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## New York's "New York State on PAUSE" Order: What Businesses Need to Know

***New York State has issued guidance regarding businesses exempt from the order, but has yet to clarify its regulations' interplay with local orders and federal guidance.***

As part of the State of New York's continued response to the outbreak of COVID-19, on March 20, 2020, Governor Andrew Cuomo expanded upon Executive Order 202.6 and issued [Executive Order 202.8](#), known as the "New York State on PAUSE" Order (the Order), pursuant to which all nonessential businesses in the State of New York are ordered to reduce their in-person workforce by 100%, excluding industries and personnel previously identified as "Essential Business" in 12 categories (though such exempt entities are required to facilitate six feet of distance between employees). The Order will take effect March 22, 2020 at 8:00PM EST.

We understand that the Order will have significant implications for businesses located across the United States and within the State of New York in particular, and we are hopeful that the information contained in this *Client Alert* will provide some guidance to businesses and entities affected by the Order. Importantly, the situation remains fluid, and government agencies have not yet provided substantive guidance as to the specific contours of the Order. Accordingly, while Latham believes that the information provided below may be useful to obtain a general understanding of the Order, Latham recommends that businesses discuss their particular circumstances with legal counsel in order to determine the best path forward. Latham continues to monitor the rapidly developing situation.

The Order requires all businesses and not-for-profit entities in the state to reduce their in-person workforce and to use any telecommuting or work-from-home procedures to the maximum extent possible, unless such businesses and entities are deemed essential (see below). Guidance on the New York Coronavirus website states that all nonessential gatherings of individuals of any size for any reason are banned, and that individuals may only leave their residences for good reason (such as groceries, medicine, and exercise) and mandates that all individuals maintain at least six feet of distance from other individuals when outside their residences, with stricter restrictions placed on individuals over the age of 70 and those with underlying illnesses (exercise is limited to solitary activity and there are requirements to wear masks whenever in the company of others, as well as to pre-screen all visitors by taking their temperature). For more information, see the [New York Coronavirus website](#).

### New York State Essential Businesses or Entities

Following Gov. Cuomo's issuance of [Executive Order 202.6](#) on March 18, 2020, the State issued Guidance on Executive Order 202.6 (the Guidance) identifying 12 categories of "Essential Business"

which are exempt from the business restrictions placed by the state in the most recent Order. The exempt businesses include:

- **Essential health care operations:** including research and laboratory services; hospitals; walk-in-care health facilities; veterinary and animal health services; elder care; medical wholesale and distribution; home health care workers or aides; doctor and dentist offices; nursing homes; or residential health care facilities or congregate care facilities; and medical supplies and equipment providers
- **Essential infrastructure:** including utilities — power generation, fuel supply, and transmission; public water and wastewater; telecommunications and data centers; airports/airlines; and transportation infrastructure such as bus, rail, or for-hire vehicles, garages
- **Essential manufacturing:** including food processing, including all foods and beverages; chemicals; medical equipment/instruments; pharmaceuticals; safety and sanitary products; telecommunications; microelectronics/semi-conductor; agriculture/farms; and paper products
- **Essential retail:** including grocery stores and all food and beverage stores; pharmacies; convenience stores; farmers' markets; gas stations; restaurants/bars (but only for take-out/delivery); and hardware and building material stores
- **Essential services:** including trash and recycling collection, processing, and disposal; mail and shipping services; laundromats/dry cleaning; building cleaning and maintenance; child care services; auto repair; warehouse/distribution and fulfillment; funeral homes, crematoriums and cemeteries; storage for essential businesses; and animal shelters or animal care or management
- **News media**
- **Financial Institutions:** including banks; insurance; payroll; accounting; and services related to financial markets
- **Providers of basic necessities to economically disadvantaged populations:** including homeless shelters and congregate care facilities; food banks; and 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:** including skilled trades such as electricians and plumbers; and other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes
- **Defense:** including defense and natural security-related operations supporting the US Government or a contractor to the US government
- **Essential services necessary to maintain safety, sanitation, and essential operations of residence 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; and doormen

- **Vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure that continuing operation of government agencies and provide for the health, safety and welfare of the public:** logistics; technology support for online services; child care programs and services; government owned or leased buildings; and essential government services

The Guidance further exempts any business that only has a single occupant/employee and provides for any business not identified in the above categories to request a designation as essential [here](#). Any business ordered to close pursuant to the restrictions placed on gatherings with 50 or more participants is not eligible for designation as an essential business.

