

Essential Business—Separating Fact from Fiction  
Tracking Who or What is Essential in the Era of COVID-19



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## Overview

As COVID-19 required governments to impose stay-at-home orders and to distinguish between essential and non-essential businesses, Mayer Brown has been at the forefront of providing clients with up-to-date insights on the impacts to their businesses. Now, as governmental authorities address their responsibilities not just to impose restrictions, but to reopen economies and support businesses in resuming commercial activity, our dedicated Essential Business Team stands ready to help you anticipate, interpret and adjust to this transition.

And, as economies reopen and business restrictions evolve, new rules give rise to ancillary questions regarding how businesses should go about protecting the health and safety of employees and the general public given CDC, WHO and other guidance. This guide contains summaries of the current thinking and mandates in the jurisdictions that matter most for your business.

Other links to Mayer Brown thought leadership include:

## Useful Links

- [Responding to COVID-19](#)
- Essential Business Navigator
- [Employment Guide](#)
- [COVID-19 Global Travel Navigator](#)

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# SPOTLIGHT on . . .

## Operation Restart—Governments and Businesses Around the Globe Tackle Emerging from a Pandemic

By [Andrew Tauber](#) & [Elizabeth \(Liz\) Espín Stern](#)

It was late December when the first cases of COVID-19 were reported in China. Soon, the disease spread across the world in a global pandemic. In response, countries instituted various measures in an effort to slow its spread. One common measure has been to order non-essential businesses to suspend operations. Another has been to limit domestic and foreign travel. But as the economic toll increases and the pandemic begins to abate in certain regions, governments have begun to think about how they will restart their economies.

Although the process of reopening businesses is still in its early stages even where the pandemic's apex has apparently passed, this much is clear already: the process will be gradual, vary from jurisdiction to jurisdiction, and confront business with myriad issues.

When originally issued, orders for non-essential businesses to cease in-person operations were to remain in effect for several weeks or a month. But as the pandemic continued, multiple jurisdictions extended the orders, although some have recently relaxed restrictions on some types of commerce.

Driven in part by different experiences with COVID-19 and in part by different policy proclivities, world governments are moving at different speeds toward the resumption of business as normal. In Germany, factories were never ordered to shut; in France and Italy, by contrast, factories were forced to close and have been ordered to remain closed. Even within a single country, different parts of the economy are likely to reopen at different times. Under the plan announced by Germany's Chancellor Merkel, for example, small stores have, subject to certain conditions, been allowed to reopen, while restaurants, bars, sporting venues, and concert halls remain closed through August. As New York

Governor Andrew Cuomo has stated, "[t]here's no light switch" to throw that would enable "all businesses" to resume full operations "tomorrow." Consistent with that understanding, Governor Cuomo outlined a plan for a staged resumption of commercial activity "designed to open businesses in phases of priority," giving consideration to both the importance of the business and the risk of infection posed by its reopening.

In places, such as the United States, where businesses are subject to regulation at multiple levels of government, companies could be caught between conflicting directives. The spectre of such conflicts was raised in mid-April when President Trump initially asserted that he has "total" authority to determine when American businesses reopen, while state governors (backed by constitutional scholars) maintained that the decision rests with them and have formed multi-state pacts to coordinate the resumption of business across economically integrated regions.

Although the president subsequently backed away from his assertion of "total" authority, the same sort of conflict could be replicated at the state and local level if, for example, a municipality issues a business-closure order that state officials attempt to countermand. To cite one example Texas Governor Greg Abbott announced last Tuesday that if his new order expected on April 27 conflicts with any local stay-at-home orders—his rules will override anyone else's, while on the same day Dallas County Commissioners voted to extend their stay-at-home order until May 15, currently 15 days beyond the general state order.

When contemplating the resumption of non-essential business, authorities must take into account the risk of renewed infections. After having weathered the initial outbreak of COVID-19, certain Asian countries, including China and Singapore, reported new cases apparently attributable to international travelers and imposed travel restrictions as a result. Of course, domestic transmission of SARS-CoV-2, the virus that causes

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COVID-19, is also a significant concern as lockdown orders are relaxed.

Until an effective vaccination is developed and widely available, something that experts suggest is still at least a year away, effective testing of individuals to determine whether they are infected with SARS-CoV-2 will be essential to a safe resumption of business, particularly given that many infected people are contagious but asymptomatic. Some countries, such as South Korea and Germany, appear to have controlled the COVID-19 outbreak through aggressive testing followed by thorough contact tracing. In other countries, such as the US for example, testing has lagged and contact tracing is controversial, at least among certain segments of the population. Absent effective testing and contact tracing, any country that resumes in-person business activity risks a resurgence of COVID-19.

As companies contemplate reopening their premises when permitted, they will need to develop protocols to ensure the safety of their employees and customers. Adopting appropriate and effective measures will not only facilitate a successful resumption of activity despite a continued threat from SARS-CoV-2, but will also help companies avoid potential civil and regulatory liability. When designing and implementing such measures—which could involve medical-clearance, social-distancing, and sanitation protocols—companies will have to consider not only virology, but also various legal issues, such as privacy and anti-discrimination laws.

Indeed, it is already apparent that the COVID-19 pandemic has resulted in businesses facing legal claims. Thousands of US employees have filed complaints with the federal Occupational Safety and Health Administration alleging that their “essential business” employers—*i.e.*, companies in the healthcare, supply chain, infrastructure, and other critical sectors that have been allowed to continue operations during the pandemic—required them to work without providing adequate protection against SARS-CoV-2. The risk of similar claims will

undoubtedly accompany the reopening of the world economy.

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Mayer Brown’s COVID-19 Core Response Team continues to provide timely information on these evolving issues and is poised to assist you as your business confronts pandemic-related challenges. For any other legal questions related to this pandemic, please contact the Firm’s COVID-19 Core Response Team at [FW-SIG-COVID-19-Core-Response-Team@mayerbrown.com](mailto:FW-SIG-COVID-19-Core-Response-Team@mayerbrown.com).



# Who or What is Essential in . . .

## AMERICAS

### NORTH AMERICA

In mid-April 2020, for the first time in US history, every state was under a disaster declaration simultaneously. In response to the COVID-19 outbreak, all 50 states, Puerto Rico and the District of Columbia have adopted certain measures intended to encourage “social distancing” in an effort to limit human contact and thus slow down the spread of the coronavirus.

Many jurisdictions have issued or extended orders advising residents to stay in their homes (i.e., “shelter-in-place”). Other states have imposed strict limits on which businesses can remain open and/or have imposed requirements that “non-essential” workers stay home. As a result, businesses and workers have been confronted with the critical issue of whether they can operate (i.e., is the business “essential?”), who, if anyone, can leave home to work on premises, and what measures need to be taken to protect workers required to work in order to perform essential functions.

Many of these orders have been imposed on short notice, responding to specific circumstances within the relevant jurisdiction. As a result, the language of the orders, particularly definitional terms, are not consistent from jurisdiction to jurisdiction. Several jurisdictions reference definitional guidance relating to essential businesses and workers that has been published by the Cybersecurity and Infrastructure Security Agency (CISA), which is part of the Department of Homeland Security (DHS), while others have implemented their own definitional standards. The variance in definitional terms that

have been implemented from jurisdiction to jurisdiction, and, in some cases, at the city or county level within a state, require that businesses, particularly those that operate across jurisdictional lines, carefully evaluate the restrictive measures that may apply to them. One should not assume, for example, that the term “financial services” in one state means the same as it does in a neighboring state. Additionally one should not assume that what a state may define as an essential business will be consistent with restrictions imposed by city or county governments in that same state. In many states, city and county governments can adopt ordinances that exceed and override state standards.

It is possible that the ramifications of whether a business is essential or not will extend well beyond the point when various COVID-19-related restrictive measures are relaxed or lifted altogether.

Businesses that maintain operations without confirming that they fully qualify as being essential under applicable law not only run the risk of being closed and fined by local authorities, but also potentially later being the subject of litigation brought by injured workers and/or the families of deceased workers for maintaining operations in contravention of local law that put employees at added risk.

Understanding whether a business can maintain operations because it is deemed essential is often only the first step in the process of adapting to business restrictions imposed as a result of COVID-19. Essential businesses need to understand which employees are themselves essential to maintaining essential operations. In every jurisdiction that has adopted operational restrictions on businesses, the



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exceptions provided for essential businesses do not authorize such businesses to maintain “business as usual.” As a general rule, businesses deemed essential are required to limit their work forces to those that perform essential functions and take steps to protect the health and safety of employees who are required to work.

For purposes of defining what constitutes an appropriately safe work environment, many jurisdictions make reference to the CDC guidance regarding social distancing, enabling employees to wash or disinfect their hands and steps to ensure that work areas are properly cleaned/disinfected. Businesses should consider whether it is advisable to go beyond the measures recommended by the CDC or local authorities. For example, should essential employees be required to wear face masks, having temperatures taken before entering a work site, or restricted to maximum numbers in common areas, such as lounges, kitchens or restrooms? Should food only be served on disposable plates, with wrapped and disposable utensils? Should common containers for snack items be eliminated? Should essential retail operations limit the number of customers permitted in their establishments for the safety of employees and customers?

Our work below provides guidance on the scope of what have been classified as essential services or businesses in US states and the District of Columbia

that have adopted restrictive measures to fight the spread of the virus. We intend to periodically update our Navigator tool as states amend their orders. At present, the Navigator tool does not cover restrictions imposed by local governments at the sub-state level. Businesses should confirm whether any such orders exist in jurisdictions in which they maintain operations.

For ease of use, our tool utilizes a drop down by industry to indicate whether a business is defined as essential or not essential by the relevant jurisdiction.

Our tool is only a guide, not the definitive word on the legal or regulatory provisions that may apply in each state or locality. As noted above, COVID-19 restrictions can be complex, inconsistent and under ongoing revision in response to locally changing conditions. Before taking steps that affect business operations in any jurisdiction, users of our Navigator tool are advised to specifically analyze regulations and orders at the state and local levels that may apply to your business. The Navigator contains links to state orders for each state. Additionally, if you need an answer to a specific question in a particular jurisdiction, we recommend you email the Team at [FW-SIG-COVID-Essential-business@mayerbrown.com](mailto:FW-SIG-COVID-Essential-business@mayerbrown.com), and we will provide the latest guidance relevant to your business.

# US: State by State

## Alabama

**Last Updated:** April 10

**Order in place through:** April 30

### BACKGROUND

On March 13, in response to the spread of COVID-19, the governor of Alabama proclaimed a public-health emergency in the state. Approximately three weeks later, on April 3, the state's chief health officer issued an order, amended on April 10, prohibiting certain public gatherings. The order compels every Alabama resident to stay at home except for designated activities.

### DESCRIPTION

Under the order, Alabama residents may leave home "to perform work at 'essential businesses and operations'" as defined in the order.

The order defines "essential businesses and operations" expansively, listing numerous categories of business deemed essential. Moreover, rather than expressly limit the respective categories, the order generally defines them as "including" enumerated types of businesses. It is not clear from the face of the order whether the enumerations are meant to be illustrative or exclusive.

Businesses deemed "essential" in Alabama include in the following:

- Health-care enterprises, including "research and laboratory operations" as well as "medical supply and equipment manufacturers";
- Infrastructure operations, including those related to energy and transportation as well as telecommunications and cybersecurity;
- Manufacturing facilities, including those that produce medical products, food, cleaning supplies, energy, telecommunications products, technology, automobiles, automobile components, planes, rockets, and steel, as well as

those involved in national defense or producing products needed by other essential businesses;

- Financial services;
- Professional services;
- Construction services;
- Federally-designated critical infrastructure as defined by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA);
- Military contractors;
- Agricultural operations;
- Essential retailers, defined as food, beverage, and liquor stores; pharmacies; hardware and building-supply stores; gas stations; vehicle repair shops; office-supply and computer stores; bookstores; and gun stores.
- Restaurants and bars (which may offer only take-out or delivery);
- Essential services or product providers for other essential businesses;

Under Alabama's order, essential businesses are to:

- Avoid gatherings of 10 or more;
- Maintain social distancing of at least 6 feet to the extent consistent with the essential activity; and,
- Limit their occupancy to no more than 50% of the maximum allowed by the fire marshal.

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# US: State by State

## Arizona

**Last Updated:** March 30

**Order in place through:** April 30

### BACKGROUND

On March 30, 2020, Arizona Governor Douglas Ducey issued a statewide order that introduces additional restrictions on personal movement and continues to prohibit gatherings of 10 or more people. The updated order expands upon the March 19 and 23 orders that prohibit the closure of Essential Services, cancel gatherings of 10 or more people, and require restaurants in Arizona counties with confirmed COVID-19 cases to close bars, gym, and movie theaters and provide dine-out options only.

### DESCRIPTION

Under the March 30 order, all individuals in Arizona are prohibited from leaving their residences, except to undertake "Essential Activities" or to engage in "Essential Functions;" to utilize services or products from "Essential Businesses;" or to work at an office of a sole proprietor or family-owned business if the business is not open to serve the public. Individuals are not required to show documentation or proof of their activities.

**Non-essential businesses** may continue to operate, provided they do not require in-person, on-site transactions and may maintain basic operations to maintain business inventory, to preserve conditions of a physical plant and equipment, to ensure security, to process payroll and employee benefits, and to facilitate telework and mail pickup.

**Exemptions/Exceptions:** Individuals experiencing homelessness are exempt from the order, and victims of domestic violence are permitted and urged to leave their homes to stay at a safe, alternative location. Cafeterias at soup kitchens, hospitals and nursing homes may continue

operations with safe social distancing. The order does not apply to the United States government or to tribal entities.

The Arizona order defines **Essential Activities** as:

**Obtaining necessary supplies and services** for families, household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, assignments for completion of distance learning, and products necessary to maintain safety, sanitation and essential maintenance of homes and residences.

**Engaging in activities essential for the health and safety** of families, household members and pets, including such things as seeking medical, behavioral health or emergency services and obtaining medical supplies or medication.

**Caring for a family member**, friend, or pet in another household or residence, which includes, but is not limited to, transportation of a family member, friend or pet for essential health and safety activities and to obtain necessary supplies and services for the other household.

**Engaging in outdoor exercise activities**, such as walking, hiking, running, biking or golfing, but only if appropriate physical distancing practices are used.

**Attending or conducting work or volunteering in Essential Functions**, which includes, but is not limited to, transporting children to child care services for attending work in an essential service.

**Engaging in constitutionally protected activities**, such as speech, religion and any legal or court process, provided that such activities are conducted in a manner that provides appropriate physical distancing to the extent feasible.

Businesses and government entities providing essential functions must implement rules that facilitate physical distances of at least six feet



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between individuals. As with the previous order, the Arizona order defines **Essential Functions** as follows:

**Health Care and Public Health Operations:** This includes but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies, including operations, research and development, manufacture, and supply chain; organizations collecting blood, platelets, plasma, and other necessary materials; eye care centers, including those that sell glasses and contact lenses; home health care service providers; mental health and substance use providers; other health care facilities and suppliers; providers of any related and/or ancillary health care services; entities that transport and dispose of medical materials and remains; manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood, platelets and plasma products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products; and veterinary care and all health care services provided to animals. This includes doctors, nurses and any other classification of medical personnel necessary to operate those functions in this category. This category of essential services shall be construed broadly to avoid any impacts to the delivery of health care, broadly defined.

