



## KTA COVID-19 ALERT

### **New York and New Jersey Issue New Executive Orders Affecting Businesses and Loan Forbearance**

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Updated as of: March 22, 2020; 5:30 pm

Over the weekend, New York and New Jersey issued executive orders requiring many businesses to reduce employees at the workplace by 100% or to close to the public. We encourage all clients to contact us for questions or assistance regarding the effects of these orders as they may pertain to your business and other measures being implemented to address the spread of COVID-19. We have assembled a team to help.

#### **New York**

On Friday, NYS Gov. Andrew Cuomo issued [a new Executive Order](#) directing that effective 8 p.m. on Sunday, March 22, 2020, all non-essential businesses in New York are to reduce their in-person workforce by 100%. The Empire State Development Corporation has issued [guidance](#) in connection with this order. Essential businesses are exempt from the “stay at home” requirements; a list of essential business categories may be found in the [guidance](#) on the [Empire State Development Corporation website](#) and in our prior Newsletter of the 19th. Any business not included in the listed categories may request to be designated as an essential business by submitting a form to the Development Corp. The form may be found [here](#). Violation of the order is a violation of Public Health Law Section 12, which provides for a civil penalty of up to \$2,000 for the first violation and increasing for subsequent violations. Businesses violating the order may be subject to fines up to \$2000 per violation. The fine may increase to \$5,000 for a second violation and \$10,000 for a third violation. The Governor has indicated he will also issue orders to shut down businesses violating these orders.

The order also states that “[a]n entity providing essential services or functions whether to an essential business or a non-essential business shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function.” While the guidance lacks clarity, it notes among its examples of essential services mail and shipping services, and security and general maintenance as necessary to maintain the sanitation, safety and operations of residences and essential businesses. We have submitted Q and A through the state’s website concerning whether, or to what extent, non-essential business employees may **on a limited basis** access the workplace in connection with delivered mail, general security, or to otherwise keep the business operational. We are waiting guidance on those issues. The firm will update you on the State’s response when available.

The order further tolls the “specific time limit for the commencement, filing, or service of any

legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state. . . ” This would not apply outside New York legal proceedings (such as federal matters) and its full scope is not clear to other steps required in litigation, such as responding to motions, discover request, court-imposed deadlines. Some deadlines may be imposed by a substantive statute or a contract. Our firm is continuing to adhere to all deadlines unless specifically extended. We encourage clients not to rely on this tolling provision if they believe that an action they are considering has a current short-term deadline.

### **New York Loan Forbearance**

On Saturday, March 21, 2020, New York issued an executive order, effective until April 20, 2020 making it “an unsafe and unsound business practice if, in response to the COVID-19 pandemic, any bank [subject to the NY Department of Financial Services jurisdiction] shall not grant a forbearance to any person or business who has a financial hardship **as a result of the COVID- 19 pandemic**[1] for a period of ninety days.” As of noon today, the Department of Financial Services has not issued additional guidance or regulations on this matter. We will provide further updates as more information becomes available.

### **New Jersey**

Effective 9:00 p.m. on Saturday, March 21, 2020, brick-and-mortar premises for all non-essential retail businesses must close to the public. [Essential retail businesses](#) include:

1. Grocery stores, farmer’s markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
2. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
3. Medical supply stores;
4. Retail functions of gas stations;
5. Convenience stores;
6. Ancillary stores within healthcare facilities;
7. Hardware and home improvement stores;
8. Retail functions of banks and other financial institutions;
9. Retail functions of laundromats and dry-cleaning services;
10. Stores that principally sell supplies for children under five years old;
11. Pet stores;
12. Liquor stores;
13. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
14. Retail functions of printing and office supply shops; and
15. Retail functions of mail and delivery stores.

All recreational and entertainment businesses, including personal care services, such as barbershops and nail salons, must also close. Other non-retail businesses and essential businesses may continue operating but are required to use best efforts to reduce staff on site to the minimal number necessary to ensure essential operations can continue. Violations of the order are punishable by a fine up to \$1,000 and 6 months in jail. New Jersey will be providing updates through the; [New Jersey COVID-19 website](#) (website [www.covid19.nj.gov](http://www.covid19.nj.gov)).

### **WARN Act**

The Federal, New York, and New Jersey WARN Acts remain in effect. These statutes impose several notice requirements on many employers prior to any mass layoffs or shutdowns. The notices must contain specific information and are time sensitive. The statutory exceptions to the various Federal and States WARN laws remain in effect and the need for notice must be assessed on a case by case bases based on technical statutory criteria and the facts and circumstances of a particular employer and layoff and/or shutdown We are

available to assist if you have any questions on the applicability of these Acts to you or your business. We strongly encourage any of our clients who are considering mass layoffs or shutdowns to consult with us concerning compliance with any WARN act requirements.

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**[1]** Emphasis added.

### **Further Help**

We understand that at this time of crises these additional requirements may prove difficult for many employers. They also may be the springboard for litigation and problems down the road. Our team stands ready to help. For further assistance, do not hesitate to call any member of our team:

Gary Trachten (212) 868-5721 (o); (914) 420-5435 (c);  
email: [gtrachten@kudmanlaw.com](mailto:gtrachten@kudmanlaw.com)

Paul Aloe (212) 868-1888 (o); (516) 816-8000 (c);  
email: [paloe@kudmanlaw.com](mailto:paloe@kudmanlaw.com)

Barry Posner (212) 868-0174 (o); (914) 420-5555 (c);  
email: [bposner@kudmanlaw.com](mailto:bposner@kudmanlaw.com)

David Saponara (212) 868-1887 (o); (914) 220-2885 (c);  
email: [dsaponara@kudmanlaw.com](mailto:dsaponara@kudmanlaw.com)

Francis Curran (212) 868-0871 (o); (727) 215-7507 (c);  
email: [fcurran@kudmanlaw.com](mailto:fcurran@kudmanlaw.com)

Alex Slichko (212) 244-2586 (o); (518) 867-7916 (c);  
email: [aslichko@kudmanlaw.com](mailto:aslichko@kudmanlaw.com)

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