

COVID-19: What employers need to know about California's "stay at home" order (United States)

March 23, 2020

On March 19, 2020, in an effort to "bend the curve, and disrupt the spread" of COVID-19, California Governor Gavin Newsom issued a statewide executive Order (Executive Order N-33-20) directing all California residents to "stay home or at their place of residence," effective midnight on March 20, 2020 until further notice. This notice came just one hour after Los Angeles issued a similar county-wide order, and days after the Bay area and Orange County issued their own orders. The California statewide order was the first order of its kind, and has since been followed by states such as New York and Illinois.

Below we address some of the common questions employers have around the new statewide order.

What businesses are covered / exempt?

The order directs "all individuals living in the State of California to stay at home or at their place of residence" except "as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/critical-infrastructure-sectors>." Those 16 sectors are those whose assets, systems, and networks, whether physical or virtual, have been considered by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) as so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, economic security, and/or the public health or safety of the United States. The 16 sectors include:

- Chemical Sector
- Commercial Facilities Sector
- Communications Sector
- Critical Manufacturing Sector
- Dams Sector
- Defense Industrial Base Sector
- Emergency Services Sector
- Energy Sector
- Financial Services Sector
- Food and Agriculture Sector
- Government Facilities Sector

- Healthcare and Public Health Sector
- Information Technology Sector
- Nuclear Reactors, Materials, and Waste Sector
- Transportation Sector
- Water and Wastewater Systems Sector

On March 19, 2020, CISA released guidance to help state and local jurisdictions, and the private sector, identify and manage their essential workforce while responding to COVID-19. On March 22, 2020, the Governor released a similar list of “exempt sectors,” tracking in large part the CISA guidance and adding some additional sectors and categories of employees.

The Governor’s website also provides some insight. Listed on as exempted businesses are those in the federal critical infrastructure sectors plus “critical government services, schools, childcare, and construction, including housing construction[.]” The website also lists as “essential” services the following: (1) gas stations; (2) pharmacies; (3) food (grocery stores, farmers markets, food banks, convenience stores, take-out and delivery restaurants); (4) banks; (5) laundromats / laundry services; and (6) essential state and local government functions will also remain open, including law enforcement and offices that provide government programs and services. Under “What’s closed,” the website lists: (1) dine-in restaurants; (2) bars and nightclubs; (3) entertainment venues; (4) gyms and fitness studios; (5) public events and gatherings; (6) convention centers; and (7) hair and nail salons.

How does the order interact with local orders (e.g., city, county)?

A number of jurisdictions issued their own stay-at-home orders prior to the issuance of the statewide order, such as Los Angeles and Orange county. The statewide order does not expressly address how the statewide order should be interpreted with these local orders. However, on the Governor’s website, in response to the question: “How does this order interact with local orders to shelter in place? Does it supersede them?,” it states “This is a statewide order.” A previous version of that answer stated that local orders may remain in place, but cannot be more permissive than the statewide order. This means that if a local ordinance is more permissive than the statewide order, it likely would not be effective. This will impact orders such as the Los Angeles county order which permits businesses who service work-from-home offices (but is not expressly permitted under the statewide order).

Does the order shut down government services?

No. According to the order, essential state and local government functions will remain open “including law enforcement and offices that provide government programs and services.” Law enforcement and government functions are also deemed critical infrastructure by the federal government.

Do employers require express authorization from the state to remain open?

No. The Governor’s website makes clear that if your business or organization is on the Governor’s list of exempt

sectors, “it may still operate. You do not need to obtain any specific authorization from the state to do so.”

Do employers still need to pay taxes?

Yes. The Governor’s website makes this clear, and state and federal deadlines have been extended. State taxes are now due on July 15, 2020.

What activities are permitted?

Workers in the exempt industry may continue work. The order also provides that the “supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and healthcare.” Therefore, Californians are permitted to leave their home to obtain such services or to facilitate “authorized necessary activities,” however when they do they must practice social distancing and follow other guidance from the State healthcare officials. Although the order does not define “authorized necessary activities,” the Governor’s website has clarified issues about permissive activities to obtain healthcare, obtain prescriptions, and to get exercise so long as social distancing guidelines and other guidelines are followed.

Takeaways for businesses

- **Health & Safety.** In this time of emergency, the health of your employees and their families and your own health is paramount. That should be your first consideration.
- **Consider Critical Infrastructure / Other Industries.** The 16 critical infrastructure sectors can be broad. There are also some industries that are identified by CISA but do not appear on the Governor’s exempt business document. Other industries are identified essential on both the Governor’s website, and in municipal and county guidance. Thus, determining whether your business is exempt, essential, or subject to closure requires close attention.
- **Consider WARN Act Implications.** If your business meets the thresholds under the California and Federal WARN acts, and your business either shuts its doors or engages in a significant reduction of hours, you may need to provide notice. It’s important to note that Governor Newsom issued an executive order on March 18, 2020 waiving the 60 day notice period under Cal-WARN. For more information, [click here](#).
- **Payroll Considerations.** If your business decides to terminate employees and close its doors to operations, you will need to consider how payroll will operate either remotely or in person (identified as a critical infrastructure service). Terminated employees in California are entitled to their pay upon termination according to a strict schedule. It’s important that in this uncertain time businesses do not ignore their day-to-day wage and hour obligations owed toward employees (including employees on a leave of absence).

If you and your business require further guidance on these issues or navigating the new California order, structuring or reviewing reductions in force, including layoffs and reduction in hours in these uncertain times, please reach out to one of the key contacts listed.

To help our clients manage the employment challenges of COVID-19, wherever their employees are located, we also provide the following resources that may be useful to you:

- We have built out and are continually updating a Global Labor and Employment Tracker as a resource for

comparative perspectives on employment law obligations in light of COVID-19.

- Here is a link to our overall COVID-19 hub, where we have collected all our alerts and other resources.
- The coronavirus alerts and other resources can also be identified country by country here.

Your Key Contacts



Peter Stockburger

Partner, San Diego

D +1 619 595 8018

peter.stockburger@dentons.com