
GOVERNOR ABBOTT'S GA-14 EXECUTIVE ORDER: CAN MY EMPLOYEES GO TO WORK?

The Last Two Weeks – Counties in Texas React Quickly and Inconsistently to COVID-19. For the last two weeks, counties across Texas have been issuing local orders that have run the gamut in terms of the scope of the quarantine imposed upon their residents and businesses.

Companies Scramble to Interpret and React to Counties' Orders. Companies – especially those that operate in multiple counties in Texas – have often struggled to understand how each county's order applies to their business. In some cases, they have sent letters to county judges explaining their position, if the order was not completely clear. Most have provided their employees letters explaining why the employee was not covered by a county's order.

Governor Abbott Issues a State-Wide Order that in Some Cases Trumps the Local Orders. Governor Abbott's [Executive Order GA-14](#) dated March 31, 2020 (the "March 31 Texas Order") was issued in part in response to a growing concern that all localities in Texas pare down their activities to prevent the spread of COVID-19. The March 31 Texas Order is short and simple in scope, and generally restricts Texan individuals from leaving their homes unless necessary to providing essential services and doing essential activities. These "essential services" consist of, among other things, everything listed in the "Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response" issued by the Cybersecurity and Infrastructure Security Agency ("CISA") of the US Department of Homeland Security, dated March 28, 2020 (the "2020 CISA Guidance").

The March 31 Texas Order supersedes any conflicting order issued by local counties only to the extent that "such a local order restricts essential services allowed by the executive order or allows gatherings prohibited by the executive order." So, to the extent any local order in the state of Texas imposes restrictions on essential services more onerous than those contained in the March 31 Texas Order, the March 31 Texas Order explicitly supersedes those restrictions. Similarly, to the extent any local order in the state of Texas allows gatherings of people that the March 31 Texas Order prohibits, the March 31 Texas Order explicitly supersedes those allowances.

How Does the March 31 Texas Order Work with Existing Local Ordinances? Companies need to review the local ordinance to confirm that the March 31 Texas Order does not change what is considered essential under a local order. In doing so, keep in mind that counties in Texas have gone one of three ways in defining what is essential: (1) they cite, similar to the March 31 Texas Order, to the 2020 CISA Guidance, (2) they cite to CISA's original guidance found at <https://www.cisa.gov/critical-infrastructure-sectors> (the "Original CISA Guidance"), or (3) they cite to neither and set their own guidance. For those counties that cite to the 2020 CISA Guidance, no additional work is necessary at this time to determine whether you should restrict or allow more work activities. For those counties that cite to the Original CISA Guidance, you should compare the activities found in the Original CISA Guidance

and compare how the 2020 CISA Guidance restricts or allows those activities. In the case of any conflict, the 2020 CISA Guidance controls. For those counties that cite to neither, the 2020 Guidance now controls, and you have to decide what is now allowed that was prohibited before.

An Example: Oil and Gas Services Workers. As an example, let's look at whether field workers at oil and gas services companies who do not directly drill but assist in providing fracking equipment to drillers, may physically come to work. Specifically, may you come in to work under the March 31 Texas Order, if your local county cites to the Original CISA Guidance? Under the March 31 Texas Order, you must look at the 2020 CISA Guidance, which explicitly permits workers who provide services related to energy sector fuels to come to work. Our belief is that these employees' work falls into these permitted services because supporting fracking is necessary to the ongoing production of energy in the United States. Therefore these employees provide essential services and may come to work under the March 31 Texas Order.

You May Request Your Business Be Deemed "Essential." The Texas Department of Emergency Management has introduced a free online service whereby you may request a determination that your business be deemed "essential." You may receive this determination by answering several questions at this website: <https://www.tdem.texas.gov/essentialservices>.

Takeaway. The takeaway is that you need to compare the March 31 Texas Order to any local order governing your employees. If you have questions, please contact one of the Thompson & Knight attorneys with whom you regularly work or one of the attorneys listed below.

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