

Preparing for an Uncertain Future: Is Your Business Ready to Tackle Important Legal Issues Raised by a Shelter-in-Place Order?

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These are challenging times.

Businesses, nonprofits, and public entities are changing their operations more rapidly than many ever thought possible. And certainly battling an unseen and so far unpredictable virus has been one of the most disruptive events in U.S. history.

North Carolina continues to experience the spread of the novel coronavirus (COVID-19). To deal with growing numbers of infections, the Governor has issued a series of Executive Orders imposing restrictions on certain public activities and businesses. Much of the media coverage has focused on the Executive Orders' impacts on schools, health care, and restaurants. But there is much more to know if you are running a business.

The Governor has also loosened some regulations that should make it easier for health care and essential services to respond more quickly to the COVID-19 crisis. This article provides a timeline of those orders and explores the possible effects of additional restrictions, namely the possibility that the Governor may issue a statewide "shelter-in-place" order.

Possible State Restrictions on Movement and Gatherings

At the time of publication on March 24, the Governor has not issued a "shelter-in-place" order. Although a shelter-in-place order would be a dramatic and extreme disruption to daily lives, it remains a possibility.

Shelter-in-place restrictions may take a variety of forms, but based on what other states have imposed, it's possible that a North Carolina specific order would create a general restriction on all gatherings and movement with certain exceptions for exempt industries and sectors and for specific types of movement (i.e., medical services or trips to the grocery store). Possible restrictions include prohibitions on group gatherings and business operations, restrictions on travel, and curfews.

North Carolina doesn't have much history with these types of restrictions, but there have been limited situations where coastal counties and municipalities have restricted access, imposed curfews, or mandated evacuations because of hurricanes. Unlike those prior situations, a shelter-in-place order would likely cover the entire state rather than select areas.

While it's impossible to forecast exactly which business sectors or industries would be exempt from the restrictions or to know what type of movement would be permitted, it is expected that "essential services" would be allowed to continue. But what is an "essential service"? How do you know if your business is essential and therefore exempt from the shelter-in-place order? Unfortunately, there is no set list of companies that qualify. We will not know with any certainty unless and until the shelter-in-place order is issued.

But you can plan now based on what we do know.

The federal government previously identified sixteen (16) "critical industries," which are encouraged to continue despite COVID-19, and on March 22, it added "financial services" to the list. While the ultimate decision about exemptions remains with state and local officials, we believe the federal list may serve as a framework for which industries would be exempted from a possible shelter-in-place regulation. If you are uncertain about your status, you should seek guidance from the N.C. Emergency Management division of the Department of Public Safety.

Unfortunately, we have found the Emergency Management's website lacks details and substantive guidance. Therefore, if you are in doubt about your status, you can always contact our COVID-19 Response Team for an assessment of your specific situation.

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