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COVID-19 STATE PUBLIC HEALTH ORDERS AND THEIR IMPACT ON NEWS MEDIA OPERATIONS

Numerous state and local governments have issued public health orders requiring residents to “stay at home” or “shelter in place,” closing businesses, limiting public gatherings, or otherwise restricting work, travel, and presence in public places. The following is an overview of the orders of which we are currently aware as they apply to news media organizations, in particular whether news media organizations are permitted to continue operating and whether their employees are allowed to continue working.

The COVID-19 pandemic and government responses to it continue to evolve. New orders or clarification of existing orders are being issued frequently. In addition, local government orders may restrict operations of businesses, including media businesses, even if state government orders do not. Such orders may affect this assessment, and new developments not addressed in this assessment should be investigated and considered before taking any action. Furthermore, there are many concerns regarding the rights and responsibilities of employers and potential liability that we have not addressed. If you need further information or advice, please feel free to contact us.

State Public Health Orders

To date, we are aware of COVID-19 public health orders imposing “stay at home” requirements (and often other restrictions) having been issued by the following states:

- California: Stay at Home, Essential Critical Infrastructure Workers
- Delaware: Essential Businesses, List of Essential & Nonessential Businesses, Stay at Home
- Hawaii
- Illinois
- Indiana
- Louisiana: Stay at Home, List of Additional Critical Infrastructure Businesses
- Massachusetts: Order, Stay at Home Advisory, List of Essential Services
- Michigan
- New Jersey
- New York: Order, Guidance Document
- Ohio
- Oregon
- Pennsylvania: Governor’s Order, Guidance, List of “Life Sustaining” Businesses
- Washington: Order, List of “Essential Critical Infrastructure Workers”
- West Virginia
- Wisconsin

In addition, several states have issued orders requiring closure of all non-essential businesses, but have not yet adopted “stay at home” requirements:

- Connecticut: Order, List of Essential Businesses
- Kentucky
- Maryland
- Nevada: Order, Emergency Regulations
- New Mexico
- Virginia

Local governments (counties and cities) too numerous to list have issued stay at home orders or other restrictions.

Exceptions for News Media

In general, the public health orders adopted around the country exempt certain businesses and/or workers involved in those business. They sometimes use different terminology to do so, but the structure of most orders are similar: essential businesses are permitted to continue operating, and/or their employees are permitted to leave home and to travel for purposes related to their work with an essential business. The following list identifies by state whether and, briefly, how each state exempts news media organizations from core restrictions imposed by the state. In most if not all of these states, essential businesses that are permitted to continue operating and/or employees who are permitted to continue working are required to practice “social distancing.”

California: The Governor’s order indicates that workers in certain “federal critical infrastructure sectors” are exempt from the stay at home requirements of the order. In doing so, it refers to guidance issued by the Cybersecurity and Infrastructure Security Agency (CISA). Thus, it apparently exempts those who are involved in the “Critical Infrastructure Sectors” defined by CISA, and explained (in part) on the website available at the link to which the Order refers (the “CISA Website”). The CISA Website refers to a “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response” issued by the Director of CISA (the “CISA List”). The CISA List includes a list of the infrastructure sectors critical to the COVID-19 response, and describes categories of workers deemed to be involved in those sectors. One of the critical infrastructure sectors identified by the CISA List is “Communications.” The CISA List specifies that workers in this sector include: “Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting.” The California Department of Public Health subsequently issued its own list of “Essential Critical Infrastructure Workers” (the “CDPH List”). The CDPH List is clearly intended to identify the categories of workers exempt from compliance with the State Order. Under the category “Communications and Information Technology,” the List includes “[w]orkers who support radio, television, and media services, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting.”

Connecticut: Both the Governor’s order and subsequent guidance issued by Commissioner of the Department of Economic and Community Development identify news media as an essential business.

Delaware: The “Delaware list of essential and nonessential businesses during coronavirus,” under the “Information” category, identifies “Newspaper, Periodical, Book, and Directory Publishers” and “Radio and Television Broadcasting” as essential businesses.

Hawaii: The Governor’s order identifies “Newspapers, television, radio, and other media services” as essential businesses.

Illinois: The Governor’s order identifies “Newspapers, television, radio, and other media services” as essential businesses.

Indiana: The Governor's order identifies "Newspapers, television, radio, and other media services" as essential businesses, and also incorporates the "Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response" issued by the Director of the Cybersecurity and Infrastructure Security Agency (CISA). The CISA List identifies the infrastructure sectors critical to the COVID-19 response, and describes categories of workers deemed to be involved in those sectors. One of the critical infrastructure sectors identified by the CISA List is "Communications." The CISA List specifies that workers in this sector include: "Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting."

