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COMMERCIAL LITIGATION ALERT | NIXON PEABODY LLP

MAY 18, 2020



## **UPDATE** Statute of Limitations Suspended for additional period in New York

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ALERT UPDATE: On April 7, 2020, New York State Governor Cuomo issued Executive Order 202.14, extending the suspension of statute of limitations discussed in our previous alerts from April 19, 2020 to May 7, 2020, and adding an enforcement mechanism for all Executive Orders issued by the Governor during the State disaster emergency related to COVID-19. Additionally, in more positive news, courts around New York have taken initiatives to allow for increased functions during the current situation and will take preliminary steps to open up access (albeit, remotely) to the courts for certain activities in non-essential pending cases starting April 13, 2020. New updates are provided in this alert, **in red**, in the wake of further guidance from Governor Cuomo and New York State Courts.

As set forth in our [prior alerts](#), New York State Governor Cuomo has executed a series of increasingly restrictive Executive Orders (“EO”) to encourage “social distancing” in response to the COVID-19 pandemic. Most recently, on March 20, 2020, Governor Cuomo signed EO 202.8, which implemented the “New York State on PAUSE (Policies Assure Uniform Safety for Everyone)” initiative, requiring closure of all non-essential on-site businesses, and on May 8, 2020, Governor Cuomo signed EO 202.29, extending those initiatives through **June 6, 2020** (the “PAUSE Orders”).

In addition to the number of restrictions imposed upon the daily lives of New Yorkers statewide, and the mandate that all non-essential businesses and not-for-profit entities close or reduce their in-person workforces by 100%, the PAUSE Orders suspend all state-law-based statutes of limitation. This includes, “any specific time limit for the commencement, filing, or service of any legal action, notice, motion or other process or proceeding,” under any state law, act, statute, local law, ordinance, order, rule or regulation, through **June 6, 2020**. The PAUSE Orders also clarify that there shall be no enforcement of an eviction or foreclosure proceeding against any resident or commercial tenant for a period of 90 days.

The specific language of the PAUSE Orders is that:

- In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for

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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, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until [June 6, 2020].

Governor Cuomo's EO 202.14 also temporarily suspended or modified certain laws and regulations during the State disaster emergency, if compliance would be prevented, hindered, or delayed in order to cope with the COVID-19 pandemic. The laws and regulations related to the practice of medicine, appointment of legal guardians, and certain insurance requirements. That part of EO 202.14 is also effective through May 7, 2020. Please contact your Nixon Peabody attorney for questions regarding the status of specific laws or regulations that were impacted by this mandate.

EO 202.14 also adds an enforcement mechanism for all Executive Orders in addition to any other enforcement contemplated by prior Executive Orders. A violation of any of the Executive Orders is "punishable as a violation" of Public Health Law § 12-b(2), which violations are punishable by imprisonment not exceeding one year, and/or by a fine of up to \$10,000.

Consistent with the directives from Governor Cuomo, the Chief Administrative Judge of the New York State Court issued an Administrative Order on March 22, 2020, providing that, "effective immediately and until further order, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters[.]" The Administrative Order includes a list of such "essential matters," which are defined to include, among other things, certain criminal matters, Family Court matters, Civil/Housing matters related to landlord lockouts and serious code violations, and Supreme Court matters related to the Mental Hygiene Law and certain emergency applications. The [Administrative Order](#) applies to both paper and electronic filing cases.

Additionally, on April 7, 2020, the Chief Administrative Judge issued a Memorandum to all Trial Court Justices and Judges outlining preliminary steps the courts will take to open up remote access to the courts for certain actions in non-essential pending cases, effective Monday, April 13, 2020, and an Administrative Order was issued by the Chief Administrative Judge the following day providing further details on these developments. Judges were advised to review their case inventories to identify cases in which court conferences would be helpful in advancing the progress of the case, including achieving a resolution of the case. Specifically, effective April 13, 2020, Judges are permitted to:

- Schedule conferences at the request of an attorney for ongoing matters,
- Address discovery disputes and other ad hoc concerns, and
- Decide fully submitted motions.

The overarching goal with these directives appears to be to reduce the trial courts' backlog of pending and undecided matters, while encouraging settlement and resolutions wherever possible, to free up the courts for the expected deluge in motion activity in cases that have been—and will remain for now—essentially stayed. While the parties are now permitted to bring discovery disputes to the courts, they are not presently required to proceed with depositions remotely.

Notably, **courts around New York are now moving towards being fully reopened for “nonessential matters.”**

Essentially, the PAUSE Orders and the Chief Judge’s Administrative Order mean that the deadline to initiate any New York State court action, or to respond to a deadline in a current New York State court action, has been extended to **June 6, 2020**. Given the ongoing nature of New York State’s response to the COVID-19 pandemic, that date may well be extended or altered by a future EO.

This unprecedented action, while seemingly simple on its face, is bound to raise a number of complex legal issues in the near future, including, for example, retroactive application, application to statutes of repose and contractual limitations and notice periods, as well as undelivered misdirected mailings and notices. In addition, it is not clear in certain circumstances how this will apply in diversity cases in the federal courts. (The federal courts around New York have already limited their functions and operations in response to the COVID-19 pandemic. Please contact your Nixon Peabody attorney for questions regarding the status of specific federal courts or pending federal court actions.)

One thing that is clear is that the PAUSE Orders and the Chief Judge’s Administrative Order will not, except in very narrow instances where a time is set in relation to a statute of limitations, change the times for contractual notice or performance. We have provided substantial commentary on those issues [elsewhere](#). The PAUSE Orders and the Chief Judge’s Administrative Order also cannot extend the time for claims that may have periods of limitations or repose under other states’ or countries’ laws, so analyses of choice of law and forum will be important.

We will continue to monitor guidance from the Governor and the courts on these ongoing issues closely. In the meantime, we look forward to helping you with advice on a case-by-case basis.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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