**Health Care and Public Health Operations:** This does not include fitness and exercise gyms.

**Human Services Operations:** This includes but is not limited to: long-term care facilities; residential settings and shelters for adults, seniors, children and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs, including food, cash assistance,

medical coverage, child care, vocational services and rehabilitation services; developmental centers; adoption agencies; and businesses that provide food, shelter, social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual and/or developmental disabilities, or otherwise vulnerable individuals. Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

**Essential Infrastructure Operations:** This includes but is not limited to: food production, distribution and sale; construction, including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction and housing construction; building management and maintenance; landscape management; airport operations; operation and maintenance of utilities, including water, sewer and gas; electrical, including power generation, distribution and production of raw materials; distribution centers; oil and biofuel refining; roads, highways, railroads and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video and telecommunications systems, including the provision of essential global, national and local infrastructure for computing services, business infrastructure communications and web-based services. Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

**Essential Governmental Functions:** This includes but is not limited to: park personnel who provide admission, maintenance and operation of park facilities that provide outdoor recreation; all first responders, emergency management personnel, emergency dispatchers and those supporting 911 services; court personnel, law enforcement and corrections personnel; hazardous materials responders; child protection and child welfare personnel; housing and shelter personnel; military and other governmental employees working for or supporting Essential Businesses and Operations. Essential Government Functions means all services provided by the State or any county, city, town or political subdivision thereof and needed to ensure

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the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public. Essential Government Functions also include contractors performing or supporting such functions. Each government body shall determine its Essential Governmental Functions and ensure a plan is in place for the performance of these functions. This order does not apply to the United States government or to tribal entities; however, any employees, officials or contractors of the United States government shall not be restricted from performing their functions under law.

As with a previous order that prohibits the closure of essential businesses, the current Arizona order defines **Essential Businesses** as the aforementioned **Essential Functions**, as well as:

- **Stores that sell groceries and medicine:**

Grocery stores, pharmacies, certified farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish and poultry, alcoholic and non-alcoholic beverages, and any other household stores that sell groceries, medicine (including medication not requiring a medical prescription), other non-grocery products, and products necessary to maintaining the safety, sanitation and essential operation of residences and Essential Businesses and Operations.

- **Food, beverage and agriculture:** Food and beverage manufacturing, production, processing and cultivation, including farming, livestock, fishing and baking, and other agricultural production, including the cultivation, marketing, production and distribution of animals and goods for consumption and businesses that provide food, shelter and other necessities for the life of animals, including animal shelters, rescues, shelters, kennels and adoption facilities.

- **Outdoor recreation activities:** Any outdoor recreation area, park, site or trail that provides

opportunities for outdoor recreation with social distancing, such as walking, hiking and biking. This includes golf courses if restrictions on food and beverage service under Executive Order 2020-09 are followed.

- **Organizations that provide charitable and social services:** Businesses and religious and secular nonprofit organizations, including food banks that provide food, shelter and social services and other necessities of life for economically disadvantaged or otherwise vulnerable individuals who need assistance as a result of this emergency and people with disabilities.
- **Media:** Newspapers, television, radio and other media services.
- **Gas stations and businesses needed for transportation:** Gas stations, auto supply, auto repair and related facilities, truck stops, and bicycle shops and related facilities.
- **Financial institutions:** Banks, currency exchanges, consumer lenders (including, but not limited to, payday lenders), pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products.
- **Hardware and supply stores:** Hardware stores and businesses that sell electrical, plumbing and heating materials.
- **Critical trades:** Building and Construction Tradesmen and Tradeswomen and other trades. Including, but not limited to, plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties; security staff; operating engineers; providers of HVAC, painting, moving and relocation services; and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential

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operation of residences, essential activities, and essential businesses and operations.

- **Mail, post, shipping, logistics, delivery and pick-up services:** Post offices and other businesses that provide shipping and delivery services and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods or services to end users or through commercial channels.
- **Educational institutions:** Educational institutions, including public and private pre-K-12 schools, colleges and universities, for purposes of facilitating distance learning, performing critical research or performing essential functions, provided that social distancing of six feet per person is maintained to the greatest extent possible.
- **Laundry services:** Laundromats, dry cleaners, industrial laundry services and laundry service providers.
- **Restaurants for consumption off-premises:** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so on the condition that the food is provided to students or members of the public on a pick-up and take away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided or at any other gathering site.
- **Supplies to work from home:** Businesses that sell, manufacture or supply products needed for people to work from home or conduct distance learning.
- **Supplies for Essential Businesses and Operations:** Businesses that sell, manufacture or supply other Essential Businesses and Operations

with the support or materials necessary to operate, including computers, audio and video electronics, and household appliances; IT and telecommunication equipment; hardware, paint and flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene and products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, and soaps and detergents; and firearm and ammunition suppliers and retailers for purposes of safety and security.

- **Transportation:** Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public and commercial transportation and logistics providers necessary for all categories of Essential Operations.
- **Home-based care services:** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders and/or mental illness, including caregivers, such as nannies who may travel to the child's home to provide care and other in-home services, including meal delivery.
- **Residential facilities and shelters:** Residential facilities and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, and substance use disorders and/or mental illness.
- **Professional and personal services:** Professional services, such as legal services, accounting services, insurance services, personal hygiene services (with additional sanitization precautions as recommended for businesses by the Arizona Department of Health Services) and real estate services (including appraisal and title services).
- **Day care centers for employees exempted by this Executive Order:** Day care centers providing care for individuals serving in any essential services category.

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- **Manufacture, distribution and supply chain for critical products and industries:** Manufacturing companies, distributors and supply chain companies producing and supplying essential products and services in and for such industries as pharmaceutical, technology, biotechnology, health care, chemicals and sanitizations, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, and communications, as well as products used by other Essential Businesses and Operations.
- **Hotels and motels:** Hotels and motels, to the extent used for lodging and delivery or carryout food services.
- **Funeral services:** Funeral, mortuary, cremation, burial, cemetery and related services.

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## California

**Last Updated:** March 20

**Order in place through:** Until further notice.

### BACKGROUND

After first declaring a state of emergency and taking other incremental steps, on March 19, 2020, California Governor Gavin Newsom issued a statewide order directing all residents to “stay home or at their place of residence” until “further notice.” The governor’s executive order (EO N-33-20) makes clear, however, that not all businesses must close.

Businesses and sectors deemed critical may remain open because of their importance “to Californians’ health and well-being.”

### DESCRIPTION

Initially, the governor’s order defined “critical” sectors by referencing a list of 16 infrastructure sectors identified by the Cybersecurity and Infrastructure Security Agency (CISA), part of the US Department of Homeland Security. On March 20, 2020, though, the [1] governor provided additional clarification by issuing a detailed list of “essential critical infrastructure workers.” One will want to consult both this list and the CISA guidance to [2] assess sectors and industries of interest. For example, for financial services, essential critical infrastructure workers include:

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing and settlement; wholesale funding; insurance services; and capital markets activities).
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers).
- Workers who support financial operations, such as those staffing data and security operations centers.

And, for the chemical industry, essential critical infrastructure workers include:

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, and workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.

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- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items.
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water and medicine, among other essential products.
- Workers supporting the operation and maintenance of facilities (particularly those with high-risk chemicals and/or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections.
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine and other essential products, including glass container manufacturing.

Businesses operating in California should also be aware of orders issued by various local health officials, including "shelter-in-place" orders issued by seven counties in the San Francisco Bay Area on March 16, 2020 and similar orders issued by the County and City of Los Angeles on March 19, 2020. To the extent that these local orders are less restrictive than the governor's order, they have been superseded by the governor's order. However, the governor has stated that his order does not necessarily prevent local health officers from enforcing stricter public health orders. If a client is operating within an industry that may be subject to conflicting state and local orders, we would recommend contacting Mayer Brown immediately.

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## Colorado

**Last Updated:** April 20

**Order in place through:** April 26

## BACKGROUND

On March 25, 2020, the Colorado Department of Health & Environment issued Amended Public Health Order (PHO) 20-24 Implementing Stay-at-Home Requirements, pursuant to Governor Jared Polis's directive in Executive Orders D 2020 017 ordering Coloradans to stay at home due to the presence of COVID-19 in the state. Under the Public Health Order, all individuals living in Colorado are ordered to stay at home whenever possible from 6:00 a.m. on March 26, 2020 until 11:59 p.m. on April 11, 2020, unless otherwise exempted under the Order. Amended April 9 with an extension through April 26. The order may be viewed at: <https://cha.com/wp-content/uploads/2020/04/Fourth-Updated-Public-Health-Order-Authorized-Business.pdf>

Governor Polis previously declared a Disaster Emergency on March 10, 2020, and previous Public Health Orders, including PHO 20-20, PHO 20-22 and PHO 20-23, ordered such measures as

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restricting visitors to assisted living facilities; closing bars, restaurants and noncritical personal services facilities; and mandating social distancing requirements.

On April 20, Governor Polis announced that the state's stay-at-home order would not be extended beyond the scheduled expiration date of April 26, explaining that the state would shift from staying at home to being "safer at home."

## DESCRIPTION

### *Gradual Removal of Restrictions*

The governor stated that restrictions on business operations and individual activity will not be lifted entirely but will be eased gradually. Under the shift to "safer at home," retail stores will be allowed to reopen with curbside pickups on April 27. Certain personal service businesses, like hair salons and barber shops, will be allowed to reopen on April 27, although subject to certain restrictions, such as occupancy limitations and requirements to wear masks. Other retail stores will be allowed to reopen to in-store customers on May 1 (subject to various restrictions), and non-retail offices will be permitted to reopen on May 4 (subject to various restrictions). Restaurants and bars will not reopen until "mid-May." These adjustments were discussed at a press conference on April 19 (see coverage [here](#) and [here](#)) but are not yet reflected in any order or revised guidance.

However, stricter local orders will supersede the statewide order in certain parts of the state. In fact, shortly after the governor's announcement, the mayor of Denver stated that the Denver order, which expires on May 11, will likely be extended beyond that date.

Also, on April 20, Colorado issued [EO 2020-039](#) (Ordering Workers in Critical Businesses and Critical Government Functions to Wear Non-Medical Face

Coverings). This order expires 30 days after April 17, unless extended.

The stay-at-home order defines the following five categories of activity that are exempt, with certain limitations, from the Order's restrictions:

**Necessary Activities (PHO 20-24 § III.A):** Individuals may leave their homes or residences to perform "necessary activities," which are identified in five subcategories: (1) engaging in activities or performing tasks essential to their own or others' health and safety, (2) obtaining necessary services or supplies for themselves or others or delivering such services or supplies, (3) engaging in outdoor activities, (4) performing work providing essential products and services for critical businesses or functions and (5) caring for family members, friends or pets.

**Necessary Travel (PHO 20-24 § III.B):** Individuals may engage in "necessary travel," which includes (1) any travel related to the provision of or access to other activities or functions identified in the Order, (2) travel to or from educational institutions for purposes of receiving materials for distance learning, meals or any other related services, (3) travel to return to a place of residence from outside the jurisdiction, (4) travel required by law enforcement or court order and (5) travel required for non-residents to return to their places of residence outside Colorado.

**Critical Businesses (PHO 20-24 § III.C):** Although the Order does not expressly incorporate the CISA list from the U.S. Department of Homeland Security, the Order specifies that the following 12 subcategories of businesses are deemed "critical" due to the pandemic: (1) Healthcare Operations, (2) Critical Infrastructure, (3) Critical Manufacturing, (4) Critical Retail, (5) Critical Services, (6) News Media, (7) Financial Institutions (including "[s]ervices related to financial markets"), (8) Providers of Basic Necessities to Economically Disadvantaged Populations, (9) Construction; (10) Defense, (11) Critical Services Necessary to Maintain the

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Safety, Sanitation and Critical Operations of Residences or Other Critical Businesses and (12) Vendors that Provide Critical Services or Products, Including Logistics and Technology Support, Child Care and Services.

Specifically exempted are defense and other government contractors that provide goods and services related to national security and health care (among other things). Importantly, Colorado's PHO 20-24 makes clear that contractors supporting defense, security and intelligence-related operations of the government (at any level), including aerospace operations, *are not covered* by the restrictions. Other government contractors providing services necessary for critical government functions are similarly exempted.

**Critical Governmental Functions (PHO 20-24 § III.D):** Key governmental functions are exempted from the Order, including public safety; emergency response; judicial branch operations; emergency medical; communications; transportation; and "any [other]government service required for the public health and safety, government functionality, or vital to restoring normal services."

**Minimum Basic Operations (PHO 20-24 § III.E):** Individuals may also perform the minimum necessary activities to maintain the value and condition of a business's inventory and facilities; to ensure security and the continuation of employee payroll, benefits or related functions; and to facilitate employees to work remotely.

A copy of the Order can be found at: [https://drive.google.com/file/d/1GjiohfHn3BP10UxifTQLfgfdw0Twrut\\_/view](https://drive.google.com/file/d/1GjiohfHn3BP10UxifTQLfgfdw0Twrut_/view), and Frequently Asked Questions can be found here: <https://drive.google.com/file/d/16nO05S6q0AGBew32r0NYelifwk11uDMO/view>

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## Connecticut

**Last Updated:** April 10

**Order in place through:** May 20

### BACKGROUND

On March 10, 2020, Governor Ned Lamont declared a state of emergency in Connecticut. Since then, Governor Lamont has issued a series of executive orders providing mandatory guidance for businesses to follow during the outbreak of COVID-19. In doing so, and like other states, Connecticut has chosen to separate businesses into two groups: essential and non-essential businesses.

On March 20, 2020, Governor Lamont issued Executive Order No. 7H ("EO 7H") placing restrictions on workplaces for non-essential businesses. Effective on March 23, 2020 at 8 pm, and continuing through April 22, 2020, unless otherwise modified, extended or terminated, "all businesses and not-for-profit entities in the state shall employ, to the maximum extent possible, any telecommuting or work from home procedures that they can safely employ." EO 7H has also ordered that non-essential businesses shall reduce their in-person workforces by 100% not later than March 23, 2020 at 8 pm. "Any essential business or entity providing essential goods, services or functions shall not be subject to these in-person restrictions." Amended April 10, extended through May 20. The order is available at:

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<https://cha.com/wp-content/uploads/2020/04/Fourth-Updated-Public-Health-Order-Authorized-Business.pdf>

## DESCRIPTION

Under EO 7H, the following businesses and sectors have been deemed essential:

- The 16 “Critical Infrastructure Sectors” as defined by the Department of Homeland Security (available at [www.cisa.gov/critical-infrastructure-sectors](http://www.cisa.gov/critical-infrastructure-sectors));
- Essential health care operations, including hospitals, clinics, pharmacies and elder care;
- Companies and institutions involved in the research and development, manufacture, and distribution of pharmaceuticals and consumer health products;
- Essential infrastructure, including utilities, wastewater and drinking water, telecommunications, airports and transportation infrastructure, and manufacturing, including food processing and pharmaceuticals;
- Industries supporting the essential services required to meet national security commitments to the federal government and U.S. Military;
- Essential retail, including grocery stores and big-box stores or wholesale clubs, provided they also sell groceries; pharmacies; gas stations and convenience stores; food and beverage retailers (including liquor/package stores and manufacturer permittees); and restaurants, provided that they limit their services to pick-up and delivery services only;
- Services, including financial institutions and advisers, insurance companies, legal and accounting services, news media businesses, real estate transaction services, laundromats, and trash and recycling collection;
- Construction;
- Child care; and
- Services needed to ensure the continuing operation of government agencies and the provision of goods, services or functions necessary for the health, safety and welfare of the public.

