



Operating a Creative Business in PA During COVID19

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Governor's Order

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The Basics

- ▶ On March 19, 2020 Governor Tom Wolf ordered that all non-life-sustaining businesses must close their physical operations
- ▶ The list of non-life-sustaining and life sustaining businesses is on the Governor's website and also the Trellis blog.
 - ▶ This was recently updated and clarified on Tuesday March 24, 2020...more on that in a minute
- ▶ While the Governor's office has not directly defined "physical operations" but it as been generally been defined to be in-person operations, mobile operations (other than food), and businesses open to the public.
- ▶ If you do not fall on the "life-sustaining" list, but believe you are providing goods or services necessary to maintain operations of a business on the life-sustaining list then you can apply for a waiver

Cont.

- ▶ The State is using the the CISA (the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency) Advisory document to guide their waiver decision making. The CISA Advisory document a broadly authorizes in-person activity by businesses and workers necessary for production, operation and maintenance of supply chains of the following critical infrastructure categories:
 - ▶ materials and products needed for medical supply chains,
 - ▶ essential transportation,
 - ▶ energy,
 - ▶ essential communications,
 - ▶ food and agriculture,
 - ▶ chemical manufacturing
 - ▶ nuclear facilities,
 - ▶ the operation of dams, water and wastewater treatment
 - ▶ emergency services, and
 - ▶ the defense industrial base.

Classifications Likely Related to Creative Businesses

- ▶ Contractor work/specialty contractor work: Not permitted
- ▶ Apparel manufacturing and production sewing: Not permitted
- ▶ Steel product manufacturing from purchased steel: Permitted
- ▶ Glass and glass product manufacturing: Permitted
- ▶ Furniture wholesaling: Not permitted
- ▶ Clothing, jewelry, apparel: Not permitted
- ▶ Electronic Shopping and Mail Order: Permitted
- ▶ *Look at list for more specifics

So What Does This Really Mean?

- ▶ If your business is not permitted to be in “physical operation” you cannot be open to the public, participate in any open to the public sales, or have your employees working on site.
- ▶ But what about if I make things and just sell them online?
 - ▶ That seems to be ok. The FAQ section of the DCED website specifically says “In-person public facing locations must be suspend in-person operations. Mail order and online fulfillment may continue with essential staff but telework should be employed whenever possible, and social distancing must be observed.”
 - ▶ Our advice-try to minimize staff for this purpose, if you use staff follow all CDC best practices and requirements and make sure anyone with symptoms is not working.
- ▶ In home businesses can continue as normal but cannot have any in-person customers, etc.
- ▶ What if I have a private studio space?
 - ▶ Good question. If you are going there to fulfill orders or make things yourself you’re probably more safe, but there are still some risks. If you’re having employees come in to manufacture and not to just fulfill orders...you’re getting into more risky territory.
 - ▶ Also depends on if your building is open. Some commercial buildings have closed in order to protect maintenance and other staff (though building maintenance is permitted).

How To Approach It

- ▶ You can see how you fall on the list. If you don't CLEARLY fall in a category it is recommended you apply for a waiver if you have a valid reason (see slide 4).
 - ▶ Each category is based on a North American Industry Classification System (NAICS) definition. Go to the NAICS site and search the category to see the definition and what is included
- ▶ Also apply for a waiver if your business normally wouldn't fall under a permitted business BUT you have modified a part of your business and that part would fall under a permitted category. For example-sewing manufacturing to make medical masks.
 - ▶ If you get a waiver for that component of your business, you can ONLY operate that portion of your business.
- ▶ See the DCED's business operation site and FAQs:
<https://www.pa.gov/guides/responding-to-covid-19/#ForBusinesses>



Employment Considerations

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If in Operation

- ▶ If working on your own or in a private studio space
 - ▶ Only have essential employees (so maybe you are the only one making product and an employee is coordinating and responding to online sales questions/customer service remotely).
 - ▶ Be aware of the risks (there are stay at home orders in effect in several counties)
- ▶ If you have physical operation/manufacturing with multiple employees:
 - ▶ Again, only have essential employees
 - ▶ Follow all CDC recommended practices for employers found here: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
 - ▶ Implement a reporting procedure if an employee has symptoms
 - ▶ Implement operational changes and regulate overall facility contact
- ▶ Pittsburgh Paid Sick leave
 - ▶ Does account for public health emergencies

Other Employment/Unemployment Considerations

▶ Unemployment Compensation

- ▶ If you have employees and reduce their hours or lay them off, you can tell them they can see if they are eligible for unemployment benefits. See our blog on unemployment benefits here: <http://www.trellispgh.com/news/2020/3/17/unemployment-compensation-information-for-during-covid19-shutdown>
- ▶ If you are a creative business but also have a W-2 job, if you were laid off your W-2 job you can apply for unemployment benefits, but you will have to report any income you make through your own business on your bi-weekly report.
- ▶ Unfortunately, under the current laws, self employed or 1099 individuals are not eligible for unemployment benefits...but that is likely changing...more on that in a minute.

