

**Bay Area Counties Adopt Health Orders Prohibiting Travel  
and Closing Non-Essential Businesses; Napa and Sonoma Counties  
Protect Agriculture, Beverage and Dairy Production**

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**ADOPTION OF LOCAL “SHELTER IN PLACE” ORDERS**

As many employers now know, six Bay Area counties and one local city adopted “Shelter in Place” orders effective March 17, 2020. These orders severely limit group activities and individual travel in and through each county. The effect on most businesses is even more severe: unless designated as “essential” (or supporting “essential” activities), *all businesses in each county must basically close.*

Sonoma County has also adopted a Shelter in Place order effective March 18, 2020. Its terms are also virtually identical to other Bay Area counties except for an expanded list of essential businesses including agriculture, dairy, and beverage production (including winery and brewery operations), as well as businesses necessary to supply “agriculture, food and beverage distribution.”

Napa County initially decided *not* to implement a Shelter in Place order but has since implemented an order, effective March 20, with its own list of essential businesses including any “form of cultivation of products for personal consumption or use,” activities or businesses “associated with planting, growing, harvesting, processing, cooling, storing, packaging, and transporting such products, or the wholesale or retail sale of such products.” instead adopting a revised emergency order effective March 18, 2020. This list appears to cover virtually all agricultural, wine, and beverage-related activities (*including* both wholesale and retail sale, potentially such as winery hospitality and tasting rooms). The remaining terms of the order are similar to other counties apart from specific coverage of activities related to medical devices and cemetery/funeral services.

The orders were authorized and are enforceable under the California Health and Safety Code; violation by individuals or businesses could result in substantial civil fines, penalties, and even potential criminal prosecution. The orders are expected to remain in place through at least April 7, 2020.

**TERMS OF THE ORDERS**

The initial orders are virtually identical and are published on the relevant municipal website, which can be viewed via the following links: [Alameda](#), [Berkeley](#), [Contra Costa](#), [Marin](#), [San Francisco](#), [San Mateo](#), and [Santa Clara](#). San Francisco also published a set of

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Frequently Asked Questions, a source for interpreting each local order, which can be viewed [here](#).

Sonoma County's order is also published online [here](#), with Frequently Asked Questions addressed [here](#). Napa County's shelter-in-place order is published [here](#) (and its initial emergency order, effective until March 19, is [here](#)).

### **EFFECT ON NON-ESSENTIAL TRAVEL AND BUSINESSES**

First, the orders require all residents to “shelter at their place of residence” with limited exceptions for “essential” activities and some non-group outdoor activities. This means that individuals living in an affected county *are not allowed* to travel away from home for non-essential work, even if it is outside the county. While this requirement may not be rigidly enforced, it does have a few immediate consequences:

- Individuals who live in an affected county may be fined or prosecuted for traveling to a non-essential business or activity; and
- Individuals who refuse to leave home and report to work at a non-essential activity may insist that they need not do so because leaving home violates the law. Individuals disciplined for failure to report to work at a non-essential business might, for example, make retaliation claims under California Labor Code section 1102.5, which prohibits retaliation for refusing to violate the law, or under California public policy.

Second, of immediate interest to businesses, the orders require all non-essential businesses “to cease all activities at facilities located within” affected counties. This means that they must *stop all onsite activity immediately* except for “Minimum Basic Operations” limited to:

- The minimum necessary activities “to maintain the value of inventory, ensure security, process payroll and benefits, and related functions; and
- The minimum necessary activities to “facilitate” employees working remotely from their residences.

This is a dramatic limitation meant to effectively *shut down* all non-essential businesses apart from the bare minimum operations necessary to protect an establishment, process payroll and benefits, and maintain IT access for off-site workers.

