

Insights

MICHIGAN "STAY-AT-HOME" ORDER AND SUPPLY CHAIN DESIGNATIONS

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SUMMARY

To respond to the rapid spread of coronavirus, numerous state, city, and local governments have passed "stay-at-home" orders requiring that individuals shelter-in-place and that all non-essential businesses cease operations in an attempt to curb the rising infection rate of the disease. As a result, companies must navigate a patchwork of state and local laws to determine whether their facilities must close, or if they can remain open as an "essential businesses" or "critical infrastructure." The analysis of whether a "stay-at-home" order applies to a business can be particularly complex for upstream and downstream participants in a supply-chain.

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Michigan's Mandatory Supply Chain Designation Rule

In its "stay-at-home" order, the State of Michigan has explicitly addressed whether the supply-chain of a critical infrastructure business may remain operational. The Michigan Order permits any such business to designate its suppliers, distribution centers, or service providers whose continued operations are essential to facilitate the work of the critical infrastructure business. If a supplier is not designated as necessary for an essential business, if they do not otherwise qualify as an essential business on their own, they may be required to shut down their operations. Those designated suppliers, distributors, and service providers can in turn additionally designate the businesses in their supply chain necessary to their own operation. The Michigan Order requires these supply-chain designations to be in writing after March 31st, and includes a provision

penalizing any company, anywhere along the chain, that abuses its designation authority and over-designates non-essential parts of its supply chain. While no penalty is expressly provided, the order clearly warns that a violator “shall be subject to sanctions to the fullest extent of the law.”

The Michigan Order’s supply-chain provisions are unique among the statewide orders passed to date but are clearly intended to require the creation of a written record of businesses that claim they or others are essential, and to discourage collusion of non-critical businesses to avoid the restrictions in the order. Other states certainly may look to Michigan as a blueprint for interpreting and enforcing how their own “stay-at-home” orders apply to upstream and downstream operations and to discourage over aggressive determinations of what is or is not essential.

How to Mitigate Your Supply Chain Disruption

Businesses would be wise to examine their supply chain with an eye toward these designations and begin to analyze which suppliers and vendors are truly critical to the businesses operations and begin to prepare appropriate documents to designate their essential distributors and suppliers. Specifically, businesses should consider the following steps:

- Identify any of their facilities – whether in Michigan or elsewhere – that rely on upstream product or service providers who are located in Michigan.
- Provide those upstream Michigan businesses with official designation letters.
- Ask your Michigan suppliers to confirm in writing that they have sent designation letters to all of their upstream suppliers, and consider asking for copies of those letters where appropriate.
- If your business is located in Michigan, and you believe that any of your customers rely on your products or services, reach out to them and remind them of their obligation to designate you as an essential provider.
- Continue to monitor your supply chain for businesses in Michigan so that you can send designation letters where appropriate in the future.

BCLP’s Shutdown/Shelter-in-Place Team is happy to assist with any questions that you may have about statewide or local shutdown orders and whether your business and its supply-chain may continue its usual operations under these new laws.

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