The current state of the world has raised many concerns for the well-being of its citizens. COVID-19, more commonly referred to as the Coronavirus, has not only created panic surrounding the health and social welfare of the population, it has also created unease about the implications for businesses. In these uncertain times, communication with employees and consumers may be urgent and necessary. The Telephone Consumer Protection Act (TCPA) has carved out an exemption for autodialed calls, prerecorded messages, and text messages made for emergency purposes.

The TCPA specifically excludes calls “made for emergency purposes.” 47 U.S.C. § 227(b)(1)(A). Calls made for emergency purposes are defined as “calls made necessary in any situation affecting the health and safety of consumers.” 47 C.F.R. § 64.1200(f)(4). These emergency calls do not require prior express consent of the called party. The FCC has made it clear that “the legislative history of the TCPA indicates a congressional intent to interpret the term ‘emergency’ broadly

The broad interpretation of the term “emergency” is evident in the case law. In Lindenbaum v. CVS Health Corp., No. 1:17-CV-1863, 2018 U.S. Dist. LEXIS 10052 (N.D. Ohio Jan. 22, 2018), the court held that pharmacy reminder calls by CVS Pharmacy fell within the TCPA’s emergency exemption. In Derrick v. Kroger Co., No. 3:19-cv-00106-AJB-MDD, 2019 U.S. Dist. LEXIS 135803 (N.D. Cal. Aug. 12, 2019), the court held that Kroger had “a bona fide emergency” when it made calls warning customers about potentially salmonella-tainted beef from its stores. The court noted that the individual does not have to be in “direct harm” for the exemption to apply.

Considering the case law, the congressional intent behind the emergency exemption, and the fact that President Trump and several governors have declared states of emergency, calls made to communicate information regarding the Coronavirus and its impact on consumers and employees likely fall outside of the TCPA’s prior express consent requirements. The mass scale of what has been deemed a “pandemic” surely affects the health and safety of consumers within the United States, and around the world. The urgency and necessity of making calls in response to the Coronavirus far exceeds that of the calls made in CVS Health and Kroger.

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