

Webinar Question & Answer

Question: What gives the Governor the legal authority to prohibit mask mandates during a declared emergency? What part of the emergency declarations statute gives the Governor that authority?

Answer: It is a great question. While we make no conclusions regarding the Governor's view of his authority and his resulting actions, we can point you back to a few relevant provisions of the Government Code, Chapter 418, that may grant him this authority. Specifically:

1. Sec. 418.012. EXECUTIVE ORDERS. Under this chapter, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law; and

2. Sec. 418.016. SUSPENSION OF CERTAIN LAWS AND RULES. (a) The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.

It seems counterintuitive that strict compliance with a mask order would prevent coping with the disaster. In all of the disaster orders we have seen in recent times from the Office of the Governor, we have never seen an order prohibiting a measure that could potentially prevent further disaster. That said, we are unaware of any legal guidance that would answer your question directly.