# What Employers Need To Know About California's New Regional Stay Home Order

Insights
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California Governor Gavin Newsom just announced a Regional Stay Home Order on December 3 that could soon have a dramatic impact on businesses in the state. Unlike previous orders, the Regional Stay Home Order focuses on shutting down regions, not counties, based on hospital capacity in each area. The order takes effect at 1pm on December 5, 2020 for any specific region when ICU capacity for hospitals in that region drops below 15%. What do employers need to know about this latest development?

**Who Is Currently Affected By The Order?**
The order is not currently in effect in any regions. Newsom predicts, however, that the Bay Area will likely fall under the order by mid-December, while the other regions will likely hit the 15% threshold by early December. The California Department of Public Health will identify on covid19.ca.gov any regions that hit the 15% threshold. Once a region falls under the order, businesses will have 24 hours to comply with the restrictions.

**What Are The Five Regions?**
The Order divides California counties into five regions based on the regional hospital and healthcare systems. The regions are:

- **Northern California:** Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Shasta, Siskiyou, Tehama, Trinity
- **Bay Area:** Alameda, Contra Costa, Marin, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma
- **Greater Sacramento:** Alpine, Amador, Butte, Colusa, El Dorado, Nevada, Placer, Plumas, Sacramento, Sierra, Sutter, Yolo, Yuba
- **San Joaquin Valley:** Calaveras, Fresno, Kern, Kings, Madera, Mariposa, Merced, San Benito, San Joaquin, Stanislaus, Tulare, Tuolumne
- **Southern California:** Imperial, Inyo, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura

**Which Businesses Are Impacted?**

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Once the order is triggered in a region, the restrictions will go into effect within 24hours and will last for at least three weeks. Restrictions in the region will continue until the CDPH's four-week projections of available ICU bed capacity is at least 15%.

***The following sectors in a triggered region must close temporarily:***

- Indoor and outdoor playgrounds
- Indoor recreational facilities
- Hair salons and barbershops
- Personal care services
- Museums, zoos, and aquariums
- Movie theaters
- Wineries
- Bars, breweries, and distilleries
- Family entertainment centers
- Cardrooms and satellite wagering
- Limited services
- Live audience sports
- Amusement parks

Additionally, hotels and lodging entities may not accept or honor out-of-state reservations for non-essential travel unless the guests quarantine in the hotel or entity for at least the minimum time period required for quarantine.

***The following sectors in a triggered region may stay open:***

- Critical infrastructure (when remote work is not possible)
- Schools that are already open
- Retail (at 20% capacity)
- Shopping centers (at 20% capacity with entrance metering and no eating or drinking in the stores)
- Restaurants (take-out, pick-up, and delivery only)
- Places of worship and political expression (outdoor services only)
- Entertainment production including professional sports without live audiences
- Non-urgent medical and dental care
- Child care and pre-K

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Note that there remains uncertainty regarding two key aspects of this program. First, while the state's COVID-19 website indicates that critical infrastructure businesses may only remain open if remote work proves impossible, the public health order contains no such limiting language. Second, the state's COVID-19 website indicates that restaurants are only permitted to remain open for take-out, pick-up, and delivery services, but again, the order does not provide such detail. While it stands to reason that the information on the website remains accurate and we advise businesses to follow those limitations, we will monitor this uncertainty and provide further information when clarity emerges.

**Businesses May Also Still Have To Obey Local Orders**

Employers located in a county or city that has issued a local Shelter in Place (or similar) Order should consult their local order to determine whether their business or organization faces additional restrictions.

**What Should Employers Do?**

If your business may be impacted by this order, you should think ahead and quickly create a plan to address the need to close or reduce operations upon the 24-hour notice. You should consider the following when implementing your plans for a possible shutdown:

1. **Prepare for staffing decisions.** Consider which employees will continue to work at the workplace, which employees will work from home, which employees' hours will be reduced, and which employees will need to go on leave, furlough or otherwise.
2. Consider whether your business will need to implement a **furlough or layoff**. If so, organize the furlough/layoff ahead, so you can implement it when necessary.
3. Review your **leave policies** and consider which policies will be available to employees if the business is forced to close.
4. Create a plan to **communicate the business operation changes** to employees.

**Businesses Face Serious Consequences For Failing to Comply**

California law provides other mechanisms that provide a strong incentive for businesses to comply with the order:

- **Unfair Competition Law Claim** – A business that violates the order could be sued either by the Attorney General or a person or entity allegedly harmed by the unfair competition (which could include a business' competitors) for injunctive relief, restitution, and attorneys' fees.
- **Retaliation and/or Wrongful Termination Claims** – An employee who refuses to come to work in a business that is not exempted from the order and is subjected to disciplinary action, termination, or other negative consequences could sue for alleged unlawful retaliation or wrongful termination in violation of public policy.

**Conclusion**

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For now, we will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our California offices, or any member of our COVID-19 Taskforce. You can also review our nationwide Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus and our FP Resource Center For Employers, maintained by our Taskforce.

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*This Legal Alert provides an overview of a specific state development. It is not intended to be, and should not be construed as, legal advice for any particular situation. The authors wish to thank Law Clerk Abby Harrington for her significant contributions to developing this alert.*

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