



Employers Grapple With Essential Business Designations Resulting From Shelter-In-Place and Shutdown Orders

Insights

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As governors and local leaders across the country are issuing mandates for employees of “nonessential” businesses to stay home, businesses are grappling with a host of issues, including whether they qualify as an “essential” business, how to get clarification on their status, the penalties for getting it wrong, and what to do if they believe they should be deemed essential and are not. Unfortunately, the answers are not always clear and vary by jurisdiction at the state and local level. The Fisher Phillips Essential Business Task Force is monitoring the situation and has assembled the following guidance to assist.

The governors of [California](#), [Connecticut](#), [Delaware](#), [Illinois](#), [Louisiana](#), [Massachusetts](#), [Nevada](#), [New York](#), [Ohio](#), Pennsylvania ([Order](#) and [Amended Order](#)) and [Puerto Rico](#) have all ordered workers of nonessential businesses to stay home. Governors of other states have issued more limited restrictions, including the closure of restaurants and bars for anything other than takeout food, theaters, fitness centers and certain [nonessential retail establishments](#). And mayors of cities are also issuing shelter in place orders impacting employers. In many states including California, Connecticut, New Jersey and Illinois, city and county orders remain in effect so long as they do not conflict with statewide orders.

What Is An “Essential” Business?

Which businesses are “essential” is being determined at the state and local level. But most states and localities are turning to the [essential critical infrastructure guidelines](#) issued by the U.S. Department of Homeland Security for guidance. Essential businesses almost universally include:

HEALTH CARE OPERATIONS

- research and laboratory services
- hospitals
- walk-in-care health facilities
- veterinary and animal health services
- elder care
- medical wholesale and distribution
- home health care workers or aides

- doctor and dentist offices
- nursing homes, or residential health care facilities or congregate care facilities
- medical supplies and equipment providers

INFRASTRUCTURE

- utilities including power generation, fuel supply and transmission
- public water and wastewater
- telecommunications and data centers
- airports/airlines
- transportation infrastructure such as bus, rail, or for-hire vehicles, garages

MANUFACTURING

- food processing, including all foods and beverages
- chemicals
- medical equipment/instruments
- pharmaceuticals
- safety and sanitary products
- telecommunications
- agriculture/farms
- paper products

RETAIL

- grocery stores including all food and beverage stores
- pharmacies
- convenience stores
- farmer's markets
- gas stations
- restaurants/bars (but only for take-out/delivery)
- hardware and building material stores

SERVICES

- trash and recycling collection, processing and disposal
- mail and shipping services
- laundromats/dry cleaning

- building cleaning and maintenance
- child care services
- auto repair
- warehouse/distribution and fulfillment
- funeral homes, crematoriums and cemeteries
- storage for essential businesses
- animal shelters or animal care or management

NEWS MEDIA

FINANCIAL INSTITUTIONS

- banks
- insurance
- payroll
- accounting

PROVIDERS OF BASIC NECESSITIES TO ECONOMICALLY DISADVANTAGED POPULATIONS

- homeless shelters and congregate care facilities
- food banks
- human services providers whose function includes the direct care of patients

CONSTRUCTION

- skilled trades such as electricians, plumbers
- other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes

DEFENSE

- defense and security-related operations supporting the U.S. Government or a contractor to the U.S. government

SERVICES NECESSARY TO MAINTAIN THE SAFETY, SANITATION AND ESSENTIAL OPERATIONS OF RESIDENCES OR OTHER ESSENTIAL BUSINESSES

- law enforcement
- fire prevention and response
- waste management
- emergency management and response

- building cleaners or janitors
- automotive repair

What Should You Do If Your Business Is Not On The Essential Business List But You Believe It Should?

Nonessential businesses in the supply chain for essential businesses have successfully lobbied for essential designations or waivers from shutdown orders. For example, the governor of Pennsylvania expanded the list of essential businesses to include all sectors of the nature resource and mining industry, dry cleaning and laundromats, insurance carriers and agencies, and accounting and tax preparation services.

Businesses in [Pennsylvania](#), [New York](#) and [Connecticut](#) can apply for relief online. In other jurisdictions, what to do if you believe your business should be designated as essential is much less clear although further guidance is expected. Pennsylvania has made clear that businesses requesting a waiver must remain closed while they await a decision.

What Are The Penalties For Staying In Violation?

Penalties vary from state to state but can include citations, fines, license suspension and criminal penalties.

Conclusion

Fisher Phillips and the Fisher Phillips Essential Business Task Force 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, or [any member of our Essential Business or 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 developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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