

COVID-19: FOUR STEPS TO HELP PROTECT SUPPLY CHAINS IN FACE OF SHELTER-IN-PLACE ORDERS

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Effective March 17, 2020, San Francisco and six other Bay Area counties passed “Shelter in Place” ordinances preventing workers not engaged in providing Essential Activities, working at Essential Businesses or providing Essential Government Services from leaving their homes to go to work. Such laws are now being considered throughout the country. This alert provides actionable steps companies can take to ensure that Shelter in Place laws in their jurisdictions do not inadvertently block employees from getting to work at their Essential Businesses.

First, be proactive, contact your state and local government officials to make sure they understand why your business is essential. If your product or service is truly essential, no government official is going to want to be blamed for inadvertently causing a shortage of that product. Note the Bay Area Orders define Essential Businesses to include “Businesses that supply other essential businesses with the support or supplies necessary to operate.” If your business falls into that category, you may want to have that business explicitly enumerated as an Essential Business rather than rely on a judgment call that this catch all provision applies. To proceed, identify to make sure they know. BCLP can help (a) identify the appropriate officials at the State and local level and reach out to them, (b) develop the message to be delivered as to why your employees should not be required to Shelter In Place and (c) draft language to clarify why your business and its supply chain should be exempt from the shelter in place ordinance.

Second, respond to state and local trade association efforts to get ahead of the curve on this issue when they ask their memberships for information supporting why their business should be considered essential and exempt from shelter in place requirements. Make sure you cover your supply chain in such responses.

Third, increase the likelihood that your suppliers will fall under the exemption for businesses that supply Essential Businesses by sending individual letters to each supplier stating why that supplier is necessary for you to operate your essential business. If, on other hand, you are a supplier to an Essential Business, do not wait to hear from your customer and ask your customer for a written letter on the Essential Business’ letterhead signed by an officer of the Essential Business saying that your product or service is necessary to the operation of the Essential Business. In this regard, note

that, in addition to our suppliers, transportation companies, who are downstream of your manufacturing process but are necessary for delivery of the products made by your Essential Businesses also receive or obtain a “necessary to operate” letter.

Fourth, communicate with your employees that their work is part of an Essential Business or necessary to the operation of an Essential Business. Done right, that communication can be an opportunity to build morale during these trying times. Such communication should also be combined with appropriate training around the Social Distancing Requirements to minimize the risk of infection spread while delivering the product required of the Essential Business.

BCLP’s Supply Chain Team advises clients on corporate social responsibility and legal risks and opportunities throughout the life cycle of our client’s delivery of products and services.

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