

# My Employee is Subject to a “Shelter-in-Place” Order – What Do I Do Now?

## Labor & Employment Law Update

on March 20, 2020

As we continue to grapple with the impact of the COVID-19 pandemic, and with potentially more drastic measures being imposed by health officials, the question becomes what is the impact on employers if a shelter-in-place order is issued. The answer: it depends on the order.

In response to the crisis, a number of states, counties and cities have imposed or are considering shelter-in-place orders. Generally, a shelter-in-place order means that individuals must stay in their residences and not leave “unless necessary for one of the designated exceptions.” The purpose of such orders is to contain the spread of the virus by minimizing interaction between individuals to only those activities that are absolutely necessary. Such orders, as adopted or under consideration by various jurisdictions, do not appear to compel full out seclusion and isolation or to prohibit the public from venturing outside their homes. The City of San Francisco, on March 16, 2020, issued the first shelter-in-place order. California, in the first state-wide measure, followed suit last night extending local measures to its 40 million residents. A similar measure was also adopted last night in Pennsylvania where Governor Tom Wolf announced that all but “life sustaining” businesses in the state were ordered to shut down (Pennsylvania’s measure does contain a very specific list of affected businesses by industry and sector). While the terms of such orders will vary, they contain exceptions for “essential services” impacting a number of critical infrastructure sectors.

By way of illustration, the City of San Francisco’s measure had health officials issue an order that generally directed the public to stay in their homes except for the following:

1. To provide or receive essential services;
2. To engage in essential activities; and
3. To work in essential businesses and government services.

Measures that followed elsewhere similarly include terms like “essential services”, “essential activities” and/or “essential business and government services.” *These terms are specifically defined and must be reviewed to determine whether or not your employees will be able to make it to work.* In the San Francisco order “essential

activities” incorporate activities or tasks essential to health and safety. Examples of this include going to the doctor, buying food or medicine, obtaining supplies to work from home, or *performing work* for “essential businesses” that provide “essential services.” “Essential businesses” include health care providers, grocery stores or other food producing/retail establishments (restaurants are generally limited to take out/curb side), gas stations, banks, and even professional services that support the legally mandated activities of essential businesses. Certainly, protective services and first responders are also engaged in essential services so they are not going to be limited. Finally, orders also address “essential travel”, which generally consists of going to/coming from work, the doctor, or any destination where essential services will be procured.

Bottom line, individuals should be able to go to work provided their employers are engaged in an essential business or government service or in support of such businesses or services. While “shelter-in-place” orders may differ from one jurisdiction to another and may be more restrictive depending on your location, the objective is still containment of the virus. Thus, your employees should be able to come to work, go home at the end of the day and even stop at the store for groceries or other essentials. But they will not be able to go out to dinner, hang out at a bar for drinks or engage in any entertainment or social activities with lots of people around them.

As with all matters involving COVID-19, this is a fluid situation with frequent, if not daily, developments. These may involve not just “shelter-in-place” orders, but other health official directives that must be carefully reviewed to ensure compliance. We will continue to monitor and update as needed.

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