaning and maintenance
- child care services
- auto repair
- warehouse/distribution and fulfillment
- funeral homes, crematoriums and cemeteries
- storage for essential businesses
- animal shelters

6. News media

7. Financial Institutions including

- banks
- 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 including

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

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 essential businesses including

- law enforcement
- 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

12. Vendors that provide essential services or products, including logistics and technology support, child care and services:

- logistics
- technology support for online services
- child care programs and services
- government owned or leased buildings
- essential government services

If the function of your business is not listed above, but you believe that it is essential or it is an entity providing essential services or functions, you may request designation as an essential business.

Houses of worship are not ordered closed however it is strongly recommended no congregate services be held and social distance maintained.

Every business is strongly urged to maintain social distance to the extent possible, even if designated essential.

Requests by businesses to be designated an essential function as described above, should only be made if they are NOT covered by the guidance.

To request designation as an essential business, please [click here](#). (All fields of this form must be completed to be considered for exempt designation.)

Restrictions on requesting designation as an essential business:

- Any business that only has a single occupant/employee (i.e. gas station) has been deemed exempt and need not submit a request to be designated as an essential business.
- Businesses ordered to close 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, are presumed to be compliant with NYS issued restrictions and must remain closed and are not eligible for designation as an essential business for purposes of this guidance.

For Guidance on cleaning and disinfection of facilities, refer to the New York State Department of Health Interim Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID-19

at http://www.health.ny.gov/diseases/communicable/coronavirus/docs/cleaning_guidance_general_building.pdf.

For further information: New York State Department of Health's COVID-19

Webpage <https://coronavirus.health.ny.gov/home>

Center for Disease Control and Prevention

Webpage: <https://www.cdc.gov/coronavirus/2019-ncov/>

Local health department contact information can be found

at: https://www.health.ny.gov/contact/contact_information/index.htm