
New York and New Jersey Close Businesses and Order Residents to Stay Home

By Vanessa M. Kelly / Mar 24, 2020

Both Governor Cuomo of New York and Governor Murphy of New Jersey issued Executive Orders mandating closures of certain businesses except for those designated as essential and restricting State residents' travel and congregational activities. New York's closure mandate applies to all non-essential businesses and prohibits in-person work; whereas New Jersey's closures are for all non-essential retail businesses. In addition, the federal government authorized a Disaster Declaration for the State of New York which means that federal funds will be available for responding to the State's needs in addressing the coronavirus. New Jersey declared a state of emergency granting Governor Murphy additional authority; the federal government has not yet authorized a Disaster Declaration for New Jersey.

New York

New York has issued a "PAUSE," "Policies That Assure Uniform Safety for Everyone." PAUSE is a ten-point plan to address the spread of the COVID-19 virus. It includes:

1. Closure of all non-essential businesses
2. Cancellation/Postponement of non-essential gatherings of any size
3. Concentration of individuals outside of their homes is limited to workers providing essential services with all practicing social distancing
4. In public, individuals must practice social distancing and remain six feet apart
5. Essential services businesses must implement rules to ensure social distancing of at least six feet
6. Outdoor activities limited to those that are non-contact
7. Limitation on public transportation to absolute necessity with social distancing of six feet or more
8. Sick individuals may leave their homes only for medical care and only after a telehealth visit to determine if leaving home is in the best interest
9. Young individuals must practice social distancing and avoid contact with vulnerable populations
10. Use precautionary sanitizer practices

Essential businesses have been defined as:

- Health Care Operations
- Essential infrastructure
- Essential manufacturing
- Essential Retail
- Essential Services
- News Media
- Financial Institutions
- Providers of Basic Necessities to Economically Disadvantaged Populations
- Construction
- Defense
- Essential Services Necessary to Maintain the Safety, Sanitation and Essential Operations of Residences or other Essential Businesses
- Vendors who provide Essential Services or Products, including Logistics and Technology Support, Child Care and Services

For more detail on essential services, visit [here](#).

On March 15, 2020, New York ordered the closure of gyms, movie theaters, dine in restaurants/bars and casinos. Those closures remain in effect.

For those New York State employees who are out of work due to business closures, New York is waiving the seven-day waiting period for unemployment benefits. And, New York amended its Paid Sick Leave and Paid Family Leave laws to provide enhanced benefits for those affected by COVID-19. For employees who are subject to mandatory or precautionary orders of quarantine or isolation, the Emergency COVID-19 Paid Sick Leave provides benefits and New York's Paid Family Leave Insurance and Short-Term Disability Benefits may also apply. Benefits vary based on the size of the employer. In general, these expansions provide job protection for the duration of the quarantine, access to Paid Family Leave and Short-Term Disability benefits without waiting periods, and for medium and large employers, paid sick leave of 5 and 14 days respectively.

Employers who have 50 or more employees and are laying off 25 or more employees or are closing must comply with New York's WARN Act. Typically WARN requires 90 days advance notice of closure or layoff; however, there is an exception for sudden and unexpected circumstances outside of the employer's control requiring the closure. Under the sudden and unexpected circumstances, the employer must provide the required notices as soon and possible and identify the circumstances that required the closure. WARN is triggered for closings or mass layoffs affecting 25 or more employees.

New Jersey

On March 21, 2020, Governor Murphy ordered all New Jerseyans to shelter in place meaning they are to remain in their homes or place of residence unless they are (1) obtaining goods or services from essential retail businesses; (2) obtaining take-out food or beverages; (3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; (4) visiting family or others in a close personal relationship; (5) reporting to or performing their job; (6) engaging in outdoor activities using social distancing, including staying 6 feet apart; (7) attending to an educational, religious or political activity; (8) leaving because of a fear to well-being or safety; or (9) leaving at the direction of law enforcement or other governmental agency.

The brick and mortar premises of all non-essential retail businesses must close unless the business is deemed essential. Essential businesses include:

- Grocery and food stores
- Pharmacies and medical marijuana dispensaries
- Medical supply stores
- Retail functions at gas stations
- Ancillary stores within healthcare facilities
- Hardware and home improvement stores
- Retail functions of banks and other financial institutions
- Retail functions of laundromats and dry-cleaning establishments
- Stores for supplies for children 5 and under
- Pet stores
- Liquor stores
- Car dealerships but only in service/repair areas
- Retail functions for printing and office supply shops
- Retail functions of mail and delivery stores

All such essential businesses open to the public must use social distancing and frequent sanitizing products on common services.

Restaurants and bars are limited to take out service. All recreational and entertainment businesses must close to the public, including fitness centers, casinos, racetracks, movie theaters, concert venues, personal care facilities, and libraries.

Businesses or non-profits, whether open to the public or not, must accommodate their workforce for telework or work from home. Where such employees cannot perform their work remotely, the business should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. Such employees may include cashiers or store clerks, construction workers, utility workers, warehouse workers, lab researchers, IT personnel and certain administrative staff. Manufacturing, industrial, logistics, ports, heavy construction, shipping, food production, food delivery, and other commercial operations may continue to operate, but they should also limit staff on site to the minimal number needed for essential operations. Businesses are encouraged to give their employees a letter indicating that the employee works in an industry permitted to continue operations.

Employees who have been terminated, had their hours reduced, or been laid off because of this crisis may apply for Unemployment Benefits. Because of high volume, the Department of Labor has issued staggered claim filing procedures based on the last four digits of a claimant's social security number. Further, the Department of Labor has relaxed the rule requiring active search for alternate work during this crisis.

In addition, based on the employee's status, he or she may be able to claim Earned Sick Leave Benefits, Temporary Short-Term Disability or Family Leave Insurance. If the absence is due to diagnosis or symptoms of COVID-19, accrued New Jersey Earned Sick Leave benefits will apply and the employee may also be eligible for Temporary Short-Term Disability benefits. If an employee is unable to work because his/her child's school or daycare was closed for a public health reason, an employee may claim New Jersey Earned Sick Leave benefits. If a worker was exposed and quarantined, yet his/her employer's business remains open, the employee may be eligible for Paid Sick Leave, short term disability and dependent upon where the exposure occurred, workers compensation benefits. If the employee is out of work because his employer was ordered closed, the employee can apply for Paid Sick Leave and Unemployment Benefits. If an employee is immune-compromised or otherwise advised to self-quarantine, the employee may use NJ Earned Sick Leave benefits and apply for Temporary Short-Term Disability Benefits. If an employee is caring for a family member who is sick, the employee may use New Jersey Earned Sick leave and apply for Family Leave insurance. There are bills pending in New Jersey's Legislature, or awaiting signature by the Governor that may provide additional financial relief for New Jersey residents. Details will follow as more information is released.

New Jersey was approved by the US Small Business Administration and New Jersey small businesses can apply for disaster relief under these programs.

New York and New Jersey

The provisions of the new Federal Law "Families First Coronavirus Response Act" may also apply. This Act expands the provisions of the federal Family and Medical Leave Act to cover COVID-19 and provides Paid Sick Leave. Additionally, Congress is working on a relief package for those impacted by the coronavirus. Details will follow when a final law is enacted.

For more information, please visit [Clark Hill's COVID-19 Resources webpage](#).