March 21, 2020

Day Pitney Prepares to Assist Clients in Requesting Designation as "Essential" Business under Connecticut's COVID-19 "Work from Home" Executive Order

On Friday, March 20, Connecticut Governor Lamont issued Executive Order 7H, effective on March 23, directing that all businesses and not-for-profit entities in the State of Connecticut, employ, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. ***Under the Executive Order, non-essential business or not-for-profit entities are required to reduce their in-person workforces at any workplace locations by 100 percent no later than March 23 at 8:00 p.m.*** No later than 8:00 p.m. on March 22, the Department of Economic and Community Development (DECD) is required by the Executive Order to issue guidance about which businesses are essential. ***Businesses not operating in categories initially identified as essential by the Executive Order or initial DECD guidance may be deemed essential after requesting an opinion from DECD***, which will review and grant such request, should it determine that "it is in the best interest of the state to have the workforce continue at full capacity to properly respond to this emergency." Pending DECD's guidance, ***Day Pitney attorneys are studying precedent and preparing to promptly submit client applications to DECD for designation as an "essential" business or seek other relief for purposes of gaining full or partial exemption from the in-person restrictions of Executive Order 7H, as appropriate.*** On its face, Executive Order 7H offers a *non-exclusive list* of types of business that will be deemed *essential*, as follows:

Critical Infrastructure Sectors comprising:

- 16 critical infrastructure sectors defined here.

Essential healthcare operations comprising:

- hospitals
- clinics
- dentists
- pharmacies
- elder care workers
- home health care workers

Also, companies and institutions involved in the research and development, manufacture, distribution, warehousing, and supplying of:

- pharmaceuticals
- biotechnology therapies
- health care data
- consumer health products
- medical devices
- diagnostics equipment
- services
- any other healthcare related supplies or services

Essential infrastructure, including:

- utilities
- wastewater
- drinking water
- telecommunications
- airports
- transportation infrastructure

Manufacturing, including:

- food processing
- pharmaceuticals
- industries supporting the essential services required to meet national security commitments to the federal government and U.S. Military

The defense industrial base, including:

- aerospace
- mechanical and software engineers
- manufacturing/production workers
- aircraft and weapon system mechanics and maintainers

Essential retail, including:

- grocery stores and big-box stores or wholesale clubs, provided they also sell groceries
- pharmacies
- gas stations and convenience stores
- food and beverage retailers (including liquor/package stores and manufacturer permittees)
- restaurants[1]

Essential services, including:

- trash and recycling collection, hauling, and processing
- mail and shipping services
- news media
- legal and accounting services
- banks, insurance companies, check cashing services and other financial institutions
- providers of basic necessities to economically disadvantaged populations
- construction
- vendors of essential services and goods necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses, including pest control and landscaping services
- vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and the provision of goods, services or functions necessary for the health, safety and welfare of the public

Day Pitney anticipates issuing another alert on this subject promptly after reviewing DECD's guidance, which is expected to be published by 8:00 p.m. on Sunday, March 22. For your information, on March 20, New York's Governor Cuomo issued a similarly worded Executive Order 202.8 which becomes effective March 22. Further, "Guidance for Determining Whether a Business Enterprise is Subject to a Workforce Reduction on Executive Order 202.6" was published by the New York State Department of Economic Development. The New York DED guidance includes a form to submit a Request for Designation as an Essential Business for Purposes of Executive Order 202.6. Given the close coordination between the governors of Connecticut and New York on COVID-19 matters, we anticipate that the Connecticut DECD guidance and process for requesting exemption will look very similar to the New York guidance and process.

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[1] Provided they comply with previous and future executive orders issued during the existing declared public health and civil preparedness emergency.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center. COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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