This is not an exhaustive list of services deemed essential. Connecticut’s Department of Economic and Community Development (“DECD”) has issued binding guidance providing additional details regarding which businesses are deemed essential (available at <https://portal.ct.gov/DECD/Content/Coronavirus-for-Businesses/Coronavirus-for-Businesses>). For each sector or type of business, the DECD’s guidance provides additional details on the scope of an essential business for purposes of EO 7H. The guidance also makes clear that, for businesses operating from more than one location, only the location(s) that provide essential services will be exempt. Even then, exemptions from Connecticut’s work from home mandate will apply only to those employees of essential businesses whose duties are critical to an essential business function; all other employees (i.e., those who do not perform essential functions) should telecommute or utilize any available work from home procedures.

Finally, Connecticut permits certain businesses not covered by the guidance to apply for designation as an “essential business.” For a description of this process and the requisite forms, see <https://portal.ct.gov/DECD/Content/Coronavirus-for-Businesses/Essential-Business-Designation-Form>. Requests to be designated as essential can only be made by businesses if they are not covered by the guidance.

Connecticut has created a website where individuals and businesses can receive additional, timely guidance on conditions within the state. This information can be found at: <https://portal.ct.gov/coronavirus>

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## Delaware

**Last Updated:** March 23

**Order in place through:** May 15

### BACKGROUND

Governor John Carney declared a state of emergency in Delaware, effective as of March 13, 2020 and continuing until terminated as provided under state law. In a series of modifications to his initial emergency declaration (the "COVID-19 State of Emergency"), Governor Carney has since increased restrictions on businesses and people within his state, which generally are effective "until after May 15, 2020, or the public health threat of COVID-19 has been eliminated."

For instance, the First Modification of the COVID-19 State of Emergency (issued March 16, 2020) ordered (i) the cancellation of public gatherings of 50 or more people, (ii) all restaurants, bars and taverns to provide food and beverage service through take-out, drive-through and off-premises delivery only and (iii) the cessation of operations of casinos, among other things. Since then, subsequent modifications to the emergency declaration have imposed further restrictions on businesses and people, such as requiring all individuals to "shelter in place" (with limited exceptions for essential activities and business), restricting the use of public parks and beaches, and ordering the closure of bowling alleys, concert halls, movie theaters, sports facilities, fitness centers and health spas.

## DESCRIPTION

Eventually, in the Fourth Modification of the COVID-19 State of Emergency (as amended by the Tenth Modification), Governor Carney expanded the list of businesses that are required to cease or limit operation as of March 24, 2020. Specifically, all "Non-Essential Businesses" must close their physical locations, except that they may continue to offer goods and services over the internet and by phone. "Non-Essential Businesses" include, but are not limited to, the following:

- Hospitality and recreation facilities, such as community recreation centers, casinos, racetracks, sporting facilities, gyms, swimming pools, indoor play areas, concert halls, theaters, zoos and museums
- Hair salons, barber shops, nail salons and spas
- Pawn shops
- Door-to-door solicitations
- Customer service call centers and telemarketing operations
- Shopping malls, with limited exceptions for Essential Businesses and Limited Operating Non-Essential Businesses with stand-alone exterior access points
- Electronics retailers and craft/hobby retailers
- Libraries and bookstores
- All licensed child care facilities not designated as "Emergency Childcare Sites"

All other businesses not included within the definitions of "Essential Business" or "Limited Operation Non-Essential Business."

The Tenth Modification of the COVID-19 State of Emergency, issued April 6, 2020, also makes provisions for "Limited Operation Non-Essential Businesses," which may operate on a limited basis. Such businesses include, but are not limited to, the following:

- Commercial lodging facilities

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- Campgrounds
- Motor vehicle dealers and repair
- Dentist offices
- Repair shops for computers, household appliances or otherwise
- Bicycle repair
- Firearms dealers
- Shooting ranges
- Golf courses
- Realtors of both residential and commercial properties

In contrast, the Fourth Modification of the COVID-19 State of Emergency allows “Essential Businesses” to keep their physical business locations open while following the coronavirus guidelines for public safety enumerated by the CDC and Delaware Department of Health & Social Services’ Division of Public Health. Such guidelines require businesses to take such actions as implementing precautionary measures with respect to sick and high-risk employees, requiring social distancing of employees, and maximizing teleworking. The Ninth Modification of the COVID State of Emergency added requirements that Essential Businesses (with the exception of health care providers) must limit the number of customers in their stores and encourage social distancing of customers. Essential Businesses are subject to inspection by state officials, and those deemed to be in violation of these guidelines will be subject to immediate closure. “Essential Businesses” are those engaged in the following sectors:

- Health care and public health
- Law enforcement, public safety and first responders
- Food and agriculture
- Electricity, petroleum, and natural and propane gas
- Water and wastewater

- Transportation and logistics
- Public works
- Communications and information technology
- Community-based government operations and essential functions
- Manufacturing
- Hazardous materials
- Financial services and insurance
- Chemicals
- Defense industrial base
- Construction
- Necessary Products Retailers, such as medical/hygiene, dry goods, agricultural, pet supplies, hardware, technology and alcohol
- Necessary Retail and Services Establishments, such as appliance and home repair, service and equipment providers for households, landscaping, delivery services, warehousing, social service providers, home-based care, banks and other financial institutions, legal, accounting and other professional services, and taxis and for-hire transportation (excluding ride-sharing services)
- Open air recreation facilities

Detailed descriptions of what constitutes “Essential,” “Non-Essential” and “Limited Operation Non-Essential” business are included in the text of the Fourth and Tenth Modifications of the COVID-19 State of Emergency, which can be found at <https://governor.delaware.gov/health-soe/>. Further, a list of various business designations can be found at: <https://business.delaware.gov/wp-content/uploads/sites/118/2020/04/DE-Industry-List-4.8.pdf>

Finally, note that, in the Eighth Modification of the COVID-19 State of Emergency, Governor Carney mandated that “state buildings and essential businesses that the Public Health Authority deems high-risk” must screen for physical symptoms of illness every employee, visitor and member of the

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public upon entering the business. "High risk" businesses include health care, child care and residential facilities and shelters. The full list of such businesses can be found at:

[https://coronavirus.delaware.gov/wp-content/uploads/sites/177/2020/04/High-Risk-Business-List\\_04.2.20.pdf](https://coronavirus.delaware.gov/wp-content/uploads/sites/177/2020/04/High-Risk-Business-List_04.2.20.pdf). These businesses are specifically required to use screening measures, which are outlined at: [https://coronavirus.delaware.gov/wp-content/uploads/sites/177/2020/03/Essential-Services-Screening-Policy\\_03.31.20.pdf](https://coronavirus.delaware.gov/wp-content/uploads/sites/177/2020/03/Essential-Services-Screening-Policy_03.31.20.pdf)

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## District of Columbia

**Last Updated:** April 15

**Order in place through:** May 15

### BACKGROUND

On March 30, 2020, Mayor Muriel Bowser issued an updated order (effective April 1, 2020 through April 24, 2020, unless rescinded or extended), which introduces additional restrictions on personal movement. Like the preceding March 24 order, the revised order prohibits gatherings of 10 or more people, but the revised order also prohibits individuals in DC from leaving their residences, except to undertake "essential activity" or to engage in "essential business." All DC businesses, including non-essential businesses, are allowed to continue operating on a telework basis, provided their operation did not require individuals to make physical contact with other persons and could be conducted without violating social distancing requirements. As before, the order's definition of "essential business" is modeled on a March 19, 2020 memorandum from the Department of Homeland

Security's Cybersecurity and Infrastructure Security Agency ("CISA") Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, March 19, 2020 ("CISA Memo"). Amendment issued on April 15 extending order through May 15 is available at: <https://coronavirus.dc.gov/sites/default/files/dc/site/coronavirus/publication/attachments/MayorsOrder2020.063.pdf>

### DESCRIPTION

The DC order encourages essential businesses to remain open and describes such businesses as:

**Health Care and Public Health operations**, which includes health care providers and suppliers and businesses that perform ancillary services (as defined by the CISA Memo).

**Essential Infrastructure**, including public works, street lighting, railways, government facilities, and utilities, such as electric power, telecommunications, water and sewage, and waste collection.

**Food and Household Products and Services**, including grocery stores, supermarkets, alcohol retail stores and suppliers, restaurants (though only for delivery or to-go services), laundry services and dry cleaners, and retail stores that sell products necessary to maintain the safety, sanitation and operation of residences.

### SOCIAL SERVICES

**Communications and Information Technologies**, including IT infrastructure and media services.

**Energy and Automotive**, including power suppliers and providers, auto repair shops, and suppliers and related facilities.

**Financial Services**, including banks, credit unions and related financial institutions.

**Educational Institutions**, though only to facilitate remote learning or to support COVID-19-related research or training.

**Transportation and Logistics**, including delivery businesses, taxis and ride-sharing businesses to

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provide transport for employees who work at essential businesses or who perform essential government functions.

**Construction and Building Trades**, including plumbers, electricians, roofers, carpenters and other businesses that perform services necessary for the safety, sanitation and operation of residences and essential businesses.

**Housing and Living Facilities**, including legal, insurance, notary public, tax and accounting services, but only when necessary to assist in compliance with legally mandated activities or essential businesses or essential government functions.

**Professional Services**, prioritizing the needs of persons who work for essential businesses or carry out essential government functions.

**Child Care Facilities**, prioritizing the needs of persons who work for children of essential employees.

The order also excepts activities related to “essential government functions” and includes language that should be of interest to DC’s government contracting community. Specifically, the Order excepts from the prohibited activities “services needed to ensure the continuing operation of government agencies and provide for the health safety, and welfare of the public performed by the District of Columbia or federal government or their contractors.” This provision is principally aimed at first responders, such as police, firefighters and emergency medical services, but, depending on the work being performed under agreements with federal or local governments, it could arguably support the position that work being performed by contractors is permitted under the order.

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## Florida

**Last Updated:** April 1

**Order in place through:** April 30

### BACKGROUND

On April 1, 2020, Florida Governor Ron DeSantis issued Executive Order 20-91, limiting workers, citizens and others in the state to “essential services and activities during [the] COVID-19 emergency.” The Order reflects growing concerns about the spread of the virus; although several populous counties had previously issued similar orders, Governor DeSantis had not imposed a statewide order. The new statewide order will be effective through April 30, 2020, unless extended by a subsequent order.

### DESCRIPTION

The order makes clear that Floridians are safer at home. Therefore, it requires that “all persons in Florida shall limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.” In addition to traveling to/from work as necessary to provide essential services, the order defines other “essential activities” as attending religious services, participating in recreational activities, caring for pets and “caring for or otherwise assisting a loved one or a friend.”

As noted above, Florida’s new order permits workers who provide “essential services” to continue working and for such businesses to continue their operations. The order defines “essential services” by incorporating the “detailed [list provided] by the U.S. Department of Homeland Security in its Guidance on the Essential Critical

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Infrastructure Workforce, v.2 (March 28, 2020) . . . and any subsequent lists published.” In conjunction with the Executive Order, the DHS list, which is generally referred to as the “CISA Guidance” (and is attached to the Executive Order and linked [here](#)), excludes a series of industry sectors from the order’s restrictions. For instance, Critical Manufacturing, Communications and IT, the Defense Industrial Base, Energy, and Financial Services are all deemed “essential” under the Guidance.

The order reiterated the governor’s previous “urging those who can work remotely to do so” and the President’s and Center for Disease Control and Prevention’s “guidance advising individuals to adopt far-reaching social distancing measures.” Presumably companies providing essential services in Florida already are operating under those guidelines; the order does not further restrict those operations.

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## Hawaii

**Last Updated:** March 23

**Order in place through:** April 30

## BACKGROUND

On March 4, in response to the spread of COVID-19, the governor of Hawaii proclaimed a public-health emergency in the state. On March 23, the governor issued an order directing residents to stay at home except “as necessary to maintain continuity of operations of the federal critical infrastructure sectors” as identified by the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) “and as further

designated” in the governor’s order “or by the Director of the Hawaii Emergency Management Agency (HIEMA).” The stay-at-home order is currently scheduled to remain in place until April 30.

## DESCRIPTION

Under the order, all businesses must cease operation unless (i) identified as identified as part of the federal critical infrastructure by CISA; (2) exempted by the governor’s order; or (3) designated by HIEMA.

Businesses deemed “essential” by the governor’s order, and therefore permitted to continue operations in Hawaii, include the following:

- Health-care services and facilities;
- Stores that sell food and medicines;
- Producers of food, beverages, and agricultural products, including cannabis;
- Financial institutions;
- Businesses that sell, manufacture, or supply other essential businesses and operations with the support or materials necessary to operate;
- Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by essential businesses and operations;
- Logistical and delivery services;
- Professional services;
- Transportation services;
- Hotels;
- Restaurants (which may offer only take-out or delivery);
- Hardware and building-supply stores; and

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- Trades such as plumbers, electricians, and janitors necessary to maintain the safety, sanitation, and essential operation of residences, essential businesses, and essential activities;

Under the governor's order, essential businesses are to:

- Maintain social distancing of at least 6 feet to the extent consistent with the essential activity;
- Provide hand sanitizer to employees and customers; and,
- Implement separate operating hours for at-risk populations.

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## Illinois

**Last Updated:** April 23

**Order in place through:** May 30

### BACKGROUND

On March 20, 2020, Governor JB Pritzker issued executive order 2020-10 (Executive Order), which ordered all Illinois residents to "stay at home or at their place of residence" from 5:00 pm on March 21, 2020, until April 7, 2020, unless otherwise exempted under the executive order

(<https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-10.pdf>). On April 1, 2020,

Governor Pritzker extended the stay-at-home period until April 30, 2020

(<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-18.aspx>).

The stay-at-home order was further modified on April 23 and extended through May 30.

All COVID-related executive orders followed Governor Pritzker's March 9, 2020 Disaster Proclamation, which "declared all counties in the State of Illinois a disaster area" in response to COVID-19.

### DESCRIPTION

The executive order does not prohibit residents from essential activities, such as going to the grocery store or receiving medical care, but it does otherwise restrict travel and requires residents to stay at home unless one of the five following categories of exemptions applies: (1) health care and public health operations, (2) human services providers, (3) essential infrastructure, (4) essential government functions and (5) essential businesses and operations. The executive order provides that many of the exempted categories are to "be construed broadly." Furthermore, Section 17 of the Executive Order provides that it "may be enforced by State and local law enforcement." The five exempted categories are described below:

#### **Health Care and Public Health Operations**

**(Executive Order § 7):** Although hospitals, health care providers, pharmacies, clinics and other public health operations are clearly covered by this section, the exemption also applies to "manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products." Veterinary care and "all healthcare services provided to animals" also are covered. Not covered by this section are "fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities."

