



Stay Order Q&A for Orange County

April 2020

We live in turbulent times and businesses are faced with constantly changing rules and regulations. On January 27, 2020, Orange County confirmed its first case of COVID-19, which is commonly known as coronavirus. On February 26, 2020, the Orange County Public Health Officer, Dr. Nicole Quick declared a local emergency. On March 4, 2020, Governor Newsom declared a state of emergency to prepare California for the spread of the coronavirus.

Currently, Orange County residents are required to stay at home except for “essential needs” such as to get food, care for a relative or friend, get necessary health care or go to an essential job. The Governor’s March 19, 2020 executive order for nonessential workers to stay at home has had a profound effect on most businesses, which must now operate remotely from their employees’ home. The Governor’s order will remain in effect in Orange County until further notice. However, workers may go to work if they fall within one of the 16 essential critical infrastructure sectors described below in this article. For businesses within the deemed essential sectors, employees must continue to practice social distancing and to telecommute as much as possible.

The following summarizes the most common questions and answers regarding the county and state orders affecting businesses in Orange County and what you need to do to comply with the current orders. Because many businesses in Orange County also have offices in other counties in California we have also included a summary of current orders in Los Angeles County, San Francisco County and Santa Clara County and how these orders may impact your workforce.

1. What is the current order in effect for Orange County residents?

Governor Newsom’s executive order to stay at home enacted on March 19, 2020 is the current order in effect for Orange County residents and businesses (“**Current Order**”). The Current Order requires all individuals living in California to stay at home except for those who work in the 16 critical infrastructure sectors in the below document as essential to California’s health and wellbeing: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

2. Does the state's executive order supersede Orange County's previous public health order?

Yes. On March 17, 2020, Orange County issued a County Public Health Order prohibiting all public and private gatherings of any number that are not engaged in essential activities. In light of the confusion and to provide more clarity, on March 18, 2020, Orange County issued an amended order emphasizing the importance of keeping Orange County businesses open while practicing social distancing consistent with California Department of Public Health ("CDPH") guidance.

On March 20, 2020, and again on March 30, 2020, Orange County released a press release stating that the previous County Public Health Order has been superseded by Governor Newsom's executive order until further notice.

Therefore Orange County residents are required to stay at home except for essential needs such as to go get food, taking care of family and friends, get necessary health care and go to an essential job. Orange County residents may exercise outdoors with proper social distancing.

3. How does the Current Order differ from the initial March 17 and March 18 orders enacted by Orange County?

3/17/20 Orange County Order. On March 17, 2020, Orange County issued an order prohibiting all public and private gatherings of any number that are not engaged in essential activities. Essential activities gathering can only be conducted if they cannot be postponed and recommended social distancing.

The order closed bars that did not serve food, dining on-site in restaurants and required food to be served via delivery, pick-up or drive thru. Social distancing was required for persons picking-up food on site. All businesses were required to enact social distancing, increased sanitation requirements, make every effort to telecommute their workforce if possible and suspend policies requiring doctor verification for sick leave.

As written, the order caused confusion because many interpreted the order as a "shelter-in place" order. Hours after releasing the order on March 17, 2020, Orange County issued a press release clarifying that the order is NOT an order to shelter in place. Dr. Nicole Quick confirmed that: "It is not a lockdown. It is important for all Orange County businesses to remain open while practicing social distancing consistent with the Governor's guidance."

3/18/20 Orange County Amended Order

In light of the confusion and to provide more clarity, on March 18, 2020, Orange County issued an amended public health order and guidance. The amended order emphasized the importance of keeping Orange County businesses open while practicing social distancing consistent with California Department of Public Health (“CDPH”) guidance. The following are highlights of the amended order:

- The amended order abolished the March 17, 2020 order.
- The order did not prohibit businesses from operating in Orange County except as provided in the order. The businesses should operate in accordance with social distancing guidelines issued by CDPH.
- All public and private non-essential gatherings were prohibited. Essential activity gatherings should only be conducted if they are essential and could not be postponed.
- The order did not prohibit school attendance, going to work or performing essential services. The prohibition on gathering did not apply to public transportation, airport travel, shopping at store, mall or farmers market, charitable food pantries and distribution, congregate living situations, dorms and homeless encampment.
- The amended order did close all bars, movie theaters, gyms and health clubs. The order also closed on-site dining, but allowed food to be served by pickup, delivery or drive thru.
- Employers were prohibited from requiring their employees to provide doctor’s notes to validate their illness.
- The order also strongly recommended that all businesses enact social distancing, increased sanitation standards and make every effort to telecommute their workforce.

