

**CLIENT ALERT
FOR COMPANIES & EMPLOYERS**

**COVID-19
California State and Local Bay Area Shelter-in-Place Orders**

**Understanding and Managing the Impact of COVID-19 Orders on
Companies & Employers**

The purpose of this Alert is to assist California companies and employers navigate COVID-19-related challenges by:

- Providing an overview and timeline of the COVID-19-related orders with a focus on specific provisions that relate to businesses and employers in California and certain Bay Area counties.
- Highlighting the compliance requirements under the orders.
- Identifying legal issues that businesses should consider in complying with the COVID-19-related orders and assessing the impact of the orders on its business operations.
- In a subsequent Alert, we will advise on the practical aspects of business operations and workforce management under the COVID-19 outbreak.

It is our hope that these Alerts will serve as a helpful resource as our corporate clients in the US and Headquarters in Japan make important strategic decisions during these fast-changing challenging times. The team at Yorozu Law Group is ready to assist in creating and implementing strategies to manage business and employment risks. Please contact us if we can be of any assistance. It would be our privilege to serve you.

INTRODUCTION & SUMMARY

The novel coronavirus outbreak that was first detected in China (“COVID-19”) has been a rapidly evolving situation with wide ranging impacts on individuals, communities, businesses operations, countries, and the global economy. The Centers for Disease Control and Prevention (“CDC”) has stated that the United States nationally is in the initiation phase of the pandemic, with all 50 states having reported cases of COVID-19, including 27 states currently reporting community-

acquired cases with an unknown infection source (as compared to imported cases from travelers). New York has been significantly impacted, with the New York Times indicating that the New York City region accounts for 5 percent of the reported and confirmed cases of COVID-19 as of March 22, 2020. The COVID-19 outbreak is also significantly impacting California. During a March 25, 2020 press conference, the California Secretary of Health and Human Services indicated that the number of COVID-19 cases in California was doubling every 3-4 days (possibly related increased levels of testing), which is on par with the transmission rate in New York. Governmental authorities throughout California at the state, county, and city levels have issued unprecedented shelter-in-place orders and guidelines in response to the COVID-19 outbreak to protect the health, safety, and welfare of its residents and businesses.

The California orders have a widespread and drastic effect of all businesses and individuals in California. (Businesses and individuals in other states have also been affected. In the weeks following the issuance of these California orders, state and/or local officials in approximately 30 other states have enacted similar “stay at home” or shelter-in-place orders.) These orders are a drastic measure to slow the spread of COVID-19 in an attempt to save lives and reduce the chances of a public health crisis which overwhelms the healthcare system.

California businesses are facing significant challenges as they do their part to comply with the various state and local orders. As further explained below, in states or municipalities where shelter-in-place orders have been issued, businesses must determine whether their business or services are “essential” or “non-essential” in assessing whether to (i) continue onsite operations, (ii) reduce onsite operations to specified minimally necessary basic operations and enable all other employees to work remotely, or (iii) suspend all business operations until the orders are lifted or relaxed. In reaction to the financial impact of the orders or because certain employees cannot perform their work remotely, many businesses are also having to make the difficult decision to layoff or furlough employees or reduce their pay or hours, triggering various employment law compliance requirements among other considerations.

The purpose of this Alert is to assist California businesses and employers navigate these challenges by:

- Providing an overview and timeline of the COVID-19-related orders with a focus on specific provisions that relate to businesses and employers in California and certain Bay Area counties.
- Highlighting the compliance requirements under the orders.
- Identifying legal issues that businesses should consider in complying with the COVID-19-related orders and assessing the impact of the orders on its business operations.
- In a subsequent Alert, we will advise on the practical aspects of business operations and workforce management under the COVID-19 outbreak.

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OVERVIEW, TIMELINE, AND HIGHLIGHTS OF COMPLIANCE REQUIREMENTS

1. California State of Emergency. The COVID-19 outbreak has spread rapidly throughout California from the first confirmed incidents in late January 2020. The California Department of Public Health indicates that that community transmission of COVID-19 has been identified in California since late February 2020. On March 4, 2020, Governor Newsom declared a State of Emergency.

2. Issuance of Local Bay Area County Shelter-in-Place Orders. On March 16, 2020, public health officials from the Counties of San Francisco, Santa Clara, San Mateo, Alameda, Contra Costa, and Marin took action to slow the potential transmission of COVID-19 by issuing shelter-in-place orders which prohibit community gatherings and severely restrict the operations and activities of individuals and businesses within each county. On March 31, 2020, public health officials from seven Bay Area counties (including all listed above and Sonoma County) issued new shelter-in-place orders which superseded and replaced the prior orders.

2.1 *Applicability*. Individuals and businesses may be subject to local shelter-in-place orders issued by their county and/or city. The shelter-in-place orders and additional guidance from the six Bay Area counties are largely similar, but for purposes of this article, we will specifically consider the current shelter-in-place order from the City and County of San Francisco issued on March 31, 2020 (“SF Order”). The SF Order applies to all individuals living in the City and County of San Francisco.

