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What You Need To Do if You are in the Aerospace and/or Defense Industries and Your Business is Exempt from the “Stay Home” Order, And What You Need To Do Even if it is Not

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If you are based in Michigan or have a facility there, then you know that, on Monday, March 23, Governor Gretchen Whitmer issued Executive Order No. 2020-21, titled **“Temporary requirement to suspend activities that are not necessary to sustain or protect life.”** This is also being referred to as the “Stay Home, Stay Safe” order. A copy of the Executive Order can be found [here](#).

As stated in the Order, “critical infrastructure workers” are those workers described by the Director of the U.S. Cybersecurity & Infrastructure Security Agency (“CISA”) in his “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response,” Version 1.1 (March 23, 2020) (available [here](#)). There, CISA defines “critical infrastructure workers” to include workers in the “Defense Industrial Base” (“DIB”). That is, the Order expressly incorporates the CISA definitions of “critical infrastructure workers,” and the CISA definition applies to workers who “support the essential services required to meet national security commitments to the federal government and U.S. Military,” and provides that these individuals include, but are not limited to (a) “aerospace, mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support; [and] aircraft and weapon system mechanics and maintainers,” and (b) personnel “working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense.” In short, workers in companies that are part of the DIB are covered by the Order unless they are exempt.

Since the Order not only covers all employees of aerospace and defense companies, but also exempts many of them, Butzel Long has assembled a team to operate immediately to answer

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urgent client questions regarding the Order. For more information about that team, click [here](#). This team has been fielding questions from clients nearly non-stop, attempting to determine who is exempt under the Order, who is prohibited from working, and what to do next.

But once you determine whether you are able to continue working that is only the beginning of your task. The question then is what do you have to do next. If you are exempt from the Order, there are still certain tasks you may need to carry out. And Butzel Long can help you with those tasks.

Here are two things that exempt companies must do and the one thing that non-exempt companies must do, plus something that all companies that continue at least some operations will have to do.

Exempt Companies Must Designate Their Employees

First, under Paragraph 4 of the Governor's Order, no business may conduct operations that require workers to leave their homes or places of residence, unless they are exempt under the Order. Paragraph 5 states that "Businesses and operations that employ critical infrastructure workers may continue in-person operations," subject to certain conditions. One such condition is that the in-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume. This means that even though a company may perform work in one or more of the industrial sectors that have been designated by CISA as "critical infrastructure," not every one of its employees will be exempt if their specific work is not "necessary to protect life" or to "conduct minimum basic operations."

Second, once a company determines that it is exempt under the Order as providing critical infrastructure products or services, it "must determine which of their workers are critical infrastructure workers and inform such workers of that designation." These designations must be in writing by the end of the first week of the Order's effective period, *i.e.*, by March 31, 2020, at 11:59 pm. These designations need not be sent to the state or publically filed anywhere, but should be sent to the individual employees so designated and should be kept in the company's files. Employees who receive such letters should be instructed to carry those letters with them while they are traveling. Although employers are not required to provide such designations to the following categories of workers, it is prudent that they do so:

- Workers in health care and public health.
- Workers who perform necessary government activities, as described in section 6 of the Order.
- Workers and volunteers who provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, or people with disabilities.

If, however, you have determined that even though, you are a company that is part of the "critical infrastructure," you must now designate those employees who provide such critical infrastructure services.

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Exempt Companies May Designate Their Suppliers and Distribution Centers

If a company employs critical infrastructure workers, that company may also designate its suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the work of its critical infrastructure workers. Those suppliers, distribution centers, or service providers so designated may then designate *their* appropriate workers as critical infrastructure workers. Those lower-tier suppliers, distribution centers, or service providers may then also designate *their* suppliers, distribution centers, and service providers whose continued operation is necessary to enable, support, or facilitate the work of their critical infrastructure workers. This can continue down the supply chain or contract stream.

This may mean that a grocery store that is exempt from the Order because it provides food can designate its trucking companies, their distributors, and other vendors who keep it in business. Or, if a manufacturing company is exempt from the Order, it can designate its suppliers who provide it with parts as critical infrastructure workers. And so on.

Under Paragraph 9(b)(5), “Businesses, operations, suppliers, distribution centers, and service providers must make all designations in writing to the entities they are designating” The designations also must be put in writing by the end of March 31, 2020. And the sooner this is done the better, so that an exempt company’s downstream suppliers and materialmen know that they, too, can keep their doors open.

Non-Exempt Companies May Still Designate Essential Workers

Even if your company is not exempt under the Order and therefore must either close its doors or work from home, such companies may still designate certain essential workers necessary to keep their business running or who are necessary to assist others in working from home. Under Paragraph 4 of the Order, companies may still conduct operations that require workers to leave their homes if “those workers are necessary . . . to conduct minimum basic operations.” Under Paragraph 4(b) of the Order, “workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, . . . ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.”

This is envisioned, it seems, to include a “bare-bones” skeletal crew who may be necessary to be in the office for certain activities to keep the company running while everyone else works from home. This would appear to clearly include HR and Accounting departments necessary to send out checks, process payroll, stay on top of employee benefits, and other similar tasks. It would also clearly cover IT workers who are necessary to facilitate the ability of everyone else in the company to work from home. There are others who would also clearly fall within this definition, as well, whose in-person presence will be needed to keep the trains running.

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These employees also must be designated, even if the company itself is not exempt under the Order. These designations, too, must be in writing after the first week of the effective period of the Order. These, too, should be sent to the designated employees and the employees should be directed to carry these letters with them when they travel for work. We also recommend the company keep a copy of such designations in their own files.

What All Companies and Individuals Must Do

If a business is permitted to continue its operations, or if an employee is designated as necessary to work pursuant to the Order, certain minimum guidelines still must be followed. "Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons." These practices include, but are not limited to:

- Restricting the number of workers present on-premises to no more than is strictly necessary to perform the business's critical infrastructure functions.
- Promoting remote work to the fullest extent possible.
- Keeping workers and patrons who are on-premises at least six feet from one another to the maximum extent possible, including customers standing in line.
- Increasing standards of facility cleaning and disinfection to limit exposure to Covid-19.
- Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person who is known or suspected to have Covid-19.
- Any other social distancing practices and mitigation measures recommended by the federal Centers for Disease Control and Prevention ("CDC").

Know Your Obligations

Determining whether your business or employees provide critical infrastructure products or services or are otherwise exempt under the Order is only Step 1. Once you make that determination, make sure that you are properly following the Order by designating your proper employees, suppliers, and distribution centers. For assistance in properly following these designation procedures, contact Butzel Long. We are here to assist you.

Ira Hoffman

202.454.2849

hoffmani@butzel.com

Beth Gotthelf

248.258.1303

gotthelf@butzel.com

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Don Orlandoni

313.225.5314

orlandoni@butzel.com

Joshua J. Chinsky

313.225.7091

chinsky@butzel.com