Kentucky: The Governor announced he would be issuing an order restricting the operations of "non-life-sustaining businesses." The announcement states that businesses that will be allowed to remain open include "media" businesses, as well as those covered by the CISA List.

Louisiana: Like the California order, the Governor's order does not identify essential businesses, but refers to and apparently incorporates the guidance issued by the Cybersecurity and Infrastructure Security Agency (CISA). Thus, although it is not clear (because, unlike some other orders, the Governor's order does not specifically reference it), the Governor's order apparently incorporates the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response" which, as explained above, specifies that workers in the critical (and hence exempted) Communications sector include: "Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting."

Maryland: The Governor issued an order closing or restricting the operations of all "Non-Essential Businesses." The order defines "Non-Essential Businesses" as those not listed in the guidance provided by the Cybersecurity and Infrastructure Security Agency. It does not expressly reference the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, as some other orders do, but probably incorporates it. As noted, the CISA List specifies that workers in the critical (and hence exempted) Communications sector include: "Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting."

Massachusetts: The Governor's order temporarily shuts down all business that do not provide "COVID-19 Essential Services." The state has published a list of COVID-19 Essential Services, which includes "Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting."

Michigan: The Governor's order imposes a stay-at-home requirement and prohibits businesses from conducting operations requiring their employees to leave their homes, except to the extent that they are classified as "critical infrastructure workers." The order provides that "critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#))." The link leads to the CISA Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response" which, as explained, specifies that workers in the critical (and hence exempted) Communications sector include: "Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting."

Nevada: The Governor's directive requires the closure of all "Non-Essential Businesses." Emergency regulations issued by the state at the direction of the Governor define "Essential Businesses" to include "Newspapers, television, radio, and other media services."

New Jersey: The Governor issued an executive order imposing a stay-at-home requirement and requiring all non-essential retail businesses as well as other specified categories of businesses to close their “brick and mortar” facilities. Paragraph 19 of that order provides that “Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.”

New Mexico: The Secretary of the Department of Health issued an order stating that “All businesses, except those entities identified as “essential businesses”, are hereby directed to reduce the in-person workforce at each business or business location by 100%.” The order provides that “Essential Business” include “Media services including television, radio, and newspaper operations.”

New York: The Governor issued an order requiring all businesses to utilize telecommuting or other work from home procedures to the greatest extent possible, and prohibiting business from having more than 50% of their employees working in person. Essential businesses or businesses providing essential services are exempt from the latter restriction. The Governor’s order identifies “news media” as an essential business. The Guidance Document issued by the Department of Economic Development also lists News Media as an essential business.

Ohio: The Director of the Ohio Department of Health issued an order imposing stay at home and business closure requirements. Residents are permitted to leave home to participate in “Essential Businesses,” and Essential Businesses are permitted to remain open. Essential Business include “Newspapers, television, radio, and other media services.” Notably, they also include “First amendment protected speech.”

Oregon: The Governor’s order imposes some limitations on individual activities, but does not prohibit people from going to work. It also requires the closure of some business, but most non-retail businesses are permitted to continuing operating. It requires all businesses to facilitate working from home to the extent possible.

Pennsylvania: The Governor’s order (and an order by the Secretary of the Department of Health) imposes a stay at home requirement on seven counties. Residents are permitted to leave home to participate in “life sustaining businesses.” A list of life sustaining businesses issued by the state includes identifies “Newspaper, Periodical, Book, and Directory Publishers” and “Radio and Television Broadcasting.”

Washington: The Governor issued an order imposing stay at home requirements and restricting the operations of all Non-Essential Businesses. The state issued a list of “Essential Critical Infrastructure Workers.” Business listed are permitted to continue operating, and their employees can continue to work for them. The list includes, in the “Communications” sector, “Workers who support radio, television, newspapers and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting, and workers involved in the printing and distribution of newspapers.”

West Virginia: The Governor issued an order imposing stay at home requirements and restricting the operations of all Non-Essential Businesses. The Governor’s order includes in the list of Essential Businesses “Media and first amendment protected speech. Newspapers, television, radio, and other media services.” It also incorporates the CISA “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response.” As explained, the CISA List specifies that workers in this sector include: “Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting.”

Wisconsin: The Governor issued an order imposing stay at home requirements and restricting the operations of all Non-Essential Businesses. The Governor’s order includes in the list of Essential Businesses “Newspapers, television, radio, and other media services.” It also incorporates the CISA

“Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response.” As explained, the CISA List specifies that workers in this sector include: “Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting.”

Virginia: The Governor issued an order restricting (but not prohibiting) the operations of non-essential retail business. It does not appear to apply to the operations of media organizations. Like most state public health orders, it requires all businesses to utilize teleworking to the extent possible and adhere to social distancing practices for employees working in person.