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## DETERMINING WHO IS EXEMPT FROM CALIFORNIA'S STAY-AT-HOME ORDER: STATE PUBLIC HEALTH OFFICER PUBLISHES GUIDANCE ON WHICH EMPLOYEES ARE "ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS"

MARCH 24, 2020

Last Thursday, March 19, 2020, to curb the spread of COVID-19, California Governor Gavin Newsom issued [Executive Order N-33-20](#), which directed all residents to stay at home, except as necessary to maintain "essential critical infrastructure sectors." On March 22, the California State Public Health Officer published an updated list of "[Essential Critical Infrastructure Workers](#)." Unlike the guidance offered in the March 19 order and guidance from the federal government that clarified the meaning of non-essential as opposed to essential *businesses* ([Federal Guidance on Identifying Critical Infrastructure During COVID-19](#)), the State Public Health Officer's list identifies which *workers* are essential.

The stated purpose of the state's "Essential Critical Infrastructure Workers" list is 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 State Public Health Officer's guidance identifies workers who "supply" or "support" critical infrastructure sectors as essential workers. This Client Alert provides an overview of the current guidance issued by the State Public Health Officer as to which employees are exempt from the state's stay-at-home order.

The State Public Health Officer's list is the most detailed guidance to date issued by California. Similar to the Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA) guidelines, the State Public Health Officer broke down its guidance by sector, specifically providing classifications of essential workers for the following 13 critical infrastructure sectors:

- Healthcare/Public Health
- Emergency Services
- Food and Agriculture
- Energy
- Water and Wastewater
- Transportation and Logistics
- Communications and Information Technology
- Other Community-based Government Operations and Essential Functions
- Critical Manufacturing
- Hazardous Materials
- Financial Services
- Chemical
- Defense Industrial Base

While most of the sectors are self-explanatory, the "Other Community-based Government Operations and Essential Functions" sector functions as a catchall that includes within it several different types of businesses and employees, including:

- Courts
- Building security staff
- Elections personnel
- Weather forecasters
- Private childcare establishments and schools

- Hotels that are used for COVID-19 mitigation and containment measures
- Construction workers
- At-home service providers, such as plumbers, electricians, and exterminators
- Rental car services
- Commercial retail stores, including convenience stores, pet supply stores, auto supplies and repair, and hardware stores
- Laundromats and laundry services

For each sector, the State Public Health Officer provides: (1) a “Sector Profile” that describes which businesses fall within that sector, and (2) a detailed bullet-point list of employees who qualify as essential workers within that sector. Which employees qualify as “essential” is highly individualized by sector. Businesses that fall within any of these sectors are encouraged to review the guidance; however, since every determination must be made on a case-by-case basis and the guidance from the government is constantly evolving, it is important for qualifying businesses/employers in critical infrastructure industries to consult counsel to assist them in weighing their options and making important determinations as to which employees to exempt from stay-at-home orders.

#### ADDITIONAL INFORMATION

Tucker Ellis attorneys are helping clients, boards, and management in considering their best options and in documenting policies, ongoing governance, and continuing business operations in compliance with government mandates and safety measures. For additional information or assistance, please contact:

- [NDUBISI EZEOLU](mailto:ndubisi.ezeolu@tuckerellis.com) | 213.430.3239 | [ndubisi.ezeolu@tuckerellis.com](mailto:ndubisi.ezeolu@tuckerellis.com)
- [BART KESSEL](mailto:bart.kessel@tuckerellis.com) | 213.430.3388 | [bart.kessel@tuckerellis.com](mailto:bart.kessel@tuckerellis.com)
- [NICK JANIZEH](mailto:nicholas.janizeh@tuckerellis.com) | 213.430.3320 | [nicholas.janizeh@tuckerellis.com](mailto:nicholas.janizeh@tuckerellis.com)

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