#### **Human Service Operations (Executive Order § 8):**

This exemption applies to such entities as long-term care facilities, shelters, homes for people with

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disabilities, transitional facilities, adoption agencies, development centers and “businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.”

## **Essential Infrastructure (Executive Order § 9):**

Traditional infrastructure operations are exempted and include such key operations as food production and distribution, construction, building management, airport operations, utilities (e.g., water, sewer, gas, electrical), oil refining, roads, railroads, public transportation, telecommunications, public waste/recycling, and cybersecurity operations.

## **Essential Government Functions (Executive Order § 10):**

Key governmental functions are exempted, such as first responders, emergency management personnel, law enforcement, court personnel, corrections officers, child welfare personnel, and other governmental employees who “support” Essential Business and Operations as defined by the Executive Order.

**Essential Businesses (Executive Order § 12):** The fifth and final category of exempted entities and individuals is Essential Business and Operations, which itself is comprised of 23 sub-categories of exempted businesses: (a) stores that sell groceries and medicine, (b) food, beverage and cannabis production and agriculture, (c) charitable and social service organizations that provide food, shelter, social services and “other necessities of life” for needy individuals, (d) media, (e) gas stations and businesses needed for transportation, (f) financial institutions, (g) hardware and supply stores, (h) critical trades, (i) mail, post, shipping, logistics, delivery and pick-up services, (j) educational institutions for purposes of providing distance learning, (k) laundry services, (l) restaurants for consumption off-premises, (m) supplies to work

from home, (n) supplies for Essential Business and Operations, (o) transportation. (p) home-based care and services, (q) residential facilities and shelters, (r) professional services, (s) day care centers for employees exempted under the executive order, (t) manufacture, distribution and supply chain operations for critical products and industries, (u) critical labor union functions, (v) hotels and motels and (w) funeral services and cemeteries. Many of these sub-categories are very broad and include those entities that “support” the functions within the sub-category.

The State of Illinois has created a “Stay-at-home FAQs” webpage with additional information and guidance on the executive order, which can be found at

<https://www2.illinois.gov/sites/coronavirus/FAQ/Pages/Stay-At-Home-FAQS.aspx#qst6>.

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## **Indiana**

**Last Updated:** April 20

**Order in place through:** May 1

## **BACKGROUND**

On March 23, 2020, Governor Eric Holcomb issued Executive Order 20-08 (Executive Order), directing that, unless an exemption applies, all Indiana residents “stay at home or at their place of residence” from March 25, 2020, until April 6, 2020 ([https://www.in.gov/gov/files/Executive\\_Order\\_20-](https://www.in.gov/gov/files/Executive_Order_20-)

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[08 Stay at Home.pdf](#)). The Executive Order followed Governor Holcomb's March 6, 2020 Executive Order 20-02, declaring a "public health disaster emergency" in Indiana due to COVID-19, and several related Executive Orders that, among other things, prohibited residential evictions or foreclosures as well as cutoffs of essential utilities during the declared emergency. Amended on April 20 and extended to May 1, the order may be viewed at: <https://www.in.gov/gov/3232.htm>.

## DESCRIPTION

Executive Order 20-08 does not prohibit residents from essential activities like going to the grocery store or receiving medical care. Still, it does restrict travel and requires residents to "stay at home" unless one of the five following categories of exemptions applies: (1) health care and public health operations, (2) human services providers, (3) essential infrastructure, (4) essential government functions and (5) essential businesses and operations. The Executive Order provides that many of the exempted categories are to "be construed broadly." Furthermore, Section 19 of the Executive Order provides that it "may be enforced by State and local law enforcement, as well as other governmental entities (as state and local departments of health), to the extent set forth in Indiana law." We describe the five exempted categories below:

### Health Care and Public Health Operations

**(Executive Order § 9):** This exemption covers hospitals, health care providers, pharmacies, clinics and other public health operations. It also applies to "manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products." Veterinary care and "all healthcare

services provided to animals" also are covered. Not covered are "[f]itness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities."

### Human Service Operations (Executive Order §

**10):** This exemption applies to such entities as long-term care facilities, shelters, homes for people with disabilities, transitional facilities, adoption agencies, development centers and "businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals."

### Essential Infrastructure (Executive Order § 11):

Traditional infrastructure operations are exempted and include such vital operations as food production and distribution, construction, building management, airport operations, utilities (e.g., water, sewer, gas, electrical), oil refining, roads, railroads, public transportation, telecommunications, public waste or recycling, and cybersecurity operations.

### Essential Government Functions (Executive

**Order § 12):** Key governmental functions are exempted, such as first responders, emergency management personnel, law enforcement, court personnel, corrections officers, child welfare personnel and other government employees who support "Essential Business and Operations" (as defined by the Executive Order).

**Essential Businesses (Executive Order § 14):** The fifth and final category of exempted entities and individuals is Essential Business and Operations, which itself is comprised of 24 sub-categories of exempted businesses: (a) all workers that the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency ("CISA") identified in its "Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response," (b) stores that sell groceries and

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medicine, (c) food, beverage and agriculture, (d) charitable and social service organizations that provide food, shelter, social services and "other necessities of life" for needy individuals, (e) religious entities, "provided they adhere to the CDC's guidance on social gatherings," (f) media, (g) gas stations and businesses needed for transportation, (h) financial and insurance institutions, (i) hardware and supply stores. (j) critical trades, such as plumbers, electricians, operating engineers, cleaning and janitorial staff for commercial and governmental properties, and security staff, (k) mail, post, shipping, logistics, delivery and pick-up services. (l) educational institutions for purposes of providing distance learning, (m) laundry services, (n) restaurants for consumption off-premises, (o) businesses that sell supplies to work from home, (p) businesses that sell supplies for Essential Business and Operations, (q) transportation, (r) home-based care and services, (s) residential facilities and shelters, (t) professional services, including legal services, (u) manufacture, distribution and supply chain operations for critical products and industries, (v) critical labor union functions, (w) hotels and motels and (x) funeral services and cemeteries. Many of these sub-categories are very broad and include those entities that "support" the functions within the sub-category.

Finally, the Executive Order requires all businesses and employers, whether or not they are deemed to be essential under the Order, to take certain actions, including to "allow as many employees as possible to work from home," "[a]ctively encourage sick employees to stay home," "[s]eparate employees who appear to have acute respiratory illness symptoms from other employees, send them home immediately, and restrict their access to the business until recovered," and "[p]rovide protection supplies," such as soap and water and hand sanitizer.

Indiana has created a "Stay-At-Home Order FAQ" webpage with additional information and guidance

on the Executive Order, which can be found at <https://www.in.gov/gov/3232.htm>.

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## Kentucky

**Last Updated:** April 21

**Order in place through:** Duration of emergency

## BACKGROUND

On March 6, in response to the spread of COVID-19, the governor of Kentucky declared a public-health emergency in the state. Building on a March 22 order, the governor issued an order on March 25 that "prohibit[s] in-person work that is not necessary to protect or sustain life." Under the order, "only life-sustaining businesses may remain open." The order states that it will remain in place for duration of the declared emergency.

## DESCRIPTION

### *Reopen Measures*

The Kentucky stay-at-home order remains in place, but on April 21 the state's governor announced a phased framework for reopening the state's economy. During the first phase, the state public-health officials will determine whether Kentucky has met certain public health benchmarks. During the second phase, state public-health officials will evaluate individual businesses' ability to safely reopen. Businesses wishing to reopen will be required to explain their ability to provide personal

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protective equipment (PPE) to employees, adequate access to hand sanitizer and disinfectant, and minimal direct contact between employees and the public.

The original Order defined “life-sustaining businesses” as:

- Businesses operating in the federal critical infrastructure sectors as identified by the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency;
- Retail sales of food, drugs, medical supplies, hardware, building supplies, agricultural supplies, and pet supplies;
- Automotive repair shops;
- Hardware stores;
- Gas stations;
- Food and beverage manufacturing;
- Agricultural production;
- Banks and other financial services;
- Residential and commercial construction and maintenance, including the services of plumbers, electricians, janitors, and landscapers;
- Restaurants (for take-out and delivery only);
- Transportation providers;
- Professional services;
- Hotels and motels;
- Those who sell, manufacture, distribute, or supply life-sustaining businesses with the support or materials necessary to operate; and,
- Those who manufacture or distribute critical products and services for use in critical industries such as pharmaceuticals, biotechnology, healthcare, chemicals, transportation, energy, mining, communications, and national defense.

Under the governor’s order, life-sustaining businesses are to:

- Maintain social distancing of at least 6 feet to the extent possible;

- Regularly clean and disinfect frequently touched surfaces;
- Permit employees to work from home when feasible; and,
- Identify sick workers and ask them to leave the premises.

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## Louisiana

**Last Updated:** April 2

**Order in place through:** April 30

### BACKGROUND

On the heels of a dramatic increase in confirmed COVID-19 cases and amid concerns for the capacity of the state’s health care system to provide adequate care, Louisiana’s Governor joined a growing number of states, counties and cities nationwide and announced a “shelter-in-place” order statewide.

The general stay-at-home order took effect at 5:00 pm on Monday March 23, 2020 and expired on Monday, April 13, 2020, unless ordered otherwise. It was amended on April 2 and extended to April 30 (<https://gov.louisiana.gov/assets/Proclamations/2020/41-JBE-2020-Stay-At-Home-Extended.pdf>).

### DESCRIPTION

The order applies to “all individuals within the state of Louisiana,” which is broader than some counties’ mandates that extend only to residents. All individuals are directed to stay home, unless performing an “essential activity.” The order defines an “essential activity” as activity with the following purpose(s):

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- Obtaining food, medicine and other “similar goods” necessary for an individual or a family member of the individual;
- Obtaining non-elective medical care, treatment, and “other similar vital services” for an individual or a family member of the individual;
- Going to and from an individual’s workplace to perform a job function necessary to provide goods or services being sought in sanctioned activities above, or as otherwise deemed “essential worker functions;”
- Going to and from the home of a family member;
- Going to and from an individual’s place of worship; and
- Engaging in outdoor activity, so long as individuals maintain a distance of six feet from one another and abide by the 10-person limitation on gathering size established in the order.

The order references the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) on what constitutes an “essential worker function.” The CISA directive is available at: <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.

Additionally, the order directs the following non-essential businesses to close but allows conducting necessary activities, such as payroll, cleaning services, maintenance or upkeep, as necessary:

**Places of public amusement, whether indoors or outdoors**, including, but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, trampoline parks, aquariums, zoos, museums, arcades, fairs, pool halls, children’s play centers, playgrounds, theme parks, any theaters, concert and music halls, adult entertainment venues, racetracks, and similar businesses;

**Personal care and grooming businesses**, including, but not limited to, barber shops, beauty

salons, nail salons, spas, massage parlors, tattoo parlors and other similar businesses; and

**All malls**, except for stores in malls that have direct outdoor entrances and exits that provide essential services and products detailed in the CISA guidelines.

Any business not covered by the CISA guidance and not ordered to temporarily close is mandated to reduce operations to continue with minimum contact with members of the public and essential employees, while maintaining proper social distancing. Additionally, the 10-person limit on gathering size applies to such business operations.

Early learning centers and child care facilities adhering to the guidance issued by the Louisiana Department of Education and Office of Public Health are allowed to continue operations. The most recent guidelines issued by the Louisiana Department of Health on March 23, 2020 include:

- Strongly encouraging children who can stay home to do so;
- Recommend early learning center and day care services prioritize support for health care workers and essential workers;
- Limit children and staff group sizes to 10 or less and limit group sizes for infants to 5 or less;
- Separate outdoor groups from each other and follow the 10 or less staff/children guidance;
- Practice frequent environmental cleaning (cleaning high-touch surfaces hourly) and hand washing frequently with soap and water for 20 seconds. Alcohol-based sanitizers are appropriate when soap and water are not readily available;
- Actively monitor children and staff for any symptoms of fever, cough, shortness of breath or sore throat throughout the day. Any child with these symptoms should not participate in the programs for the duration of the child’s illness. Only well children should attend.

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- Staff members in high-risk categories (elderly and those with medical conditions) should be encouraged to stay home.

The Guidelines on Licensed Daycare and Early Learning Centers in Louisiana can be found at: ([https://www.louisianabelieves.com/docs/default-source/covid-19-resources/memorandum\\_daycare\\_03\\_23\\_2020.pdf?svrsn=d7e09b1f\\_8](https://www.louisianabelieves.com/docs/default-source/covid-19-resources/memorandum_daycare_03_23_2020.pdf?svrsn=d7e09b1f_8)).

The full text of the Governor's stay-at-home order can be found at: <https://gov.louisiana.gov/assets/Proclamations/2020/JBE-33-2020.pdf>

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## Maryland

**Last Updated:** March 30

**Order in place through:** End of state of emergency

### BACKGROUND

On March 30, 2020, Maryland Governor Larry Hogan issued a "stay-at-home" order prohibiting individuals in Maryland from leaving their residences except to undertake "essential activity" or engage in "essential business." As before, the revised order directs the closure of all non-essential business in the state, but it also introduces additional restrictions on personal movement and specifies a new list of specific non-essential businesses that must close. The Maryland Office of Legal Counsel published new guidance for the

revised Order (<https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf>).

### DESCRIPTION

Consistent with the previous order, the revised Order defines non-essential businesses as all those that are not part of the critical infrastructure sectors identified by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency ("CISA"). CISA's list of critical infrastructure is available here. The Order modifies some of the CISA sectors; for example, the Order specifically directs closure of certain facilities, such as enclosed malls, casinos, betting facilities and racetracks. The Order states that any person who "knowingly and willfully violates this order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both." The revised Maryland Office of Legal Counsel guidance cites several new restrictions (e.g., prohibiting curbside pickup from non-essential businesses) but leaves unchanged prior guidance about which businesses are "essential." Such business sectors include:

**Chemicals**, including pharmaceutical and chemical manufacturers and distributors.

**Commercial Facilities**, including lodging, building and property maintenance, janitorial firms, companies that sell supplies and materials for maintenance of commercial and residential buildings, laundromats and dry cleaners, commercial and residential construction, and self-storage facilities.

**Communications**, including broadcasting companies and stations, cable TV, telephone and ISP.

**Critical Manufacturing**, including the manufacture of steel, iron and aluminum products; engines, motors, turbines, generators and power transmission equipment; earth-moving, mining,

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agricultural and construction equipment; parts for water, electric and telecommunications utility infrastructure; land, air and water vehicles and related parts; medical equipment; personal protective equipment; and cleaning and sanitation equipment and supplies.

**Defense Industrial Base**, including companies that research, develop, manufacture or integrate weapons, defense, or intelligence systems or assets and private contractors that support defense and intelligence agencies.

**Emergency Services**, including law enforcement, emergency medical, emergency management, fire and rescue, and private ambulance services.

