



Update Regarding March 23, 2020 Washington COVID-19 Executive Order

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Due to the spread of COVID-19, on March 23, 2020, Jay Inslee, the Governor of the State of Washington, issued an amendment to Proclamation 20-05, which imposes an executive “Stay Home – Stay Healthy” Order throughout Washington State. This Order prohibits all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind, and prohibits all non-essential businesses in Washington State from conducting business requiring travel outside the home. As part of the Order, the Governor has designated “*Essential Critical Infrastructure Workers*” and “*Essential Workforces*” as groups permitted to continue their operations within the State of Washington in the face of the Governor’s “Stay Home – Stay Healthy” Order. Within the Order, the exempted essential workforces are broken up by industry sector, and for the purposes of addressing the concerns of all Roofing Contractors Association of Washington (RCAW) members, and to address many of your questions, the following work exceptions are important to highlight:

- ❖ Within the “**Emergency Services**” Sector, **Public Works** workers such as plumbers, electricians, exterminators, *and other service providers* who provide services that are necessary to maintaining the safety, sanitation, *and essential operation of residences* are exempt from the “Stay Home – Stay Healthy” Order.
- ❖ Within the “**Transportation and Logistics**” Sector, the following are exempt from the “Stay Home – Stay Healthy” Order:
 - a. Employees of firms providing services enabling logistics operations, including ... *distributing products for wholesale* or retail sale or use.
 - b. Manufacturers and *distributors* (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and *distribution operations*.

- ❖ Within the Sector entitled “**Other Community-Based Government Operations and Essential Functions,**” the “Stay Home – Stay Healthy” Order also provides an exemption for:
 - a. “*Construction Workers* who support the construction, operation, inspection, and maintenance of construction sites and construction projects (*including housing construction*) for all essential facilities and projects [as outlined in the Order] ... and for *residential construction related to emergency repairs and projects that ensure structural integrity.*”
 - b. “*Workers* such as plumbers, electricians, exterminators, *and other service providers* who provide services that are necessary to maintaining the safety, sanitation, *and essential operation of construction sites and construction projects (including those that support such projects* to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste).”
- ❖ Within the “**Defense Industrial Base**” Sector, in the event a member is performing work as a contractor providing services to the Department of Defense on a government owned facility, such work is also exempted from the “Stay Home – Stay Healthy” Order.

Based on the language in the “Stay Home – Stay Healthy” Order and its appendix, it appears at this time that material distributors and *construction workers* (including roofers) would be excluded from the Order based largely on the sector exemptions above. In addition to *construction workers*, there is also a good argument to be had that all members of a contractor’s office staff would also be considered exempt from the Governor’s Order. This is because an exemption *is* provided to some extent for workers that *support* the essential operations of construction sites and construction projects to ensure the availability of needed facilities, transportation, energy and communications. One could argue that staff-members ensuring proper deliveries and communication between the exempted *construction workers* would fit into an exemption under the “Other Community-Based Government Operations and Essential Functions” Sector. That said, in conducting their operations, contractors should understand that potential exemptions for office staff are not as clear cut as the *construction workers* themselves, who will surely be deemed exempt from the prohibitions on leaving home.

For any and all members that have employees that are exempt from the Governor’s order, you will still want to ensure that your Company is engaging in all applicable recommended hygiene measures and maintaining all Social Distancing Requirements to the extent possible while performing the essential services of your Company as a member of the Essential Workforce. This is because even essential businesses are prohibited from operating under the Governor’s Proclamation unless they establish and implement social distancing and sanitation measures established by the United States Department of Labor’s Guidance on Preparing Workplaces for COVID-19 and the Washington State Department of Health Workplace and Employer Resources & Recommendations. As of the date of this update, those measures can be found outlined at:

- a) <https://www.osha.gov/Publications/OSHA3990.pdf>
- b) <https://www.doh.wa.gov/Coronavirus/workplace>.

Our hope is that this advice will help you navigate some of the novel workplace issues that this outbreak continues to present to the industry; but as is the case with most legal issues, especially those dealing with unprecedented events like the outbreak of COVID-19, specific legal questions should be analyzed with your attorney on a case-by-case basis. For any questions of the sort, feel free to give us a call.

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