2.2 *Effective Date*. The initial SF shelter-in-place order took effect as of March 17, 2020 and was set to remain in effect through April 7, 2020. The current SF Order took effect as of March 31, 2020 and will remain in effect through May 3, 2020. The expiration date of the SF Order is subject to monitoring and extension by Public Health Officer. The new order is intended to set stricter compliance requirements and clarify certain points from the initial order.

2.3 *Requirements*.

(a) Requirements for Individuals: The SF Order requires that all individuals in San Francisco shelter-in-place at their place of residence. Individuals are permitted to leave their residences, provided that they follow social distancing requirements to the extent possible, and only when necessary for the limited purpose of performing: (i) essential activities necessary for

the health and safety of themselves or family or household members (including pets), such as shopping for groceries, obtaining medical supplies or medication, visiting a healthcare professional, taking a walk (or other outdoor exercise near one's residence), obtaining supplies necessary to work from home, and performing minimum basic operations for a non-essential business (as described in Section 2.3(b)), or (ii) work for an essential business or perform essential services (as described in Section 2.3(b)).

(b) Requirements for Businesses: The SF Order requires that all businesses cease all operations at facilities in San Francisco unless they are classified as an essential business or perform essential services.

- Essential businesses include without limitation hospitals and healthcare providers, grocery stores, food banks, convenience stores, gas stations, banks, hardware stores, auto repair and bicycle shops, restaurants preparing food for delivery or take-away, and laundromats.
- Essential services include without limitation the services provided by essential businesses, services to maintain essential governmental functions, and other services that may be designated as essential. (For example, a church is not classified as an essential business, but it might provide essential services such as operating a food bank. Under the SF Order, the church would be required to stop conducting in-person religious congregational services, but it would be allowed to continue food bank services.)
- Businesses that are essential businesses, or to the extent that they provide essential services, are exempt from the SF Order. These businesses are allowed, and encouraged, to continue operations, provided that they (i) limit onsite operations on an as-needed basis and maximize the number of employees working remotely from home; (ii) prepare a tailored company-specific written protocol for social distancing and provide employees with notices for this protocol; (iii) implement and enforce social distancing requirements for employees and customers to the extent possible.

All other businesses (which are non-essential and do not perform essential services) are only permitted to have onsite employees working from their business facility as necessary to perform minimum basic operations (defined as the minimum activities necessary to allow employees to work remotely, maintain the security of the business, process payroll and employee benefits, or perform related functions), provided that they follow social distancing requirements to the extent possible.

- Social distancing requirements include: maintaining a 6 foot social distance from individuals who are not members of your household, frequently washing hands with soap and water for at least 20 seconds (or using hand sanitizer), covering coughs and sneezes with a tissue, sleeve, or elbow (not hands), regularly cleaning high-touch surfaces (such as door handles, elevator buttons, common area phones and keyboards, and bathroom surfaces), and not shaking hands.

Please note that the SF Order affects onsite business operations and prohibits employees from traveling to or working from a non-essential business office or facility. A non-essential business would be fully compliant with the SF Order if it were to continue operations remotely, with employees telecommuting from their respective residences.

2.4 Penalty. Violation of the SF Order is a misdemeanor punishable by a monetary fine not to exceed \$1,000 and/or imprisonment for up to one year. The SF Order was issued two weeks ago and additional information about the implementation and enforcement is forthcoming. As a preliminary matter, it appears that there are no plans for active enforcement of the SF Order at this time—governmental authorities seem to be largely relying on voluntarily compliance.

3. Issuance of Statewide California Shelter-in-Place Order. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a statewide shelter-in-place order which prohibits community gatherings and severely restricts the operations and activities of individuals and businesses in California (“CA Order”). The CA Order was issued to protect the health and well-being of all Californians and to establish consistency across California to slow the spread of COVID-19.

3.1 Applicability. The CA Order applies to all individuals living in California.

3.2 Effective Date. The CA Order took effect as of March 19, 2020 and will remain in effect until further notice.

3.3 Requirements. The CA Order requires that all individuals in California stay at home or their place of residence. Individuals are permitted to leave their residences—provided that they maintain a 6 foot social distance from others to the extent possible—only when necessary for the limited purpose of performing: (i) necessary activities for the individual or a family member or friend needing assistance, such as obtaining food, prescriptions, or healthcare, or (ii) work for a business in the critical infrastructure sector or which provides essential services, as described below.

- The critical infrastructure sector, as currently defined by the federal government and incorporated into the CA Order <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>, includes public health/healthcare, law enforcement, food and agriculture, energy, transportation, public works, communications and information technology, financial services, and critical governmental operations.
- Essential services include the services provided by grocery stores, food banks, pharmacies, gas stations, convenience stores, restaurants providing take-away, banks, hardware stores, and laundromats and laundry services.

