

How to Prepare for Government Inquiries Regarding Your Essential Business Operations

In a series of executive orders, Gov. Cuomo ordered non-essential businesses to keep 100 percent of their workforce at home. Following the executive orders, the New York State Empire State Development Corporation (ESD) issued, and updated, lists of what are considered essential businesses.

Personnel from the New York Department of Labor and Office of the Attorney General have been contacting businesses that are still operating in some fashion to inquire if they are operating in compliance with the Executive Orders and ESD Guidance. These inquiries include questions about health and safety precautions being followed and whether remote working (or teleworking) is being used to the greatest extent possible. Many of these inquiries also ask for responses within 24 hours. Here are some of the steps you can take now to prepare for such inquiries.

1. Review the most recent [guidance](#) and [FAQs](#) from ESD regarding which businesses are considered essential. Please note that if your company is a vendor, supplier or provides other support to an essential business that is required for its operation, then your company is exempt from the employment reduction provisions contained in the executive orders. However, only those employees necessary to support the essential business are exempt from the employment reduction requirements.
2. If the type of business you operate is not specifically listed, you can [apply](#) to receive a designation from ESD to operate as an essential business. If you have already been granted such a designation, be prepared to provide documentation to support that designation.
3. If your business is not included in the categories of essential businesses and you have not received a designation from ESD, be prepared to articulate the rationale for why your company believes it can continue operating. There are certain limited circumstances that may allow you to continue to operate in some fashion.
4. Consider analyzing and documenting now the steps you're taking to comply with the health and safety mandates in the governor's executive orders. Those employees who do report to work must adhere to the requirements set forth in the Department of Health [guidelines](#). For example, you should be prepared to discuss the increased cleaning and disinfecting protocols your company is following.
5. Consider whether you're utilizing telecommuting (working from home) for your employees to the maximum extent possible. Specifically, only those employees that are needed to provide the essential products and 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. You should be prepared to discuss why the employees that are still reporting to work are needed to be on site and to describe the social distancing measures your company has in place.

6. You should also be prepared to discuss what precautions your company may be taking to protect employees in higher risk categories (e.g., older workers, those with underlying health conditions or those who live with someone who is an at-risk individual). However, employers should be cautious of assuming certain workers have limitations and/or require specific accommodations without discussing those potential concerns with the employee.

If you need assistance preparing for or responding to such an inquiry, you can contact [David Ferrara](#), [Hermes Fernandez](#), [Kate McClung](#), [Rod McDonald](#), [Gail Norris](#), [Katie Schafer](#), [Erin Torcello](#) or the attorney at the firm with whom you are regularly in contact.



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