

COVID-19 Update

Presented by
The Franklin Partnership, LLP
Policy Resolution Group at Bracewell
March 2020



Your Team in Washington, D.C.



Lobbying Firm – The Franklin Partnership, LLP

- Bi-partisan Washington, D.C.-based government relations firm
- Representing manufacturing industry since 2002
- Clients include: manufacturing associations, defense contractors, hospitals, cities



Strategic Communications Firm – Policy Resolution Group at Bracewell

- Wash, D.C.-based public affairs & strategic communications consultants
- Promote NTMA and PMA in print, digital and other media
- Support Franklin Partnership government relations efforts by designing and implementing coordinated strategic communications strategy
- Representing metalworking industry since 2003

Agenda

- Current State of the States
- Who Defines an Essential Business
- What are the States Doing
- What is Washington Doing to Help?
- Expansion of Paid Sick Leave/FMLA
- Economic Stimulus
- Questions

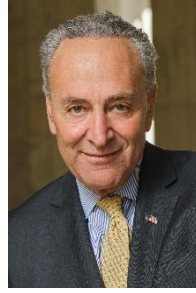
Current State of Washington

- All efforts focused on COVID-19 – Health and Economic Responses

- Key players:



Senate
Majority Leader
Mitch McConnell



Senate
Minority Leader
Chuck Schumer



Speaker of the House
Nancy Pelosi



Treasury Secretary
Steve Mnuchin

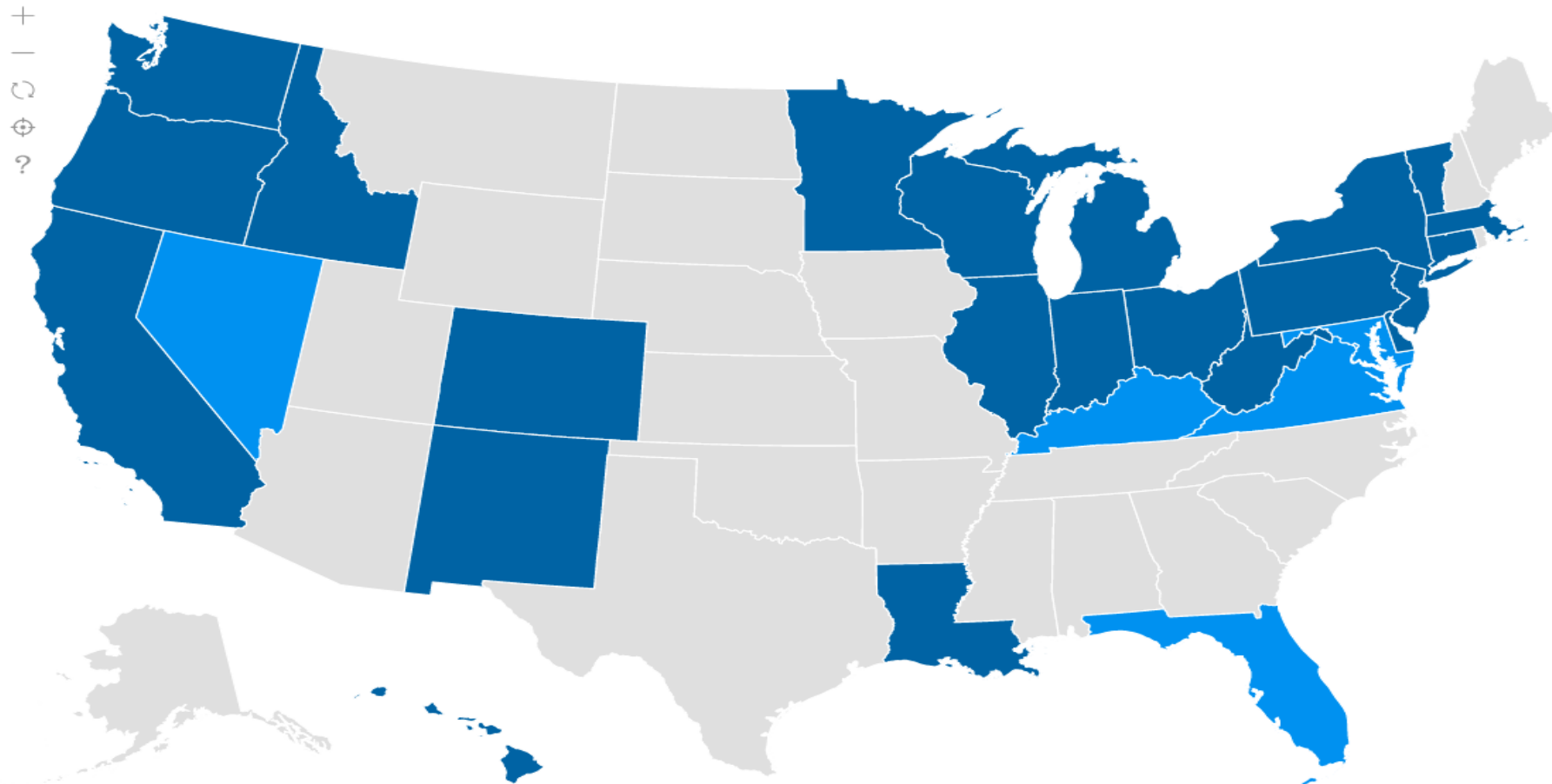
- U.S. Senate will leave Washington shortly and reconvene April 20.
- U.S. House of Representatives reconvened today.
- FEMA has now taken over COVID-19 Response
- Washington is focused on payrolls – preventing mass layoffs
- Concern it could become a 2008 Financial Crisis plus nation-wide Katrina

