

Business Operations During The Shutdown – Can You Remain Open?

Articles, COVID 19: Answers to Business Challenges March 27, 2020

Following the Governor of Pennsylvania's Order of March 19, 2020 directing that no place of business which is not deemed to be life sustaining may continue to operate, many business owners have found themselves questioning whether they fit within a broad array of categories that was subsequently acknowledged to be "life sustaining" or whether their business, like similar businesses, is entitled to a waiver.

We have had many business owners calling our offices since last Thursday, indicating that they believe their business provides life sustaining services, but has not seen any specific direction from the Governor's Office regarding their specific business. Some businesses have assumed that they fit within a category outlined by the Department of Health and the Department of Community Economic Development while others have submitted requests for waivers, which requests are still pending.

We have been able to provide guidance for businesses that seem to fit within one of the "life sustaining" categories published by the Governor's Office and updated as recently as early this week. Business owners should reach out to us to discuss creative solutions that may enable them to maintain operations during the shutdown, even if on the face of the Governor's Order, there would otherwise be a question of whether they would be permitted to operate. The broad definition of "life sustaining" leaves significant room for interpretation. As to businesses that have requested a waiver, but have not yet received a response, these businesses should also contact counsel to discuss whether they may be considered life sustaining under the Governor's Order even if not specifically delineated as such in the most recent list of categories provided by the Governor's office.

In any event, we advise that if requested by a Federal, state or local official or government authority or a member of the state or municipal police to cease operations, then the operations should immediately cease. If operations need to continue subsequent to being contacted by one of these officials, a legal means can be pursued to do so. The Governor's Office has provided guidance to the Pennsylvania State Police as well as local law enforcement agencies indicating that where the law enforcement agencies suspect that a business is in violation of the Order, the individuals present at the place of operations should be notified. We have received further indication from local law enforcement officials that no arrests will be made under the authority that has been utilized by the Governor to shut down the businesses. This may not apply in situations in which an individual refuses to comply with a government official's request to cease operations after which point other criminal statutes could come into play.

As this situation remains ever fluid, this information should not be used as legal advice in your particular situation, but is provided as general information only.

Kevin L. Hall, Esquire is an attorney in Central Pennsylvania who is working with businesses throughout the Commonwealth to remain open during the general shutdown. He can be reached via email or 717-991-8793.