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News & Types: クライアント・アドバイザリー

カリフォルニア州およびイリノイ州で自宅待機命令 — 各州の命令の概要とキーポイント

3/25/2020

EXECUTIVE SUMMARY

Several states, including California and Illinois, are now imposing “stay-at-home” restrictions on residents and the businesses operating within these states. The executive orders are unprecedented and are not uniform in their language or scope. It is likely that additional states will issue such orders in the weeks to come. Many businesses are struggling to understand whether they can continue operations under controlling “stay-at-home” orders. If allowed to keep their operations open, they may have questions regarding what operations they are allowed to continue and what safety and health measures they are required to meet. Two such orders were issued last week in California (Executive Order N-33-20 or the “California Order”) and Illinois (COVID-19 Executive Order No. 8 or the “Illinois Order”). A summary of each is provided below.

Although California and Illinois both issued state-wide orders, a number of counties and individual cities throughout the U.S. have enacted their own public health orders with more specific instructions. Generally speaking, any stricter local emergency health requirements will remain in effect, in addition to the new state-wide orders.

CALIFORNIA ORDER

- The California Order was signed by Governor Gavin Newsom and issued on March 19, 2020.
- Restrictions and exceptions:
    - Under the California Order, all individuals living in the State of California are ordered “to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors,” as outlined by the federal Cybersecurity & Infrastructure Security Agency (“CISA”).
    - The CISA issued a guidance document titled “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response” on March 19, 2020 (available at link). “Essential Critical Infrastructure Workers” include those whose jobs are related to:
        - Healthcare/public health
        - Law enforcement, public safety and first responders
        - Food and agriculture (including food manufacturers, producers and distributors)
        - Energy

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        - Water and waste management
        - Transportation and logistics (including cargo, freight, mass transit and aviation)
        - Public works
        - Communication and information technology
        - Government functions
        - Critical manufacturing (including manufacturing and supply chain for medical supplies, transportation, chemical manufacturing, and defense industrial base, among others)
        - Hazardous materials
        - Financial services
        - Chemicals (including agricultural, pharmaceuticals and consumer products)
        - Defense industrial base
- Enforcement
    - The California Order is enforceable pursuant to California law, including California Government Code §8665, which provides that any person who refuses or willfully neglects to obey any relevant lawful order "shall be guilty of a misdemeanor punishable by a fine of not to exceed $1,000 or by imprisonment for not to exceed six months or by both[.]"
- The California Order maintains the importance of continuing the supply chain so that individuals may have "access to such necessities as food, prescriptions and health care." Individuals who leave their residences are strongly encouraged to "practice social distancing" at all times.

ILLINOIS ORDER

- The Illinois Order was signed by Governor J.B. Pritzker and issued on March 20, 2020.
- Restrictions:
    - Under the Illinois Order, "all individuals currently living within the State of Illinois are ordered to stay at home or at their place of residence" except as allowed by the Illinois Order below.
    - All non-essential business and operations are required to cease all activities except "Minimum Basic Operations." Minimum Basic Operations are defined in the Illinois Order as "[t]he minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions."
- Exceptions
    - Individuals may leave their residences to perform "Essential Activities." Essential Activities include those for:
        - Health and safety

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        - Necessary supplies and services (groceries, supplies to work from home, etc.)
        - Outdoor activities (exercise)
        - Governmental functions
- Individuals may also leave their residence to travel to/perform work for “Essential Infrastructure.” Essential Infrastructure includes:
        - Food production, distribution and sale
        - Construction
        - Building management
        - Airport operations
        - Utilities services
        - Distributions centers
        - Oil
        - Ports
        - Cybersecurity
        - Waste removal and recycling
        - Internet
- All businesses and operations that are “essential” are “encouraged to stay open,” and individuals may leave their residences to travel to/perform “Essential Businesses and Operations.” Essential Businesses and Operations include:
        - Grocery stores and pharmacies
        - Food and beverage manufacturing, productions and processing
        - Non-profits and charities that provide food, shelter and social services to disadvantaged individuals
        - Media
        - Gas stations
        - Financial institutions
        - Hardware and supply stores
        - Building and construction related trades
        - Mail and postage
        - Educational institutions for purposes of facilitating distance learning and critical research

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        - Laundry services
        - Restaurants for consumption off-premises and delivery
        - Supplies to work from home
        - Supplies for Essential Businesses and Operations
        - Transportation
        - Home-base care and services
        - Residential facilities
        - Professional services (including legal, accounting, insurance)
        - Manufacture, distribution and supply chain for critical products and industries
        - Critical labor union functions
- Manufacturing companies, distributors and supply chain companies producing and supplying critical products and services for essential industries are permitted to stay open, subject to the exercise of social distancing practices, as outlined below. Such industries include:
        - Pharmaceutical
        - Technology
        - Biotechnology
        - Healthcare
        - Chemicals and sanitization
        - Waste pickup and disposal
        - Agriculture
        - Food and beverage
        - Transportation
        - Energy
        - Steel and steel products
        - Petroleum and fuel
        - Mining
        - Construction
        - National defense
        - Communications

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        - Other products used by other Essential Business and Operations
    - Businesses that sell, manufacture or supply Essential Businesses and Operations with support or materials necessary to operate are also permitted to stay open, subject to the exercise of social distancing practices.
- Social Distancing Practices
    - To the greatest extent possible, individuals, and especially those performing Essential Businesses and Operations, should comply with “Social Distancing Requirements.” Social Distancing Requirements include:
        - Maintaining a six-feet distance from other individuals
        - Washing hands as frequently as possible
        - Covering coughs and sneezes
        - Regularly cleaning high-touch surfaces
        - Having hand sanitizer and sanitizing products available for employees and customers
        - Implementing separate operating hours for elderly customers
        - Operating remotely when possible
- Enforcement
    - The Illinois Order will be enforced by State and local law enforcement, but no specific fines or penalties have been defined, thus far.

In addition, companies that are subject to any of the local or state “stay-at-home” orders may be compelled to exercise their right to suspend performance under “force majeure” clauses of their contracts with vendors and/or customers. These are decisions that should be made upon consulting with your business attorney and after review of the specific contract and the controlling “force majeure” clause. These types of clauses vary considerable from contract-to-contract.

Please contact your Masuda Funai relationship attorney for further information or to address any questions or comments that you may have. You can also contact us at lawfirm@masudafunai.com or if you require Japanese language support at Ftokuyoshi@masudafunai.com.

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