Current State of the States

STATE POLICIES IN RESPONSE TO COVID-19 PANDEMIC

All 50 States and DC have declared a state of emergency. To access a state declaration, click on the state. This map is continuously updated as new declarations and policies are issued across the country in response to COVID-19. If your state has issued a shelter-in-place and/or business closure policy not reflected in County Explorer, please contact us at research@naco.org.

COUNTY DECLARATIONS & POLICIES STATE DECLARATIONS & POLICIES FEMA DECLARATIONS



Source: NACo-collected data, as of March 26, 2020. In the event of a discrepancy between NACo data and data reported by state and local public health officials, data reported by state and local public health officials should be considered the most up to date.

Counties Can Have Their Own Restrictions

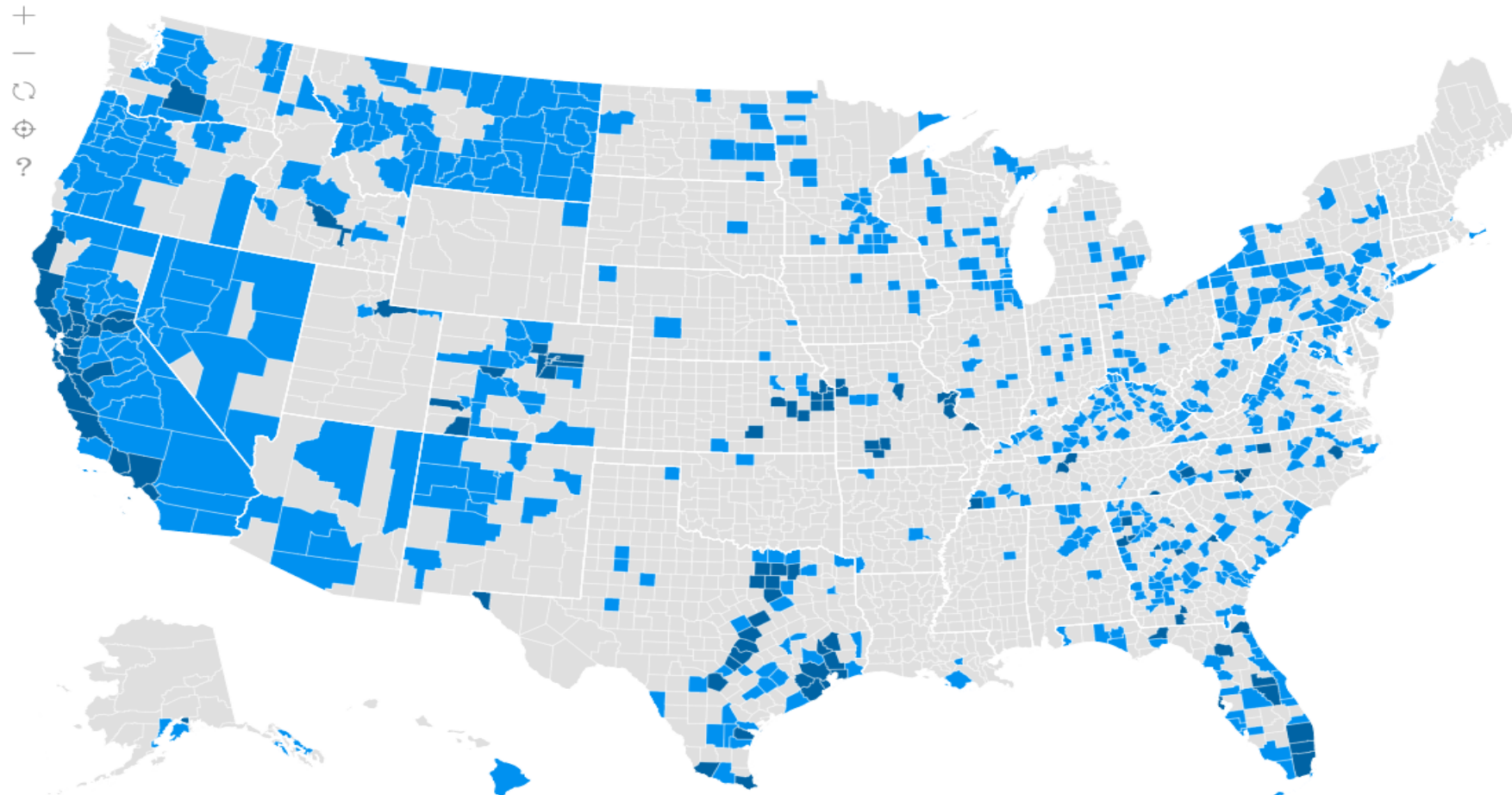
COUNTY DECLARATIONS AND POLICIES IN RESPONSE TO COVID-19 PANDEMIC

This map is continuously updated as new declarations and policies are issued in counties across the country in response to COVID-19. If your county has issued an emergency declaration or shelter-in-place policy not reflected in County Explorer, please contact us at research@naco.org.

COUNTY DECLARATIONS & POLICIES

STATE DECLARATIONS & POLICIES

FEMA DECLARATIONS



Source: NACo-collected data, as of March 26, 2020. In the event of a discrepancy between NACo data and data reported by state and local public health officials, data reported by state and local public health officials should be considered the most up to date.

2360

No known local policy

598

County with an emergency declaration

111

County with a safer-at-home or business closure policy

Numbers within each color box represent the distribution of counties

<https://ce.naco.org/?dset=COVID-19&ind=Emergency%20Declaration%20Types>

