Maryland Governor Issues Business Closure Executive Order

Insights
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While specifically stating that he was not issuing a shelter in place order, Maryland Governor Larry Hogan announced the shutdown of non-essential businesses effective at 5 P.M., March 23, due to COVID-19 pandemic. The Maryland Executive Order follows the guidance issued by the Department of Homeland Security. The Maryland Office of Legal Counsel also issued interpretive guidance outlining a non-exhaustive list of essential businesses. According to that guidance, the following businesses are "essential" –

1. **The Chemical Sector** includes, but is not limited to:
    1. Pharmaceutical manufacturers.
    2. Chemical manufacturers.
    3. Distributors of chemicals and pharmaceuticals.
2. **The Commercial Facilities Sector** includes, but is not limited to:
    1. Lodging.
    2. Building and property maintenance companies, including without limitation plumbers, electricians, HVAC service companies, roofers, environmental services companies, exterminators, arborists, and landscapers.
    3. Janitorial firms.
    4. Companies that sell supplies and materials for maintenance of commercial and residential buildings, including "big box" home improvement supply stores, plumbing distributors, electrical distributors, and HVAC distributors.
    5. Laundromats, dry cleaners, and laundry services.
    6. Commercial and residential construction companies.
    7. Self-storage facilities.
    Please note: Casinos, racetracks, simulcast betting facilities, enclosed malls, certain recreational establishments, and certain retail businesses are subject to specific provisions of this and other Orders, and are required to close. Please read the Order carefully.
3. **The Communications Sector** includes, but is not limited to:
    1. Broadcasting companies and stations.

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    2. Cable TV companies.
    3. Telephone (cellular and landline) companies.
    4. Internet service providers.
4. **The Critical Manufacturing Sector** includes, but is not limited to, manufacturing of:
    1. Steel, iron, and aluminum products.
    2. Engines, motors, turbines, generators, and power transmission equipment.
    3. Earth-moving, mining, agricultural, and construction equipment.
    4. Parts for water, electric, and telecommunications utility infrastructure.
    5. Land, air, and water vehicles, and related parts.
    6. Medical equipment.
    7. Personal protective equipment.
    8. Cleaning and sanitation equipment and supplies.
5. **The Defense Industrial Base Sector** includes, but is not limited to:
    1. Companies that research, develop, manufacture, or integrate weapons, defense, or intelligence systems or assets.
    2. Private contractors that support defense and intelligence agencies.
6. **The Emergency Services Sector** includes, but is not limited to:
    1. Law enforcement.
    2. Emergency medical services.
    3. Emergency management.
    4. Fire and rescue services.
    5. Private ambulance companies.
7. **The Energy Sector** includes, but is not limited to:
    1. Companies engaged in electricity production (excluding hydroelectric and nuclear, which are included in other sectors).
    2. Companies engaged in the production, refining, storage, transportation, distribution, and sale of oil, gas, and propane products, including gas stations and truck stops.
    3. Companies that provide utility maintenance services.
8. **The Financial Services Sector** includes, but is not limited to:
    1. Banks and credit unions.
    2. Non-bank lenders.
    3. Payroll processing companies.

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4. Payment processing companies.
5. Armored car companies.
6. Insurance companies.
7. Securities and investment companies.
8. Accounting and bookkeeping firms.

9. **The Food and Agriculture Sector** includes, but is not limited to:
    1. Grocery stores.
    2. Farmer's markets.
    3. Convenience stores.
    4. Alcoholic beverage stores and distributors, distilleries, and wineries.
    5. Institutional food service and supply companies.
    6. Food manufacturing and processing.
    7. Pet supply stores.
    8. Veterinary hospitals, clinics, and kennels.
    9. Companies that manufacture, maintain, and sell agricultural equipment.
    10. Companies that manufacture, or support the manufacturing of paper products.
    Please note: Restaurants and bars are subject to specific provisions of the Order, and are required to close (except for carry-out, delivery, and drive-through sales). Please read the Order carefully.

10. **The Government Facilities Sector** also encompasses private persons and entities that support the judicial system including, but not limited to:
    1. Lawyers and law firms.
    2. Court reporters.
    3. Bail bondsmen.

