



Five Key Points on Governor Wolf's Business Shutdown Order as of March 23, 2020

Michael G. Trachtman, Esquire

1. Important amendments have been made to the definitions of life-sustaining businesses in Governor Wolf's shutdown order. See the Notes column in the revised Order to determine if any of these changes affect the status of your business:

<https://dced.pa.gov/wp-content/uploads/2020/03/452553026-UPDATED-Industry-Operation-Guidance-March-20-2020.pdf>

If you believe you qualify as a life-sustaining business and are remaining open, we strongly suggest that you prepare a document that clearly states the basis for this position – *exactly* what it is that you do, and *exactly* why that fits within the permitted business category. Rather than ad-libbing, you should provide this document to an enforcement authority who comes calling. We suggest that you involve us in preparing this document – essentially, it is a legal document and we can help make your best case.

2. It is crucial to understand that businesses that are subject to the shutdown order may be entitled to an exemption. Two key points:

a. Business that are involved in “critical infrastructure” or that are integral to the operations of other businesses that are involved in “critical infrastructure” should apply for an exemption on that basis. Exemptions have been granted for defense contractors. The extent to which exemptions will be granted in other infrastructure sectors remains to be seen. Here is a link to the publication that defines the “critical infrastructure” sectors:

<https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. Your exemption application should marshal all the available facts documenting how crucial your business is in the applicable sector or in supporting other businesses in the sector.

b. The governor's website states that, in addition to critical infrastructure, in considering exemption requests the state “will balance public health, safety, and the security of our industry supply chains supporting life sustaining businesses.” So, for example, if your business supports a business that is in a category that is permitted to stay open, stress that in your application.

We again urge that you involve us in preparing exemption applications.

If you need an exemption, use this form: <https://expressforms.pa.gov/apps/pa/DCED/Waiver-process-keeping-physical-locations-open> and click on the submit button. Or send it to RA-dcexemption@pa.gov. Or both.

3. The governor has set up a website for information of interest to businesses: <https://www.pa.gov/guides/responding-to-covid-19/#ForBusinesses>

4. Enforcement actions will begin on March 23, 2020, at 8:00 AM. The focus, at least at the onset, will be on businesses where people congregate. It is very likely that the first stage of enforcement will involve warnings and cease and desist orders only but followed by penalties thereafter. We strongly suggest that you call us immediately if you are contacted by the authorities.

5. What can you continue to do if your business is shut down? Note this directive from the governor: “Businesses suspending physical operations must limit on-site personnel to maintain critical functions, and in all cases follow social distancing and COVID-19 mitigation guidance provided by the PA Department of Health and CDC.”

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The Wisler Pearlstine team of employment attorneys is ready to address your COVID-19 questions and concerns. Please contact any of us if you have concerns about the impact of COVID-19 in the workplace.

Christopher E. Ezold
cezold@wispearl.com

Rhonda K. Grubbs
rgrubbs@wispearl.com

Michael D. Kristofco
mkrstofco@wispearl.com

Michael J. O’Donoghue
mod@wispearl.com

Mary J. Pedersen
mpedersen@wispearl.com

Kenneth A. Roos
kroos@wispearl.com

Michael G. Trachtman
mtrachtman@wispearl.com

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