



New regional stay-at-home orders in California

Employment Alert

9 December 2020

By: Margaret A. Keane | Yue Deng-Wu

California issued several new orders and accompanying guidelines this past week that require remote work for certain workers, with the effective date of restrictions triggered by each region's intensive care capacity. On Friday, December 4, 2020, five Bay Area counties and the City of Berkeley issued their own new Stay at Home Order, adopting the statewide restrictions but on an expedited schedule.

Based on current conditions (which are changing rapidly), remote work took effect in several California regions on December 6, 2020. Employers are strongly encouraged to evaluate their compliance with current orders and prepare now for additional restrictions that may be triggered in the coming days.

California's new regional Stay at Home Order

The new State Order requires all Californians to stay at home and return to remote work (or continue remote working, as the case may be) unless they work for a business that is considered "critical infrastructure." Even if a business is critical infrastructure, employees who can work remotely must also stay home.

The new State Order does *not* impact employers to the extent that remote workers can continue to work remotely: both essential and non-essential employees who can work remotely must do so. Those necessary for maintaining "Minimum Basic Operations" can work onsite. The definition of Minimum Basic Operations remains unchanged from earlier state orders and has been narrowly construed by law enforcement authorities. Ongoing enforcement efforts

should be expected. Employers have 24 hours to comply once the State Order is triggered.

The State Order contains numerous other sector restrictions. For example, it limits restaurants to takeout and limits retail stores to 20 percent of capacity. See the full list of restrictions [here](#).

The following sections summarize key provisions under the new State Order that may impact companies.

Critical infrastructure

The State Order requires “critical infrastructure” workers to work remotely to the extent possible. This means if some or part of a business is critical infrastructure, only those who can’t perform their job responsibilities remotely should continue to work onsite under the new State Order. Further details regarding operation of critical infrastructure businesses can be found [here](#). Notably, the list of critical infrastructure businesses has been expanded since the shelter in place order earlier this year to include, among other industries, the entertainment industry.

Travel

Travel restrictions under the State Order are somewhat unclear. The State Order directs covered persons to stay home except for very limited circumstances that do not include travel, but the State Order doesn’t explicitly ban travel. The State’s FAQs currently suggest that non-essential travel (including travel for leisure and non-essential business travel) is strongly discouraged but not prohibited; however, Dr. Mark Ghaly, the state’s Secretary of Health and Human Services, stated in Governor Gavin Newsom’s press conference on Thursday, December 3, 2020, that “now as we move into the new order, this advisory moves to not just an advisory but something we are requiring people to do.” He recognized that enforcement may be difficult but emphasized the importance of restricting travel.

Regardless, those who do travel outside of California are urged to remember that the quarantine period after returning from travel is 14 days. Santa Clara County is requiring 14-day quarantine of anyone returning from travel into Santa Clara County from any place more than 150 miles outside Santa Clara County. The 14-day duration could be changed in response to recent CDC guidance, but employers should assume that it will remain intact until they are advised otherwise.

These post-travel quarantines may not trigger employer obligations to compensate employees for quarantine time under the Families First Coronavirus Response Act (FFCRA) and other statutory leaves, depending in part on whether they are triggered by orders issued by state and local government or, in some cases, ordered by medical providers. Should you have any questions regarding obligations to provide paid benefits for COVID-19 related reasons, please contact your DLA Piper counsel.

Effective date varies by region

The State Order became effective at 12:59 p.m. on December 5, 2020. After that, when a region’s available intensive care capacity falls below the 15-percent ICU threshold set in the State Order, it will have 24 hours to implement the State Order’s restrictions, and they will remain in effect for at least 3 weeks thereafter.

The State Order divides California into five regions. Two regions, Southern California (this region includes Los Angeles and San Diego) and San Joaquin Valley, are already below the ICU threshold for triggering the State Order; the rules under the State Order became effective at 11:59 p.m. on December 6, 2020, for this large portion of California’s population. The Greater Sacramento region’s ICU capacity is also under the threshold and the State Order will become effective there on December 10, 2020, at 11:59 p.m. The other regions have not reached the ICU threshold but are expected to reach it in a matter of days or weeks.

The State Order will remain in effect until further notice.

Bay Area counties’ new Stay at Home Order

Five Bay Area counties (including Alameda, Contra Costa, Marin, San Francisco, and Santa Clara) and the City of Berkeley elected not to wait for the State Order to be triggered and issued their own Stay at Home Order (the County Order), adopting the restrictions of the State Order on an accelerated calendar effective no later than

December 8, 2020.

Employers in the Bay Area counties must move to immediate implementation and may need to restrict operations, depending on sector requirements. San Mateo County has indicated that it will not join the County Order and will delay further action until its ICU capacity triggers the State Order.

The County Order is effective until at least January 4, 2021.

If you have any questions regarding these developments, please contact the authors or your DLA Piper relationship attorney.

Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.

AUTHORS



Margaret A. Keane

Partner

San Francisco | T: +1 415 836 2500

margaret.keane@dlapiper.com



Yue Deng-Wu

Associate

San Francisco | T: +1 415 836 2500

yue.deng-wu@dlapiper.com
