

Locke Lord QuickStudy: State Restrictions on Non-Essential Business Operations During the COVID-19 Crisis

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Beginning in March of last year, Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and many localities throughout the United States began prohibiting all “non-essential” public and private employees from commuting or gathering for work as a result of COVID-19.

While states are maintaining varying levels of restrictions on non-essential businesses, most states and localities have lifted some restrictions, allowing businesses to restart operations.

The reopening process, however, has not been uniform. Many states have taken a localized approach to their reopening processes, allowing varying levels of restrictions by region or county. In addition to this localized approach, states have paused, restarted, and reinitiated restrictions at varying levels based on statistics reflective of each individual region.

For many businesses, this means that they must determine whether they operate within the varying definitions of essential or reopened businesses. As provided below, both the federal government and all noted states and localities have issued guidance on what constitutes essential or reopened businesses in their jurisdiction. Some jurisdictions have included the federal government’s guidelines on essential critical infrastructure when defining essential and reopened businesses, while other jurisdictions have provided their own lists or supplemented the federal guidelines. All states, however, have expanded their reopenings beyond essential critical infrastructure.

It is important to note further that, as of the date of this publication, the federal guidelines are in no way binding on the states, and are only there to provide guidance to states and municipalities. The federal government has likely issued these guidelines, rather than a sweeping national standard, both out of deference to the “police powers” afforded to states under the Constitution, as well as an understanding that individual states are more properly suited to assess their unique needs. Nevertheless, there have been calls, including by the U.S. Chamber of Commerce, urging states and municipalities to issue uniform standards based on the instituted federal guidelines.

For some businesses, the determination of whether they are an essential service will be a straight-forward determination; for many others, it will be a matter of interpretation. Many businesses are also asking then whether there is a method by which they can be precleared as an essential or critical service. At this point, Kansas, Massachusetts, New York, and some municipalities have offered businesses the ability to request a designation or opinion on whether they are an essential service; however, these are optional and are not required of all businesses. It is unlikely that any state would have the capacity required to preclear *all* essential businesses, and therefore is an unlikely measure for a state to take.

Instead, businesses must determine—based on the guidance provided at the federal level and any associated restrictions at the state or local level—whether they have a reasonable belief that their business is providing an exempted service to society.

For a copy of the federal memo, click [here](#).

For more guidance on the federal memo and its interpretation, click [here](#).

For a copy of the Alabama reopening order, click [here](#).

For a copy of the Alaska reopening order, click [here](#).

For a copy of the current Arizona order, click [here](#).

For a copy of the new Arizona reopening guidelines, click [here](#).

For a copy of the California reopening orders and guidance, click [here](#).

For a copy of the current Colorado order, click [here](#).

For a list of “essential businesses” in Colorado, click [here](#)

For a copy of the current Connecticut order, click [here](#).

For a copy of the Delaware reopening order, click [here](#).

For a copy of the current Delaware guidelines, click [here](#).

For a copy of the District of Columbia reopening order, click [here](#).

For a copy of the District of Columbia reopening plan, click [here](#).

For a copy of the Florida reopening order, click [here](#).

For a copy of the Georgia reopening order, click [here](#).

For a copy of the current Idaho order, click [here](#).

For a copy of the Idaho reopening plan, click [here](#).

For a copy of the current Illinois order, click [here](#).

For a copy of the Indiana reopening order, click [here](#).

For a copy of the Indiana reopening plan, click [here](#).

For a copy of the Kansas reopening order, click [here](#).

For questions about Kansas reopening guidance, contact the state [here](#).

For a copy of the Kentucky reopening plan, click [here](#).

For a copy of the Louisiana order, click [here](#).

For a copy of the Maine reopening order, click [here](#).

For a copy of the Massachusetts reopening orders, click [here](#) and [here](#).

For a copy of the Massachusetts reopening plan, click [here](#).

For a list of “COVID-19 Essential Services” in Massachusetts, click [here](#).

For a copy of the current Michigan order, click [here](#).

For a copy of the Michigan reopening plan, click [here](#).

For a copy of the Minnesota reopening order, click [here](#).

For a copy of the Mississippi order, click [here](#).?

For a copy of the Missouri reopening plan, click [here](#).

For a copy of the New Jersey reopening orders, click [here](#).

For a copy of the New Jersey reopening plan, click [here](#).

For a copy of the current New Mexico guidance, click [here](#).

For a copy of the New Mexico reopening plan, click [here](#).?

For a copy of the New York reopening orders, click [here](#).?

For a copy of the New York reopening plan, click [here](#).

For a list of “essential businesses” in New York, click [here](#).

For a copy of the current North Carolina order, click [here](#).

For a copy of the current Oklahoma order, click [here](#).

For a copy of the South Carolina order, click [here](#).?

For a copy of the Tennessee reopening order, click [here](#).

For questions about Texas essential services designations, contact the state [here](#).?

For a copy of the Vermont order, click [here](#).

For a copy of the Vermont reopening plan, click [here](#).?

For a copy of the Virginia reopening plan, click [here](#).

For a copy of the updated Washington reopening plan, click [here](#).?

For a copy of the West Virginia reopening plan, click [here](#).

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