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Ask Your Employment Lawyer Webinar Series

# COVID-19 – CLOSURES/SHELTER IN PLACE ORDERS AND BUSINESS IMPACTS

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# Today's Presenters



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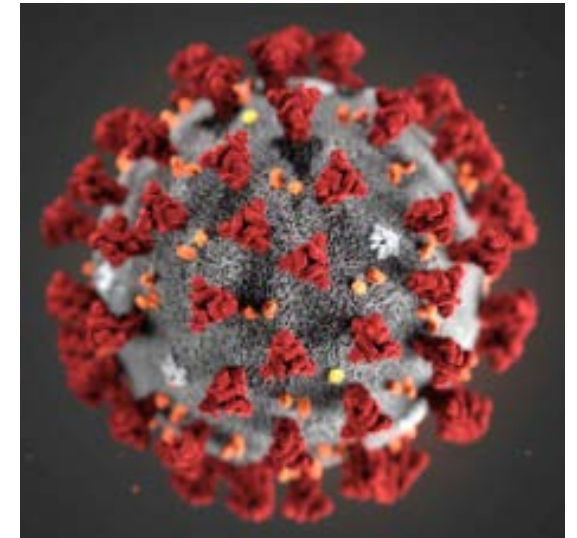
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The purpose of this update is to identify select developments that may be of interest to readers. The information contained herein is abridged and summarized from various sources, the accuracy and completeness of which cannot be assured. This update is not and should not be construed as legal advice or opinion, and is not a substitute for the advice of counsel.

# Blank Rome Coronavirus Task Force

## Resources

- Guidance for Employers to Address Coronavirus in the Workplace
- How to Approach Coronavirus-Related Workplace Scenarios
- How to Prepare for Coronavirus-Themed Phishing Attacks
- Coronavirus Guidance for Businesses: Commercial Arrangements, Contractual Performance and Force Majeure
- Coronavirus Guidance for Employers: Pandemic Declaration and Government Action
- Coronavirus Update: House Passes Bill for Paid Leave and Other Emergency Relief
- Coronavirus Update: Ensuring Privacy in a Time of Crisis
- SEC Eases In-Person Board Meeting and Other Filing and Delivery Requirements in Response to Coronavirus Developments





# Blank Rome Coronavirus Task Force

## Multifaceted Team

- Insurance Recovery
- Labor and Employment
- Maritime
- Litigation
- Corporate and M&A
- Real Estate and Hospitality
- Cybersecurity & Data Privacy
- Tax
- Bankruptcy & Restructuring
- Investment Management



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# What We Plan to Cover

1. East Coast Updates
2. West Coast Updates
3. Legal Considerations in Reducing your Workforce and Available Options



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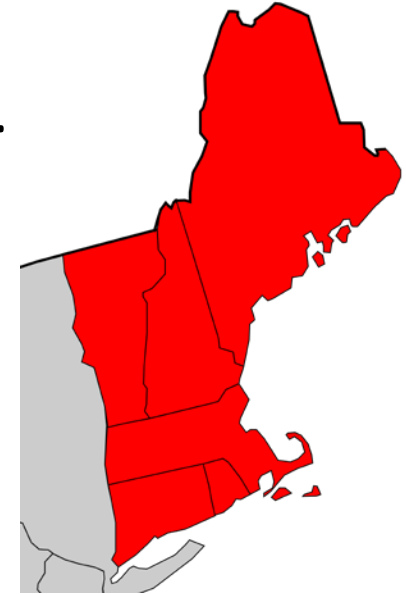
# New England

- **Massachusetts**

- Governor Charlie Baker declared a state of emergency on March 10, 2020.
- Executive orders shutting down state construction projects, limiting restaurants to takeout and delivery, and restricting public gatherings to 25 people.
- No other business operation restrictions as of March 18.

