Florida Governor Issues Safer At Home Order – What Do Businesses Need To Know? (UPDATED)

Insights
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Florida Governor Ron DeSantis issued a Safer At Home Order for the State of Florida yesterday. It goes into effect just after midnight (at 12:01 am) on the morning of Friday, April 3, 2020, and is set to expire on Thursday, April 30, 2020. The Order limits movement and personal interaction outside of the home to only those necessary to obtain or provide essential services, or to conduct essential activities.

The term "essential services" is defined as and encompasses the list detailed by the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce. Essential services also include the businesses and activities designated by Florida Executive Order 20-89 and its attachment, which consists of the list propounded by Miami-Dade County Emergency Order 07-20, as amended in multiple orders. Other essential services may be added under the Order and nothing in the Order prohibits individuals from working from home.

Thus, when determining whether your business qualifies as an essential business, you should consult the Department of Homeland Security's Guidance and Miami-Dade County Emergency Order 07-20 and its amendments. The Order also indicates that a current list of essential services will be maintained on the Florida Department of Health's website. For purposes of the Order, essential activities also include attending religious services, participating in recreational activities (consistent with social distancing guidelines), taking care of pets, and caring for or otherwise assisting a loved one or friend.

State v. Local Law

Governor DeSantis has taken a gradual approach to social distancing measures related to COVID-19. On March 17, he ordered all bars and restaurants across the state to discontinue all dine-in service. On March 27, the he ordered all persons who enter the state of Florida after being in New York, New Jersey, and Connecticut to isolate or self-quarantine for two weeks.

In the meantime, the state's largest counties, including Miami-Dade, Broward, Palm Beach, Orange, and Hillsborough, issued Stay at Home or Safer at Home orders requiring residents to stay home, with certain exceptions, and ordering all non-essential businesses to close, or cease in-person operations. In some cases, however, these orders were only limited to those non-essential businesses that could not perform their work in adherence with the Centers for Disease Control

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guidance regarding social-distancing and other sanitary matters. Miami-Dade's business closure order went into effect on March 19, while Orange County and Hillsborough followed on March 26 and 27, respectively.

Governor DeSantis' Order supersedes any conflicting order issued by local officials but only to the extent that such local order allows essential services or essential activities that are prohibited by the State of Florida's April 1, 2020 Safer At Home Order. However, also on April 1, 2020, Governor DeSantis issued an amendment clarifying that the Safer At Home Order supersedes any conflicting official action or order issued by local officials in response to COVID-19. Therefore, the list of essential businesses set forth in the Governor's Order is now the only applicable essential businesses list in the state.

Additionally, Governor DeSantis released FAQs to assist with interpreting his Safer at Home Order. The FAQs state that local authorities can adopt requirements directly on businesses, operations or venues, including buildings, beaches and parks that may be stricter than the Governor's Executive Order.

Senior Citizens And Individuals With Significant Underlying Medical Conditions

Governor DeSantis' Order directs senior citizens and individuals with a significant underlying medical condition to stay at home and take all measures to limit the risk of COVID-19. The Order references a few such significant underlying medical conditions, which include chronic lung disease, moderate-to-severe asthma, serious heart conditions, immunocompromised status, cancer, diabetes, severe obesity, renal failure, and liver disease.

However, the FAQs released by Governor DeSantis clarify that senior citizens and individuals with significant underlying medical conditions are permitted to leave their homes when necessary to obtain or provide essential services or to conduct essential activities. Therefore, senior citizens and individuals with significant medical conditions are permitted to leave their homes to go to work at an essential business. Employers should refer to Fisher Phillips' "Top 10 Things Employers Need To Know About DOL's New COVID-19 Rules" for guidance on how Executive Order 20-91 impacts employee eligibility for Emergency Paid Sick Leave in light of the recently issued FAQs.

What Is An Essential Business?

The U.S. Department of Homeland Security Essential Critical Infrastructure Workforce Guidance and Miami-Dade County Emergency Order 07-20 and its amendments include the following as Essential Businesses:

HEALTH CARE OPERATIONS

- Research and laboratory services;
- Hospitals, doctors' and dentists' offices, clinics;
- Walk-in-care/Urgent care health facilities;
- Veterinary and animal health services;

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- Elder care;
- Rehabilitation facilities, physical therapists, and therapists;
- Mental health professionals and psychiatrists;
- Medical wholesale and distribution;
- Home health care workers or aides;
- Nursing homes, or residential health care facilities or congregate care facilities;
- Medical supplies and equipment providers.

INFRASTRUCTURE, TRANSPORTATION, AND MARINE SERVICES

- Utilities, including power generation, fuel supply and transmission;
- Public water and wastewater;
- Telecommunications and data centers;
- Airports/Airlines;
- Taxis;
- Other private transportation providers providing transportation services via automobile, truck, bus, or train.
- Transportation infrastructure, such as bus, rail, or for-hire vehicles and garages.
- Private and municipal marinas;
- Boat launches;
- Docking services;
- Fueling services;
- Marine supply and other marina services.