Confusion Over Closures

Realities:

- Businesses and other entities are being told to close their doors in some states.
- People are being told to stay indoors in some cities, states.
- Employees are uncertain about their futures.

Questions:

- Who determines which businesses remain open?
- How do you become listed as an essential/life critical business?
- Can we stay open if I want to?
- What is Washington doing to help?

Who Determines What is an Essential Business?

- U.S. law gives cities, counties, and states the power to manage their own emergency preparedness
- All determinations as of right now are made by counties, states
- Non-binding list of essential employees came from federal government (Department of Homeland Security Cybersecurity & Infrastructure Security Agency) on 3/19
- Some states have begun to voluntarily use federal definition
- However, some states go further

Essential Critical Infrastructure Definition



U.S. Department of Homeland Security

Cybersecurity & Infrastructure Security Agency (CISA) list:

Critical Manufacturing Definition:

“medical supply chains, and for supply chains associated with transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base. Additionally, workers needed to maintain the continuity of these manufacturing functions and associated supply chains”

as of March 23, 2020

States Set Their Own Guidelines

State	Essential Business Definition	Waiver Process?	Effective Date
CA	CISA Modified	No	3/19/2020
CO	Own	No	3/26/2020
CT	CISA & Own	Yes	3/23/2020
IL	Own	No	3/21/2020
IN	CISA & Own	No	3/25/2020
MA	CISA modified	Yes	3/24/2020
MD	CISA		3/23/2020
MI	CISA & Suppliers	No	3/24/2020
MN	Own/Incorporating CISA	Yes	3/27/2019
NJ	Own	No	3/21/2020
NM	Own	No	3/24/2020
NY	Own	Yes	3/22/2020
OH	CISA & Own	No	3/24/2020
PA	Own	Yes	3/19/2020
WA	CISA Modified	Yes	3/26/2020
WI	CISA & Own	Yes	3/25/2020