**Energy**, including electricity production; the production, refining, storage, transportation, distribution and sale of oil, gas and propane products, including gas stations and truck stops; and utility maintenance services.

**Financial Services**, including banks and credit unions, non-bank lenders, payroll processing companies, payment processing companies, armored car companies, insurance companies, securities and investment companies, and accounting and bookkeeping firms.

**Food and Agriculture**, including food and alcohol retail stores and supply companies; farms; food manufacturing and processing; pet supply and veterinary; companies that manufacture, maintain and sell agricultural equipment; and companies that manufacture or support the manufacturing of paper products.

**Government Facilities**, including private persons and entities that support the judicial system, such as lawyers and law firms, court reporters and bail bondsmen.

**Health and Public Health**, including hospitals and other health care providers, diagnostic facilities, health plan and billing companies, funeral homes

and crematoriums, senior and assisted living facilities, manufacturers and distributors of medical equipment and supplies, medical cannabis producers and distributors, home health care companies, and pharmacies.

**Information Technology**, including companies that design, develop, distribute, host, sell and support information and companies that provide network routing, access and configuration services.

**Transportation Systems**, including airlines and airports; motor carriers and carriers of marine freight; transportation terminals; package delivery and courier services; warehouse and distribution companies; pipeline owners and operators; lessors of transportation assets, such as railcars and truck trailers; companies that supply parts or maintain transportation assets; and automotive supply stores and repair shops.

**Water and Wastewater**, including municipal, community, and other drinking water and wastewater systems and facilities; well drillers; companies that provide maintenance and inspection services for water and wastewater assets, including treatment works, residential water treatment systems, piping, pumps, tanks, drains, conveyances, and monitoring systems; and water testing companies

**Supporting Firms**, including staffing / payroll companies and essential raw materials, products and services.

Regarding this list of essential businesses, the guidance reiterates that the list is non-exhaustive. The fact that a particular business, organization or facility is not included in the list does not mean it is excluded from the federal critical infrastructure sectors. The Guidance cites the CISA guidance regarding what is and is not included in the federal critical infrastructure sectors. The CISA guidance describes "16 critical infrastructure sectors whose assets, systems, and networks, whether physical or

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virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.”

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## Massachusetts

**Last Updated:** March 23

**Order in place through:** April 7

### BACKGROUND

On March 10, 2020, Governor Charlie Baker declared a state of emergency in Massachusetts, giving the administration flexibility to more aptly respond to the coronavirus outbreak. As for the operation of workplaces, like other states, Massachusetts has chosen to designate certain sectors as “COVID-19 Essential Services,” which are urged to continue operations during the state of emergency but to do so with allowance for social distancing protocols.

On March 23, 2020, Governor Baker issued an emergency COVID-19 Order No. 13, ordering non-essential businesses and organizations to close their physical workspaces and facilities to customers, workers and the public as of 12 p.m. on Tuesday March 24, 2020 until 12 p.m. on Tuesday, April 7, 2020. The emergency order also prohibited any non-essential gatherings of more than 10 people throughout the Commonwealth, including

community, civic, public, leisure, faith-based, or sporting events; concerts, conferences; conventions; fundraisers; parades; fairs; festivals; weddings, funerals; or any similar event or activity in any confined indoor or outdoor space. Pursuant to COVID-19 Order No. 13, certain production and service sectors are designated as “COVID-19 Essential Services,” and the businesses operating in these production and service sectors are designated as “COVID-19 Essential Workforces.” All other businesses and organization that do not provide COVID-19 Essential Services are to close their physical workplaces and facilities to workers, customers and the public as of noon on March 24, 2020 until noon on April 7, 2020. However, businesses and organizations not on the list of essential services are encouraged to continue operations through remote means. Additionally, restaurants, bars and other establishments that sell food and beverage products to the public are encouraged to continue to offer food for take-out and delivery, if they follow appropriate social distancing protocols.

### DESCRIPTION

Under Exhibit A to the COVID-19 Order No. 13, the following business sectors, industries or organizations provide Essential Services:

- Health care, public health, and human services operations, including hospitals, medical facilities and community resident services;
- Law enforcement, public safety and first responders;
- Companies and institutions involved in food and agriculture, including restaurant carry-out and quick serve food operations, farm workers, and company cafeterias;
- Employees and workers in the electricity industry;
- Employees and workers in the petroleum industry;

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- Employees and workers in the natural and propane gas industry;
- Employees and workers in the steam industry;
- Employees and workers in the water and wastewater industry,
- Employees and workers supporting or enabling transportation functions or logistics;
- Employees and workers supporting the operation, inspection and maintenance of public works;
- Industries and businesses supporting communications infrastructure;
- Community-based essential functions and government operations;
- Employees and workers necessary for the manufacturing of critical supplies;
- Employees and workers who support hazardous materials management operations;
- Employees, workers and businesses who support financial operations and financial transactions;
- Employees and workers supporting the chemical and industrial gas supply chains; and
- Employees and workers who support essential services to meet national security commitments.

This is not an exhaustive list of services deemed essential. Additionally, for each sector or workplace, the exemptions from the Commonwealth's work from home mandate will apply to only those employees of essential sectors whose duties are critical to an essential business function and who cannot work remotely. Otherwise, employees of essential sectors whose duties are critical to an essential business function are encouraged, as much as practically possible, to work from home.

The administration has provided a full list of businesses and organizations that provide COVID-19 Essential Services (available at <https://www.mass.gov/doc/covid-19-essential-services>). For each sector or type of business, the

Essential Services List provides additional details on the scope of an essential business for purposes of COVID-19 Order No. 13.

Finally, the Commonwealth permits certain businesses not covered by the guidance to apply for designation as an "essential business." For a description of this process and the requisite forms, see <https://www.mass.gov/forms/essential-service-designation-request>. Requests to be designated as essential can only be made by businesses if they are not covered by the guidance.

The administration has also created a website where individuals and businesses can receive additional, timely guidance on conditions within the Commonwealth. This information can be found at <https://www.mass.gov/resource/information-on-the-outbreak-of-coronavirus-disease-2019-covid-19>.

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## Michigan

**Last Updated:** April 24

**Order in place through:** May 15

### BACKGROUND

On April 9, 2020, Governor Gretchen Whitmer issued Executive Order 2020-42 (Executive Order), which directs Michigan residents to "remain at home or in their place of residence to the maximum extent feasible" until 11:59 pm on April 30, 2020, unless exempted under the Executive Order [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-525182--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525182--,00.html)). Subject to certain exceptions, the Executive Order limits in-person business and governmental operations, requires

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Michigan residents to remain in their homes, and prohibits “all public and private gatherings of any number of people occurring among persons not part of a single household.” Willful violation of the Executive Order is a misdemeanor.

On April 24, the governor issued [EO 2020-59](#) (effective April 26), which supersedes the preceding stay-at-home order ([2020-42](#)) that was set to expire on 4/30/2020. The new order eases several restrictions while extending many of the state’s restrictions on individual activities and business operations until May 15.

## DESCRIPTION

### “Resumed Activities”

In addition to exempting essential critical infrastructure workers from closure (as shown below), the order introduces a new exemption for “resumed activities,” which include:

- Workers who process or fulfill remote orders for goods for delivery or curbside pick-up.
- Workers who perform bicycle maintenance or repair.
- Workers for garden stores, nurseries, and lawn care, pest control, and landscaping operations, subject to certain “enhanced social-distancing rules” described elsewhere in the order
- Maintenance workers and groundskeepers who are necessary to maintain the safety and sanitation of places of outdoor recreation not otherwise closed under [EO 2020-43](#) or any order that may follow from it, provided that the places and their workers do not provide goods, equipment, supplies, or services to individuals, and subject to the enhanced social-distancing rules described in section 11(h) of this order.
- Workers for moving or storage operations, subject to enhanced social-distancing rules.

The new order also requires individuals in Michigan to wear face coverings when in any enclosed public

space, and requires businesses to provide non-medical grade face coverings to workers who perform in-person work.

Under the latest order, businesses may not “operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary[1] to sustain or protect life, [2] to conduct minimum basic operations, or [3] to perform a resumed activity within the meaning of this order.”

“Resumed activities” are summarized above. The other two broad exemptions are detailed below.

### (1) Critical Infrastructure Workers:

Workers necessary to sustain or protect life are “critical infrastructure workers” (CIWs), defined as:

- Workers identified in the March 19, 2020 guidance of the Director of the U.S. Cybersecurity and Infrastructure Security Agency (available at <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>);
- Certain child care workers who support CIWs;
- Workers at suppliers, distribution centers or service providers whose continued operation is necessary to enable, support or facilitate another business’s or operation’s critical infrastructure work;
- Workers in the insurance industry to the extent their work cannot be done remotely;
- Workers and volunteers for businesses/operations that provide food, shelter and other necessities of life for certain needy individuals;
- Workers who perform certain critical labor union functions to the extent their work cannot be done remotely;
- Workers at retail stores who sell groceries, medical supplies and products necessary to maintain the safety, sanitation and basic operation of residences, including convenience stores, pet supply stores, auto supply and repair

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stores, hardware and home maintenance stores, and home appliance retailers;

- Workers at laundromats, coin laundries and dry cleaners;
- Workers at hotels and motels that do not offer in-house amenities, such as gyms, pools, spas, dining and entertainment facilities, meeting rooms, or like facilities; and
- Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.

Businesses that employ CIWs may “may continue in-person operations,” subject to the following conditions: (1) each business must designate and so inform its CIWs in writing, (2) “[i]n-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume” and (3) businesses maintaining in-person activities must adopt certain social distancing practices and other mitigation measures.

## **(2) Minimum Basic Operations:**

The second category of exempted business operations—minimum basic operations—covers workers whose “in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.” Workers necessary to carry on minimum basic operations must be so designated in writing and informed by their employers. Businesses maintaining in-person activities for minimum basic operations must adopt the same social distancing and mitigation measures mentioned above with respect to businesses employing CIWs.

Michigan’s Executive Orders related to COVID-19 as well as FAQs can be found at:

[https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705---,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705---,00.html)

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## Minnesota

**Last Updated:** April 8

**Order in place through:** May 3

## BACKGROUND

Governor Tim Walz issued Executive Order 20-20 on March 25, 2020, directing Minnesotans to stay in their residences except to engage in certain defined activities, including “Critical Sector” work. The restrictions on activities took effect on March 27, 2020 at 11:59 pm and last through April 10, 2020, at 5:00 pm. The order was amended on April 8 and is in effect through May 3. It can be viewed here: [https://mn.gov/governor/assets/2a.%20EO%2020-33%20Final\\_tcm1055-427370.pdf](https://mn.gov/governor/assets/2a.%20EO%2020-33%20Final_tcm1055-427370.pdf)

Minnesota bars, restaurants and public accommodations have been closed by executive order since March 17, 2020. Now, pursuant to Executive Order 20-20, only those in “Critical Sectors” may work outside their homes. The Critical Sectors are defined by reference to 35 categories, based largely on the U.S. Department of Homeland Security Guidance on the Essential Critical Infrastructure Workforce (“CISA Guidance”). Ongoing clarifications of the categories will be published at: <http://mn.gov/deed/critical/>

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## DESCRIPTION

The exempt Critical Sectors include the following categories: (1) health care and public health, including supporting manufacturers, distributors, technicians and logistics personnel as well as home care workers, (2) law enforcement and public safety workers and first responders, (3) food and agriculture workers, although restaurants, bars and other places of public accommodation remain closed pursuant to Executive Orders 20-04 and 20-18, (4) energy, (5) water and wastewater workers, including those working with residential wells and septic tanks and with bottled water or home filtration systems where there is a health emergency, (6) transportation and logistics workers, alongside public transit employees and state, county and local government workers supporting transportation functions, and those engaged in roadway construction and maintenance, utility projects, bicycle shops, and automobile sales necessary for travel, (7) public works employees and their suppliers, (8) communications and information technology workers, including and any workers supporting news services, (9) workers in community-based government operations, including election workers, housing and shelter workers at state and local agencies and organizations, and public workers performing other essential governmental functions and services, (10) critical manufacturing workers, including those in ore mining activities and their suppliers, (11) hazardous materials workers, (12) financial services workers, including “workers at banks, credit unions, insurance companies, insurance agencies, and other financial services workers identified in the CISA Guidance,” (13) chemical workers, (14) defense industrial base workers, (15) tribal government officers and workers deemed essential by their governments, (16) judicial officers and personnel deemed essential by the Chief Justice of the Minnesota Supreme Court, (17) executive branch personnel deemed necessary to continue priority services of state agencies, including the state

colleges and universities and public retirement systems, (18) executive branch Constitutional Officers deemed essential by the applicable Constitutional Officer, (19) legislative personnel deemed essential by the presiding officers of each body, (20) federal employees in the state, (21) National Guard members on orders, (22) faith leaders and workers and workers supporting broadcasting services, (23) education workers supporting public and private schools, although Executive Order 20-02 closing schools remains in effect, (24) construction and critical trades workers, including electricians, plumbers, custodians and other service providers, (25) child care providers, including those working from a personal home, (26) hotels, residential facility and shelter workers, (27) workers at emergency shelters, (28) charitable and social services organizations providing food, shelter, prescription delivery, and mental health and substance abuse treatment, (29) essential legal services, which include representation to ensure delivery of critical government services and health, safety and liberty interests, as well as support for housing-related efforts, (30) notaries whose services cannot be deferred, (31) critical labor union functions, including administration of health and welfare funds, (32) laundry services, (33) animal shelter workers and veterinarians, (34) workers facilitating real estate transactions, including appraisers and title services, and (35) essential supply stores that sell products or materials necessary for the above Critical Sectors or for others to work from home or maintain safety and sanitation.

Willful violation of the order is punishable as a misdemeanor by a fine not to exceed \$1,000 or by imprisonment for not more than 90 days.

The order can be found at:

<https://www.leg.state.mn.us/archive/execorders/20-20.pdf>.

# US: State by State

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## Mississippi

**Last Updated:** April 17

**Order in place through:** April 27

### BACKGROUND

On March 14, in response to the spread of COVID-19, the governor of Mississippi declared a public-health emergency in the state. Building on an order issued March 24, the governor issued an order on April 1 requiring Mississippi residents to stay at home except as allowed by the order, which will remain in place until April 20, unless rescinded, modified, or extended. Under the order, all businesses other than those designated "essential businesses" must cease all operations other than specified "minimum operations." Amended April 17 and in place through April 27, the latest order expanded minimum operations for nonessential businesses to allow retail sales, albeit limited to drive through hand curbside pickup and/or delivery (while practicing social distancing). The amended order also allows recreational boating and fishing, subject to certain occupancy restrictions. In addition, "essential activities" were expanded to include recreational boating, fishing, and use of beaches, subject to restrictions imposed by local authorities. The order can be viewed at:

<https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1473.pdf>

## DESCRIPTION

For purposes of the order, "essential businesses" include:

- Health-care providers and research facilities;
- Pharmacies;
- Food and beverage stores;
- Gas stations;
- Telecommunications;
- Transportation providers;
- Shipping services;
- Supply-chain companies;
- Financial services;
- Professional services;
- Hardware and building-supply stores;
- Construction and maintenance, including the services of plumbers, electricians, janitors, and landscapers;
- Automotive sales and repair;
- Restaurants and bars (subject to certain restrictions);
- Agricultural production and certain related services;
- Manufacturing, including those that produce medical products, food, cleaning supplies, household products, energy products, telecommunications products, technology, and steel products;
- Military contractors and businesses operating in the federal critical infrastructure sectors as identified by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency; and,
- Vendors that provide products and services needed to ensure the continued operation of essential businesses.

