Pennsylvania Governor Issues Statewide Order Closing All Businesses That Are Not Life Sustaining

Sunday, March 22, 2020

On March 19, 2020, Governor Tom Wolf issued a broad executive order requiring the closure of “all businesses that are not life sustaining.” Simultaneously, the secretary of Pennsylvania’s Department of Health issued a similar order, explaining “the closure of non-life sustaining businesses is necessary to protect the public’s health.”

Summary of the Orders

The orders require businesses, other than those that are classified as life sustaining, to cease physical operations as of 8:00 p.m. on March 19, 2020. Virtual, telework, and work-from-home operations may continue. While businesses that are
life sustaining may remain open, they must follow, at a minimum, the social distancing practices and other mitigation measures identified by the Centers for Disease Control and Prevention to protect workers and patrons.

Governor Wolf published a detailed chart outlining businesses deemed to be life sustaining. The chart is organized by industry and was amended by the governor on March 20, 2020, after commentary and feedback from the business community and to conform with guidance on the “Essential Critical Infrastructure Workforce” issued by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency. Enforcement of the orders was delayed and will now begin on Monday, March 23, 2020, at 8:00 a.m.

Businesses that are concerned that they will not be deemed life sustaining may request a waiver by completing an online form available through the Pennsylvania Department of Community and Economic Development (DCED). Additionally, businesses requesting clarification on whether they are defined as life sustaining may contact the DCED at ra-dcedcs@pa.gov or calling (877) PA-HEALTH, and selecting option 1.

Explanatory Guidance

On March 20, 2020, the DCED published a list of “Life-Sustaining Business Frequently Asked Questions.” The frequently asked questions (FAQs) provide the following guidance:

- Businesses seeking waivers should suspend in-person, physical operations until a waiver is approved and provided.
- If a business is within a classification that is not permitted to maintain physical operations, but is in the process of converting to a manufacturing process authorized to maintain physical operations, it should apply for a waiver. In this circumstance, the business should clarify in the waiver request that the facility is transferring operations to a life-sustaining function. The DCED will follow up with the business regarding the next steps.
- Businesses required to suspend physical operations may maintain limited in-person essential personnel for “critical functions,” such as security, processing of essential functions, or compliance with federal, state, and local regulatory guidance.
- Hotels and motels are not required to suspend in-person, physical operations. However, hotels and motels may not have gatherings larger than 10 people and must cease any dine-in food services. Take-out is permitted.
- Businesses granted a waiver will receive written confirmation, which they should share with enforcement agencies to confirm authorization to maintain operations.
- The governor’s order will be enforced through, among other things, criminal penalties. The DCED intends to enforce any violations through “progressive discipline that begins with a warning to any suspected violator.” Further, the DCED expects that enforcement will be “prioritized to focus on businesses where people congregate.”
- The chart outlining businesses deemed to be life sustaining “is not intended to be an authoritative or exhaustive list of critical infrastructure sectors and
functions.” State and local officials have been instructed to use their “best judgment in exercising their authorities and issuing implementation directives and guidance.”

Life-Sustaining Businesses

As discussed above, the governor provided a lengthy chart identifying businesses that are (and are not) life sustaining. The chart is organized by industry, and should be carefully consulted to evaluate whether a particular business or operation may continue to operate in the Commonwealth. Some highlights of the chart are as follows:

- Natural Resources and Mining. Crop production; animal production; forestry and logging; fishing, hunting, and trapping; support activities for agriculture and forestry; oil and gas extraction; mining; and support activities for mining may all continue physical operations.
- Businesses within this category generally may not continue physical operations except for emergency repairs and construction of health care facilities.
- There is significant variation in the governor’s guidance regarding whether manufacturing operations may continue physical operations in the state. The chart should be consulted closely to determine whether the nature of any given operations falls within the definition of life-sustaining business.
- Trade, Transportation, and Utilities. There is also significant variation in the governor’s guidance regarding whether trade, transportation, and utilities may continue physical operations in the state. The chart should be carefully consulted.
- Health Care. The governor has broadly defined ambulatory health care services, hospitals, and nursing and residential care facilities as life sustaining and permitted to continue physical operations (although elective procedures are prohibited).

The governor’s orders and guidance have been rapidly changing on a day-by-day basis.


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