4. Who can continue to work under Governor Newsom’s stay at home order currently in effect?

On March 19, 2020, Governor Newsom ordered all individuals living in California to stay at home except for those individuals who work in the 16 critical infrastructure sectors identified by the federal government. The Governor’s order stated that: “Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians’ health and well-being.” The critical infrastructure sectors include: healthcare/public health, emergency services, food and agriculture, energy, water and wastewater, transportation and logistics, communications and information technology, other community-based government operations and essential functions, critical manufacturing, hazardous materials, financial services, chemical and defense industrial base. Specifically,

California has identified the workers in the below document as essential to California's health and wellbeing: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

5. Which county and state beaches and parks are closed to the public?

To minimize the spread of the coronavirus effective March 25, 2020, OC Parks closed parking lots at all county beaches, regional parks and wilderness parks, parking spaces at all county trailheads, pedestrian access points at Thousand Steps, Table Rock, West, Camel Point and Treasure Island Beaches, restrooms, playgrounds, exercise equipment and shelters at all county parks and beaches. Residents may still walk, bike or ride their horses through these areas. In addition, many public agencies have closed their beaches, parking lots and/or piers. For instance, Huntington Beach has closed its city beach parking lots. Laguna Beach has closed its city beaches and trailheads. Newport Beach has closed its city beach parking lots and piers. Dana Point has closed its beach, its trails, and all parking facilities servicing the County beaches located in that city. San Clemente has closed its city beach parking lots and pier. Seal Beach has closed its city beaches, beach parking lots, pier, parks and biking trails. The State of California has also closed San Onofre State Beach and Trestles Beach. Doheny State Beach is still currently open but its parking lots are closed. Residents and businesses are required to continue to practice social distancing as directed by the Governor and the State's Public Health Officer.

6. In what capacity can businesses that are not deemed "essential" operate?

Business operations in Orange County have been significantly restricted if not shut down until further notice unless they fall within one of the 16 essential critical infrastructure sectors. To the extent possible, many non-essential businesses have shifted their operations to provide online, streaming, delivery and no-contact services.

7. What, if any, are the limitations on businesses that are deemed "essential"?

Businesses within the 16 essential infrastructure sectors must continue to practice social distancing and to telecommute their workforce if possible.

8. What is the penalty for non-compliance of the Current Order?

Violators who are found guilty of a misdemeanor may be fined up to a \$1,000 or imprisoned up to 6 months or both. (*California Government Code* § 8665.)

Many businesses in Orange County also have offices in other counties in California. We have included a summary of current orders in Los Angeles County and San Francisco County, how they differ from Orange County and how these orders may impact your workforce.

9. How does the Los Angeles County Stay at Home Order differ from the Current Order in Orange County?

Los Angeles County has also issued a similar stay-at-home order, requiring Californians to stay at home unless they are performing essential activities. Los Angeles County's Health Officer has closed all non-essential businesses.

Los Angeles County requires essential businesses to practice social distancing to the extent possible and infection control precautions, i.e., social distancing by at least 6 feet, provide access to handwashing facilities with soap and water or hand sanitizer with at least 60% alcohol, posts a sign at the entrance in a conspicuous place that instructs the members of the public not to enter if they are experiencing symptoms of respiratory illness and to follow the communicable disease control recommendations by the Los Angeles Department of Public Health posted at <http://www.publichealth.lacounty.gov/media/Coronavirus/>. The Los Angeles County order will remain in effect until April 19, 2020.

