



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
June 2, 2020 Edition



**“We believe in the ideas of family, mutuality,
the sharing of benefits and burdens
for the good of all, feeling one another’s pain,
sharing one another’s blessing
recognizing that at the heart of the matter
we are bound to each other.”**

-Mario M. Cuomo-

EMPIRE STATE DEVELOPMENT ISSUES GUIDANCE FOR DETERMINING WHETHER A BUSINESS IS ESSENTIAL AS STATE ECONOMY REOPENS

On May 31, 2020 the Empire State Development Corporation (“ESD”) revised its guidance for businesses to determine whether they are essential under Governor Andrew Cuomo’s executive order 202.6. Businesses in each region are re-opening in phases. Re-opening refers to non-essential businesses and business activities. More specific definitions for each of the areas that are identified were included. Concerns that the guidance was ambiguous were addressed.

To ease the transition and make it less confusing for businesses to resume operations, the ESD provided clearer definitions for businesses that are deemed essential in the following areas:

1. Essential health care operations
2. Essential infrastructure
3. Essential manufacturing
4. Essential retail
5. Essential services
6. News media
7. Financial institutions
8. Providers of basic necessities to economically disadvantaged populations
9. Construction
10. Defense
11. Essential services necessary to maintain the safety, sanitation and essential operations or other businesses
12. Vendors that provide essential services or products, including logistics and technology support, childcare and other services.
13. Recreation
14. Professional services with extensive restrictions

The guidance specifically enumerates the following businesses as non-essential and are, therefore unable to request the designation:

1. 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;
2. Any dine-in or on-premise restaurant or bar service, excluding take-out or delivery for off-premise consumption;
3. Any facility authorized to conduct video lottery gaming or casino gaming;
4. Any gym, fitness center, or exercise classes, except the remote or streaming service;
5. Any movie theatre, except drive-ins;
6. Any indoor common portions of retail shopping malls with 100,000 or more square feet of retail space for lease;
7. All places of public amusement, whether indoor 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
8. Any nail salons, tattoo or piercings parlors and related personal care services, including nail technicians, cosmetologists and estheticians, and the provision of electrolysis, laser hair removal services.

A copy of the ESD's guidance is available at: <https://esd.ny.gov/guidance-executive-order-2026>.

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