

March 9, 2020

What Does New York's Declaration of a State of Emergency Mean for Business?

On Saturday, March 7, 2020, Governor Andrew M. Cuomo declared a state of emergency in New York as the number of confirmed coronavirus (COVID-19) cases in the state continued to rise. In doing so, New York joined several other states that previously declared states of emergency, including California, Florida, Maryland, and Washington. Executive Order No. 202 – “Declaring a Disaster Emergency in the State of New York”¹ – grants the State additional powers and suspends various legal requirements to facilitate the State’s ability to obtain additional resources and respond more quickly to the COVID-19 outbreak. Executive Order No. 202 follows on the heels of recently passed legislation that expands the state’s existing emergency powers. Businesses should be mindful of how the implementation of the Executive Order, and expected future government action, may affect their operations and obligations.

State of Emergency Declarations in New York

New York law grants the governor broad powers to declare a state of emergency to respond to a disaster to which local governments are unable adequately to respond, including epidemics or other events that threaten widespread damage, injury, or loss of life. A state of emergency declaration permits the governor to direct local officials and state agencies, and to suspend state and local law or regulation to facilitate disaster response efforts.²

On March 3, 2020, Governor Cuomo signed into law an amendment to New York’s statute governing the state’s emergency powers.³ In addition to appropriating \$40 million for use in fighting the spread of COVID-19, the law also expanded the state’s disaster response authority by authorizing the governor to issue any directive during a state of emergency that is reasonably necessary to aid the disaster response.

Executive Order No. 202

Executive Order No. 202 utilizes New York’s emergency powers to facilitate the State’s ability to more quickly and effectively contain the spread of COVID-19. The Executive Order grants the State the following authority:

¹ See <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>.

² N.Y. Exec. Law §§ 20, 28, 29, 29(a).

³ 2020 Sess. Law News of N.Y. Ch. 23 (S. 7919).

- The power to procure, without following traditional bureaucratic prerequisites, material and supplies to assist the state in responding to the spread of COVID-19, including cleaning supplies, hand sanitizers, testing equipment, and other resources;
- The power to hire, without following traditional bureaucratic prerequisites, additional personnel to deal with the fallout from the spread of COVID-19;
- The power to expand the personnel and locations permitted to conduct COVID-19 testing;
- The power to obtain additional facilities or vehicles, such as lab space or patient transport, without complying with traditional procurement processes;
- The power to permit medical providers to transfer patients to designated quarantine locations;
- The power to modify eligibility criteria and premiums for certain state insurance programs; and
- The power to suspend quorum and in-person public-meeting requirements to permit public health officials to take such actions as may be necessary to respond to the COVID-19 outbreak.

Executive Order No. 202 will be effective for six months unless terminated by the governor, although it remains subject to further extensions.⁴ The specific laws and regulations modified by the Order will remain suspended until April 6, 2020, unless extended by the governor for additional 30-day periods.⁵

The declaration of a state of emergency also triggers application of New York's price gouging law. The Attorney General is empowered during states of emergency to seek civil penalties against, and restitution from, businesses that sell or offer to sell consumer goods or services at unconscionably excessive prices.⁶

The Implications of the Emergency Declaration for Businesses Operating in New York

The human and financial costs associated with COVID-19 have been significant and will continue to escalate as governments and businesses grapple with how to slow the spread of the virus. Government and regulatory action may have substantial implications for how businesses conduct their operations, apply measures to protect employees, and interact with state regulators. Executive Order No. 202 does not, by its terms, impose affirmative obligations on private businesses or citizens, at this time. Companies supplying goods and services in the state should be mindful of increased scrutiny by state regulators to pricing behavior. State contractors, medical companies, and insurance providers in particular should evaluate

⁴ N.Y. Exec. Law § 28(3).

⁵ N.Y. Exec. Law § 29-a(2)(a).

⁶ N.Y. Gen. Business Law § 396-r.

whether and to what extent the suspension of laws and regulations subject to the Executive Order may affect their businesses.

Companies also should closely monitor further developments as state authorities implement disaster response efforts. Past emergency declarations often have been followed by additional executive orders in the ensuing weeks and months that clarify or expand upon the state's emergency powers as disaster recovery efforts unfold. The recent expansion of emergency powers to authorize directives necessary to respond to disasters such as the COVID-19 outbreak affords the state great latitude to issue any directive believed to be reasonably necessary to aid the disaster response.

We will closely monitor the legal and business implications associated with the global – and local – fallout from the COVID-19 outbreak, and will continue to report developments. We will be meeting with the Governor on Wednesday, as part of a select group of New York's business leaders, to discuss how the state government and business community should best deal with the COVID-19 crisis.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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