## Sixteen Federal Infrastructure Sectors

The Order does not reference the critical infrastructure sectors identified in the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response (the Memo) issued by the U.S. Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA). While it is not fully clear at the moment how the Order and the Memo are consistent or inconsistent with one another, if New York State is silent on interaction with federal guidance, Latham would assume that any client that qualifies as federal critical infrastructure pursuant to the Memo could continue to operate even if it would be unclear under the Order.

At this moment, the sixteen critical sectors currently identified by CISA include:

Chemical	Dams	Financial Services	Information Technology
Commercial Facilities	Defense Industrial Base	Food and Agriculture	Nuclear Reactors, Materials, and Waste
Communications	Emergency Services	Government Facilities	Transportation Systems
Critical Manufacturing	Energy	Healthcare and Public Health	Water and Wastewater Systems

Source: <https://www.cisa.gov/critical-infrastructure-sectors>

The Memo provides a list of sectors and identifies groups of essential critical infrastructure workers, which "are intended to be overly inclusive" and include, amongst others, the following:

- **Critical Manufacturing:** including workers necessary for the manufacturing of materials and products needed for supply chains, transportation, energy, communications, food and agriculture, and chemical manufacturing
- **Healthcare/Public Health:** including manufacturers, technicians, logistics, and warehouse operators; and distributors of medical equipment pharmaceuticals, blood and blood products, vaccines, testing materials, and laboratory supplies
- **Chemical:** including workers supporting the chemical and industrial gas supply chains, workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, and workers who transport basic raw chemical materials to the producers of industrial and consumer goods

- **Energy:** including workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers, and fleet maintenance technicians
- **Communications:** including manufacturers and distributors of communication equipment, in addition to call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, and Internet Exchange Points
- **Information Technology:** including workers supporting the provision of essential global, national, and local infrastructure for computing services, including cloud computing services, business infrastructure, web-based services, and critical manufacturing, and manufacturers and supply chain vendors that provide hardware and software, and information technology equipment (to include microelectronics and semiconductors) for critical infrastructure
- **Financial Services:** including workers who are needed to process and maintain systems for processing financial transactions and workers who are needed to provide consumer access to banking and lending services and to move currency and payments

## Impact on Local County and Municipal Orders

It is not currently clear whether the Order is meant to replace similar orders issued by local county and municipal health departments over the last few days. However, pursuant to the New York Executive Law, the Governor has the authority to suspend or modify any statute, local law, ordinance, order, rule or regulation, or parts thereof, of any agency during a State disaster emergency, which was declared by the Governor on March 7, 2020 and remains in effect. The Governor has exercised this authority in previous executive orders issued in response to COVID-19. At this time Latham recommends, to the extent possible, that businesses and entities comply with the terms of both the statewide Order and any local order that may apply to them. To the extent the terms of the statewide Order and any local order conflict, Latham recommends businesses and entities comply with the terms of the more restrictive order that applies to them.

## Enforcement

Any business violating the Order will be subject to enforcement as if it was in violation of Section 12 of the New York Public Health Law and will be subject to mandatory closure and a civil fine of up to \$2,000 (or up to \$5,000 for subsequent violations and up to \$10,000 for violations that result in serious physical harm).

## Additional Information

Please see the following links for additional information:

- <https://coronavirus.health.ny.gov/home>
- [Guidance for Determining Whether a Business Enterprise is “Essential” under the “New York State on PAUSE” Executive Order](#)
- [Request for Designation as an Essential Business](#)
- [The Full Executive Order 202.8 is available here \(pdf\)](#)
- [The Full Executive Order 202.6 is available here \(pdf\)](#)
- <https://www.cisa.gov/critical-infrastructure-sectors>

- <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>
- <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>

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