States Set Their Own Guidelines

- Michigan “In Writing” Requirement
 - If a supplier, must have written (e-mail accepted) designation from your essential business customer
 - Only employees essential to that critical part/product may be at work
- Pennsylvania created its own list by NAICS codes, then added some of CISA
- Kansas City allows medical suppliers only
- Illinois allowing unlicensed daycare for essential workers
- New Jersey open to all manufacturing but minimal employees to maintain operations

States do their own enforcement – criminal, civil penalties

More Resources: www.onevoiceinfo.org

Follow State Actions and Essential Business Definitions

ONE VOICE COVID-19 RAPID RESPONSE WEBSITE

CALL: (202) 828-7637



More Resources: A Defense of Manufacturing



One Voice Talking Points for NTMA and PMA Members: COVID-19 Response

- Our member companies are committed to serving our country by producing the products Americans need while safeguarding the health of employees, their families, and the communities in which we live and work.
- Member companies are complying with federal, state and local guidance regarding business operations.
- The U.S. Department of Homeland Security has [issued federal guidance](#) designating multiple manufacturing sectors as essential services. Many states have incorporated this guidance into their directives for businesses. We encourage all state and local governments to incorporate this guidance as they determinations about what constitutes essential businesses.
- Now, more than ever, leaders in government must recognize that manufacturing work is necessary and critical to our nation's pandemic response. Business disruptions in manufacturing can have consequences both immediate and long-ranging. Our facilities do not operate on a simple on-off switch. Many of our members are working with complicated, large machinery that, if powered down, cannot be easily restarted on short notice.
- It is important to remember that, particularly in this time of crisis, our country is depending on the component parts made by our members. These parts are vital to the supply chain for equipment and supplies for our nation's medical first responders.
- But essential, life-sustaining work goes far beyond medical supplies. Our member manufacturers also support everything from the services that keep us comfortable in our homes (power generation and transmission and heating and cooling) to the networks – physical and virtual – that we are depending on to connect us (trucking and transit, computers and electronics).

What is Washington doing to Help?

- **Phase 1:** \$8.3 billion “Coronavirus Supplemental” for vaccines, test kits
- **Phase 2:** \$100 billion Families First Coronavirus Response Act signed into law
 - Paid Sick Leave, FMLA Expansion
 - Tax credits for employers
- **Phase 3:** \$2 trillion economic stimulus package pending
 - Direct funds to individuals, states, loans to small businesses
 - Support for larger companies, tax provisions to support industry
- **Phase 4:** Multitrillion dollar continuation of stimulus
 - Funding for FEMA
 - Additional support for hospitals
 - More direct payments to individuals, payroll tax holiday possible

Phase 2: Expansion of Paid Sick Leave

- Emergency Paid Sick Leave applies to all employers with 1-499 employees
- If full time, pay 80 hours of sick leave
- If part time, pay based on avg. number of hours worked previous six months
- Paid Sick Leave reasons:
 - Employee subject to federal, state, local quarantine or isolation order (100% pay)
 - Employee told to self quarantine by government, health professional, employer (100% pay)
 - Employee is caring for individual subject to self-quarantine or illness (2/3 pay)
 - Employee caring for child under 18 if school/child care closed or unavailable (2/3 pay)
- 100% pay capped at \$511/day (\$5,110 aggregate) over two weeks
- 2/3 pay capped at \$200/day (\$2,000 aggregate) over two weeks

Phase 2: Expansion of Paid Sick Leave

- Businesses under 50 employees may seek a waiver from DoL if would “*jeopardize the viability of the business*”
- No application at this time, asking employers to “document” leave for later
- Expanded Paid Sick Leave *in addition* to existing paid leave policy
- Employee may use expanded sick leave prior to existing sick leave accrued
- Employer may not mandate employee use existing sick leave first
- Law in effect April 1 until December 31, 2020
- Employer must post a notice about new law for all employees by April 1
- Expanded sick days will not carry over

Phase 2: Expansion of Paid Sick Leave

- 100% refundable payroll tax for paid sick leave used
- Leave for self credit limited to \$511/day (\$5,110 total) per employee
- Leave for others credit limited to \$200/day (\$2,000 total) per employee
- Credit also covers cost of health care during leave
- Credit is claimed on a *quarterly* basis
- Credit is applied against employer Social Security taxes
- If credit exceeds amount employer has in Social Security, IRS will issue refund

Phase 2: Expansion of FMLA

- Applies to all employers with 1-499 employees
- Separate entities will be counted as a single employer
- Applies to employees working at least thirty days prior to leave
- 12 total weeks (10 weeks paid); first two weeks would be Paid Sick Leave
- 12 Weeks of FMLA (10 weeks after the Sick Leave 2 weeks):

