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California's Stay-at-Home Order: What Businesses Need to Know

State and local government agencies have not yet provided substantive guidance as to the contours of the order, or their interplay with corresponding local orders.

As part of California's continued response to the COVID-19 outbreak, on March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20 (the Order), pursuant to which all individuals living in the state were ordered, until further notice, to stay home or at their place of residence except to get food, care for a relative or friend, get necessary health care, or maintain the continuity of operation of critical government services, schools, childcare, and construction, including housing construction and 16 federal critical infrastructure sectors identified by the US Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA).

The Order will have significant implications for businesses located across the United States, in addition to those in California. The situation remains fluid, and state and local government agencies have not yet provided substantive guidance as to the contours of the Order. Businesses and entities are advised to discuss their particular circumstances with legal counsel in order to determine the best path forward as Latham continues to monitor the rapidly developing situation. For more information, see the [California Coronavirus Response website](#).

16 Federal Infrastructure Sectors

The California Department of Public Health is permitted to designate additional sectors as critical moving forward. The 16 critical sectors currently identified by CISA and incorporated into the Order include:

Chemical	Dams	Financial Services	Information Technology
Commercial Facilities	Defense Industrial Base	Food and Agriculture	Nuclear Reactors, Materials and Waste
Communications	Emergency Services	Government Facilities	Transportation Systems
Critical Manufacturing	Energy	Healthcare and Public Health	Water and Wastewater Systems

Source: <https://www.cisa.gov/critical-infrastructure-sectors>

The Order is meant to be consistent with CISA's March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response. The Memorandum provides a list of sectors and identifies groups of essential critical infrastructure workers that "are intended to be overly inclusive." On March 20, 2020, California's State Public Health Officer published an updated list of Essential Critical Infrastructure Workers, which provided additional categories of workers exempt from the Order. At this time, the Critical Infrastructure Workers exempt from the Order, include, amongst other categories, the following:

- **Critical Manufacturing:** Includes workers necessary for the manufacturing of materials and products needed for supply chains, transportation, energy, communications, food and agriculture, and chemical manufacturing.
- **Healthcare/Public Health:** Includes manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment pharmaceuticals, blood and blood products, vaccines, testing materials, and laboratory supplies.
- **Chemical:** Includes workers who support the chemical and industrial gas supply chains, workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, and workers who transport basic raw chemical materials to the producers of industrial and consumer goods.
- **Energy:** Includes workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers, and fleet maintenance technicians.
- **Communications:** Includes manufacturers and distributors of communication equipment, in addition to call centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, and Internet Exchange Points.
- **Information Technology:** Includes workers who support the provision of essential global, national, and local infrastructure for computing services, including cloud computing services, business infrastructure, web-based services, and critical manufacturing, and manufacturers and supply chain vendors that provide hardware and software, and information technology equipment (to include microelectronics and semiconductors) for critical infrastructure.
- **Financial Services:** Includes workers who are needed to process and maintain systems for processing financial transactions and workers who are needed to provide consumer access to banking and lending services and to move currency and payments.

Notably, today's guidance eliminated (the apparent incorporation by reference of) the CISA category of "Commercial Facilities," which had included Entertainment and Media, Gaming, Lodging, Outdoor Events, Public Assembly, Real Estate (apartment and office buildings, etc.), Retail and Sports Leagues. Companies in these sectors need to consult the broader functional list above (and consider the activities occurring in a commercial building, or a retail establishment supplying food or critical items, for example) in considering how to assure compliance with the Order, and should also follow other local orders (generally addressing the activities or businesses in these categories) in order to determine whether adjustments to the assignment or movement of workers, visitors, or tenants needs to be changed.

Impact on Local County and Municipal Orders

A Q&A published by the State of California following issuance of the Order acknowledges that local officials may enforce local public health orders that impose stricter limitations than the Order. But any less stringent local restrictions have been superseded by the Order. Latham recommends, to the extent possible, individuals and businesses continue to comply with the restrictions of both local and statewide orders. Businesses will need to identify exceptions under both the local and statewide orders permitting them to continue operations. To the extent the terms of the statewide Order and any local order conflict, Latham recommends that businesses and entities comply with the terms of the more restrictive order that applies to them. It is not currently clear whether the statewide order therefore nullifies exemptions contained in certain local orders permitting all businesses to maintain Minimum Basic Operations or whether the Order cancels the sunset provisions contained in some local orders, although the language on the state's FAQs website may be interpreted to abrogate any such exceptions or sunset provisions contained in local orders. Latham continues to monitor the situation closely.

Enforcement

The Order states that the Office of Emergency Services is directed to take necessary steps to ensure compliance with the Order, which shall be enforceable pursuant to California law as a misdemeanor, punishable by a fine not to exceed US\$1,000 and/or by imprisonment not to exceed six months.

Please see the following links for additional information:

- [California Coronavirus \(COVID-19\) Response](#)
- [FAQ: Stay home except for essential needs](#)
- [Full Executive Order \(PDF\)](#)
- [Critical Infrastructure Sectors \(US DHS\)](#)
- [Memo on Identification of Essential Critical Infrastructure Workers During COVID-19 Response \(US DHS\) \(PDF\)](#)
- [March 20, 2020 California List of Essential Critical Infrastructure Workers](#)
- [California Department of Public Health: COVID-19 Updates](#)
- [County of Santa Clara Statement on Governor Newsom's Executive Order for All Californians to Stay at Their Home](#)

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