- **Connecticut**

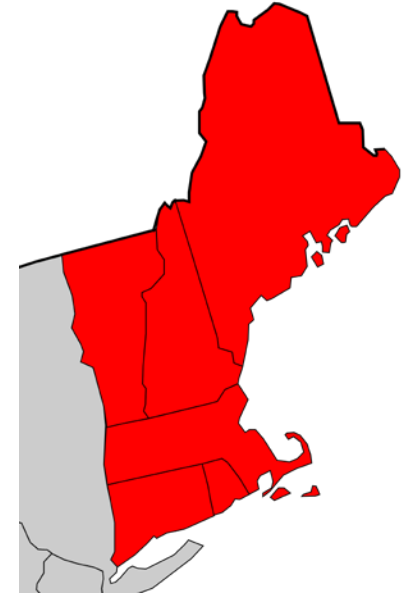
- On March 16, Governor Ned Lamont ordered the statewide closure of fitness centers, recreation facilities, and movie theaters through April 30.
- The order also limited restaurants to takeout and delivery operations and restricted public gatherings to 50 people or less.
- Governor Lamont is expected to also order retail shopping malls, amusement parks and bowling alleys to close by 8:00 p.m. on March 19.
- No other business operation restrictions as of March 18.



# New England

- **Maine/New Hampshire/Rhode Island/Vermont**

- RI/VT have limited restaurants to takeout and delivery operations.
- VT has also ordered the statewide closure of fitness centers, recreation facilities, and movie theaters through April 30.
- Public gathering restrictions in ME (<50) /RI (<25) /VT (<50).
- No current business operation restrictions as of March 18.





# New York

- **New York State**

- On March 17, Governor Andrew Cuomo issued an executive order closing casinos, fitness centers, and theaters until further notice.
- Bars and restaurants limited to takeout and delivery.
- “Strongly advised” that only essential businesses (defined as grocery stores, pharmacies, gas stations, and medical facilities) stay open after 8:00 p.m.
- Governor and Legislature have reached agreement on a bill that would guarantee certain job protections and pay quarantined employees for up to 14 days. However, the bill has not yet been drafted and only limited details are available.



# New York

- **New York State**

- On March 18, Governor Cuomo stated that he would issue an executive order directing non-essential businesses to implement work-from-home policies effective Friday, March 20.
- Per the forthcoming order, non-essential businesses that rely on in-office personnel must decrease their in-office workforce by **75 percent** (per new guidance issued March 19).
- Exemptions from the order will include shipping, media, warehousing, grocery and food production, pharmacies, healthcare providers, utilities, banks and related financial institutions.
- Additionally, the Governor ordered that retail shopping malls, amusement parks and bowling alleys must close by 8:00 p.m. on March 19.



# New York

- **New York City**

- In addition to the statewide restrictions, New York City has ordered the closure of all nightclubs, movie theaters, and concert venues.
- Indoor and outdoor events with more than 50 attendees are banned and events with <50 attendees are recommended to be held only in venues with <50% capacity to facilitate social distancing.
- On March 17, Mayor Bill de Blasio told New York City residents to prepare for the possibility of a “shelter-in-place” order, with a final decision expected by March 19, **but on March 19, Governor Cuomo stated that he would not permit a NYC shutdown.**



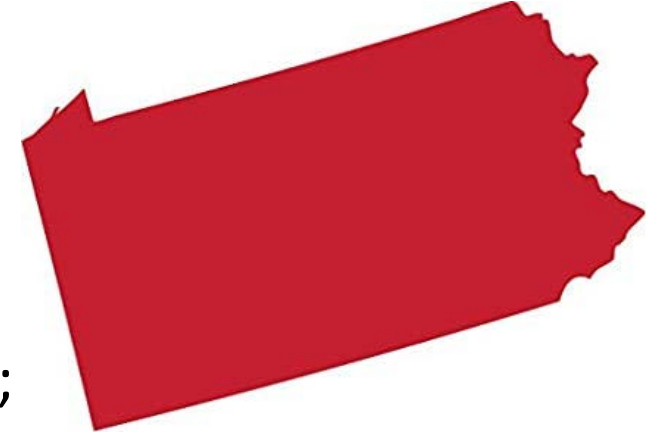
# New Jersey

- On March 16, Governor Phil Murphy signed an executive order requiring strict social distancing measures.
- All “gatherings of persons” limited to 50 or fewer.
- All casinos, concert venues, nightclubs, racetracks, gyms, fitness centers and classes, movie theaters, and performing arts centers closed indefinitely.
- Non-essential businesses must be closed by 8:00 p.m. and 5:00 a.m.
- Non-essential travel “strongly discouraged” after 8:00 p.m.
- Some localities have ordered greater restrictions:
  - Bergen County: Complete shutdown effective March 17 except for defined essential businesses (healthcare facilities – but not dentists, grocery stores, pharmacies, pet stores, gas stations including attached auto repair, banks, funeral parlors, law firms in some capacities)