10. How does the San Francisco Stay At Home Order differ from the Current Order in effect in Orange County?

The City and County of San Francisco has also issued a stay at home order for nonessential workers. Notably, San Francisco found most construction projects are nonessential and must stop. (See <https://sf.gov/information-construction-projects-during-coronavirus-outbreak>.)

However, unlike Orange County and Los Angeles County, San Francisco allows nonessential businesses to perform basic operations, including:

- Inventory, ensure security, process payroll, and employee benefits, or for related functions;
- Activities that help employees work from their homes; and
- Sanitation, including janitorial.

Employees must maintain a distance of at least 6 feet from each other at all times.

Essential businesses are encouraged to remain open only if they can maximize the number of employees who can work from home. Employees can only work outside the home if their duties cannot be performed at home. Additionally, San Francisco requires essential businesses to prepare, posts and follow a social distancing protocol.

The social distancing protocol must be posted at the facility and given to each employee by April 3, 2020. The protocol must explain how the business will:

- limit the number of people who entered the business at once to maintain social distancing within the store;
- make sure individuals in line are at least 6 feet apart;
- provide hand sanitizer, soap and water and/or disinfectants near the entrance or at points of frequent transaction, i.e., by the cashier;
- regularly disinfect high touch surfaces and handles; and
- posts a sign reminding patrons of social distancing requirements.

(See San Francisco List of Essential Businesses <https://sf.gov/check-if-your-business-essential>.)

11. How does the Santa Clara Stay At Home Order differ from the Current Order in effect in Orange County?

Santa Clara County has issued a much more restrictive “shelter in place” order, which will remain in effect until May 3, 2020 unless extended or shortened. The order requires Santa Clara residents to stay at home as much as possible, but allows residents to leave their home for essential activities such as to get food and medical supplies, attend doctor’s appointment, go to work at an essential business that cannot be done at home or to go to work to perform “minimum basic operations” for a non-essential business that cannot be done from home. Minimum basic operations include activities necessary to maintain the safety and sanitation of the business, maintaining the value of a business’s inventory, keeping the business site safe and secure, ensuring that employees are able to work remotely, or providing for the delivery of existing inventory to residences or businesses.

Like San Francisco, Santa Clara requires essential business to prepare, post and implement a social distancing protocol using the template attached to the order by April 3, 2020. The protocol must be provided to all employees and the businesses “must provide evidence of its implementation to any authority enforcing the Order on demand.” The updated order also limits the number of people who can enter a store at once and provides guidance on controlling shopping lines and requires stores to provide hand sanitizers.

Essential businesses must maximize the number of employees who can work from home. Employees are only allowed to go to work who cannot perform their job from home. Businesses that have both essential and non-essential components must scale down their operations to only essential operations. Retail stores that sell a significant amount of essential goods like food, hygiene and consumer household products may, however, continue to sell non-essential

products. The essential businesses must follow industry-specific guidance that the Santa Clara has issued.

Santa Clara has eliminated businesses that sell products that allow people to work from home as an essential business and further limited certain construction activity. Santa Clara has added the following businesses to the list of essential businesses:

- Real estate agents, escrow agents, notaries and title companies
- Funeral homes, mortuaries, cemeteries, and crematoriums
- Employment services that help people find employment with essential businesses
- Moving services
- Rental car companies and rideshare services.

Violations of Santa Clara's order may be enforced by law enforcement and through civil remedies. Violators may be charged with a misdemeanor, which is punishable by a fine, imprisonment or both. Santa Clara may also take steps to stop the business from violating the order, such as obtaining a temporary restraining order, pulling a permit or revoking a license.

As has been observed by all lately, the orders and guidelines are very fluid and constantly changing, which is expected to continue as long as the Governor's state of emergency remains in place. Nevertheless, we hope that the summary helps your businesses comply with the current requirements for businesses in Orange County, Los Angeles County, San Francisco County and Santa Clara County.

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Clients with questions about this e-Alert or related issues are welcome to contact Partners [Jennifer Farrell](#) or [William Ihrke](#), or the Rutan & Tucker attorney with whom you are regularly in contact.

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