

CORONAVIRUS IMPACT ON COMMERCIAL LEASING OPERATIONS

Hodgson Russ Real Estate Leasing Alert
March 23, 2020

As part of New York State's response to the Coronavirus pandemic, on March 20, 2020 Governor Cuomo issued Executive Order No. 202.8, which creates further restrictions designed to minimize contact between individuals.

Notably, starting at 8 p.m. on Sunday, March 22, businesses and not-for-profit entities are not allowed to have any in-person workers unless they are considered "essential businesses or entities," which are exempt from the in-person workforce restrictions.

Under the Executive Order, entities that otherwise may not qualify as "essential" but that provide "essential services or functions" may operate at the level necessary to provide such service or function.

Guidelines clarifying the Executive Order were promulgated by Empire State Development and are available [here](#). These guidelines provide insight into the categories of "essential businesses or entities" and which "essential services or functions" at non-exempt businesses are exempted from the Executive Order prohibition against on-site employees. "Essential services" under this guidance include trash collection and building cleaning/maintenance.

So, a landlord could still have employees necessary to provide general maintenance, disinfection or general building cleaning work on site (or could still provide these services through a vendor working on site).

Entities taking advantage of this exception should be careful not to over staff with in-person workers and to avoid in-person staff that do not clearly fall within the designated categories of essential functions. Non-essential businesses that provide "essential services or functions" are only allowed to operate "at the level necessary to provide such service." If a worker can work from home, that worker should do so.

Commercial landlords are reminded that the Executive Order prohibits tenant evictions for a period of 90 days.

Executive Order 202.8 states that violation of the workforce reduction mandate is subject to the penalties associated with violating Section 12 of the New York Public Health Law. Currently, these penalties include civil fines from \$2,000 to \$10,000, with the potential for additional fines for repeated violations. In addition, while not

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embodied in the Executive Order, Governor Cuomo stated in his press conference that any business or not-for-profit that violates the order is subject to “mandatory closure.”

The full list of essential businesses is below and can also be accessed via the link to the Empire State Development guidelines referenced above. Any business that believes it should be considered essential but is not on the list may request an opinion from the Empire State Development Corporation. The Empire State Development Corporation will grant a business’s request when it determines that it would be in the best interests of the state to have the business’s workforce continue at full capacity “in order to properly respond to this disaster.”

“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

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- 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



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- 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

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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

Hodgson Russ continues to monitor this and all other real estate issues presented by the Coronavirus pandemic. If you have any questions about the definition of essential businesses, its application to your business, requesting an opinion from the ESD, reducing your workforce, or your COVID-19 response more generally, please contact any member of our Real Estate team.

Hodgson Russ remains on top of these circumstances as they develop. Our attorneys are working remotely, and ready, willing, and able to address the needs of our clients, so do not hesitate to contact us (attorney directory). **Please check our Coronavirus Resource Center to view many other alerts our attorneys in various practice areas have published on topics related to the pandemic.**

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