### **ESSENTIAL BUSINESS AND ACTIVITY**

A broad range of businesses have been deemed “essential.” These operations are allowed with “social distancing” limitations, including:

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- Healthcare operations and essential infrastructure;
- Grocery operations including supermarkets, convenience stores, other retail grocery and food outlets (even including farmers markets), and pet supplies;
- Food cultivation such as farming and fishing;
- *In Sonoma County Only:* Agriculture; beverage cultivation, processing and distribution (presumably wineries, breweries and cider); dairies and creameries. These industries may remain open to “preserve inventory and production: but not for “retail business.”
- *In Sonoma County Only:* Businesses necessary to supply agriculture, food, and beverage cultivation, processing, and distribution;
- *In Napa County Only:* Any form of cultivation of products for personal consumption or use, activities or businesses “associated with planting, growing, harvesting, processing, cooling, storing, packaging, and transporting such products, or the wholesale or retail sale of such products;”
- *In Napa County Only:* Specific coverage of manufacturers, distributors, warehouse facilities, suppliers and servicers of medical devices, diagnostics, equipment and services, and activities required to maintain the supply chain;
- *In Napa County Only:* Specific coverage of cemetery and funeral service providers;
- Food and shelter services for disadvantaged individuals, and residential facilities and shelters for seniors, adults, and children;
- Home-based care for seniors, adults, or children;
- Child-care facilities (but with dramatic limitations on the manner of care);
- Newspapers, television, radio, and other media services;
- Gas stations and auto-supply, auto-repair, and related facilities;
- Banks and related financial institutions;
- Hardware stores;
- Services necessary to safety, sanitation, and essential operation of residences and permitted businesses such as plumbers, electricians, exterminators, and other service providers;
- Mailing and shipping services, including post office boxes;
- Educational institutions;
- Laundromats, dry cleaners, and laundry service providers;
- Restaurants and other facilities that prepare and serve food *but only* for delivery or carry out;
- Businesses that supply products needed for people to work from home (this is undefined);
- Businesses that ship or deliver groceries, food, goods or services directly to residences;
- Airlines, taxis, and other private transportation providers providing transportation services necessary for essential and other authorized activities;

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- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities; and
- Businesses that supply other essential businesses with the support or supplies necessary to operate.

This last category is the least well-defined, as it is not clear how much “support” or “supply” is enough to count as “essential.”

Maintaining operations in a non-authorized business could have serious civil and criminal consequences, including fines up to \$1000 per day and even imprisonment. On the employment side, employees disciplined for failure to report to work at a non-authorized business could make the same types of whistleblower, retaliation, and public policy claims discussed above.

### **OTHER CONSEQUENCES**

The significance of employee layoffs due to ordered shutdowns is unclear. Employers will argue that employees have not been terminated or laid off, but authorities may argue that shutdowns longer than one pay period qualify as a “termination” requiring immediate payment of final pay and accrued vacation. It is far more likely that the federal government will adopt short-term paid leave requirements (pending in Congress this week) that clarifies employment status and provides tax credits for paid leave. Some of these dynamics are discussed in our recent blog post, which can be viewed [here](#).

Even businesses deemed “essential” are likely to encounter workforce shortages due to employees’ family or childcare needs. Affected county schools are shut down, immediately creating childcare issue that working parents may not have anticipated. For employers with 25 or more employees, workers typically have a right to take up to forty hours per year off to attend to a “school emergency” (*see* Labor Code section 230.8), and workers at employers with twenty or more employees are likely to invoke either FMLA or state parental leave rights for child and family quarantines or illness.

Employers will also need to comply with benefit and coverage issues, from monitoring potential COBRA notices necessitated by loss of coverage during long-term closures to providing information on short-term unemployment benefits.

### **CONCLUSION**

The effect of these orders is not yet fully understood and will develop over the coming days. If not followed, they may be replaced with even more dramatic limitations stopping almost all social activity.

Fortunately, both local and federal authorities seem poised to craft comprehensive relief programs designed to assist individuals – and hopefully businesses – affected by the pandemic event.

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We will continue to monitor the situation and provide updates as events develop.