MANUFACTURING

- Food processing, including all foods and beverages;
- Chemicals;
- Medical equipment and instruments;
- Pharmaceuticals;
- Safety and sanitary products;
- Telecommunications;
- Agriculture/Farms;
- Paper products;
- Factories:

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- Manufacturing facilities;
- Bottling plants;
- Other industrial uses.

RETAIL

- Grocery stores and supermarkets, including all food and beverage stores;
- Food banks;
- Pharmacies;
- Convenience stores;
- Farmer's markets, and farm and produce stands;
- Gas stations;
- Restaurants/bars (but only for take-out/delivery);
- Hardware and building material stores;
- Other establishments engaged in the retail of food products, pet supply, and such other household consumer products as cleaning and personal care products;
- Other stores that sell groceries and other non-grocery products, and products necessary to maintaining the safety, sanitations, and essential operations of residents;
- Businesses that ship or deliver groceries, food, goods, or services directly to residences;
- Restaurants and other facilities that prepare and serve food, but only for delivery, takeout, or drive-thru services.

SERVICES

- Trash and waste 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;
- Sales of computer or telecommunications devices and the provision of home telecommunications;

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- Legal and accounting services as necessary to assist in compliance with legally mandated activities.

NEWS MEDIA

- Newspapers;
- Television;
- Radio;
- Other media services.

FINANCIAL INSTITUTIONS

- Banks and other related financial institutions;
- Insurance;
- Payroll.

PROVIDERS OF BASIC NECESSITIES TO ECONOMICALLY DISADVANTAGED POPULATIONS

- Homeless shelters and congregate care facilities;
- Food banks;
- Human services providers whose functions include the direct care of patients;
- Businesses providing food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals.

CONSTRUCTION

- Skilled trades such as electricians and plumbers;
- Other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes;
- Open construction sites, irrespective of the type of building;
- Architectural services;
- Engineering services;
- Land surveying services.

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 AND ESSENTIAL OPERATIONS OF RESIDENCES OR OTHER ESSENTIAL BUSINESSES

- Law enforcement;

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- Law enforcement;
- Fire prevention and response;
- Emergency management and response;
- Building cleaners or janitors;
- Local governments.

PET CARE

- Pet supply stores;
- Veterinarians;
- Pet boarding facilities;
- Animal shelters or animal care or management.

AGRICULTURE

- Food cultivation, including farming, livestock, and fishing.

AUTOMOBILE AND VEHICLE-RELATED OPERATIONS

- Gas stations;
- Auto-supply stores;
- Auto-repair facilities;
- New and used automobile dealerships;
- However, for each of the above, social distancing as advised by the CDC must be practiced.

HARDWARE STORES AND TRADESMEN

- Hardware stores;
- Contractors;
- Appliance repair personnel;
- Exterminators;
- Fumigators;
- Landscaping businesses;
- Pool care services;
- Service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences and other structures.

EDUCATION

- Private colleges, trade schools, and technical colleges;

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    - However, the above are only deemed essential as needed to facilitate online or distance learning;
- University, college, or technical college residence halls may also remain open to the extent needed to accommodate students who cannot return to their homes.

LOGISTICS

- Warehouses;
- Trucking;
- Consolidators;

SENIOR CARE

- Home-based care for seniors or adults;
- Assisted living facilities;
- Nursing homes;
- Adult day care centers;
- Senior residential facilities.

CHILDCARE

- Home-based care for children;
- Childcare facilities providing services that enable employees exempted to work as permitted, subject to group size and spacing restrictions.

OTHER OPERATIONS DEEMED ESSENTIAL

- Businesses providing mailing and shipping services, including post office boxes;
- Laundromats, dry cleaners, and laundry service providers;
- Businesses that supply office products needed for people to work from home;
- Businesses that supply other essential businesses with the support or supplies necessary to operate, and which do not interact with the general public;
- Businesses operating at any airport, seaport, or other government facility, including parks and government offices;
- Office space and administrative support necessary to perform exempted essential activities;
- Businesses providing propane or natural gas;
- Mortuaries, funeral homes, and cemeteries;
- Firearm and ammunition supply stores;

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- Businesses providing services to any local, state, or Federal government, including municipalities, pursuant to a contract with such government;
- Any business that is interacting with customers solely through electronic or telephonic means, and delivering products via mailing, shipping, or delivery services.

What Does This Mean For Employers?
Employers with operations in Florida should review the CISA guidance and Miami-Dade County Emergency Order 07-20, and its amendments, to determine if they are deemed non-essential and must close beginning on April 3, 2020 at 12:01 am.

Employers should also be prepared to address concerns from older employees and employees with underlying significant health conditions regarding whether or not they must come in to work. Employers should also carefully assess the availability of telework for these employees.

Conclusion
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 any of our Florida 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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