# Pennsylvania

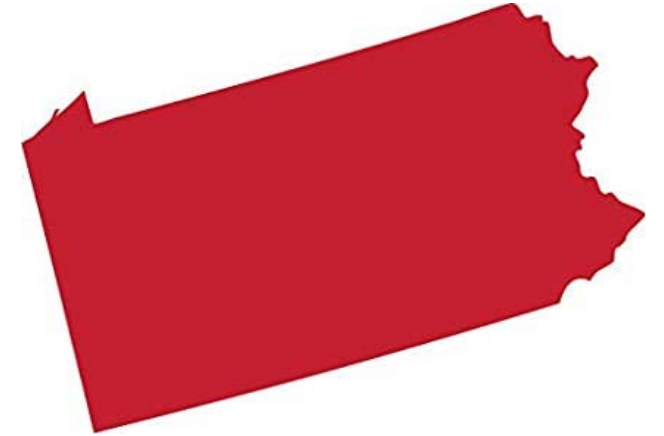
- On March 16, Governor Tom Wolf “strongly urged” non-essential businesses to close for 14 days
  - “**Non-essential businesses include** public-facing industries such as entertainment, hospitality, and recreation facilities, including but not limited to community and recreation centers; gyms, including yoga, barre and spin facilities; hair salons and barber shops, nail salons and spas; casinos; concert venues; theaters; sporting event venues and golf courses; retail facilities, including shopping malls except for pharmacy or other healthcare facilities within retail operations.”





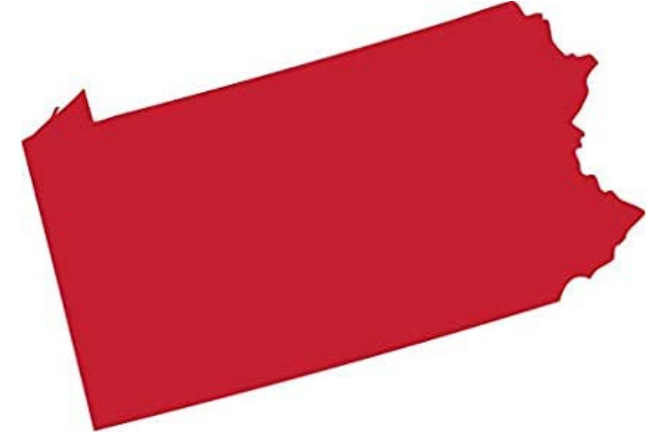
# Pennsylvania

- “**Essential services and sectors** include but are not limited to food processing, agriculture, industrial manufacturing, feed mills, construction, trash collection, grocery and household goods (including convenience stores), home repair/hardware and auto repair, pharmacy and other medical facilities, biomedical and healthcare, post offices and shipping outlets, insurance, banks, gas stations, laundromats, veterinary clinics and pet stores, warehousing, storage, and distribution, public transportation, and hotel and commercial lodging.”
- Businesses encouraged to have employees work remotely and to use social distancing at the workplace.
- Statement does not have the force of law, but voluntary compliance expected.



# Philadelphia

- On March 16, Mayor Jim Kenney issued an executive order closing all non-essential businesses in Philadelphia until March 27.
- City issued detailed guidance on March 17 defining categories of essential businesses:
  - Essential Retail Businesses
  - Essential Infrastructure and Industrial Businesses
  - Essential Healthcare and Social Services Businesses
- Remote operations exempted.
- Businesses permitted to remain open must follow social distancing practices.



