



# California Under Stay-At-Home Order, Shutting Down Non-Essential Businesses

Insights

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California Governor Gavin Newsom recently issued Executive Order N-33-20, requiring all Californians – except for those falling within an exception discussed below – to stay at home indefinitely. The Order carves out exceptions to maintain the continuity of 13 of the critical infrastructure sectors identified by the Cybersecurity and Infrastructure Security Agency (CISA). The State Public Health Officer also issued a list of Essential Critical Infrastructure sectors that are exempt from the Executive Order.

**[Ed. Note: As of April 28, 2020, the State Public Health Officer’s list of Essential Critical Infrastructure sectors was updated to include links to relevant guidance. You should review the list to see if there is guidance published for your sector or consult with your Fisher Phillips attorney.]**

## California’s Essential Critical Infrastructure

The State Public Health Officer has designated the following 13 sectors as Essential Critical Infrastructure and the employees in those sectors that are permitted to continue working in California:

- **Healthcare/Public Health** – Including physicians, dentists, psychologists, veterinarians, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacy employees, social workers, hospital and laboratory personnel, physical and occupational therapists, diagnostic and therapeutic technicians and technologists, employees of clinics and blood banks, and employees of manufacturers and distributors of medical equipment, medical supplies, pharmaceuticals, and cleaning and sanitizing supplies.
- **Emergency Services** – Including law enforcement officers, Emergency Management Systems personnel, search and rescue personnel, private security, county workers responding to reports of abuse and neglect (for children, elder and dependent adults), workers supporting the operation and maintenance of essential public works (including dams, locks, levees, bridges, and water and sewer main breaks), plumbers, electricians, and exterminators.
- **Food and Agriculture** - Including workers supporting grocery stores, pharmacies, and other stores that sell food and beverage products; employees of restaurant carry-out and quick serve food operations; food manufacturing and processing employees; farm workers; and cannabis and dietary supplement retail workers.

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- **Energy** – Including employees involved in all aspects of the generation, transmission, and distribution of electricity, petroleum, and natural and propane gas.
- **Water and Wastewater** – Including employees needed to operate and maintain drinking water and wastewater/drainage infrastructure.
- **Transportation and Logistics** – Including warehouse workers, employees of logistics and distribution companies, mass transit workers, taxi and delivery drivers, maritime and railroad employees, private and public postal shipping workers, employees of automotive repair and maintenance facilities, employees in the aviation industry (including air cargo operations), and employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels and other equipment involved in the movement of cargo and passengers.
- **Communications and Information Technology** – Including employees of wireline and wireless providers, cable service providers, and radio, television, and media services. Also data center, communications center and service center employees and workers who support information technology infrastructure for cloud computing, business computing, web-based services and other IT applications.
- **Other Community-Based Government Operations and Essential Functions** – In addition to various governmental workers, this category includes security staff, construction workers, employees of commercial retail stores that supply essential sectors (including auto supplies and repair, hardware and home repair, pet supplies and home appliances), professional services (law and accounting) firms that assist in compliance with legally mandated activities and critical sector services, faith based services that are provided through streaming or other technology, laundromats and laundry services, and rental car companies. It also includes workers supporting public and private childcare establishments, pre-K establishments, K-12 schools, colleges, and universities for purposes of distance learning, provision of school meals, or care and supervision of minors to support essential workers across all sectors.
- **Critical Manufacturing** – Including workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.
- **Hazardous Materials** – Including workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material productions, workers at laboratories processing test kits, and workers who support hazardous material response and cleanup.
- **Financial Services** – Including workers who process and maintain systems for processing financial transactions and services (including insurance services, wholesale funding, and settlement and clearing services), who provide consumer access to banking and lending services, and who support financial operations.
- **Chemical** – Including workers in chemical manufacturing plants, laboratories and distribution facilities; employees involved in transportation of raw materials and chemicals; and workers

involved in the production of protective and cleaning medical solutions, personal protective medical and packaging which prevents the contamination of essential products such as food, water, and medicine.

- **Defense and Industrial Base** – Including employees of contractors and subcontractors necessary to meet national security commitments to the federal government and U.S. military in an array of industries, including aerospace, mechanical and software engineers, manufacturing/production, IT, security, intelligence, and aircraft mechanics and maintenance personnel.

### **Businesses May Also Still Have to Obey Local Orders**

Businesses and organizations falling under the critical infrastructure categories need not receive special authorization from the state to continue operations. However, 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. Nonetheless, it is questionable whether a local order may prohibit a business from operating that is designated as part of the federal critical infrastructure.

### **Businesses Face Serious Consequences for Failing to Comply**

Persons who flout the Executive Order can face criminal prosecution for a misdemeanor punishable by up to \$1,000 and/or six months imprisonment.

In addition, California law provides other mechanisms that provide a strong incentive for businesses to comply with the Executive Order:

- **Unfair Competition Law Claim** – A business that violates the Executive Order could be sued either by the Attorney General or a person or entity 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 Executive Order and is subjected to disciplinary action, termination, or other negative consequences could sue for unlawful retaliation or wrongful termination in violation of public policy.

### **Conclusion**

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.

*This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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