

## **Municipal Employees in NY and COVID-19**

Local governments employ a significant number of personnel with a variety of responsibilities. There are many questions regarding essential vs. non-essential employees, so commission staff have compiled some information and references in this document. This will be an evolving issue, so please check back regularly. We advise working with your municipal attorney and unions to make sure what effect actions may have on collective bargaining agreements. Contact your circuit rider for more assistance.

### **Update as of June 7, 2020:**

Executive Order 202.39 issued June 7<sup>th</sup> modified Executive Order 202.4 (and as subsequently modified) and was amended “*to apply only to local governments that have not met the prescribed public health and safety metrics to be eligible for Phase Two reopening, provided such local governments in Phase Two regions may bring non-essential employees back to work beginning two weeks after such region meets the metrics to reopen Phase Two*”. Most of the regions that have entered Phase III of re-opening have successfully passed the two-week mark from starting Phase II and would be eligible to bring back non-essential employees. Text of Executive Order 202.39 is here:

<https://www.governor.ny.gov/news/no-20239-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

### **TAKE AWAYS**

All non-essential local government employees are either required to work from home or take leave without charging accruals.

Detailed information about what are considered essential employees can be found here:

[esd.ny.gov/guidance-executive-order-2026](https://esd.ny.gov/guidance-executive-order-2026). The most relevant portions of this to local government are:

1. Employees related to ***infrastructure*** are considered essential includes **utilities (power generation, fuel supply, transmission); public water and wastewater; telecommunications and data centers**.
2. Employees related to ***services*** are considered essential including **trash and recycling collection, processing and disposal; building cleaning and maintenance**.
3. Employees related to ***financial institutions*** are considered essential including **payroll and accounting**.
4. Employees related to ***basic necessities*** to economically disadvantaged populations are considered essential including **food banks**.
5. Employees providing essential services to maintain the ***safety, sanitation and essential operations*** of residences or other essential businesses including **law enforcement, fire prevention and response, building code enforcement, security, emergency management and response, building cleaners or janitors**.

6. Employees related to **essential construction including roads, bridges, and utilities**. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to \$10,000 per violation.
7. Any business that only has a single occupant/employee has been deemed exempt and need not submit a request to be designated as an essential business.
8. To request designation as an essential business, see <https://esd.ny.gov/content/request-designation-essential-business-purposes-executive-order-2026>

**New: As noted above, local governments, including municipalities and school districts, are allowed to continue construction projects at this time as government entities are exempt from these essential business restrictions. However, to the greatest extent possible, local governments should postpone any non-essential projects and only proceed with essential projects when they can implement appropriate social distancing and cleaning/disinfecting protocols. Essential projects should be considered those that have a nexus to health and safety of the building occupants or to support the broader essential services that are required to fulfill the critical operations of government or the emergency response to the COVID-19 public health crisis.**

**From Cornell Local Roads regarding Highway Employees specifically:**

Here is a list of items that should NOT be delayed:

<b>ESSENTIAL SERVICES</b>	<b>PROBABLY ESSENTIAL</b>
Water & sewer operations	Filling potholes
Snow plowing and weather emergencies	Maintaining equipment
Repairs of failed systems including culverts, traffic lights, signs	Replacing signs and other worn out safety systems
Building cleaning and maintenances	Cutting trees and brush related to safety

If you are not sure if your work is essential, ask yourself the following questions:

- If the work isn't done, will critical infrastructure (utilities, roads, & streets) be placed in jeopardy?
- Can we provide what is needed to make sure health and safety workers can get out and do their jobs?
- Is this work needed to be ready for an emergency weather event?

If you answered yes to any of those questions, you may want to go ahead and keep doing those activities.

**Governor's [Executive Order 202.4](#) – Local Government Employees, March 16, 2020**

In part directed local governments to determine non-essential personnel and act as follows: **“Any local government or political subdivision shall, effective March 17, 2020, allow non-essential personnel *as***

***determined by the local government* (emphasis added), to be able to work from home or take leave without charging accruals, except for those personnel essential to the locality's response to the COVID-19 emergency. Such non-essential personnel shall total no less than fifty-percent (50%) of the total number of employees across the entire workforce of such local government or political subdivision."**

**Governor's Executive Order 202.6 – Essential/Non-Essential Employees for private sector employers,**  
March 18, 2020

In part directed that all businesses and not-for-profit entities in New York State, shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize.