# Delaware & Maryland

- **Maryland**

- On March 16, Governor Larry Hogan issued a series of executive orders closing restaurants and bars (except for takeout), racetracks and casinos, and prohibiting gatherings of >50 people.
- No other business operation restrictions as of March 18.



- **Delaware**

- On March 16, Governor John Carney issued an executive order closing restaurants and bars (except for takeout), racetracks and casinos, and prohibiting gatherings of >50 people.
- No other business operation restrictions as of March 18.

# District of Columbia

- On March 16, Mayor Muriel Bowser ordered the closure of bars and restaurants, except for takeout service.
- Ban on gatherings of >50 people and gatherings of >10 people by organizations that primarily serve people over age 60.
- Ban extends to businesses that may attract large groups of customers “within arm’s length of one another for an extended period.”
- Does not include office buildings with >50 people.
- Does not extend to federal property.



# Washington State

- **Governor Jay Inslee's Emergency Proclamation** (March 16, 2020)  
Proclaims that a state of emergency continues to exist in **all** counties of Washington State.
- Prohibits onsite consumption of food and/or beverages in a public venue until midnight on March 31, 2020 (unless otherwise extended):
  - Restaurants, food courts, bars, taverns, coffee shops, catered events, clubs, bowling alleys, & similar venues.
  - Drive-through, delivery, and takeout **not** prohibited.
- Does **not** apply to a broad range of businesses and services, including:
  - Grocery stores, pharmacies, convenience stores, gas stations, pet stores, and libraries.
  - Any sit-down food or beverage services within these facilities are prohibited.





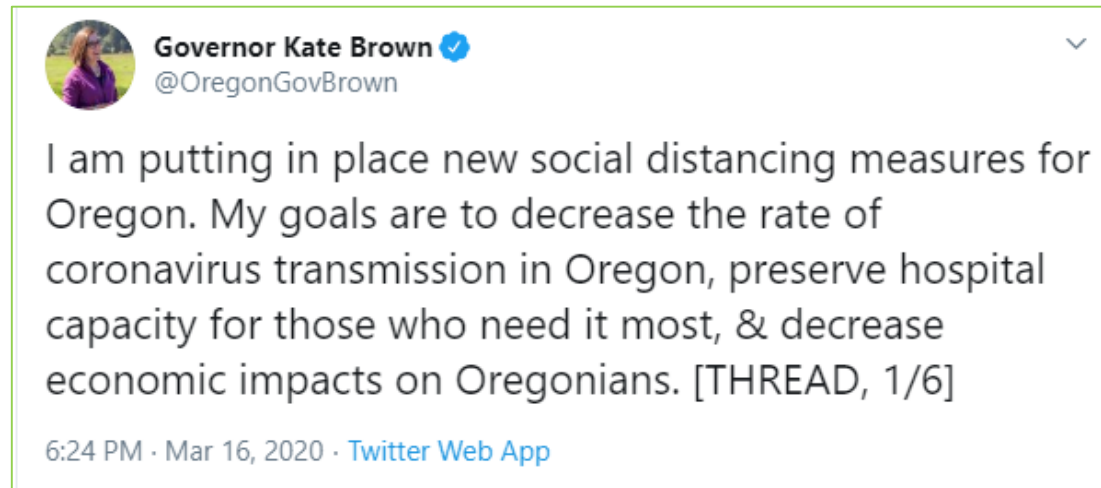
# Washington State

- Prohibits operation of public venues in which people congregate for entertainment, social or recreational purposes:
  - Theaters, bowling alleys, gyms, fitness centers, non-tribal card rooms, barbershops and hair/nail salons, tattoo parlors, pool halls, and other similar venues.
- Prohibits operation of all retail stores unless they designate an employee or officer who must establish and implement social distancing and sanitation measures established by the CDC or the WA Department of Health guidelines.
- Violators may be subject to criminal penalties.



# Oregon

- **Governor Kate Brown announced new statewide actions on COVID-19, effective March 17 for “at least 4 weeks.”**
- Statewide cancelation of all events and gatherings larger than 25 people:
  - Exempting essential locations like workplaces, grocery stores, pharmacies, and retail stores.
- Restaurants, bars, and other establishments that offer food or beverages for sale are restricted to carry-out and delivery.
  - No on-site consumption permitted.



