

Physical Location Shut Down for Non-Essential Businesses in Connecticut

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March 21, 2020 by Judith A. Lockhart, Bryan J. Hall and Alexander G. Malyshev

In an effort to control the spread of the COVID-19 pandemic, Connecticut Governor Ned Lamont adopted Executive Order No. 7H[1] (the "Executive Order") requiring "non-essential" businesses to eliminate their in-person workforces as of 8 P.M. on Monday, March 23, 2020. There is no distinction between for-profit and non-profit businesses, and the Executive Order was part of a coordinated response by New York, New Jersey, and Connecticut.[2]

The Executive Order requires every business to utilize any telecommuting, or other work from home procedures, that it can safely utilize. Every "non-essential" business must eliminate (reduce by 100%) its in-person workforce at each of its work locations. Accordingly, all non-essential businesses will be required to operate without a physical workplace or close completely.

Businesses classified as "essential" are exempt from the mandatory in-person workforce reduction. The Executive Order describes several categories of exempt essential businesses and requires the Connecticut Department of Economic and Community Development ("DECD") to issue legally binding guidance indicating which businesses are essential by 8 P.M. on Sunday, March 20. This Advisory will be updated once the guidance is issued.

Based on the Executive Order itself, essential businesses will include, but are not necessarily limited to:

1. **Essential health care operations**, including hospitals, clinics, dentists, pharmacies, elder care and home health care workers, companies and institutions involved in the research and development, manufacture, distribution, warehousing and supplying of pharmaceuticals, biotechnology therapies, health care data, consumer health products, medical devices, diagnostics, equipment, services and any other healthcare related supplies or services;
 2. **Essential Infrastructure**, including utilities, wastewater and drinking water, telecommunications, airports and transportation infrastructure;
 3. **Manufacturing**, including food processing, pharmaceuticals, and industries supporting essential services required to meet national security commitments;
 4. **The defense industrial base**, including aerospace, mechanical and software engineers, manufacturing/production workers and aircraft and weapon systems maintainers;
 5. **Essential retail**, including grocery stores (and big-box stores or wholesale clubs only if they also sell groceries), pharmacies, gas stations and convenience stores, food and beverage retailers (including liquor/package stores and manufacturer permittees) and restaurants (only if they comply with other COVID-19 related restrictions);
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6. **Essential services**, including trash and recycling collection, hauling and processing, mail and shipping services;
7. **News media**;
8. **Legal and accounting services**;
9. **Financial Institutions**, including banks, insurance companies and check cashing services;
10. **Providers of basic necessities to economically disadvantaged populations**;
11. **Construction**;
12. **Vendors of essential services and goods necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses**, including pest control and landscaping services; and
13. **Vendors that provide essential services or products**, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and the provision of goods, services or functions necessary for the health, safety and welfare of the public.

The Executive Order also deems as “essential” the **16 critical infrastructure sectors** identified by the Department of Homeland Security. These are sectors “whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof” by the Department of Homeland Security (including communications, defense, healthcare, and transportation).[3] This list overlaps, to a certain extent, with the other “essential” businesses identified by the Executive Order, but it is likely additional guidance will be provided since certain of those sectors (like commercial facilities) are quite broad.

A business that is not classified as essential under the guidance, but believes that it should be considered essential, may file a request for exemption with the DECD.

As Connecticut, in cooperation with surrounding states, continues its efforts to limit the rapid increase in COVID-19 caseload, the rules governing business operations are changing rapidly. The Carter Ledyard team is monitoring developments in this area and expects to issue updates as the situation evolves.

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[1] The Executive Order can be found here: <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7H.pdf>.

[2] For our analysis of New York’s corresponding order see “On-Site Workforce Restrictions for “Non-Essential” Businesses in New York State,” available at <https://www.clm.com/publication.cfm?ID=5684>.

[3] See <https://www.cisa.gov/critical-infrastructure-sectors>.

*Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists of **Jeffery S. Boxer** (212-238-8626, boxer@clm.com), **Judith A. Lockhart** (212-238-8603, lockhart@clm.com), **Bryan J. Hall** (212-238-8894, hall@clm.com), **Alexander G. Malyshev** (212-238-8618, malyshev@clm.com), **Melissa J. Erwin** (212-238-8622, erwin@clm.com) and **Leonardo Trivigno** (212-238-8724, trivigno@clm.com). Clients should contact the attorneys listed above or their regular CLM attorney for any questions concerning legal obligations arising from the COVID-19 pandemic.*

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