

INSIGHTS

Stay-At-Home Orders – 10 Step Evaluation Process For Manufacturers

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In the week following our [initial client alert](#) regarding the effect of government stay-at-home orders on your manufacturing operations, approximately 27 states (and many other local authorities) have implemented a version of a stay-at-home order. Many of these same states have issued subsequent updates or clarifications to their initial orders in an effort to provide the public with as much guidance as possible. As governments gear up to combat the global pandemic, there is every indication that other states, if not all, will follow suit. To help businesses navigate the new reality of conducting business alongside the spread of Coronavirus (COVID-19), we have developed a general process for evaluating orders as follows.

1. Determine if the Order is Mandatory, or simply guidance.
2. Determine if your business has any physical operations in the jurisdiction at issue, including whether any of your employees live in the jurisdiction.
3. Know the specifics of your operations in the jurisdiction at issue, what you are manufacturing, how many employees are necessary to operate the facility in person, and the industries your customers are in.
4. Fully read the Order and official guidance, and do not rely on media reports or interpretations of the Order.
5. Focus on the definitions and exceptions or exemptions in the Order. This includes reading over any mandatory social distancing requirements the Order is imposing on all businesses, even if you fall under an exception.
6. Determine if the Order has an exception for non-essential businesses that supply products or services to essential businesses, as this may be a more straight forward way to justify continued operations.
7. If you determine your business is non-essential, determine if the Order has a minimum business operations provision, and if your business needs a minimum number of in person workers to preserve the value of your inventory or the business itself.

8. Consider involving legal counsel in your analysis, especially if the exceptions you are relying upon are ambiguous or restrictive. Strongly consider consulting with counsel if you are considering requesting an exemption or waiver from an Order, and understand that filing such a request could be deemed an admission that your business is non-essential.
9. Keep a written record of the process your business has engaged in to determine if your business is essential so that it will be readily available to present to enforcement authorities if they challenge your operations. Having evidence of good faith operations can often be the difference between mild and more severe penalties.
10. Check back daily to look for updates and clarifications of existing Orders.

In evaluating orders, businesses should be aware that states with a significant number of cases tend to have more restrictive orders. For example, with over 56,000+ cases, New York has one of the more restrictive orders issued in the United States. Likewise, surrounding states such as Pennsylvania and New Jersey have issued similarly restrictive orders in an effort to flatten the curve. Michigan and Washington also have fairly restrictive orders that should be carefully evaluated. These more restrictive orders tend to have an accompanying [*detailed list*](#) of critical or essential businesses. It is important that these lists, along with the order, are carefully evaluated. At the other end of the spectrum, Texas has not issued a stay-at-home order, but is instead relying on city and county orders. In addition to state-by-state orders, businesses should be aware that foreign governments are also taking action. Last week Mexico issued its own stay-at-home Order, with many similar restrictions and guidelines as those seen in the U.S. In these cases, it's important to obtain a reliable translation of such orders and seek legal experts familiar with the jurisdiction at issue.