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# Oregon

- Recommended that Oregonians avoid gatherings of 10 people or more.
- Food service at healthcare facilities, workplaces, and other essential facilities will continue.
- All other businesses are urged to assess their practices, implement strong social distancing measures, and close their doors temporarily if they cannot put the new guidance in place.



**Governor Kate Brown** ✓  
@OregonGovBrown

We all know that as a community, we hold each other together in times of need. Working together, we are stronger together. Even if it's in ways we never thought possible. Thank you. [6/6]

6:24 PM · Mar 16, 2020 · [Twitter Web App](#)

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# California's Governor Issues Guidance on Cal-WARN

(March 17, 2020) Governor Newsom suspended certain Cal-WARN requirements for COVID-19-related layoffs.



Via executive order, Newsom suspended the 60-day notice requirement for an employer that orders a mass layoff, relocation, or termination at a covered establishment on the condition that the employer: (1) provides the affected employees with a notice as described by the California WARN Act; (2) provides as much notice as is practicable, including a brief statement of the basis for the reduced notice; (3) undertakes the mass layoff, relocation, or termination because of COVID-19-related business circumstances that were not reasonably foreseeable; and (4) includes specified language in the notice advising affected employees that they may be eligible for unemployment insurance.

The Labor and Workforce Development Agency was directed to issue public guidance regarding implementation of the order by March 23, 2020.

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# Northern California “Shelter in Place” Orders

**Eff. March 17, 2020, residents in eight Bay Area counties,\* the Cities of San Francisco and Berkeley are under order to “shelter in place”—i.e., stay home—except for “Essential Activities” and “Essential Businesses” for the next three weeks. Even “Essential Businesses” are limited to “Minimum Basic Operations...”**



- **“Minimum Basic Operations:”** (i) the minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions; and (ii) the minimum necessary activities to facilitate employees of the business being able to continue to work remotely.
- **“Essential Businesses:”** healthcare operations, grocery stores, media services, gas stations, banks and financial institutions, service providers (e.g., plumbers and electricians), educational institutions, laundry service providers, restaurants and businesses that provide food for delivery and takeout, food and grocery delivery services, airlines, residential care facilities, and childcare facilities.

\*Currently including the following counties: Alameda, Contra Costa, Marin, Santa Clara, Santa Cruz, San Francisco, San Mateo, and Sonoma. Napa County has prohibited public or private gatherings of 50 or more, but has significantly excluded hotels, grocery stores and other retail establishments, airports and hospitals from its order. The city of **Fresno** also issued a “shelter in place” order for residents as of 12:01 a.m. on Thursday, March 19, 2020 through 11:59 p.m. on Tuesday, March 31, 2020 (subject to extension).



# Northern California “Shelter in Place” Orders (Con’t)

Eff. March 17, 2020, residents in eight Bay Area counties, the Cities of San Francisco and Berkeley are under order to “shelter in place”—i.e., stay home—except for “Essential Activities” and “Essential Travel” for the next the next three weeks.



- “Essential Activities:” buying food, getting medical care, and caring for a pet.
- “Essential Travel:” (i) travel to care for elderly, minors, dependents, or other vulnerable persons; (ii) travel to/from educational institutions to receive materials for distance learning, meals, or related services; (iii) travel to return to a place of residence from outside the jurisdiction; (iv) travel required by law enforcement or court order; or (v) travel by non-residents to return to their residence outside the county.

# Industry-Specific Closures in Southern California

## City of Los Angeles (March 15, 2020)

**Los Angeles Mayor Eric Garcetti issued an emergency order closing restaurants, bars, nightclubs, theaters, and fitness centers until at least March 31, 2020 at 12:00 p.m. The order provides that:**



- Bars and nightclubs that do not serve food are closed to the public.
- Restaurants and retail food facilities are prohibited from serving dine-in food services and may only continue to operate for the purpose of preparing and offering food to customers via delivery, takeout, or drive-through.
- Movie theaters, live performance venues, bowling alleys, arcades, gyms, and fitness centers are closed to the public.
- Exempt establishments include: (i) cafeterias, and restaurants located within hospitals, nursing homes, or similar facilities' commissaries; (ii) grocery stores – rationing; (iii) pharmacies; (iv) food banks; (v) Los Angeles World Airports concessionaires.

