



**Empire State
Development**

FREQUENTLY ASKED QUESTIONS FOR DETERMINING WHETHER A BUSINESS IS SUBJECT TO A WORKFORCE REDUCTION UNDER RECENT EXECUTIVE ORDER ENACTED TO ADDRESS COVID-19 OUTBREAK

If your question is not answered below, please contact ESD at our website at: <https://esd.ny.gov/covid-19-help>

QUESTIONS AND ANSWERS

PLEASE CHECK BACK OFTEN AS THIS FAQ IS REGULARLY UPDATED

GENERAL BACKGROUND:

1. QUESTION: What is Executive Order 202.8?

ANSWER: Executive Order 202.8 is a directive issued by New York State Governor Andrew Cuomo that requires businesses in New York State to reduce the number of employees working at individual locations in New York State to help combat the COVID-19 outbreak.

2. QUESTION: Where can I find Governor Cuomo's Executive Orders?

ANSWER: Executive Orders can be found at: <https://www.governor.ny.gov/executiveorders>

3. QUESTION: What are the employee reduction requirements contained in Executive Order 202.8?

ANSWER: Employers are required to reduce the number of employees working at each location by 100% effective March 22, 2020 at 8 p.m.

4. QUESTION: What businesses are required to reduce their workforce pursuant to Executive Order 202.8?

ANSWER: The employment reduction requirements apply to all for-profit and not-for-profit employers in New York State, unless such business is deemed an essential business or entity providing essential services. These entities are considered "Essential Business."

5. QUESTION: Are state and local governments required to comply with Executive Order 202.8?

ANSWER: No. State and local governments including public authorities, municipal governments, and school districts are not covered by Executive Order 202.8.

6. **QUESTION:** What is an “Essential Business”?

ANSWER: An Essential Business is any business providing products or services that are required to maintain the health, welfare and safety of the citizens of New York State. Guidance as to whether a business is an “Essential Business” can be found on the website of Empire State Development at: <https://esd.ny.gov/guidance-executive-order-2026>

7. **QUESTION:** What should I do to determine if my business is an “Essential Business”?

ANSWER: Businesses should review the guidance on the website of Empire State Development (“ESD”) at: <https://esd.ny.gov/guidance-executive-order-2026> to determine whether they are an Essential Business.

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

ANSWER: If your firm 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.

10. **QUESTION:** What if my business is determined NOT to be an “Essential Business”?

ANSWER: If your firm is not an Essential Business, your business is required to comply with the employment reduction provisions contained in Executive Order 202.8 which requires the number of employees working at each location be reduced by 100% effective March 22, 2020 at 8 p.m.

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.

12. QUESTION: What if my business or the business my firm supports are NOT an “Essential Business” listed on ESD’s guidance, but my business believes it should be considered an Essential Business?

ANSWER: Requests can be made to ESD to be designated an Essential Business through the link found in ESD’s guidance at: <https://esd.ny.gov/guidance-executive-order-2026>.

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.

14. QUESTION: If my business supports construction and other projects within the energy industry, which projects are considered essential?

ANSWER: For this critical infrastructure sector, essential projects will be considered necessary if they are needed to respond to the COVID-19 public health emergency, provide support for basic human services (e.g. health, safety, housing, food, and other components of well-being), or proceed to a point where the project can be safely suspended. These activities must continue to comply with current guidance for maintaining a clean and safe work environment, as well as appropriate social distancing, as issued by the Department of Health. Please consult the below chart for a general reference for the energy industry:

<p>Essential – those activities necessary to respond to the COVID-19 state emergency or to provide basic human services (e.g. food, shelter, safety, health & well-being)</p>	<ul style="list-style-type: none">● Utility Operations & Maintenance and Capital Plan Activities for:<ul style="list-style-type: none">○ Existing power generation (including existing energy storage & EV infrastructure)○ Utility scale new power generation for projects with an in-service date of September 1 or sooner○ Existing fuel supply○ Transmission and distribution infrastructure, including for maintenance, resilience, reliability and demand response○ Ensuring safe and reliable service to customers● Energy Construction Activities Related to:<ul style="list-style-type: none">○ Existing or expanding grid or other critical infrastructure, including but not limited to service of:<ul style="list-style-type: none">▪ Transit Facilities
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	<ul style="list-style-type: none"> ▪ Health care facilities ▪ Affordable housing ▪ Homeless shelters ○ New renewable generation or energy storage that are necessary to the continued operation of any of the above
Non-Essential – all other activities	<ul style="list-style-type: none"> • Energy efficiency in existing buildings – all sectors • New power generation – except the above essential • New energy storage – except the above essential • New construction – except the above essential • New EV infrastructure
Emergency –health and safety	<ul style="list-style-type: none"> • Projects necessary to protect health and safety of building occupants, utility customers, or the public including continuation of existing work to extent necessary to create a safe site