Monday, March 23, 2020

On Sunday, Ohio issued a “shelter in place” or “stay at home” order, bringing the total number of states with these orders to ten. The other states are California, Delaware, Illinois, Louisiana, Michigan, Nevada, New York, New Jersey, and Pennsylvania, and this number increases by the day. The orders and associated guidance identify which businesses and specific activities are considered “essential,” and therefore exempt from travel and other aspects of the stay at home orders. The orders vary significantly from state to state.

California was the first state to issue a shelter in place order, and it is consistent with the March 19 federal Department of Homeland Security Cybersecurity and Infrastructure Security Agency (CISA) Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response. CISA’s Memorandum explains that its “list [of essential activities] is advisory in nature” and should not be considered “a federal directive or standard in and of itself.”

Ohio’s order builds on the California and subsequently-issued Illinois orders. Key environmental businesses and activities are permitted to remain open, including those concerning governmental functions related to environmental compliance, essential infrastructure, and manufacturing and supply chain for critical products and industries.
The order, issued by Dr. Amy Acton, Director of the Ohio Department of Health, becomes effective at 11:59 PM today, and requires residents to stay at home except for certain activities, including “Essential Activities,” “Essential Government Functions” and “Essential Business or Operations.”

Essential Activities include those for health and safety, necessary supplies and services, outdoor activity, and certain types of work.

Essential Government Functions are defined to include “governmental employees working for or to support Essential Businesses and Operations,” and specifically include hazardous materials responders and services to “support the health, safety and welfare of the public,” and includes contractors.

Essential Business and Operations include “businesses that sell, manufacture or supply other Essential Businesses and Operations” with the support or materials necessary to operate, including electrical, chemicals, paint and others; and manufacture, distribution and supply chain for critical products and industries, such as chemicals, sanitization, waste pickup and disposal, agriculture, energy, steel, petroleum and fuel, mining and construction.

Ohio’s order also incorporates the CISA guidance discussed above for purposes of defining “essential” businesses and operations. The CISA list includes:

- “Critical” manufacturing (i.e., those necessary for materials and products for medical supply chains, transportation, energy, communications, food and agriculture, chemicals, water and wastewater, etc.);
  - Energy, including workers who maintain, ensure or restore generation, transmission and distribution and natural gas transmission and distribution pipelines;
  - Water and wastewater operational staff;
  - Public works, including those who support the operation of bridges and construction of critical or strategic infrastructure;
  - Hazardous materials, including at nuclear facilities and hazardous materials response and cleanup.

Ohio’s order also exempts “Essential Infrastructure” including food production, construction (including but not limited to construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, essential business construction, and housing construction), utilities operation, distribution centers, oil and biofuel refining, solid waste and recycling collection and removal.

The recent orders issued by Ohio and Illinois are more specific than others, such as California’s and New York’s, in their identification of specifically exempted activities, as summarized above.

Finally, several states, including Ohio and Illinois, have included provisions
permitting leaving the home for “Minimum Basic Operations.” This term is defined to mean “activities to maintain the value of the business’s inventory, preserve the condition of the business’s physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.”

© Copyright 2020 Squire Patton Boggs (US) LLP

Source URL: https://www.natlawreview.com/article/are-you-essential-ohio-guidance-environmental-industries-regarding-covid-19