March 22, 2020

Day Pitney Prepared to Assist Clients in Requesting Designation as "Essential" Business under New York's COVID-19 "Work from Home" Executive Order

On Friday, March 20, New York's Governor Andrew Cuomo issued Executive Order 202.8, effective March 22, directing that all businesses and not-for-profit entities in the State of New York, employ, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. ***Under the Executive Order, employers in the State of New York are required to reduce their in-person workforces at any workplace locations by 100 percent no later than March 22 at 8:00 p.m.***

Previously, the State of New York's Empire State Development Corporation (ESDC) issued its "Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction." Businesses not designated as operating in categories initially identified as essential by the Executive Order or the ESDC guidance may be designated essential by ESDC after submitting to ESDC a Request for Designation as an Essential Business. ***Day Pitney attorneys are studying precedent and preparing to promptly submit client requests to ESDC for designation as an "essential" business or seek other relief for purposes of gaining a full or partial exemption from the in-person restrictions of Executive Order 202.8, as appropriate.***

The ESDC guidance offers a *non-exclusive list* of types of business that will be deemed essential, as follows:

Essential healthcare operations including:

- research and laboratory services
- hospitals
- walk-in-care health facilities
- elder care
- medical wholesale and distribution
- emergency veterinary and livestock services
- doctor and emergency dental
- nursing homes, or residential health care facilities or congregate care facilities
- home health care workers or aides for the elderly
- medical supplies and equipment manufacturers and providers

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

Essential manufacturing, including:

- food processing, manufacturing agents, including all foods and beverages
- sanitary products
- telecommunications

- chemicals
- medical equipment/instruments
- pharmaceuticals
- microelectronics/semi-conductor
- agriculture/farms
- household paper products

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

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

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Financial institutions, including:

- banks
- insurance
- payroll
- accounting
- services related to financial markets

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

Construction, including:

- skilled trades such as electricians, plumbers
- other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes

Defense, including:

- defense and national security-related operations supporting the U.S. Government or a contractor to the US government

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
- building cleaners or janitors
- general maintenance whether employed by the entity directly or a vendor

- security
- emergency management and response
- automotive repair
- disinfection

Vendors that provide essential services or products, including logistics and technology support, child care and services, including:

- logistics
- technology support for online services
- child care programs and services
- government owned or leased buildings
- essential government services

Neighboring states are implementing similar measures.

On March 20, 2020, Connecticut Governor Ned Lamont issued a similarly worded Executive Order 7H, which becomes effective March 23 and is subject to further guidance to be issued by the Commissioner of Department of Economic and Community Development (DECD). More information on the Connecticut Executive Order can be found here: Day Pitney Prepares to Assist Clients in Requesting Designation as "Essential" Business under Connecticut's COVID-19 "Work from Home" Executive Order.

On March 21, 2020, New Jersey Governor Phil Murphy issued Executive Orders 107, and 108, which became effective at 9 p.m. on March 21, ordering businesses in New Jersey to make "best efforts" to reduce on-site staff and close to the public "non-essential" retail establishments due to COVID-19.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

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