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BAY AREA COVID-19 SHELTER IN PLACE ORDERS – ESSENTIAL INFORMATION, AND SUGGESTED NEXT STEPS FOR IMPACTED BUSINESSES

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On March 16, 2020, seven Bay Area counties issued shelter in place orders that run from midnight on March 17th through April 7th, with the possibility that the period will be extended or shortened as the situation develops. This alert provides guidance on movement that is still allowed under the order and recommendations on immediate steps your business can take:

What movement do the orders still allow?

While everyone in the seven counties1 is "ordered to shelter at their place of residence," people can leave their residences for:

- Essential Activities – These include shopping for food, medical supplies, and household supplies; seeking medical care; engaging in outdoor activities including walking, hiking, or running; performing work at an Essential Business, or caring for family members or pets in another household.
- Work performing Essential Government Functions – Each government agency will determine what functions are essential, and identify appropriate employees and contractors to continue providing those services.
- Work at Essential Businesses – There are twenty one categories of Essential Businesses identified in the orders. A few of the relevant categories include:
  - Healthcare Operations, defined to include "hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services." The definition is intended to be construed broadly to avoid interfering with the delivery of healthcare.
  - Grocery stores, farmers' markets, supermarkets, convenience stores, and other retail locations that sell food as well as cleaning and personal care products.

- Newspapers, television, radio, and other media sources.
- Gas stations, auto supply, auto repair, and related facilities.
- Banks and related financial institutions.
- Restaurants, but only for delivery or carry out.
- Businesses that supply products necessary for people to work from home.
- Businesses that supply other essential businesses with the support or supplies necessary to operate.
- Businesses that ship or deliver groceries, food, goods or services to residences.
- Airlines, taxis, and private transportation services.
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities.

- Work on Essential Infrastructure – Defined to include public works, the construction of housing, water, sewer, gas, electrical, road and highways, internet, and telecommunications systems, among others.

All non-essential businesses with a facility in any of the seven counties "are required to cease all activities at facilities located within the [counties] except Minimum Basic Operations." Minimum Basic Operations includes steps needed to maintain the value of the businesses' inventory, to ensure security, to process payroll and benefits, and to ensure that employees can work remotely. These Minimum Basic Operations may be essential to some businesses which are now faced with the challenge of reallocating inventory in order to meet customer demands and to ensure that it does not spoil or otherwise deteriorate, after having only been given eleven hours to comply.

Some of the counties have published FAQs2 which provide some guidance, but the onus will be on impacted businesses to decide whether their Bay Area facilities qualify as Essential Businesses and are allowed to continue to operate.

What Can Businesses Do?

The challenge here is that the scope of the shelter in place orders is unprecedented, so businesses and the Counties need to work together to chart a course over the coming days and weeks, but the following suggestions provide a starting point.

- Determine whether some or all business operations qualify as an Essential Business, or an Essential Infrastructure project. If so, document the basis for the exemption and make sure

that you inform your employees that your business will stay open.

- Think about your employees. Recognize that even if you qualify as an Essential Business, you should still have policies in place regarding employees who may have been exposed, or who are sick. Those policies should be reviewed by your human resources department, and counsel where appropriate. See bclpemerging.com for recommendations for businesses and building owners/operators.
- Prepare for the long haul. As noted at the outset, there is no guarantee that the orders will expire on April 7, so it may be prudent to develop long-term work from home solutions to avoid an extended period of reduced productivity.
- Think about the children. As of March 15, school was cancelled for 80% of California public school children through early April. The shelter in place orders further complicate and limit childcare options for Bay Area families, but businesses should evaluate and potentially expand their emergency childcare benefits, where available, and inform their impacted employees, in order to allow parents to refocus on work.
- Check your insurance policies. Business interruption coverage may be available to offset losses and adverse impacts to your business caused by the Orders, so businesses should review their policies, and contact their brokers to see whether they have applicable coverage.

We will continue to provide insights on the shelter in place orders as the situation develops, and invite you to review the additional COVID-19 information on this blog. If you have questions specific to your company's individualized situation, contact Tom Lee (tom.lee@bclplaw.com) or Meryl Macklin (meryl.macklin@bclplaw.com). For any premises liability questions, please contact Susan Brice (susan.brice@bclplaw.com), and for employment related questions, please contact the BCLP employment lawyer with whom you work or Lily Kurland (lily.kurland@bclplaw.com).

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1. Marin, Contra Cosa, Alameda, San Francisco, Santa Clara, San Mateo, and Santa Cruz Counties have all issued orders.
2. https://sf.gov/stay-home-except-essential-needs

https://www.sccgov.org/sites/phd/DiseaseInformation/novel-coronavirus/Pages/frequently-asked-questions.aspx

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