# US: State by State

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## Missouri

**Last Updated:** April 16

**Order in place through:** May 3

### BACKGROUND

On April 3, 2020, the Director of the Missouri Department of Health and Senior Services issued a Stay-at-home Order. Under the Order, all individuals living in Missouri are ordered not to leave their residences from 12:01 a.m. on April 6, 2020 until 11:59 p.m. on April 24, 2020, unless otherwise exempted under the Order. Amended on April 16 and in place through May 3 the order may be viewed at:

<https://governor.mo.gov/priorities/extension-stay-home-order-covid-19>

### DESCRIPTION

The Order provides that “[a]ny entity that does not employ individuals to perform essential worker functions, as set forth in guidance provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) outlined at

[https://www.cisa.gov/sites/default/files/publications/CISA\\_Guidance\\_on\\_the\\_Essential\\_Critical\\_Infrastructure\\_Workforce\\_Version\\_2.0\\_Updated.pdf](https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf) shall adhere to the limitations on social gatherings and social distancing set forth in this Order.”

Essential businesses exempt from the Order, as defined by CISA guidance, include:

**Health Care and Public Health Operations**, which includes health care providers and suppliers and

businesses that perform ancillary services (as defined by CISA Memo).

**Essential Infrastructure**, including public works, street lighting, railways, government facilities, and utilities, such as electric power, telecommunications, water and sewage and waste collection.

**Food and Household Products and Services**, including grocery stores, supermarkets, alcohol retail stores and suppliers, restaurants (though only for delivery or to-go services), laundry services and dry cleaners, and retail stores that sell products necessary to maintain the safety, sanitation and operation of residences.

### *Social Services*

**Communications and Information Technologies**, including IT infrastructure and media services.

**Energy and Automotive**, including power suppliers and providers, auto repair shops, and suppliers and related facilities.

**Financial Services**, including banks, credit unions and related financial institutions.

**Educational Institutions**, though only to facilitate remote learning or to support COVID-19-related research or training.

**Transportation and Logistics**, including delivery businesses, taxis and ride-sharing businesses to provide transport for employees who work at essential businesses or who perform essential government functions.

**Construction and Building Trades**, including plumbers, electricians, roofers, carpenters and other businesses that perform services necessary for the safety, sanitation, and operation of residences and essential businesses.

**Housing and Living Facilities**, including legal, insurance, notary public, tax and accounting services but only when necessary to assist in compliance with legally mandated activities or essential businesses or essential government functions.

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**Professional Services**, prioritizing the needs of persons who work for essential businesses or who carry out essential government functions.

**Child Care Facilities**, prioritizing the needs of persons who work for children of essential employees.

Missouri's Order further provides that any entity that employs individuals to perform essential worker functions, as defined above, and that is engaged in retail sales to the public shall limit its operations in accordance with certain occupancy restrictions.

The Order expressly does not prohibit people from accessing essential services, such as grocery stores, gas stations and banks, or engaging in outdoor recreation, provided that necessary precautions are taken and maintained to reduce the transmission of COVID-19.

Finally, the Order shall be observed throughout the state and enforced by all local and state health authorities.

A copy of the Order can be found at: <https://governor.mo.gov/priorities/stay-home-order>, and Frequently Asked Questions can be found at <https://governor.mo.gov/stay-home-missouri-order-guidance-and-frequently-asked-questions>.

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## Nebraska

**Last Updated:** April 10

**Order in place through:** April 24

### DESCRIPTION

On April 10, 2020, Dr. Gary Anthonie, Chief Medical Officer and Director of Public Health for the State of Nebraska, issued a Directed Health Measure (2020-010), ordering the closure of the following types of businesses: beauty/nail salons, barber shops, massage therapy services, gentleman's clubs, bottle clubs, indoor movie theatres, indoor theatres and tattoo parlors/studios. However, general building or physical plant operations and maintenance and animal care, if applicable for the above, may be continued as needed.

In addition, Dr. Anthonie banned indoor and outdoor "gatherings," defined as any event or convening that brings together more than 10 "patrons, customers, or other invitees, excluding staff" in a single room or space at the same time. However, the order clarifies that a "gathering" for this purpose does not include normal operations at airports, bus and train stations, health care facilities and services (see Neb. Rev. Stat. §§ 71-401 to 71-475), other mental health or substance use treatment day programs that are not required to be licensed (such as Day Rehabilitation or Day Treatment), shopping malls or centers, or other spaces where 10 or more persons may be in transit.

"Gatherings" also do not include typical office environments, factories, or retail or grocery stores where large numbers of people are present but where it is typically unusual for them to be within six feet of one another. The term also does not include events at which members of the media may need to be present; courts of law; public utilities; state, county, and city operations; election offices and polling places on election day; logistics/distribution centers; or family residences

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housing 10 or more people. However, those settings are directed to use heightened, diligent and effective disinfection of exposed surfaces meeting the directions of the Nebraska Department of Health and Human Services, Centers for Disease Control and Prevention, and the Environmental Protection Agency.

To the extent such venues as fitness centers/clubs, gymnasiums, gyms, health clubs and health spas do not constitute a “gathering,” as defined above, they must ensure that a minimum distance of six feet be maintained between all patrons.

The order limits food and beverage businesses, including restaurants, bars, and liquor stores, to carry-out, drive-through or delivery sales, to the extent otherwise permitted by law. No on-site consumption in those establishments is permitted. An exemption applies, however, to food service in health care facilities. Lines for carry-out and drive-through must allow patrons and staff to maintain social distancing (a distance of six feet away from other persons) whenever possible.

Nebraska’s order also prohibits elective medical and dental surgeries and procedures, meaning those that are scheduled in advance because they do not involve a medical or dental emergency. Surgeries or procedures that must be done to preserve the patient’s life or physical health but do not need to be performed immediately are nonetheless allowed on a case-by-case determination by the medical or dental provider.

Finally, the order directs that all schools must cease in-person instruction and all extracurricular activities, except for remote learning, child care services, meal distribution, distribution of educational materials and supplies, general building or physical plant operations and maintenance, and residential services, as needed.

All organized team sports, youth and adult, including, but not limited to, club sports also are suspended.

The order provides that it does not supersede the provisions of any directed health measure issued by local health departments, but the order is binding and enforceable regardless of any such local measure.

The state has issued successive directed health measures, largely working on a county-by-county basis (starting with the counties that include and surround Omaha, then Lincoln, and expanding from there). This April 10 order applies to the entire state, although the scheduled expiration dates vary by county, ranging from April 30 to May 11.

As of April 10, Nebraska has not ordered the type of “shelter in place” requirements or provided for the “essential businesses” exemptions seen in other states, nor has Nebraska provided further guidance on the order described above.

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## Nevada

**Last Updated:** March 31

**Order in place through:** April 30

## BACKGROUND

On March 12, 2020, Governor Steve Sisolak declared a state of emergency. There followed a series of escalating orders and regulations, including Declaration of Emergency Directive 003 (“Directive 003”) on March 20, 2020, closing all non-essential businesses in the state as of that date. The Governor then issued Declaration of Emergency Directive 010 on March 31 (“Stay at Home Order”),

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ordering Nevada citizens to stay in their residences and extending the state of emergency and the closure of non-essential businesses until April 30, 2020. The directives may be found at:

<http://gov.nv.gov/News/EmergencyOrders/EmergencyOrders/>

Essential and non-essential businesses are defined by amendment of the Nevada Administrative Code (NAC), Chapter 414, proposed by the Department of Public Safety, Division of Emergency Management, and signed by the Governor on March 20, 2020. The text of the amendment is available at:

[http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/EmergencyOrders/2020\\_attachments/2020-03-20\\_COVID-19\\_DPS\\_DEM\\_EmergencyRegulations.pdf](http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/EmergencyOrders/2020_attachments/2020-03-20_COVID-19_DPS_DEM_EmergencyRegulations.pdf)

## DESCRIPTION

Under the amended NAC 414, essential businesses are those that provide (1) essential health care operations, including hospitals, medical offices, and providers of home health care, mental health care and services including dentistry, physical and speech therapy, optometry and ophthalmology, veterinary medicine, and pharmaceuticals, as well as health care suppliers, (2) essential infrastructure operations, including construction, agriculture, utilities, energy, mining, airport and public transit operations, waste collection and recycling, internet and telecommunications services, manufacturing, and food processing, (3) grocery stores, food banks, and other retailers and providers of canned and dry goods and fresh produce and meats, (4) other retailers of food items and household consumer products, (5) businesses that ship or deliver goods directly to residences, (6) businesses that sell or rent medical supplies, (7) licensed cannabis entities, (8) pet supply stores, (9) animal shelters, (10) banks and financial institutions, (11) pawn brokers, as defined in NRS 646.010, (12) restaurants, but only for take-out or delivery, (13) entities providing food,

shelter or social services for vulnerable individuals, (14) hardware stores, including home improvement centers, (15) automobile supply and repair facilities and tire shops, (16) laundromats and dry cleaners, (17) warehouse and storage facilities, (18) transportation services, including taxicabs and rideshare services, (19) mail and shipping services, (20) businesses that supply products necessary for working from home, but only on a pickup or delivery basis, (21) plumbers, electricians, exterminators, home security, and other safety and sanitation workers at residences or businesses, (22) professional or technical services, including legal, accounting, tax, payroll, real estate and property management services, (23) child care facilities, (24) residential facilities and shelters, including retirement and assisted living facilities, (25) newspapers and television, radio and other media services, (26) hotels and other accommodations, including RV parks and campgrounds, and (27) gas stations.

Non-essential businesses are those providing (1) recreational activities, including, but not limited to, community centers, sporting event venues, fitness facilities, racetracks, zoos, movie theaters and amusement parks, (2) brothels and houses of prostitution, (3) live entertainment venues, (4) retail facilities not specified as essential businesses and that cannot sell goods by shipping or direct delivery, (5) restaurants for in-house dining only, (6) nightclubs, (7) pubs, wineries, bars and breweries, (8) gaming machines and gaming operations, (9) aesthetic services and schools of aesthetic or cosmetic services, including barbers and salons, (10) spas, (11) sporting good and hobby shops and (12) museums and art galleries.

Directive 003, by its terms, shall not be construed to hinder the continued operation of those industries identified in the U.S. Department of Homeland Security Cyber & Infrastructure Security Agency Essential Critical Infrastructure Workforce memorandum dated March 19, 2020.

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Under Directive 003, as extended by the Stay at Home Order, essential businesses must adopt social distancing practices facilitating six feet of separation between workers and ensuring minimum contact between workers and the general public. Directive 013, issued on April 8, 2020, additionally prohibits essential businesses from permitting customers in show rooms, from undertaking open-house or in-person showings of real estate, or from offering self-serve food stations or unpackaged bulk dry goods to customers. It also orders closure of all sporting and recreational venues, including golf courses, and prohibits beauty or barbering services by in-home visit. Businesses that fail to comply with the directives may be subject to criminal prosecution and civil penalties if they remain noncompliant after written notice from law enforcement.

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## New Jersey

**Last Updated:** April 8

**Order in place through:** Indefinite

### BACKGROUND

On March 21, 2020, New Jersey Governor Philip D. Murphy issued Executive Order No. 107 ("EO 107"), which grouped businesses into two categories: essential businesses, which are largely retail in nature and that may remain open during normal business hours, and non-essential businesses, which must close to the public so long as EO 107 remains

in effect. Although New Jersey has not ordered its citizens to "shelter in place," New Jersey has created the presumption that everyone should work from home.

On April 8, NJ issued EO No. 122, which imposes (1) additional restrictions on construction work and (2) imposes significant requirements on essential businesses that are still allowed to continue operating. The order may be viewed at: <https://nj.gov/infobank/eo/056murphy/pdf/EO-122.pdf>. The original order, along with highlights of these additional restrictions, are noted below.

### DESCRIPTION

Governor Murphy declared that the following businesses are deemed essential retail businesses: (1) grocery stores, (2) pharmacies, (3) medical supply stores, (4) retail functions of gas stations, (5) convenience stores, (6) ancillary stores within health care facilities, (7) hardware and home improvement stores, (8) retail functions of banks and other financial institutions, (9) stores specializing in supplies for children, (10) laundromats and dry cleaning services, (11) pet stores, (12) liquor stores, (13) auto maintenance and repair shops, (14) printing and office supply shops and (15) mail and delivery shops. Further, "all restaurants, cafeterias, dining establishments, and food courts . . . are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services. . ." These essential businesses are permitted to operate normally, but "[a]ny essential retail businesses whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing essential services." Further the April 8 amendment stipulates that essential retail businesses allowed to maintain in-person operation must also limit occupancy to 50% of the stated maximum, establish special hours of operation that are open only to high-risk individuals, installing physical barriers such as shield guards to protect

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cashiers, require various infection control practices, such as face masks for all workers and customers.

Guidance issued by the state has clarified that commercial businesses that are not public in nature can stay open. "Manufacturing, industrial, logistics, ports, heavy construction, shipping, food production, food delivery, and other commercial operations may continue to operate, but they should also limit staff on site to the minimal number needed for essential operation." In addition, the April 8 amendment indicates that only "essential" construction projects are allowed to continue as defined at EO 122, paragraph 2. Further, paragraph 3 details policies and protocols to adopt for in-person operations in the essential manufacturing / warehousing / construction sectors.

All businesses in New Jersey, whether open or closed to the public, must accommodate their workforce for "telework or work-from-home arrangements." "Telework" is defined as "the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials." If a business cannot accommodate telework or work from home arrangements, the business should adopt protocols for dealing with infected individuals as per EO 122 in the April 8 amendment.

If a business believes that its operations are unique and should be included as "essential," that business may submit a request to the State Director of Emergency Management, who is the Superintendent of State Police. The Director has the discretion to make additions and amendments to the list of essential businesses.

The State of New Jersey has set up a website for businesses and employees that contains further guidance for particular industries, employers and employees. This website and information can be found at:

(<https://faq.business.nj.gov/en/collections/2198378-information-for-nj-businesses-on-the-coronavirus-outbreak>). This site provides business operations guidance, guidance for employers, summaries of economic assistance available for businesses, benefits for impacted individuals and general information about COVID-19.

