



Employment Law Note

March 2020 – “Stay-At-Home” Edition

Is Your Employee “Essential” or Not?



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As you have no doubt heard, Governor Jay Inslee issued a “Stay Home, Stay Healthy” Order on March 23, 2020. The Order directed that Washington residents must remain in their homes until at least April 8, 2020, unless they are engaging in an “essential activity.”

Closure of Non-Essential Businesses

As part of the “Stay Home, Stay Healthy” Order, the Governor directed that all businesses in Washington must close beginning on March 25, 2020, and continuing until at least April 8, 2020, except to the extent that the business's employees can function remotely.

However, there is an exception in the Order for “essential” businesses. The Governor’s office has since published a lengthy list of “critical infrastructure sectors” where workers can continue working, and where businesses can continue operating, for the duration of the Order. The sectors are:

- Healthcare/Public Health
- Emergency Services
- Food and Agriculture
- Energy
- Water and Wastewater
- Transportation and Logistics
- Communications and Information Technology
- Critical Manufacturing
- Hazardous Materials
- Financial Services
- Chemical
- Defense Industrial Base
- “Other Community-Based Government Operations and Essential Functions”

Most of these sectors are described in detail in the Governor’s publication. Employees who comprise part of the defined “essential workforce” within each sector may continue to report to work. Employees who do not fit the definition of your “essential workforce” are prohibited from coming to work by the Order (although they are free to work remotely if they have that capability).

The complete document defining the State’s “essential workforce” is available on a special website that the State has set up to consolidate COVID-19-related communications: <https://coronavirus.wa.gov>.

Is Your Workforce “Essential”?

For many organizations, determining whether or not your workforce is “essential” is relatively simple. For example, if you are a hospital, your physicians and nurses are almost certainly part of your “essential workforce.”

For others, the question is not so simple. “Essential” status is determined on a worker-by-worker basis. Within any given organization, certain employees may fit the definition of “essential,” while others will clearly not—even if the business otherwise operates clearly within a critical infrastructure sector.

The Governor’s office has identified the State’s Military Department as the agency that will answer questions about whether particular employees do, or do not, qualify as essential. They’ve also been given the authority to consider petitions to be added to the list of “essential” workers. Organizations who are interested in seeking this type of clarification, or petitioning to be added to the list, should consult with counsel about how best to proceed.

What Should “Essential” Employers Do?

There is, at present, no requirement that employers seek permission from the State before designating particular employees as comprising part of the “essential workforce.” Employers can do this unilaterally—although they should be careful to adhere to the Governor’s office’s publication.

Employers who deem particular employees’ tasks to be essential might want to furnish those employees with documentation that the employees can provide to law enforcement or public health officials who might question their presence outside of their homes. This is not currently required, and some local law enforcement agencies have indicated that they will not be asking individuals to provide evidence that they are “essential.” Our firm is able to assist in the preparing of this type of documentation if requested.

Status of Sebris Busto James

Sebris Busto James will remain open throughout the closure mandated by the “Stay Home, Stay Healthy” order.

Our firm's legal services comprise part of the “Other Community-Based Government Operations and Essential Functions,” as our firm’s professional legal services are “necessary to assist in compliance with legally mandated activities and critical sector services.”

The vast majority of our firm's clients consist of businesses, public agencies, and other organizations who operate heavily across virtually every sector on the above list. Each of our clients is legally mandated to pay their employees their required wages, provide statutory and contracted-for employee benefits, and comply with a wide range of employment law requirements—many of which are changing on a daily basis.

Our work is critical to enable our clients to continue operating while complying with these important obligations owed to their employees. We remain available, as before, to provide this assistance whenever and wherever it is needed.

All of that said, our firm’s lawyers, and all but one of the firm’s staff, are each working remotely and from their homes for the duration of the current crisis, except as necessary to perform “essential functions” in the office.

For more information about this month’s Employment Law Note
contact us at [425-454-4233](tel:425-454-4233)



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