Taking Care of Essential Business Despite Growing Number of Shelter in Place Orders

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A growing number of states, five as of the publication date of this e-alert, along with the Navajo Nation and a significant number of counties and municipalities, have issued mandatory “shelter in place” or “stay at home” orders. Many other states, counties, and municipalities have ordered that all nonessential work stop in their areas. Although the shelter in place orders are more restrictive (significantly limiting the movement of residents and the operation of businesses in each affected jurisdiction), the essential work only orders are also incredibly disruptive to employers and employees alike.  

While there is a distinct chance the federal government will issue similar restrictions for the entire country in the near future, at this time no federal agency has mandated the closure of businesses. There are, however, many federal agencies actively involved in managing the pandemic crisis. Particularly, the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency issued guidance to state and local “critical infrastructure” workforce of multiple industries:
in other words, the employees whose services are essential for certain businesses that must remain open during the COVID-19 pandemic. This guidance will advise employers along with additional jurisdictions as they develop their “red alert” orders. It will also guide all jurisdictions in interpreting their own orders as they make enforcement decisions or otherwise interpret their orders based on the circumstances as they unfold.

Every business needs to prepare for the possible imposition of such orders regardless of the current situation in their state. While the shelter in place orders have some differences, they typically have the following common characteristics:

1. Businesses not deemed “essential” are ordered to cease operations or greatly restrict operations to work that can be completed by employees remotely in their homes.

2. Only essential employees or employees needed for minimum basic operations may leave their homes to support “essential businesses.”

3. Residents must stay in their homes except to engage in “essential activities,” when they are qualifying employees of an essential business, or for outdoor exercise during which social isolation practices must be practiced.

4. Travel is greatly restricted with a handful of exemptions.

Both the shelter-in-place and nonessential business restriction orders have significant implications for all businesses, which is why we suggest businesses take the following steps:

1. Interpret the specific requirements of each applicable order.

2. Determine if the business qualifies as an essential business.

3. If the business qualifies as an essential business, determine the minimum basic operations of the business and which workers qualify as essential employees.

4. Develop notices to employees regarding the essential status of the business, and written confirmation or certifications for essential employees to present when stopped by or dealing with police or public agencies charged with enforcing the order.

5. Review staffing needs and placement options, including paid and unpaid leaves, furloughs, and layoffs.

6. Develop effective notices to suppliers, vendors, and customers regarding the status of the business under the order.

7. Consider possible support and assistance offered at the state and federal level to support businesses impacted by these orders.

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