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## New Mexico

**Last Updated:** April 22

**Order in place through:** May 15

## BACKGROUND

Governor Michelle Grisham declared a public health emergency in the state on March 11, 2020 for a 30-day period, and subsequently extended the declaration until April 30, 2020. Following the Governor's announcement, the Secretary of Health issued a series of public health orders restricting nursing home visitation and mass gatherings, closing all non-essential businesses and non-profit entities, and requiring New Mexicans to stay at home for all but the most essential activities. The Secretary's first public health order defining essential businesses took effect on March 24, 2020, and was followed by two updating and clarifying orders on April 6 and April 11, 2020. The operative April 11, 2020 order, which remains in force for the duration of the declared public health emergency, is available at: [https://cv.nmhealth.org/wp-content/uploads/2020/04/04\\_11\\_20\\_PHO\\_Amended.pdf](https://cv.nmhealth.org/wp-content/uploads/2020/04/04_11_20_PHO_Amended.pdf)

The April 11 order, like its predecessors, prohibits mass gatherings of five or more individuals for the duration of the public health emergency. Businesses

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not defined as “essential” are ordered to close their physical office or retail spaces, except that hotels and other places of lodging are permitted to operate at no more than 25 percent of maximum capacity. Those essential businesses that sell to customers in on-premises retail space must limit customers to 20% of the maximum occupancy of their retail space. The stay-at-home restrictions has been extended through May 15.

## DESCRIPTION

The order defines “Essential business” by reference to 23 categories of entities: (1) health care operations, including hospitals and other health care facilities, pharmacies, nursing homes, and medical supplies and equipment manufacturers, (2) indigent care services, including homeless shelters and food banks, (3) child care facilities, (4) grocery, convenience, and beverage stores and other retailers deriving the majority of revenue from sales of non-prepared foods, (5) farms, ranches, and other food cultivation, processing or packaging operations, (6) law enforcement, firefighters and emergency services, (7) infrastructure operations, including construction, ground and air transportation, energy producers and services, mining, nuclear materials and research, roadway repair, waste removal and recycling, internet service providers, technology support operations, and telecommunications systems, (8) manufacturing operations involved in food processing, chemicals and pharmaceuticals, household products, primary metals, microelectronics and semiconductors, electrical equipment and appliances, and transportation equipment, (9) services necessary for residential safety and sanitation, including security and custodial services and skilled trades, (10) media services, including television, radio and newspaper operations, (11) automobile and bicycle repair facilities and retailers that generate the majority of their revenue from the sale of automobile or bicycle repair products, (12) dealers of new and used automobiles, but without permitting customers in

show rooms, (13) hardware stores, (14) laundromats and dry cleaner services, (15) utilities engaged in power generation, fuel supply and transmission, and water and wastewater supply, along with their contractors and suppliers, (16) funeral homes, crematoriums and cemeteries, (17) banks, credit unions, insurance providers, payroll services, brokerage services and investment management firms, (18) real estate services, including brokers, title companies and related services, (19) businesses providing mailing and shipping services, including post office boxes, (20) laboratories and defense and national security operations supporting the U.S. government, (21) restaurants, but only for delivery or carry-out, and local breweries or distillers, but only for carry-out, (22) professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities and (23) logistics and businesses storing, shipping or delivering goods or services to residences or retailers.

The state’s Department of Health website offers further guidance by listing additional examples of essential businesses at

<https://cv.nmhealth.org/stay-at-home-essential-businesses/>

Essential businesses are permitted to remain open, “provided they minimize their operations and staff to the greatest extent possible” and adhere to social distancing protocols and ensure that surfaces are regularly cleaned. The order provides that all state law enforcement and other agencies are “authorized to take all appropriate steps to ensure compliance.”

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# US: State by State



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## New York

**Last Updated:** April 16

**Order in place through:** May 15

### BACKGROUND

New York has, for the time being, grouped businesses, including services, into three categories: (1) essential businesses and services experiencing little or no restrictions, (2) non-essential businesses and services required to work remotely and (3) social and recreational gathering spots, such as bars and casinos, which must close.

Governor Andrew Cuomo declared a state of emergency in New York on March 7, 2020. In a series of executive orders and actions since then, Governor Cuomo has increased the restriction on businesses and people. The governor has also announced a mandatory 90-day moratorium on any residential or commercial evictions and mortgage foreclosures in New York State; notably, this is 30 days longer than HUD's previously announced moratorium.

Of particular interest is executive order (EO) 202.6 issued on March 18, 2020. This first order declared that all non-essential businesses and firms not providing essential services located in the State of New York must reduce their in-person workforce at every location within the state by 50 percent no later than 8:00 pm on March 20, 2020. EO 202.6 was followed the next day by EO 202.7, which required employers to reduce the in-person workforce of all non-essential businesses and service providers at all locations by 75 percent by no later than 8:00 pm on March 21, 2020. Finally, on March 21, 2020, Governor Cuomo signed the "New York State on

PAUSE" Executive Order, directing all non-essential businesses statewide to close 100 percent of all in-office personnel functions effective Sunday, March 22, 2020 at 8:00 pm. On April 16, Governor Cuomo extended the state's stay-at-home order to May 15. The order may be viewed at:

<https://www.governor.ny.gov/news/no-20218-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

### DESCRIPTION

- The New York Empire State Development Corporation (ESDC) has provided guidance to help businesses and employers determine "whether they are an essential business" and has set forth "steps to request such designation." Generally speaking, the ESDC defines "essential businesses" to include all essential health care operations, including research and laboratory services; essential infrastructure, including utilities, telecommunication, airports and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals; essential retail, including grocery stores, pharmacies and restaurants (but only for take-out/delivery); essential services, including trash collection, mail and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; and vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and to provide for the health, safety and welfare of the public. For businesses or entities that provide both essential and non-essential services, only those lines and/or business operations that are necessary to support the essential services are exempt from

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the restrictions. Similarly, to the extent a business operates from more than one location, only the location(s) that provide essential services will be exempt.

- Businesses and entities that provide essential services are required to implement rules that facilitate social distancing of at least six feet.
- For each sector or type of business, the ESDC's guidance provides additional details. For example, with respect to financial institutions, the ESDC's guidance includes banks, insurance, payroll and accounting. To view the ESDC's complete guidance on what qualifies as an "essential business," visit <https://esd.ny.gov/guidance-executive-order-2026>.

Finally, New York permits certain businesses not covered by the guidance to apply for status as an "essential business." For a description of this process and the requisite forms, visit [https://esd.ny.gov/sites/default/files/Request%20for%20Designation%20Form\\_0.pdf](https://esd.ny.gov/sites/default/files/Request%20for%20Designation%20Form_0.pdf). However, this process is not available to bars, restaurants, gyms, movie theaters, casinos (including tribal facilities that are governed by the Indian Gaming Regulatory Act) and certain other businesses.

Lastly, on March 28 the New York State Department of Health (DOH) issued "Protocols for Essential Personnel to Return to Work Following COVID-19 Exposure or Infection." These include conducting temperature monitoring and symptom checks every 12 hours.

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## Ohio

**Last Updated:** April 2

**Order in place through:** May 1

### BACKGROUND

On April 2, 2020, Ohio's Director of Public Health, Dr. Amy Acton, issued an amended order that "All Persons Stay at Home Unless Engaged in Essential Work or Activity." The "Stay at Home" Order <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-At-Home-Order-Amended-04-02-20.pdf> is in effect as of 11:59 pm on March 23, 2020 until 11:59 pm on May 1, 2020. The Order followed Governor Mike DeWine's declaration on March 9, 2020 of a state of emergency in Ohio (EO 2020-01D). Director Acton had previously banned all mass gatherings of 50 or more people in Ohio and ordered the closure of recreational and arts facilities and personal care businesses, such as nail salons, barber shops and tattoo parlors.

### DESCRIPTION

Under the Stay at Home Order, all non-essential business and operations must cease. Any gathering of 10 or more people outside the home is prohibited, unless exempt by the Order. The Order does not prohibit residents from essential activities like going to the grocery store or receiving medical care, but it does otherwise restrict travel and require residents to "stay at home" unless one of the five following categories of exemptions applies: (1) health care and public health operations, (2) human services providers, (3) essential infrastructure, (4) essential government functions and (5) essential businesses and operations. The Order is similar in substance to the Stay at Home Order issued in Illinois as well as in other states. The five exempted categories are described below:

- **Health Care and Public Health Operations:** Although hospitals, health care providers, pharmacies, clinics and other public health operations are clearly covered by this section, the

# US: State by State

exemption also applies to “manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.” Veterinary care and “all healthcare services provided to animals” also are covered. Not covered by this section are “fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities.”

- **Human Service Operations:** This exemption applies to such entities as long-term care facilities, shelters, homes for people with disabilities, transitional facilities, adoption agencies, development centers and “businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.”
- **Essential Infrastructure:** Traditional infrastructure operations are exempted and include such key operations as food production and distribution, construction, building management, airport operations, utilities (e.g., water, sewer, gas, electrical), oil refining, roads, railroads, public transportation, telecommunications, public waste/recycling, and cybersecurity operations.
- **Essential Government Functions:** Core governmental functions are exempted, such as first responders, emergency management personnel, law enforcement, court personnel, corrections officers, child welfare personnel, and other governmental employees who “support” Essential Business and Operations as defined by the Order.
- **Essential Businesses:** The fifth category of exempted entities and individuals is Essential Business and Operations, which consists of 25

sub-categories of exempted businesses: (a) the CISA List, essential businesses and operations in this Order includes all the workers identified in the March 19, 2020, memorandum issued by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Agency, (b) stores that sell groceries and medicine, (c) food, beverage and cannabis production and agriculture, (d) charitable and social service organizations that provide food, shelter, social services and “other necessities of life” for needy individuals, (e) religious entities, (f) media, (g) first amendment protected speech, (h) gas stations and businesses needed for transportation, (i) financial and insurance institutions, (j) hardware and supply stores, (k) critical trades, (l) mail, post, shipping, logistics, delivery and pick-up services, (m) educational institutions for purposes of providing distance learning, (n) laundry services, (o) restaurants for consumption off-premises, (p) supplies to work from home, (q) supplies for Essential Business and Operations, (r) transportation, (s) home-based care and services, (t) residential facilities and shelters, (u) professional services, (v) manufacture, distribution and supply chain operations for critical products and industries, (w) critical labor union functions, (x) hotels and motels and (y) funeral services and cemeteries. Many of these sub-categories are very broad and include those entities that “support” the functions within the sub-category.

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# US: State by State



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## Oklahoma

**Last Updated:** April 20

**Order in place through:** May 6

### BACKGROUND

On April 15, 2020, Oklahoma Governor Stitt [announced](#) the extension of the existing Safer at Home Order until May 6, as well as the easing of restrictions on certain elective medical procedures beginning on April 24 (rather than April 30, as in the original order). The revised order ([Executive Order 2020-13](#)) distinguishes between elective procedures, which may commence on April 24, and “minor medical procedures and non-emergency dental procedures,” which must still be postponed until after April 30. Additionally—although this is not reflected in the order—Governor Stitt announced that his office was expanding tracking and surveillance capabilities and beginning to develop plans to reopen the economy. Nonetheless, he emphasized that the state was not yet “out of the woods” and that existing restrictions on the operation of non-essential businesses would remain in place until at least April 30.

### DESCRIPTION

The revised order, like the original Safer at Home Order ([Executive Order 2020-07](#)), contains the following notable restrictions:

- “Vulnerable individuals” are required to stay at home: these restrictions apply to individuals “over the age of sixty-five (65) and people of any age who have serious underlying medical conditions.” In this respect, the order differs from other state stay at home orders, which apply to

all residents, not just “vulnerable individuals.” This restriction has now been extended until May 6.

- Social gatherings of more than ten people remain prohibited. Essential businesses are required to “take all reasonable steps necessary” to limit gatherings “and protect their employees, workers, and patrons.”
- The closure to the public of non-essential businesses remains in place and has not been extended beyond the original April 30 end date. This restriction applies to “all businesses not identified as within a critical infrastructure sector as defined by the U.S. Department of Homeland Security [i.e., CISA, which is within DHS] or defined as essential by the Oklahoma Department of Commerce.”
- The requirement that “all persons who enter [Oklahoma] from an area with substantial community spread” quarantine “for a period of 14 days from the time of entry” remains in place, as do the exceptions for certain persons, such as medical workers, first responders, airline personnel, and employees of utility companies.

In short, although Oklahoma (like a number of other states) is looking to reopen its economy, it has not yet released a specific timeframe or milestones that must be reached before restrictions will be eased. It remains to be seen whether the government will be able to reduce restrictions on essential businesses on April 30, as currently planned.

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# US: State by State

## Pennsylvania

**Last Updated:** April 20

**Order in place through:** May 8

### BACKGROUND

Governor Tom Wolf declared a “disaster emergency” in Pennsylvania on March 6, 2020. On March 16, 2020, he ordered the closure of all “dine-in facilities” and restaurants. On March 19, 2020, the governor ordered all businesses not “life sustaining” to close.

On April 1, 2020, Governor Wolf issued a “Stay-at-Home” order that amended the previous “Stay-at-Home” order issued on March 23, 2020 to include all counties in Pennsylvania. Under the “Stay-at-Home” order, all residents are ordered to stay at home except as needed to access, support or provide life-sustaining business, emergency, or government services. Amendment issued on April 20 extends the order through May 8. A link to the original order is provided at:

<https://www.governor.pa.gov/wp-content/uploads/2020/04/20200401-GOV-Statewide-Stay-at-Home-Order.pdf> The April 20 amendment may be viewed at:

<https://www.governor.pa.gov/wp-content/uploads/2020/04/20200420-GOV-Stay-at-Home-Order-Amendment.pdf>

### DESCRIPTION

The state published a very extensive list of businesses it considers “life sustaining,” which includes grocery stores, all types of farming and food production, basic chemical manufacturing, manufacturers of medical equipment and supplies, and certain banks and financial institutions. Law firms within the state are ordered closed “[e]xcept as permitted expressly by the Administrative Office of Pennsylvania Courts.” To see the entire list visit [https://www.governor.pa.gov/wp-](https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-Life-Sustaining-Business.pdf)

[content/uploads/2020/03/20200319-Life-Sustaining-Business.pdf](https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-Life-Sustaining-Business.pdf).

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## Tennessee

**Last Updated:** April 24

**Order in place through:** April 30

### BACKGROUND

On March 12, in response to the spread of COVID-19, the governor of Tennessee declared a state of emergency in the state. Since then, the governor has issued a series of orders initially recommending and ultimately requiring the cessation of certain business activities. On April 2, the governor issued an order that prohibits persons in Tennessee from leaving their homes unless engaged in “essential activities or essential services” as defined by the order. The order also requires that businesses not providing “essential services” be closed to the public. The governor has since extended the order, which will now remain in effect until April 30. The order may be viewed at:

<https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee27.pdf>

### DESCRIPTION

#### *Reopen Measures*

On April 24, the governor amended the state’s essential-business order to permit, as of April 27, the reopening of restaurants (but not bars and night clubs) for on-premises dining.