11. **The Healthcare and Public Health Sector** includes, but is not limited to:
    1. Hospitals.
    2. Healthcare systems and clinics.
    3. Offices of health care providers, including physicians, dentists, and pharmacists.
    4. Physical, occupation, and speech therapists.
    5. Behavioral health facilities and professionals, including psychologists, mental health counselors, and substance abuse counselors
    6. Rehabilitation facilities.

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7. Diagnostic facilities, including radiology, imaging, and laboratory facilities.
8. Health plans, payors, and billing companies.
9. Funeral homes and crematoriums.
10. Senior living facilities, including independent living, assisted living, and skilled nursing.
11. Manufacturers and distributors of medical equipment and supplies.
12. Medical cannabis growers, processors, and dispensaries.
13. Home health care companies.
14. Pharmacies,

12. **The Information Technology Sector** includes, but is not limited to:
    1. Companies that design, develop, distribute, host, sell, and support information technology software and hardware.
    2. Companies that provide network routing, access, and configuration services.
13. **The Transportation Systems Sector** includes, but is not limited to:
    1. Airlines and operators of commercial aircraft (manned and unmanned).
    2. Airports, air strips, heliports, and seaplane bases.
    3. Railroads.
    4. Motor carriers.
    5. Carriers of marine freight, including ocean carriers and inland carriers.
    6. Marine, rail, truck, and intermodal terminals, and operators thereof.
    7. Stevedores, longshoremen, baggage handlers, and others who handle cargo at transportation hubs.
    8. Courier, package delivery, mail service, and mail management companies.
    9. Warehousing and distribution companies.
    10. Pipeline owners, operators and maintenance companies.
    11. Lessors of transportation assets, including railcars and truck trailers.
    12. Companies that supply parts, or provide maintenance and repair services for transportation assets and infrastructure, including aircraft, marine vessels, locomotives, rail cars, trucks, buses, cars, heavy equipment, roads, bridges, tunnels, airports, air strips, marine terminals, railroads.
    13. Automotive supply stores and repair shops.
14. **The Water and Wastewater Systems Sector** includes, but is not limited to:
    1. Municipal, community, and other drinking water and wastewater systems and facilities.

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2. Well drillers.
3. Companies that provide maintenance and inspection services for water and wastewater assets, including treatment works, residential water treatment systems, piping, pumps, tanks, drains, conveyances, and monitoring systems.
4. Water testing companies.

15. **Supporting Firms**. The federal critical infrastructure sectors include firms providing the following to any other business, organization, or facility included in the federal critical infrastructure sectors:
    1. Staffing and/or payroll services.
    2. Essential raw materials, products, or services.

The legal counsel guidance provides that Door-to-Door Solicitation even for named "essential" businesses should be discontinued as it would likely violate social-distancing guidelines. The interpretive guidance also repeatedly provides that the list set forth above is non-exhaustive. It goes on to say: "The fact that a particular business, organization, or facility is not included in the list does not mean it is excluded from the federal critical infrastructure sectors." Additional guidance in this regard can be found here.

What Are The Penalties For Violation?

In Maryland, violation of a governor's executive order declared during a state of emergency is punishable with a fine of up to $5,000 or one year in jail or both. Maryland initially indicated that it was seeking voluntary compliance. Now that more restrictive measures have been deemed necessary as public gatherings continued, enforcement measures are likely to be heightened with penalties imposed.

Additional Announcements regarding Relief Measures.

Governor Hogan announced a number of programs to help small businesses due to the pandemic. The state is providing two new emergency relief funds through the state departments of commerce and labor to help small businesses and nonprofits, through the offer of grants and loans.

- Maryland's grant fund will offer up to $10,000 for organizations with fewer than 50 employees for payroll expenses, mortgage payments and utilities. A fund will offer low-interest loans of up to $50,000 for organizations with up to 50 employees, with zero interest for a limited time.
- Maryland's Department of Labor created a $7 million Layoff Aversion Fund to help companies avoid laying off workers. According to the website "The award (up to $50,000 per applicant) will be a quick deployable benefit and customizable to the specific needs of your business to minimize the need for layoff." Applications will be reviewed within 2 days of submission. Applications will receive a response within two days.

Conclusion

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Fisher & Phillips 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 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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