

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an adjunct professor here at McGeorge School of Law in its Capital Lawyering Program. Thanks for joining today's podcast where we take a look at what are essential services.

To set the stage, while most of the public is trying to comply with the shelter in place orders that've now been instituted statewide, of course, with very stern warnings to comply to help curb the spread of this new coronavirus, there have been a number of people who have jobs that are deemed so critical that they actually can't, or shouldn't, comply with these shelter in place orders.

Now, many of these mission-critical jobs, as you can imagine, are low wage. Some won't pay their employees at all if they stay home. Just like the chaos of this unprecedented pandemic, what constitutes an essential service or not has also been rather chaotic.

There have been, over the last week and a half, several California counties who've attempted to specify different industries or professions, while other local jurisdictions didn't make any listing. Initially, the state of California didn't specify unless the determination at the local jurisdictions as to what was or was not an essential service. Finally, the state did utilize the federal list that was developed.

After these crazy couple of days, the first weekend under the shelter in place had arrived, and so did a clarification. Basically, the governor's executive order included reference to a 14-page listing of what were deemed essential, critical infrastructure workers. This comprehensive list ranges from first responders to restaurant delivery people.

Thankfully, this 14-page document was also accompanied by a list of answers to frequently asked questions, FAQs. These FAQs, very importantly, also made clear that the state order takes precedence, although cities and counties can in fact impose tighter restrictions, which several of them have.

As you know, cities and counties, have as this crisis has mounted, they've been issuing some of their own shelter in place orders and other such directives in order to try and contain the spread of the coronavirus.

Many of these local orders included specific details and what were exempt from the shelter in place. The gubernatorial power is granted by California law, our Emergency Services Act, and basically California law grants our governor broad authority during emergencies to make new policies, or suspend existing policies, as well as to enforce the laws in these policies.

The governor has -- and our Governor Newsom -- has essentially what many observers have called a light touch. In other words, he has encouraged compliance without any sort of legal enforcement.

How do you determine whether you are or are not an essential service? Basically, for businesses that are trying to make that determination, the governor's executive order identified two reference sources, which is the CISA, critical infrastructure sectors, which is a listing of 16 critical sectors, along with a much more detailed guidance on the essential critical infrastructure work force, which is specifically a Memorandum on Identification of Essential Critical Infrastructure Workers During the COVID-19 Response.

Boy, that's a mouthful. Basically, we refer to it as the guidance. This guidance includes 14 critical sectors of the economy, and provides some very clear descriptions, as well as subheadings, for all of them.

The first step in this assessment process is for a company to determine whether the business, or some portion of their business, falls within the identified critical sectors in one of these two documents. Note that there's a fair amount of overlap between the two documents.

As you can probably imagine, in some cases, a business will not fall neatly within one or more of these critical sectors, even though it may be included in the more detailed guidance.

Businesses should also refer to the California State Public Health Officer's guidance that was published on March 20th. This further guidance identifies some additional businesses that are also, if you will, mission-critical. Of course, the governor's office and the governor's web page has a specifically dedicated COVID-19 reference page, and you can check there.

Now, how should you proceed? Once a business confirms its inclusion within one of these critical infrastructure sectors, then the business needs to identify which of its functions can remain open and in operation, and which should be shut down.

Operations that can be performed remotely should be, under this guidance. Of course, your employees should be provided with the equipment that is reasonably necessary to conduct their work remotely, generally from home.

Employees who are critical to the operation of the portion of the business that is continuing to operate, they need to be instructed with rules of engagement. In other words, how do you comply with both social distancing rules, the use of PPE, the personal protective equipment, and any other applicable health and safety guidance that is appropriate for your workforce.

That's a brief look at how to determine what services are essential, and how a business should generally go about in trying to ascertain whether or not the business is considered an essentially service, and if it is, how they should have their workforce conduct that ongoing business.

Thanks for joining today's podcast. I hope you found it helpful.