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LEGAL UPDATES

Executive Orders Requiring Stay-At-Home/Shelter-In-Place With Exceptions for “Essential Businesses”

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A number of governors have issued executive orders requiring the respective residents to remain at home for periods specified in the orders in response to the COVID-19 crisis. As of March 23, 2020, the governors of the following states have issued executive orders that cover the entire states^[1]:

- California – Executive Order N-33-20
- Colorado – Executive Order D 2020 013^[2]
- Connecticut – Executive Order 7H
- Delaware – Fourth and Fifth Modifications of the Declaration of a State of Emergency for the State of Delaware Due to A Public Health Threat
- Illinois – Executive Order 2020-10
- Indiana – Executive Order 20-08
- Kentucky – Executive Order 2020-246
- Louisiana – Proclamation Number 33 JBE 2020
- Maryland – Order Number 20-03-23-01
- Massachusetts – COVID-19 Order No. 13
- Michigan – Executive Order 2020-21
- Nevada – Declaration of Emergency Directive 003
- New Jersey – Executive Orders 104 and 107
- New York – Executive Order 202
- Ohio – Department of Health Director’s Stay at Home Order^[3]

Related People

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- Oregon – Executive Order 20-12
- Pennsylvania – an unnumbered order issued March 19, 2020
- West Virginia – Executive Order No. 9-20
- Wisconsin – Order to be issued March 24, 2020

In addition to the statewide orders, a number of local jurisdictions in other states have similar orders in effect.

Each order limits the business activities in the state to “essential business,” or some similar term set forth in the respective orders, beyond those activities which can be performed from employees’ place of residence. Each order has distinctive definitions setting out what constitutes an essential business, but all have a genesis from a memorandum issued by the United States Department of Homeland Security (the “Memo”).^[4] The Memo provides a list of 16 critical infrastructure sectors “whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.” These 16 sectors are:

1. Chemical sector
2. Commercial facilities sector
3. Communications sector
4. Critical manufacturing sector
5. Dams sector
6. Defense industrial base sector
7. Emergency services sector
8. Energy sector
9. Financial services sector
10. Food and agriculture sector
11. Government facilities sector
12. Healthcare and public health sector
13. Information technology sector
14. Nuclear reactors, materials, and waste sector
15. Transportation systems sector
16. Waste and wastewater sector

In order to maintain operations to the public, a business must be a part of one of the above sectors, which can include in support of businesses within the sector. For example, manufacturers of personal protective equipment can (and



should) run at full capacity in support of hospitals and other healthcare facilities. Each state provides further definition and examples of the activities that qualify within the essential business sectors.

If a business is not included within the provided definitions of an essential business, such business may submit a request to a specified state agency to be deemed essential, and if the request is granted, the business could continue at full capacity. For example, in Connecticut a business would submit a request to the Department of Economic and Community Development and in New York a request would go to the Empire State Development Corporation.

For additional detail provided by the respective states, please see the [following table](#), which shall be regularly updated as governors of additional states issue executive orders in response to the COVID-19 crisis.

For more information, reach out to [Nicholas Anderson](#), [David Morehouse](#) or your regular Lathrop GPM contact.

[1] It is anticipated that additional states will implement similar measures in the near term, this list is current as of March 23, 2020.

[2] Colorado Executive Order D 2020 013 requires a fifty percent (50%) reduction in the workforce for nonessential businesses, all other states require a one hundred percent (100%) reduction.

[3] The Ohio order was issued by the Department of Health Director in conjunction with the Office of the Governor and Office of the Lieutenant Governor.

[4] Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, issued March 19, 2020.