# Industry-Specific Closures in Southern California (Con't)

## City of Santa Monica (March 16, 2020)

**City of Manager Rick Cole placed nearly identical restrictions on business activity. Effective March 16, 2020 at 12:00 p.m., these changes are also expected to last through at least March 31, 2020. The order provides:**



- Bars and nightclubs that do not serve food are closed to the public.
- Restaurants and retail food facilities are prohibited from serving dine-in food services and may continue to operate only for the purpose of preparing and offering food to customers via delivery, takeout, or for drive-through.
- Movie theaters, live performance venues, bowling alleys, arcades, gyms, and fitness centers are closed to the public.
- Businesses providing physical health and beauty services that do not provide medical care or services that supplement medical care as directed by medical professionals are closed to the public. This specifically includes spas, hair salons, massage parlors, and nail salons.
- Exempt establishments include: (i) cafeterias, commissaries, and restaurants located within hospitals, nursing homes, or similar facilities; (ii) grocery stores; (iii) pharmacies; and (iv) food banks.

# Industry-Specific Closures in Southern California (Con't)

## Orange County (Rev. March 18, 2020)

County Health Officer Nichole Quick recently clarified that this was *not* a “shelter in place” order (as it originally appeared to be), but *does* prohibit all public and private gatherings until 11:59 p.m. on March 31, 2020. In addition:



- All bars and nightclubs that serve alcohol but not food are closed to the public. Restaurants and retail food facilities are prohibited from serving dine-in food services and may only continue to operate for the purpose of preparing and offering food to customers via delivery, takeout, or drive-through (provided six feet social distancing is maintained).
- Movie theaters, gyms, and health clubs are closed.
- The revised order expressly states that “going to work” or “performing essential services” are *not* prohibited. The order also does not apply to essential public transportation, airport travel, grocery stores or charitable food distribution, certified farmers’ markets, and shopping at a store or a mall.
- The order issues several “strong recommendations,” including that all businesses enact social distancing, increased sanitation standards, and make every effort to use telecommuting for its workforce.

# WARN Statute Considerations

- **Worker Adjustment Retraining Notification (WARN) Act Considerations**
  - Notice requirements
  - “Unforeseeable Business Circumstances” exception
- **Mini-WARN Acts**
  - *Note:* Unforeseen business circumstance exception is **not** available in California and New Jersey
  - State law does not always consider the length of the closure



# Wage and Hour Considerations

- **Reduction in pay**
  - Impact on exempt status
- **Reduced hours and schedules**
  - Pay should not vary
  - Hours should not be defined
- **Furlough**
  - When to pay exempt employees
- **Unemployment benefits**
  - Many states expanded coverage for employees affected by COVID-19
  - Stimulus package provides \$1B for emergency grants



# Other Considerations

- **Health Coverage**
  - COBRA-Qualifying Event
- **Paid Time Off Benefits**
  - Payment upon termination
  - Accrual while on furlough
- **Severance Pay**
  - State laws vary





# Avoid Discrimination Claims

- **Avoid Bias When Selecting Employees for Layoff or Termination**
  - Ensure criteria is not discriminatory in nature
  - Ensure criteria does not cause a disparate impact
  - Special considerations when productivity is selection criterion
  - Laying off employee out on ADA, STD, or FMLA
  - Perform statistical analysis



# Work Sharing Programs

- **Short-Time Compensation Programs**

- Avoids terminations, layoffs, or furloughs
- Financial burden of economic downturn shared among employees
- Employees permitted to collect percentage of unemployment benefits
- Many states and the District of Columbia have work-sharing programs



For more information please visit our Coronavirus Task Force website and see Labor & Employment client alert:

## **Planning for Economic Downturn Related to COVID-19**

# If you have any questions, please contact:



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