**NY On PAUSE** – March 20, 2020

Directed that, no later than March 21, 2020 at 8 p.m., each for-profit or not-for profit employer (excluding state and local governments and authorities) shall reduce the in-person workforce at each business/work location by 75% from pre-state of emergency declaration employment levels.

It is **further directed** that, no later than March 22, 2020 at 8 p.m., each for-profit or not-for profit employer (excluding state and local governments and authorities) shall **reduce the in-person workforce at each business/work location by 100% from pre-state of emergency declaration employment levels.**

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### **Advice from the Association of Towns for municipal employers:**

"The Town as an Employer during a Public Health Emergency

The town has broad authority as an employer to adopt policies and procedures that address, among others, sick leave and leaves of absence for its employees (see General Municipal Law section 92).

In the event of a public health emergency, the town should consider the following factors:

- Determining Essential / Non-Essential Employees. The town should determine what people and resources are required for the town to function effectively. Each town is different, and each town board will have to make a determination as to what employees and officials are considered essential vs. non-essential.
- Telecommuting / Working Remotely. As the employer, the town board may adopt a policy that authorizes telecommuting or working remotely for its employees. It may be prudent to proactively authorize employees and officials to work from home.
- Evaluate Collective Bargaining Agreements. Generally speaking, a collective bargaining agreement will supersede any town board determination. However, the town board should review the collective

bargaining agreement and consult with the local bargaining unit to determine how to proceed in the event of an outbreak.

- Review Town Policies / Provide for Sick / Extended Leave. The town should review its policies currently in place and consider amending them to accommodate employees in the event they fall ill...”
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### **Summary from [Cornell Local Roads for Highway Employees](#):**

**Essential Work:** The Governor’s Executive Orders list transportation infrastructure as essential for both public safety and commercial visibility. Ask yourself, what do you really need to keep doing to serve the public. NYSDOT is continuing implementation of its capital program as an essential government function and will continue to let and construct capital projects. NYSDOT feels local projects should continue to be delivered as well. They state that “response to COVID-19 is directly dependent upon a reliable transportation system.” Snow plowing, filling potholes, cutting down unsafe trees, and keeping water and sewer services operational are clearly critical and, in some cases, explicitly listed. However, there are many activities that could be postponed if needed due to supply or manpower issues. If you can delay something until summer you may need to do so, but not at the expense of being prepared and ready for an emergency regarding your roads and streets. Keep your equipment maintained.

### **Staying Safe on the Job:**

Whether you are continuing to report to work, you should use best practices with regards to social distancing and cleanliness. Having your crew work in shifts, work every other week, or work 2 days on and 2 days off (except during emergencies) may be warranted.

NYSDOT is going to 1/3 on 2/3 off. Different types of shift and work patterns may be more applicable for your particular department. Set up the minimum crew size to be safe. Recommend employees refrain from going out in public for breaks or lunches. Limit access to vendors or outside visits from the public. Ask yourself what you would do if one of your employees comes down with COVID-19 since those employees (and the ones working with those employees) would need to be quarantined for two weeks or more. Set up your operations to account for the possibility of staffing disruptions.

Other common sense changes include requiring workers to not all take breaks at the same time, splitting up your crews, driving separately to any job site, limiting who is working in the building together, and being sure to clean and disinfect any surfaces and equipment. You may want to assign only one person to a particular vehicle during this time and use a single loader operator for filling trucks during snow events. If not, be sure to have the vehicle cleaned between use and try to let the equipment sit overnight after cleaning. Of course, the overall key is limiting exposure.

Here are some additional items to think about as you modify your operations:

- Social distancing of all employees of at least 6 to 10 feet
- Stay home if you are sick, even if it's not COVID-19
- Have office personnel work from home
- Clean your hands often and avoid touching surfaces with bare hands
- Avoid touching your eyes, nose, and mouth with unwashed hands
- Cover coughs and sneezes
- Wear a face mask if you are sick and you have to work
- Clean and disinfect more often than you think you need to
- No public access to buildings or property without an appointment AND essential need