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Checklist for Evaluating the Applicability of State and Local Shelter in Place Orders

by Ronald L. Raider , Gunjan R. Talati

Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Task Force page and/or your email for updates.

In response to COVID-19, state and local governments have issued public health orders that restrict business, travel, and social activities in order to slow the spread of the virus and prevent hospitals from being overrun with patients. As of March 24, 2020, 13 states have issued statewide "stay at home" orders. In addition, many county and city governments have issued their own "stay at home" orders. The statewide orders do not necessarily supersede a local government order. As of March 24, 2020, there is also no superseding federal order. A business will need to review and comply with all applicable orders which could be at the local, state, and federal levels.

The scope, duration, and exceptions of each order will vary so it is important to review both state and local government orders applicable to you and your business. While some terms vary, the scope and structure of the orders we have seen so far are similar. The following is a checklist of issues to evaluate.

Scope of the Order

- Narrow Orders:
    - Only closes bars, nightclubs, and restaurants;
    - Cancels social events above a certain size (e.g., more than 10 or 50 attendees);
    - Restricts work or activities by at-risk groups (e.g., elderly, people with respiratory ailments);
    - Requires businesses to practice "safe distancing" (e.g., reduce the workers in a particular area, keep workers at least six feet apart).
- Broad Orders:
    - Shutters all non-essential businesses;
    - Closes bars, nightclubs, and restaurants;
    - Cancels social events above a certain size (e.g., more than 10 or 50 attendees);
    - Requires essential businesses to practice "safe distancing" (e.g., reduce the workers in a particular area, keep workers at least 6 feet apart).

Essential Business Definitions

- All orders allow “Essential Businesses” or “Critical Infrastructure Businesses” to continue operating. Employees of these businesses are exempt from the shelter in place orders and allowed to travel to and from their places of employment.
- The statewide and local government orders include slightly different definitions of “Essential Businesses” which is why it is important to review the applicable order.
- Most of the orders adopt the “Essential Critical Infrastructure Workers” guidance from the Cybersecurity and Infrastructure Security Agency (“CSIA”). The current guidance was issued on March 23, 2020: https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19. This guidance does not have the force and effect of regulation and in the event of a conflict between this guidance and a local or state order, the local or state order language should be deemed to control.
- The Essential Businesses or Essential Critical Infrastructure Workers include:
    - Healthcare and public health workers;
    - Law enforcement, public safety, and first responders;
    - Food and agriculture;
    - Energy:
        - Electricity production;
        - Petroleum workers;
        - Natural gas and propane gas workers;
    - Water and wastewater;
    - Transportation and logistics;
    - Public works;
    - Communications and information technology;
    - Community-based government operations and essential operations;
    - Hazardous materials handling;
    - Financial services;
    - Chemical manufacturing;
    - Defense industrial base; and
    - Critical manufacturing to support the supply chain needed for each of these other businesses to continue.
- Other categories:
    - Some local orders also have classified other businesses as Essential:
        - Gas stations;

- Automotive repair shops;
- Media;
- Hardware stores;
- Construction trades – plumbers, electricians for homes;
- Laundromats;
- Businesses that support working from home;
- Services for the indigent, elderly, or children;
- Professional services (accounting and law firms);
- Mail and postal services; and
- Public or private construction.

- Some local orders also allow for non-essential business to maintain minimum basic operations which generally includes minimum activities necessary to maintain the value of a business's inventory, preserve conditions of a physical plant and equipment, ensure security, process payroll and benefits, and facilitate remote work by employees.

Evaluations

- Does your business provide the services and goods that are essential as defined by applicable orders?

  - If so, which categories are applicable?
  - Do your goods or services expressly fall into a defined essential business category?
  - If not, what catch-all language provides justifications for the essential determination?

- Does your business provide services and goods that support, or allow essential businesses to continue operating?

  - Have essential businesses notified you of your status as a vital supplier to them?
  - Do essential businesses keep ordering from you?

- If your business is not essential, do your orders allow for minimum basic operations?
- Can your business be adapted to provide or support essential businesses?
- If all, or just some, of your business activities provide/support essential businesses, are those workers able to follow safe distancing practices?