▶ Family Medical Leave Act and Fair Labor Standards Act amendments.

- ▶ Applies to all employers with 500 and less employees. There will likely be a hardship exemption for employers with 50 or less employees (BUT THESE HAVE NOT BEEN DETAILED YET)
- ▶ Effective April 2, 2020
- ▶ See <https://www.dol.gov/agencies/whd/pandemic> for more information

The New Federal Stimulus Bill (briefly)

- ▶ Passed by Senate, House voting on it...today?
- ▶ Stimulus Payments
 - ▶ Single time payment based on 2019 income (2018 tax return if not filed 2019 yet). Most adults would get \$1,200, although some would get less. For every child age 16 or under, the payment would be an additional \$500.
 - ▶ Single adults with Social Security numbers who are United States residents and have an adjusted gross income of \$75,000 or less would get the full amount. Married couples with no children earning \$150,000 or less would receive a total of \$2,400. And someone filing as head of household would get the full payment if they earn \$112,500 or less.
 - ▶ Above those income figures, the payment decreases until it stops altogether for single people earning \$99,000 or married people earning \$198,000.
 - ▶ No application.
 - ▶ Within 3 weeks

The New Federal Stimulus Bill (briefly)

▶ Unemployment Benefits

- ▶ The new bill wraps in far more workers than are usually eligible for unemployment benefits, including self-employed people (!!!) and part-time workers also includes 1099, freelancers, “gig” workers.
- ▶ Benefit amounts would be calculated based on previous income, using a formula from the Disaster Unemployment Assistance Program, according to a congressional aide.
- ▶ Self-employed workers would also be eligible for the additional \$600 weekly benefit provided by the federal government.
- ▶ Run through the states, paid by Federal Government
- ▶ Does not cover those able to work from home
- ▶ 39 weeks of pay
- ▶ Not eligible if receiving PTO or paid sick leave, etc.
- ▶ Not clear yet when

▶ Student loans

- ▶ Until Sept. 30, there will be automatic payment suspensions for any student loan held by the federal government. (Most eligible, check your repayment site to confirm)
- ▶ Interest is not supposed to accrue during this time

- ▶ More FAQs here: <https://www.nytimes.com/article/coronavirus-stimulus-package-questions-answers.html>. Also we'll do a blog on it next week.



Contracts

Contracts: Part 1

- ▶ Basic Principle:
 - ▶ The terms of the contract will govern what happens
- ▶ Quick note on commercial leases:
 - ▶ While eviction proceedings have been stalled, it does NOT excuse breach or default. All it does is stall the ability of a landlord to use the court to evict a tenant. Therefore, unless your lease says otherwise you **MUST** still pay rent and abide by lease terms. However, it is encouraged that tenants reach out to their landlords and discuss different options
 - ▶ April rent waiver
 - ▶ Payment plan
 - ▶ delay

Contracts: Part 2

- ▶ If you have a contract for goods or products you make what do you do?
 - ▶ First-can you perform?
 - ▶ Do you work out of a home studio? Do you work out of a private studio? Can you ship or mail the item?
 - ▶ If you can't perform then...
 - ▶ Look at the contract terms. Do they account for keeping retainers? Rescheduling? Force majeure?* Does it address what happens if you can't perform? Does it detail how rescheduling works? What happens in case of termination?
 - ▶ Non-refundable deposits get tricky
 - ▶ TALK TO YOUR CLIENT. This pandemic is mostly about people and understanding. Weigh contract terms vs long term business reputation vs \$ needs
 - ▶ There are other doctrines that may apply-doctrine of impracticability (the government has made it so it is impossible to do your job), frustration of purpose (unforeseen event caused the purpose of the contract to be negated).
 - ▶ Not having enough funds, wanting to be cautious, etc. are NOT grounds for cancelling or force majeure unless your contract allows for general termination by either party

Contracts: Part 3

- ▶ What do I do if we agree to change the contract?
 - ▶ PUT. IT. IN. WRITING.
 - ▶ Execute a contract addendum or modification agreement
 - ▶ If you are keeping a retainer and allowing for a rescheduling period, maybe set a time frame for which to reschedule
 - ▶ Ex. I was supposed to shoot a wedding or deliver a piece on xx date, but that has been cancelled due to shut down/stay at home order, but I've spoken with the client and they still want to schedule a date once this is "over," but we don't know when that is yet.
 - ▶ Draft up a contract that sets a timeline for when you have to agree to a new date, this helps keep you both honest and on top of the relationship. Put in that contract that the timeline can be extended if both parties agree.
 - ▶ If you didn't have a great contract to begin with, use the opportunity to essentially draft a better contract

Questions?

Thank you!

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Phone, Skype, and Zoom meetings available. Sign up for our newsletter to keep receiving up to date info.

Applicable links:

[Unemployment Compensation](#) (not including new bill yet)

[FMLA and FLSA Amendments](#)

[Gov. Wolf Shutdown Order](#)

[Latest Trellis Legal newsletter and resource list](#)

[Bridgeway Creative Business Accelerator Resource List for Creative Businesses](#)

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