

Essential Business Order Violations

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As of today's date, eight states and commonwealths—California, Illinois, Michigan, Nevada, New Jersey, New York, Ohio, and Pennsylvania—have issued orders mandating the close of all businesses and organizations except those deemed essential for critical infrastructure sectors¹ and life-sustaining functions. This has left entities across the nation with little choice but to shutter their operations or face civil and, in some instances, criminal penalties. As our clients continue to weigh their options, we are providing here a brief overview of the potential range of those sanctions:

California: Executive Order N-33-20, issued on March 19, 2020, mandates that all individuals living in California must stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.² The state has also defined as essential those businesses and organizations that provide critical infrastructure for the state including health care and public health, public safety, food and agriculture, and media.³

Violation of the Governor's Order is punishable as a misdemeanor under Government Code section 8665. That section, in turn, states that anyone who "refuses or willfully neglects" to obey a lawful order could also be fined up to \$1,000, imprisoned for six months, or both. The Governor has hinted that non-essential businesses that do not close could also face regulatory or licensing enforcement.⁴

Illinois: The state's March 20, 2020, Executive Order 2020-10 requires that all but essential business and operations must cease all activities except minimum

basic operations, with the exception of working from home.⁵ Penalties for violating the order may include a misdemeanor count of reckless conduct with a maximum penalty of up to one year imprisonment in County jail and a maximum fine of \$2,500. Businesses may also receive an order of closure issued by the state or local health department.

Michigan: The state's March 23, 2020, Executive Order No. 2020-21 mandates that no business or other operations may be conducted outside a residence except for those "necessary to sustain or protect life or to conduct minimum basic operations."⁶ Penalties for violations of the order are punishable as a misdemeanor.

Pennsylvania: On March 19, 2020, the commonwealth ordered the closure of all non-life-sustaining businesses.⁷ The order states that life sustaining businesses may remain open but that they must follow, at a minimum, the social distancing practices and other mitigation measures defined by the Centers for Disease Control to protect workers and patrons.⁸

The state has indicated that enforcement actions, which could include criminal charges, citations, fines, or license suspensions, will be brought against non-life-sustaining businesses. Importantly, the state has also declared that entities that do not comply with the order "will forfeit their ability to receive any applicable disaster relief and/or may be subject to other appropriate administrative action. Such action may include termination of state loan or grant funding, including Redevelopment Assistance Capital Project (RACP) grant funding and/or suspension or revocation of licensure for violation of the law."⁹

¹ The Federal government's critical infrastructure list may be found here: <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>

² <https://covid19.ca.gov/img/executive-order-n-33-20.pdf>

³ For a list of essential critical infrastructure workers, see this 14-page report issued by California's Governor and State Public Health Officer: <https://covid19.ca.gov/img/essentialcriticalinfrastructureworkers.pdf>

⁴ <http://www.capradio.org/articles/2020/03/21/what-californias-stay-at-home-directive-means-for-residents/>

⁵ <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx>

⁶ https://content.govdelivery.com/attachments/MIEOG/2020/03/23/file_attachments/1408152/EO_2020-21_Stay_Home,_Stay_Safe.pdf

⁷ <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order>

⁸ <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-Life-Sustaining-Business.pdf>

⁹ <https://www.governor.pa.gov/newsroom/all-non-life-sustaining-businesses-in-pennsylvania-to-close-physical-locations-as-of-8-pm-today-to-slow-spread-of-covid-19/>

Nevada: The state's March 20, 2020, emergency regulations mandate the closure of all but essential businesses,¹⁰ with the restrictions to be enforced locally. Cities are conducting compliance checks and if they find non-essential businesses open, they may issue citations of up to \$1,000 per day; misdemeanor citations for being a public nuisance, and a summary, suspension, or revocation of a business license.

New Jersey: New Jersey's March 21, 2020, Executive Order No. 107 mandated the brick-and-mortar closure of all non-essential retail business.¹¹ The state's Attorney General announced that people who violate the order could face charges ranging from a disorderly persons offense to a second, third, or fourth-degree crime, with potential penalties from a fine of \$10 to \$1,000 and jail time.

New York: New York State's On Pause Order, effective March 22, 2020, includes a new directive that all non-essential businesses statewide must close in-office personnel functions.¹² A violation of the order can carry a civil penalty of up to \$2,000 for a first violation in addition to fines that can go up to \$10,000. The New York Attorney General may also seek injunctive relief for violations of the order. As to potential criminal penalties, willful violations of the order are considered misdemeanors.

Ohio: Ohio's March 22, 2020, order ceases the operation of all non-essential business and services

unless conducted from an employee's residence.¹³ Violating the order is a second-degree misdemeanor that carries a penalty of up to 90 days in jail, up to a \$750 fine for an individual offender, or \$4,000 for an organization. Another penalty option for law enforcement is to charge individuals or businesses with the violation of failure to disperse. This is a fourth-degree misdemeanor that carries up to 30 days in jail and a \$250 fine for an individual or \$2,000 fine for an organization. A minor misdemeanor carries no jail time, but up to \$150 fine for an individual or \$1,000 fine for an organization.

To see our prior alerts and other material related to the pandemic, please visit the Coronavirus/COVID-19: Facts, Insights & Resources page of our website by clicking [here](#).

¹⁰ <https://nyhealthresponse.nv.gov/wp-content/uploads/2020/03/3.20-Emergency-regulations.pdf>

¹¹ <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>

¹² https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf

¹³ <https://coronavirus.ohio.gov/static/DirectorsOrderStayAtHome.pdf>

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