

# Telemarketing During the Pandemic

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Over the past few weeks, my colleagues have discussed some of the considerations for marketing around COVID-19, including [claim substantiation](#) and [price gouging](#). In the next few posts, we are going to take a deeper dive into a few topics, beginning with telemarketing. Here are some points to keep in mind:

States of Emergency: Two states, New York and Louisiana, prohibit certain telemarketing calls during declared states of emergency.

- **New York:** The prohibition applies to any unsolicited telemarketing sales call to any person under a declared state of emergency. Calls made (1) in response to an express written or verbal request, or (2) in connection with an existing business relationship, are not “unsolicited” and are therefore permissible. Importantly, it is ambiguous as to whether this prohibition also covers business-to-business telemarketing calls. The provision applies to unsolicited telemarketing sales calls made to *any person* during a declared state of emergency. The statute defines “person” to include businesses, but the other telemarketing provisions in the statute are limited to business-to-consumer calls.
- **Louisiana:** The prohibition applies to all telemarketing calls to consumers, except those made (1) within six months of an express request, or (2) pursuant to an existing business relationship or a prior business relationship that has lapsed within six months.

Telephone Consumer Protection Act: On Friday, the FCC issued a [Declaratory Ruling](#) confirming that *certain* autodialed calls and text messages to cell phones related to the COVID-19 pandemic qualify as calls and text messages made for “emergency purposes” and may be made without the prior express consent that the TCPA typically requires. The Declaratory Ruling is limited to calls and text messages by hospitals, healthcare providers, state or local health officials, government officials, or entities acting at their express direction and on their behalf. However, businesses may place COVID-19-related calls and text messages to their employees, and in some instances, to their customers, with prior express consent (by virtue of the employee or customer providing their phone number as a contact point), or potentially under this “emergency” exemption if, for example, the business is acting at the direction of a government official to address and communicate a necessary health and safety issue. Notably, if such messages include advertising, they are subject to the TCPA’s more rigorous consent obligations.

These are difficult times, but we are happy to help, so please do not hesitate to reach out to us or to check out the Kelley Drye COVID-19 Resource Center.