

SEVERAL U.S. RETAILERS FORCED TO CLOSE BY LAW ENFORCEMENT AS NON-ESSENTIAL

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Several U.S. retailers that remained open in the face of state and local shutdown orders have now been forced to close by local law enforcement.

Retailers that remain open should ensure that they qualify as “essential” under applicable state and local orders, that they have proper documentation for their employees and facilities demonstrating that they are essential, and that they comply with any health safety and social distancing requirements. BCLP is tracking these orders and the developing guidance, and a map of states with stay-at-home orders is available [here](#).

Businesses forced to close include several national craft and fabric store chains, and specialty stores that sell video games, sports equipment, furniture, clothing and accessories, shoes, books, music, jewelry, and luggage.

What qualifies as an “essential business” may vary under each order, and the approach taken by enforcement agencies may also vary. For example, stores selling CBD products have been allowed to remain open in some jurisdictions, but forced to close in others.

Law enforcement actions also varied against firearms and ammunition retailers, until the federal government last week updated its [Guidance on the Essential Critical Workforce](#) (the “Guidance”) to include “workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges.”

Some statewide orders, such as California, base their definition of an essential business on the Guidance while others, such as Oregon, do not. In updating the Guidance, Christopher Krebs, director of the Cybersecurity and Infrastructure Security Agency (CISA), stated “this advisory list is not intended to be the exclusive list of critical infrastructure sectors, workers, and functions that should continue during the COVID-19 response across all jurisdictions. Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion.”

Adding to the confusion, some stay-at-home orders include provisions allowing even non-essential businesses to continue “minimum basic operations,” while others do not. And as we [previously](#)

reported, even those essential businesses that are allowed to remain open may be required to establish, post and enforce social distancing protocols.

The takeaway is that each business should be aware of and carefully consider the applicable shutdown orders in its area, should document the basis for their continued operation and provide their employees and facilities with documentation, and consult with legal counsel if there are any questions.

For questions or more information, contact the authors, Merrit Jones and Tom Lee.

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