Essential Business Orders

Sunday, March 22, 2020

Over the last several days, Governors in California, New York, Pennsylvania, Illinois, New Jersey and Connecticut have issued similar Executive Orders directing all workers at "non-essential" or "not critical" businesses in their states to stay at home for varying periods of time. The orders, which have all gone or will go into effect by Sunday night, March 22, 2020, extend from two weeks to four weeks depending on the state, with more states likely to follow. In each case, the Governors are focused on taming the novel coronavirus (COVID-19) outbreak.

These orders are creating confusion across the United States because they are similar but all different to varying degrees. They rely on different definitions--some like California and Connecticut rely on 16 critical infrastructure sectors as defined by the Department of Homeland Security, while the others create their own standards. The issue is further complicated by local counties and cities such as Los Angeles County adopting different standards that do not necessarily sync up with the California Governor's order. Businesses all over America are trying to determine if
they and their own suppliers are critical parts of the supply chain of essential or critical businesses like food, personal and cleaning products (e.g., Costco, WalMart, Walgreen's and grocery stores), healthcare (e.g., hospitals, doctor's offices and licensed medical facilities) and defense so they can continue to operate. Letters are being provided by essential and critical businesses to vendors and contractors in their supply chain to ensure the continued movement of goods, products and services. Others are obtaining certifications from governmental entities though the Orders do not require any specific certifications.

If your business is deemed non-critical or non-essential and you can't operate via employees remotely at home, you will be closed for all practical purposes in California, New York, Pennsylvania, Illinois, New Jersey and Connecticut. Some uniform examples are retail stores in indoor malls, nail salons, health clubs and dine-in restaurants.

All of these Orders are being issued in the midst of the COVID-19 outbreak and have guidance for employers on required postings and certain policies to assure as safe a workplace as possible. Similar to the Orders themselves, this guidance is not uniform. Employers also need to make decisions on how to notify employees that they are continuing to operate and to help them with assurances that they can get to work.

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