“The employee is unable to work (or telework) due to the need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”
- Employee can use accrued PTO, Sick Leave, Vacation days for first 10 days
- Employer cannot require employee to use accrued paid sick leave

Phase 2: Expansion of FMLA

- Expanded FMLA pay is 2/3 of regular rate for full time employee
- Part time employee receives avg. pay over previous six months
- Pay limited to \$200/day (\$10,000 aggregate)
- Businesses under 50 employees may seek a waiver from DoL if would *“jeopardize the viability of the business”*
- No application at this time, asking employers to “document” leave for later
- 100 percent credit against the employer’s share of the payroll tax/employee
- Limited to \$200 per day (\$10,000 per employee total)
- Credits are refundable if exceeds amount the employer owes in payroll tax

Labor Dept. Posters – Sick Leave & FMLA



All employers must put up both posters:

<https://www.dol.gov/agencies/whd/pandemic>

Workforce FAQ – Consult an Attorney

- COVID not compensable under workers comp unless contracted at work
- Prior to making layoff decisions, consult employer health plan obligations
- Furlough has expectation of being rehired
- Employees on furlough or laid off will be eligible for unemployment
- Employees can use expanded 2 week Paid Leave if company ordered closed
- If staying open, tell employees following CDC, other protocols
- Companies deemed essential may want to provide employees a letter
- Fear of catching COVID-19 is not a valid reason for not going to work
- Should not ask employees for proof they are sick
- EEOC says employer *may* take employee temperatures upon entry

Should not be construed as legal advice, consult your counsel

Phase 3: Economic Stimulus Bill

- One Voice submitted ten recommendations to help mfg
 - Must improve cash flow
 - Make sure customers receiving federal bailout pay suppliers
 - Keep banks from pulling lines of credit
 - Have resources on hand to ramp up when time for recovery
- Senate Phase 3 legislation includes:
 - \$349 billion small business lending program
 - \$500 billion lending fund for corporations, cities, states
 - \$150 billion for state and local stimulus funding
 - \$130 billion for hospitals
 - Expansion of Unemployment Insurance Benefits
 - Net Operating Loss strengthened

Phase 3: Economic Stimulus Bill – Loan Program

- Companies up to 500 employees or size standards SBA sets based on NAICS
- \$349 billion Small Business Interruption Loan program through 7(a) loans
- Applications to cover the period of Feb. 15-June 30, 2020
- Capped at \$10 million with formula based on avg. total monthly payments of previous 12 months on payroll, mortgage, rent, payments on other debt
- Payment deferral for up to 12 months
- 1st 8 weeks payroll costs forgiven under loan with certain limitations/reductions
- Loan uses: Working capital, and specifically, payroll support, including paid sick, medical or family leave and costs related to continuation of group health care benefits, salaries, mortgage payments, rent, utilities and certain other existing debt
- Personal guarantee and collateral requirements eliminated

Contact your lender NOW and ask if they are SBA approved

Phase 3: Economic Stimulus Bill – Businesses

- \$500 billion lending program for 500 or more employees
 - Treasury to administer fund (similar to TARP) but Congress has some oversight
 - Corporations receiving federal aid must permanently provide 14 days paid sick leave
 - Must permanently pay minimum wage of \$15/hour
 - Must maintain same workforce levels into Sept. 2020
 - Any business applying for a loan is deemed impacted by COVID-19 by fact they are applying
- Other business provisions
 - Payroll taxes due over two years – half due 12/31/2021; balance due 12/31/2022
 - Net Operating Loss for both pass-throughs and corporations – carryback 5 years losses from 2018, 2019, 2020
 - Increases interest deduction limitation from 30% of EBITDA to 50% for 2019 and 2020
 - Accelerate ability to recover AMT credits as refunds
 - Employee Retention Credit up to \$10,000 per employee for wages paid

Next Steps

- More state governments will close to non-essential businesses
- States will likely increase limitations on “essential” if spread continues
- Trump wants economy reopened by Easter – states unlikely to comply
- FEMA asking for support: <https://www.fema.gov/webform/covid-19-donations>
- Expect a Phase 4 measure to move by mid-April
- Health experts predict it is a two-cycle virus – will come back later in 2020
- Impact on Presidential race unclear
- Only act of Congress can move November election (unlikely)
- How will Trump react to experts who want to keep country locked down?

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Questions?

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