

COVID-19: Rules Applicable to Essential and Non-Essential Entities

The Empire State Development Corporation issued FAQs yesterday regarding the rules applicable to “essential” and “non-essential” businesses and not-for-profit corporations. The FAQs address several questions and we are reprinting these important questions and answers in their entirety.

8. QUESTION: What if my business is listed as an “Essential Business?”

ANSWER: If your business is an Essential Business, your business is exempt from the employment reduction provisions contained in Executive Order 202.8 and no further action is required by you. PLEASE DO NOT SUBMIT A REQUEST TO ESD FOR DESIGNATION AS REFERENCED BELOW.

9. QUESTION: If my business is determined to be an “Essential Business” are all employees permitted to work at the business location?

ANSWER: No. Only those employees that are needed to provide the products and services that are essential to provide such products or services are permitted to work at the business location. In addition, Essential Businesses are still required to utilize telecommuting or work from home procedures to the maximum extent possible. Those employees who do report to work must adhere to the requirements set forth in the Department of Health guidelines, which can be found at <https://coronavirus.health.ny.gov/home>.

For example, if your firm has three production lines, one of which manufactures medical equipment and the other two manufacture toys, your business is exempt from the employment reduction requirements of Executive Orders 202.8 to the extent that employees are needed to maintain the production capacity of the line manufacturing medical equipment. All other employees are subject to the workforce reduction requirements. In addition, to the maximum extent possible, employees needed to support the medical manufacturing line (i.e. human resources, accounting, legal, etc.) are still required to utilize telecommuting or work from home procedures to the maximum extent possible.

11. QUESTION: What if my business is NOT an “Essential Business” listed on ESD’s guidance but provides services, materials, supplies or other support to an Essential Business?

ANSWER: If your firm is a vendor, supplier or provides other support to an Essential Business that is required for the Essential Business’s operation, then your business is exempt from the employment reduction provisions contained in Executive Orders 202.8. However, only those employees necessary to support the Essential Business are exempt from the employment reduction requirements of Executive Orders 202.8 and your business is still required to utilize telecommuting or work from home procedures to the maximum extent possible.

13. QUESTION: What if my business is not essential, but a person must pick up the mail or perform a similar routine function each day?

ANSWER: A single person attending a non-essential closed business temporarily to perform a specific task is permitted so long as they will not be in contact with other people.

The FAQs in their entirety can be found [here](#).

As always, if you have further questions, contact the Bond attorney you work with. If you don’t have a Bond attorney, contact: [Paul Avery](#) in Buffalo; [Jennifer Boll](#) or [Hermes Fernandez](#) in Albany; [Tom Eron](#), [Robert Kirchner](#), [Rod McDonald](#) or [Jeff Scheer](#) in Syracuse; [Jen Schwartzott](#) or [Gail Norris](#) in Rochester; [Greg Reilly](#) in New York City.



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