3.4 Penalty. Violation of the CA Order is a misdemeanor and punishable by a monetary fine not to exceed \$1,000 and/or imprisonment for up to 6 months. The CA Order was issued last week, and additional information about the implementation and enforcement is forthcoming. As a preliminary matter, it appears that governmental authorities are largely relying on voluntarily compliance with the CA Order.

4. Interaction of CA Order and Local Shelter-in-Place Orders.

There is no specific guidance yet as to how the CA Order and local orders will interact. In the meanwhile, and as a matter of standard practice, businesses and individuals in the Bay Area should comply with both the CA Order and any applicable local order. If any provisions of the two orders conflict, individuals and businesses should comply with whichever provision is more restrictive. Please also keep in mind that this is a rapidly evolving situation and the California and local shelter-in-place orders may have been prepared and released on a very short timeline. We expect additional guidance and recommendations to be released from state and local authorities.

Some local governmental authorities, including the Counties of San Francisco and Santa Clara, have taken the position that the state and local orders are consistent and both applicable. However, the State of California has not currently taken a position. (California initially and briefly indicated that the state and local orders coexist. One of the frequently asked questions on the California COVID-19 response website is “How does this order interact with local orders to shelter in place? Does it supersede them?” The initial California response, which has since been removed, indicated that local shelter-in-place orders would apply if they were stricter but not if they were looser. The current response, which is not responsive, only states that “This is a statewide order.” <https://covid19.ca.gov/stay-home-except-for-essential-needs/>)

LEGAL ISSUES BUSINESSES SHOULD CONSIDER IN COMPLYING WITH THE COVID-19-RELATED ORDERS; ASSESSING THE IMPACT OF THE ORDERS ON BUSINESS OPERATIONS

The shelter-in-place orders and related guidance from the State of California and the local counties or cities have an immediate and direct impact on business operations in California. To

comply with California and local orders, Bay Area businesses should consider the following in consultation with legal counsel:

- Whether the business is an essential business for purposes of the California and local orders. Essential businesses are allowed and encouraged to continue operations as usual, in compliance with social distancing requirements and COVID-19 best practice recommendations from governmental authorities.
 - Examples of essential businesses include medical or healthcare providers, grocery stores, convenience stores, restaurants (for delivery or take away only, not for onsite consumption), drug stores, auto parts stores, hardware stores, gas stations, warehouse and transportation providers, and those in the supply chain who manufacture or distribute supplies to the aforementioned businesses.
 - Examples of nonessential businesses include clothing stores, book stores, beauty supply stores, jewelry stores, shoe stores, movie theaters, museums, sport and concert venues, gyms and recreation centers, hair salons, beauty spas, casinos and racetracks, bowling alleys, golf courses, and businesses in the leisure, hospitality, and entertainment industries.
 - Since it is not possible to provide an exhaustive list of examples, other businesses in the retail, manufacturing, research and development, travel, and other service industries should consult with legal counsel to determine if they are exempt from the shelter-in-place orders.

- Whether the business performs any essential services for purposes of the California and local orders. The business can continue to perform those essential services in compliance with social distancing requirements and COVID-19 best practice recommendations from governmental authorities.

- If the business is non-essential and does not provide essential services, then whether its operations can be performed by employees remotely. The shelter-in-place orders do not restrict businesses operations when employees work from home.

- What minimum onsite activities are necessary to enable employees to telecommute, maintain the security of the business and any inventory, process payroll and employee benefits, or perform other minimum basic operations.

- What remaining onsite business operations must be suspended, and how to plan, implement, and announce the closure to employees, customers, third party vendors, and others. Businesses should plan to suspend these onsite business operations for an indefinite period. (Although the restrictions under the local Bay Area county shelter-in-place orders are expected to expire on or after May 3, 2020, the statewide

CA Order—which does not have an end date—will continue to apply until further notice.)

- The suspension of onsite operations may have significant implications for purposes of employment law compliance, employee benefits, immigration, insurance coverage, workers compensation, and contractual obligations. We recommend consulting with legal counsel to identify and address compliance requirements.

Please keep in mind that this is a continuously developing situation that is subject to update based on the evolution of the COVID-19 outbreak, the issuance of additional orders from federal, state, and local governmental agencies, and developments in the interpretation and enforcement of the California and local shelter-in-place orders.

For additional information, please contact Yorozu Law Group at:

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Additional Resources:

- California Shelter-in-Place Order
 - [Executive Order N-33-20](#)
 - [Frequently asked questions](#)
 - List of [Essential Critical Infrastructure Workers](#)
- City and County of San Francisco Shelter-in-Place Order
 - [Order of the Health Officer No. C19-07 \(Superseded\)](#)
 - [Order of the Health Officer No. C19-07\(b\)](#)
 - [Frequently asked questions](#)
- California Department of Public Health
 - [COVID-19 Updates](#)
- US Department of Labor Occupational Safety and Health Administration
 - [Guidance on Preparing Workplaces for COVID-19](#)

The content of this Client Alert is for informational purposes only and does not constitute, nor should it be relied upon as, legal advice.