

Further California Guidance Regarding Essential Critical Infrastructure Sectors and Workers

As previously reported in our March 20, 2020 update, Governor Gavin Newsom issued Executive Order N-33-20 (the “Order”) requiring all individuals living in the State of California to stay home or at their place of residence, “except as needed to maintain continuity of operation of the federal critical infrastructure sectors” or to obtain critical needs, such as food, healthcare, or prescriptions.

On March 20, 2020, the California State Public Health Officer published further guidance regarding essential critical infrastructure sectors and workers. This guidance is available at: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

In summary, California’s State Public Health Officer designated a list of essential critical infrastructure workers to help “state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.” The essential workers fall in various sectors: (1) healthcare/public health; (2) emergency service; (3) food and agriculture; (4) energy; (5) water and wastewater; (6) transportation and logistics; (7) communications and information technology; (8) other community-based government operations and essential functions; (9) critical manufacturing; (10) hazardous materials; (11) financial services; (12) chemical; and (13) defense industrial base. Essential workers also include those working in industries that support the thirteen enumerated sectors.

Prior to issuance of the Order, many California counties and cities had issued similar local shelter in place orders. In some cases, the local orders are not entirely aligned with the state order. California initially published a frequently asked question (“FAQ”) on the morning of March 21, 2020 that stated: “This is a statewide order. Depending on the conditions in their area, local officials may enforce stricter public health orders. But they may not loosen the state’s order.”

Later on March 21, 2020, California revised its response to the FAQ to state simply, “This is a statewide order.” As a result, it is unclear whether local directives that are stricter than those in the state order may

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be enforced. Until there is clarity, the safest course of action is to determine whether a business may continue operating under the state order, any applicable local order, and only remain in operation only if both are met.

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