

CORPORATE & TRANSACTIONAL ADVISORY

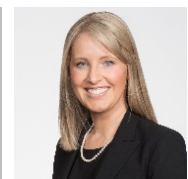
Essential Workers Exempt from Stay Home Orders



The COVID-19 pandemic is having a material impact on the businesses we rely on, our global economy, and the way we live our daily lives. Many states and cities have issued or will issue stay-at-home (or shelter-in-place) orders. The orders are a requirement to stay home to the maximum extent possible and to strictly maintain social distancing to prevent the spread of the virus.

These orders generally include an exception for people working for, or in support of, an essential service (for purposes of this advisory, defined as an “Essential Worker”). Each order is unique, and the definition of what qualifies as an Essential Worker varies from order to order. Additionally, Essential Workers that fall under the umbrella of a critical infrastructure industry (as defined by the Department of Homeland Security) have a special responsibility to maintain a normal work schedule (according to the “Coronavirus Guidance for America” issued by the president).

The orders exempt Essential Workers from the shelter-in-place aspect of the order and allow them to leave their homes to go to work to provide essential services. Some shelter-in-place orders expressly allow Essential Workers to hire nannies or babysitters to provide childcare (even if working from home) by exempting such nannies or babysitters from the orders. Lack of childcare is a problem for a lot of employees, and stay-at-home orders have given the false impression that the use of all nannies or babysitters is prohibited. However, in the Denver, Illinois, and California orders, Essential Workers may continue to hire nannies and babysitters provided they are complying with the applicable order. Some orders are silent as to the use of babysitters and nannies by Essential Workers, but there is a good argument that they are permitted as long as they are not expressly prohibited by



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any order, due to the importance of Essential Workers and the presidential emphasis on maintaining a normal work schedule.

Below is some general guidance on these Essential Worker exceptions. As we all continue to navigate through these unique and evolving challenges, it is important to note that there is gray area—and sometimes direct conflict—between the orders. Such considerations must be taken into account if a company operates in multiple jurisdictions, as the local order will govern the employees operating in that particular jurisdiction. Sometimes a company's core services clearly qualify as an exception, but it's not clear whether the company's ancillary services qualify for an exemption. Some orders expressly exempt businesses that supply materials or provide services to other expressly exempted essential businesses, while other orders are silent on this additional exemption. It is very important to specifically identify the exemption that a company falls under in order to continue operating in conflict with an applicable shelter-in-place order.

These are unprecedented issues, but we are tracking them and will provide further clarification as it becomes available.

GENERALLY, THE FOLLOWING SERVICES ARE CONSIDERED ESSENTIAL SERVICES:

1. Utilities (including internet) and energy
2. Construction (in Colorado this includes commercial, residential, and renovation projects)
3. Electrical, plumbing, exterminators, cleaning services, and anything else necessary to maintain safety, sanitation, and essential operation of residences or another essential service
4. Transportation and airport services
5. Public services
6. Communications and technology
7. Healthcare and medical care
8. Grocery stores, farming, and ranching
9. Food production, supply, and delivery
10. Gas stations

11. Mail and delivery services (including FedEx)
12. Restaurant take-out and delivery services
13. Financial services
14. Hotels, motels, and shelters used for residential purposes

This is not a complete list; this is just a general guide. Some jurisdictions narrow essential services while others include entire industries like “manufacturing.”

Even for Essential Workers, working from home and/or limited or staggered office use is required to the greatest extent possible. **Each order also specifies that social distancing must be maintained to fully comply with the order.** We recommend that all companies implement a social distancing policy and ensure that it is communicated to all of their employees.