Cooley

Six Bay Area Counties Issue Shelter-in-Place Orders Effective March 17, 2020

March 17, 2020

Please see Cooley's alert published on April 1 for revised shelter-in-place orders.

On March 16, 2020, six Bay Area counties (Santa Clara, San Francisco, San Mateo, Marin, Alameda and Contra Costa) issued Orders directing all individuals living in these specific counties to shelter at their place of residence ***except*** to provide or receive certain ***Essential Services***, engage in certain ***Essential Activities*** or perform work for ***Essential Businesses and Governmental Services***. These Orders go into effect on March 17, 2020, and will continue in effect through April 7, 2020 (unless extended, rescinded, suspended, or amended). The Orders apply to for-profit, nonprofit or educational entities, regardless of the nature of the service, the function of the business, or the corporate entity or structure.

The key effects of these Orders on employers in these six counties are as follows:

Essential Businesses can continue to operate and are strongly encouraged to do so.

The Orders provide that Essential Businesses can remain open and operating and state that these businesses are "strongly encouraged to remain open." In addition, residents of the affected counties are permitted to leave their residences in order to operate Essential Businesses.

Essential Businesses are defined as the following:

1. Healthcare Operations and Essential Infrastructure (both defined below)
2. Grocery stores, certified farmers' markets, farm and produce stands, supermarkets and the like
3. Food cultivation, including farming, livestock and fishing
4. Businesses that provide food, shelter and social services and other necessities of life for economically disadvantaged or otherwise needy individuals
5. Newspapers, television, radio and other media services
6. Gas stations and auto-supply, auto-repair and related facilities
7. Banks and related financial institutions
8. Hardware stores
9. Plumbers, electricians, exterminators and other service providers who provide services that are necessary to maintaining the safety, sanitation and essential operation of residences, Essential Activities or Essential Businesses
10. Businesses providing mailing and shipping services, including post office boxes
11. Educational institutions – including public and private K-12 schools, colleges and universities – for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six feet per person is maintained to the greatest extent possible
12. Laundromats, dry cleaners and laundry service providers
13. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only
14. Businesses that supply products needed for people to work from home
15. Businesses that supply other Essential Businesses with the support or supplies necessary to operate
16. Businesses that ship or deliver groceries, food, goods or services directly to residences
17. Airlines, taxis and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in the Orders
18. Home-based care for seniors, adults or children
19. Residential facilities and shelters for seniors, adults and children
20. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities

21. Childcare facilities providing services that enable employees exempted in the Orders to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:
    a. Childcare must be carried out in stable groups of 12 or fewer ("stable" means that the same 12 or fewer children are in the same group each day)
    b. Children shall not change from one group to another
    c. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups cannot mix with each other
    d. Childcare providers must remain solely with one group of children

"**Healthcare Operations**" are defined to include hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare service providers, mental health providers, or any related and/or ancillary healthcare services. It also includes veterinary care and all healthcare services provided to animals. The Orders make note that that this exemption is to be construed broadly to avoid any impacts to the delivery of healthcare, which is also to be broadly defined. Healthcare Operations expressly does not include fitness and exercise gyms or other similar facilities.

Individuals may leave their residences to provide any services to the operations and maintenance of "**Essential Infrastructure**," which includes, but is not limited to, public works construction, construction of housing (in particular, affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national and local infrastructure for computing services, business infrastructure, communications and web-based services).

Even though such businesses may remain open, we would recommend that employers in Essential Businesses only require the onsite attendance of employees whose work is actually necessary to providing the essential products and services. This advice is based upon the definition of "Essential Activities" that applies to the activities of individual employees and the Orders' stated intent "to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling Essential Services to continue, to slow the spread of COVID-19 to the maximum extent possible."

Finally, even though Essential Businesses may remain open and operating, they must comply with the "**Social Distancing Requirements**," which include maintaining at least six feet between individuals, washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces and not shaking hands.

Employers that are not Essential Businesses can still operate with offsite employees and contractors and can still perform Minimum Basic Operations at their facilities.

All businesses within the counties covered by the Orders, except Essential Businesses, ***are required to cease all activities at facilities located within the counties except for Minimum Basic Operations.*** "**Minimum Basic Operations**" are defined by the Orders to include: (i) the minimum necessary activities to maintain the value of the business' inventory, ensure security, process payroll and employee benefits or for related functions; and (ii) the minimum necessary activities to facilitate employees of the business being able to continue. As with Essential Businesses, we would recommend that employers limit the number of onsite employees to those employees who are truly necessary to conduct the Minimum Basic Operations.

In addition to being able to conduct Minimum Basic Operations, the Orders are clear that "***businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).***" In addition, individuals are still permitted to leave their residence in order to carry out certain Minimum Basic Operations at an employer's facilities.

Like Essential Businesses, these Minimum Basic Operations must comply with the Social Distancing Requirements specified above.

Recommended steps for employers

Employers should first determine whether they fall into any of the Essential Business categories above. If they do, they should notify their employees that they will be expected to come into work to perform their duties. These Essential Business employers also should ensure they immediately implement the Social Distancing Requirements, if they have not already done so.

For those employers who do not fit into any of the Essential Business categories, they should immediately implement a requirement that employees and contractors work from home, to the extent they haven't already done so. In addition, these employers should determine what Minimum Basic Operations are needed for their businesses and which employees will be needed onsite to perform these functions. These employees should be notified immediately of their need to be in the office. And these employers also should ensure they immediately implement the Social Distancing Requirements.

If you have any questions about the Orders and/or whether your business may qualify for any of the exceptions listed above, or have any other employment questions or issues that have arisen given the Orders, please reach out to a member of the Cooley employment team to assist you with your questions.

Coronavirus resource hub

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