In the late afternoon of March 19, 2020, and without advanced notice, Pennsylvania Governor Tom Wolf issued an Order for all “non-life-sustaining businesses” in the Commonwealth to close their physical locations. The Order was effective at 8 p.m. last evening with enforcement to begin at 12:01 a.m. on Saturday, March 21. A copy of the Order can be found here. There are many questions that arise from the Governor’s Order, and it can be expected that further clarifications will be forthcoming from the Governor’s office. The Governor’s office has also issued a press release with additional information.

In a press conference at 2 p.m. today, the Governor stated that the guidelines are being revised based upon feedback from businesses and other stakeholders, and that the forthcoming guidelines will be in line with the federal government’s Cybersecurity and Critical Infrastructure Security Agency (CISA) guidance that has identified 16 “Critical Infrastructure Sectors,” as available here. In addition, the Governor encouraged businesses to seek a waiver if they believe that they have been incorrectly categorized as “non-life-sustaining.” The waiver process is meant to “cut through red tape” and the Governor stated that decisions will issue via email.

While further guidance remains pending, this Alert will summarize the current Order and suggest methods to address confusion regarding the Order or to seek relief from its provisions.

The Order provides that “No person or entity shall operate a place of business in the Commonwealth that is not a life sustaining business regardless of whether the business is open to the members of the public.” The Order does not prevent working from home. The Order further provides specific guidance on what the Governor has decided is a “life sustaining business.” A list of businesses and industries that “can remain open” and their classification can be found here.

No doubt the list was designed to attempt to provide clarity on what is a “life sustaining business.” However, the list creates uncertainty regarding what businesses are covered by the Order and how to obtain relief from the Order.

There are options to seek clarity regarding the Order. Those options include pursuing an exemption or clarification through the Governor’s office or an entity such as the Pennsylvania Department of Community and Economic Development (“DCED”) or challenging the Order in Court. Waivers can be sought through an online form, available here.

Babst Calland is closely monitoring the developments regarding the Order and providing input to our clients to address the Order and other risks caused by the novel coronavirus. If there are questions about the Order, please contact Jim Corbelli at jcorbelli@babstcalland.com or Molly Meacham at mmeacham@babstcalland.com.