



New Executive Order Requires all “Essential” Employers to Provide Face Coverings to Employees Who Contact Customers or Members of the Public by Wednesday Night

April 13, 2020

As employers know, since the beginning of the COVID-19 pandemic Governor Cuomo has issued a series of Executive Orders regulating employees in the workplace. In essence, the only businesses which should have employees on site are those deemed “essential”. “Essential” businesses include banks, utilities, construction, retail, and health care to varying degrees. Guidance on “essential” businesses can be found at <https://esd.ny.gov/guidance-executive-order-2026>.

On April 12, 2020, Governor Cuomo issued Executive Order 202.16 (<https://www.governor.ny.gov/news/no-20216-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>). Among other parts of the Order is the following:

For all essential businesses or entities, any employees who are present in the workplace shall be provided and shall wear face coverings when in direct contact with customers or members of the public. Businesses must provide, at their expense, such face coverings for their employees. This provision may be enforced by local governments or local law enforcement as if it were an order pursuant to section 12 or 12-b of the Public Health Law. This requirement shall be effective

Wednesday, April 15 at 8 p.m.

This requires all essential businesses to provide “face coverings” for all customer- or public-facing employees at the employer’s expense. The Order does not define “face coverings”. The Order does not mention surgical masks (which are in short supply and should be reserved for health care professionals), so it appears that employers may be able to comply by providing any suitable fabric which covers the employee’s face.

The Order also does not address businesses which are not themselves deemed to be “essential”, but which service “essential” businesses. Such businesses are allowed to remain open only to the extent they service the “essential” businesses. While the new Order could be read not to apply to such businesses, we think the better and safer interpretation is that all employees of nonessential businesses that service essential businesses must be provided with the face coverings.

We will continue to update this as more information becomes available. In the meantime, if you have questions regarding any aspects of employment law and/or the implications of the coronavirus (COVID-19) on your place of business, feel free to contact Thomas B. Wassel at (516) 357-3868 or via email at twassel@cullenllp.com, James G. Ryan at (516) 357-3750 or via email at jryan@cullenllp.com, or Hayley B. Dryer at (516) 357-3745 or via email at hdryer@cullenllp.com.

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