Under the original order, “essential services” include:

# US: State by State

- Health-care services, which encompasses not only the direct provision of health care but also the development, manufacture, and distribution of medical products;
- Production, distribution, and sale of food;
- The sale of food and medicine;
- “Infrastructure operations,” which “shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined” to include, among other things, housing construction, building maintenance, power generation, utilities, cybersecurity, and telecommunications;
- Construction and maintenance, including the services of plumbers, electricians, janitors, and landscapers;
- Production of food and beverages;
- Agricultural production;
- Transportation services, including taxis, Uber, Lyft, airlines, and car rentals, gas stations, truck stops, and bike stores, and automotive manufacturers, suppliers, and repair shops;
- Financial institutions;
- Hardware and building-supply stores;
- Shipping services;
- Professional services;
- Restaurants and Bars (for off-premises consumption, except as amended above)
- Hotels and motels;
- Manufacture and distribution of essential products and services by companies that supply products and services used in the pharmaceutical, biotechnology, healthcare, chemical, agricultural, transportation, energy, steel, construction, and military industries.

Notably, businesses that do not provide “essential services” may continue to operate so long as only 10 or fewer people—including both employees and members of the public—access their premises at any one time.

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## Texas

**Last Updated:** March 31

**Order in place through:** April 30

## BACKGROUND

On March 13, in response to the spread of COVID-19, the governor of Texas declared a state of disaster in the state, a declaration that he has since renewed. On March 31, the governor issued an order requiring “every person in Texas” to “minimize in-person contact with people who are not in the same household” except “where necessary to provide or obtain essential services.”

The order may be viewed at:

<https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee23.pdf>

## DESCRIPTION

The order defines “essential services” as “everything listed by the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, Version 2.0, plus religious services conducted in churches, congregations, and houses of worship.” The DHS Guidance identifies certain workers in 16 categories as constituting the nation’s “essential critical infrastructure workforce,” including certain workers in the following sectors:

- Healthcare and public health, including the manufacture and distribution of medical products;
- Food and agriculture;
- Energy;
- Water and wastewater;
- Transportation and logistics;

# US: State by State

- Public works and infrastructure support services, including residential and building maintenance services as well as waste disposal services;
- Communications and information technology;
- Critical manufacturing, including the manufacture of metals, semiconductors, and products needed in other critical sectors;
- Hazardous materials;
- Financial services;
- Chemical;
- Defense industrial base;
- Commercial facilities, including call centers and distribution facilities;
- Residential facilities and services; and,
- Hygiene products and services.

Under the terms of the governor's order, other "essential services" may be added to the foregoing list with the approval of the Texas Division of Emergency Management (TDEM). Requests for additions should be directed to TDEM at [EssentialServices@tdem.texas.gov](mailto:EssentialServices@tdem.texas.gov) or by visiting [www.tdem.texas.gov/essentialservices](http://www.tdem.texas.gov/essentialservices).

Unlike similar orders issued in other states, the Texas order does not explicitly require the closing of businesses that do not provide "essential services." While one might conclude that such a requirement is implicit in the directive that persons in Texas minimize in-person contact with persons outside their household, nothing in the order would prevent businesses that can function with a remote workforce from continuing to operate. Indeed, the order provides that "all services should be provided through remote telework from home unless they are essential services that cannot be provided through remote telework."

Given the fact that certain jurisdictions within Texas had earlier issued their own COVID-19-related orders, the governor's order "supersede[s] any conflicting order. Notably, Governor Abbott has announced that TX will be gradually reopening the state.

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## Virginia

**Last Updated:** March 30

**Order in place through:** June 10

## BACKGROUND

On March 30, 2020, Virginia Governor Ralph Northam issued a "Temporary Stay-at-home Order" directing "all individuals in Virginia [to] remain at their place of residence" except to engage in one of several permitted activities. This Order, like the preceding March 23 order, also imposes temporary restrictions on the activities of certain organizations and businesses, including schools, restaurants, recreational and entertainment businesses, and non-essential retail businesses. Rather than shutting down all non-essential businesses and organizations (as in the case of the Maryland Order), the Order closes specified types of organizations. As before, the violation of applicable restrictions (other than those imposed on schools) "shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the Code of Virginia."

## DESCRIPTION

### ***Impacting Everyone in Virginia***

All public and private in-person gatherings of 10 or more individuals are prohibited.

### ***Business/Operations That Must Close***

Recreational and entertainment businesses must be closed to all public access. These include theaters and performing arts centers, fitness and indoor sports facilities, businesses that perform personal grooming services, race tracks and historic horse racing facilities, amusement parks and fairs, and various "places of indoor public amusement" (such as bowling alleys, skating rinks, etc.).

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Although schools are not businesses, all in-person instruction at K-12 schools, public and private, will remain closed for the remainder of the 2019-2020 school year. The impact on parents is mitigated by the Order's provision that facilities providing child care services may remain open.

## **Essential retail businesses Are Permitted to Remain Open**

Such businesses are:

- Retailers that sell food and beverage products or pharmacy products (including department stores that include grocery or pharmacy operations)
- Medical, laboratory and vision supply retailers
- Electronic retailers that sell or service cell phones, computers, tablets and other communications technology
- Automotive parts, accessories and tire retailers, as well as automotive repair facilities
- Home improvement, hardware, building material and building supply retailers
- Lawn and garden equipment retailers
- Beer, wine and liquor stores
- Retail functions of gas stations and convenience stores
- Retail located within health care facilities
- Banks and other financial institutions with retail functions
- Pet and feed stores
- Printing and office supply stores
- Laundromats and dry cleaners

## **Virginia's Government Contractors**

Virginia's large government contracting community is not specifically addressed in the temporary restrictions order. To the extent such companies provide "professional rather than retail services," they may remain open. In addition, the "operation of government" is expressly exempted from the restrictions. Government contractors whose products and services are necessary to essential government functions may be able to argue that

their operations are exempted under that provision, but the Order does not address this nuance.

## **Non-Essential Businesses Can Also Remain Open, But Are Subject to Specific Restrictions**

"Non-essential" retail businesses not specifically listed above may continue to operate but must limit all in-person shopping to no more than 10 patrons per establishment with "proper social distancing."

## **Other Impacts of the Order**

Unlike other stay-at-home orders, Virginia's temporary restrictions do not limit elective medical services or procedures; in fact, the Order specifies that "[n]othing in the Order shall limit . . . the provision of health care or medical services."

Media businesses and, as noted above, government services are also unaffected by the Order.

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## **West Virginia**

**Last Updated:** March 23

**Order in place through:** until rescinded

## **BACKGROUND**

On March 16, in response to the spread of COVID-19, the governor of West Virginia declared a state of emergency in the state. Since then, the governor has issued a series of orders imposing increasingly restrictive limits on business activity. Under the most recent order, issued on March 23, the

# US: State by State

governor issued an order that requires persons in West Virginia to remain at home unless engaged in an “essential activity” as defined by the order. The order also requires the closure of all businesses and operations that are not “essential businesses and operations” within the meaning of the order, which will remain in effect until rescinded.

## DESCRIPTION

For purposes of the order, “essential businesses and operations” include:

- Healthcare operations, including not only hospitals and pharmacies but also pharmaceutical and medical-device manufacturers and those that distribute their products;
- Grocery stores and pharmacies;
- Food, beverage, and agricultural production
- Restaurants and bars (for off-premises consumption);
- “Essential infrastructure,” including construction, building maintenance, power generation, utilities, cybersecurity, and telecommunications;
- Coal mining;
- Manufacture and distribution of essential products and services by companies that supply products and services used in the pharmaceutical, biotechnology, healthcare, chemical, agricultural, transportation, energy, steel, construction, and military industries;
- The sale, manufacture, distribution, and supply of essential businesses and operations with the support or materials necessary to operate;
- Transportation-related businesses facilitating access to or the provision of essential activities and essential businesses and operations, including freight services, taxis, Uber, Lyft, airlines, and car rentals, gas stations, truck stops, and bike stores, and automotive manufacturers, suppliers, and repair shops;
- Financial institutions;
- Hardware and building-supply stores;

- Construction and maintenance, including the services of plumbers, electricians, janitors, and landscapers;
- Shipping services;
- Professional services; and
- Hotels and motels.

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## Wisconsin

**Last Updated:** April 24

**Order in place through:** May 26

## BACKGROUND

On March 24, 2020, the Department of Health Services, at the direction of Governor Tony Evers, issued Emergency Order #12, the “Safer at Home Order.” Under the Order, all individuals present in Wisconsin are ordered to stay at home or at their place of residence from 8:00 a.m. on March 25, 2020, until 8:00 a.m. on April 24, 2020, unless otherwise exempted under the Order, outlined at: [https://content.govdelivery.com/attachments/WIGOV/2020/03/24/file\\_attachments/1409408/Health%20Order%20%2312%20Safer%20At%20Home.pdf](https://content.govdelivery.com/attachments/WIGOV/2020/03/24/file_attachments/1409408/Health%20Order%20%2312%20Safer%20At%20Home.pdf).

Governor Evers previously declared a public health emergency on March 12, 2020 to direct all resources needed to respond to and contain COVID-19 in Wisconsin. The new Order supersedes that declaration and all other previous orders to the extent they are in conflict and is enforceable by any local law enforcement official, including county sheriffs. Amended April 16 extending stay-at-home restrictions through May 26.

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The order can be seen at:

[https://content.govdelivery.com/attachments/WIGOV/2020/04/16/file\\_attachments/1428995/EMO28-SaferAtHome.pdf](https://content.govdelivery.com/attachments/WIGOV/2020/04/16/file_attachments/1428995/EMO28-SaferAtHome.pdf)

Also, beginning on April 24, certain restrictions in Wisconsin are being eased.

## DESCRIPTION

### *Reopen Activities*

Although Wisconsin's EO 28 ("Safer at Home") (issued April 16 but not effective until April 24) generally extended the state's restrictions through May 26, the order allows the following activities and business operations to commence, which were prohibited under the previous order:

- Restaurants may open for food take-out or delivery service only.
- Golf courses will be open, with some exceptions.
- Weddings, funerals, and religious entities, except that any gathering shall include fewer than 10 people in a room or confined space at a time.
- Laundromats, dry cleaners, industrial laundry services, and laundry service providers.
- Hotels and motels, as long as they close swimming pools, hot tubs, and exercise facilities as well as enforce social distancing.
- Public parks may open (although subject to closure by local authorities).

The easing of restrictions in Wisconsin has generated some press coverage ([e.g., here](#)), and was cited by Governor Whitmer of Michigan—who is facing political pressure from the legislature to ease restrictions—as grounds for easing restrictions in Michigan.

Beyond the reopen aspects of the latest update, the original Order identifies six categories of activity that are exempt from certain of its restrictions (and which continue to be exempt under the latest order) as shown on the following pages.

### **Essential Activities (Emergency Order § 11):**

Individuals may leave their homes or residences to perform "essential activities," which are identified in five subcategories: (a) to engage in activities or perform tasks essential to their own or others' health and safety, (b) to obtain or deliver to others necessary services or supplies, including food and safety and sanitation products, (c) to engage in certain outdoor activities, (d) to perform work at Essential Businesses or Operations or to otherwise carry out activities specifically permitted in the Order and (e) to care for family members, friends or pets.

### **Essential Governmental Functions (Emergency Order § 12):**

Key governmental functions are exempted from the Order, including paid and volunteer first responders, law enforcement, EMS and firefighters; emergency management personnel; court and corrections personnel; child protection and welfare personnel; and other similar groups.

### **Essential Businesses and Operations (Emergency Order § 13):**

The Order further exempts 26 subcategories of businesses: (a) any business or worker identified in the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA), *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*, updated March 23, 2020, and any subsequent versions of this Memorandum, (b) stores that sell groceries and medicine, (c) food and beverage production, transport and agriculture, (d) restaurants and further as noted above, (e) bars; (f) child care settings, (g) organizations that provide charitable and social services, (h) weddings, funerals and religious entities, (i) funeral establishments, (j) media operations, (k) gas stations and businesses needed for transportation, (l) financial institutions and services, (m) hardware and supplies stores, (n) critical trades, (o) mail, post, shipping, logistics, delivery and pick-up services, (p) laundry services, (q) supplies to work from home, (r) supplies for Essential Businesses and Operations and Essential

# US: State by State

Governmental Functions, (s) transportation, (t) home-based care and services, (u) professional services, (v) manufacturing, distribution and supply chain operations for critical products and industries, (w) critical labor union functions, (x) hotels and motels, (y) higher educational institutions and (z) Wisconsin Economic Development Corporation (WEDC) designated businesses.

## **Minimum Basic Operations (Emergency Order §**

**14):** Individuals may also perform the minimum necessary activities to maintain the value and condition of a business's inventory and facilities, to ensure security and the continuation of employee payroll, benefits, or related functions, and to facilitate employees to work remotely.

## **Essential Travel (Emergency Order § 15):**

Individuals may engage in Essential Travel, which includes (a) any travel related to the provision of or access to other activities or functions identified in the Order, (b) travel to care for vulnerable persons, (c) travel to or from educational institutions for purposes of receiving materials for distance learning, meals or any other related services, (d) travel to return to a place of residence from outside the jurisdiction, (e) travel required by law enforcement or court order and (f) travel required for non-residents to return to their places of residence outside Wisconsin.

## **Special Situations (Emergency Order §§ 8-10):**

This category identifies three subcategories of special activity exempted from the Order:

- **Health Care and Public Health Operations (Emergency Order § 8):** Individuals may leave their residences to work for or to obtain services at any Health Care and Public Health Operations, including hospitals, medical facilities, clinics and other health care providers.
- **Human Service Operations (Emergency Order § 9):** Individuals may leave their residences to work for or to obtain services at any state,

institutional or community-based setting providing human services to the public.

- **Essential Infrastructure (Emergency Order § 10):** Individuals may leave their residences to provide any services or to perform any work necessary to offer, provide, operate, maintain and repair Essential Infrastructure.

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# Canada

## BACKGROUND

While the federal authorities in Canada have joined the United States in closing the border to all but essential traffic, a number of jurisdictions within Canada have also announced that closures of most businesses are in effect. Provincial and territorial announcements have indicated that only organizations necessary to provide “essential services” are permitted to operate.

Municipal, provincial, territorial or Indigenous jurisdictions, not the federal government, have the legislative authority to implement and execute responsive actions within their respective jurisdictions, while at the federal level, Public Safety Canada has a key role to play to facilitate and enable critical infrastructure security and resilience.

## DESCRIPTION

To that end, Public Safety Canada has developed a set of [functions deemed essential](#) in the context of the COVID-19 pandemic to help local governments protect their communities while maintaining the reliable operation of critical infrastructure services and functions to ensure the health, safety, and economic well-being of the population.

According to Public Safety Canada, the services and functions it has listed are considered essential to preserving life, health and basic societal functioning. These include, but are not limited to, the functions performed by first responders, health care workers, critical infrastructure workers (e.g., hydro and natural gas), and workers who are essential to supply critical goods such as food and medicines.

Please visit the following links for information on specific jobs and services that have been deemed essential by the jurisdictions listed.

- [British Columbia](#)
- [Alberta](#)
- [Saskatchewan](#)
- [Manitoba](#)
- [Ontario](#)
- [Quebec](#)
- [New Brunswick](#)
- [Prince Edward Island](#)
- [Nova Scotia](#)
- [Newfoundland and Labrador](#)
- [Nunavut](#)
- [Northwest Territories](#)
- [Yukon](#)

# Mexico

**Last Updated:** March 31

**Order in place through:** April 30

## BACKGROUND

In December 2019, the novel coronavirus ("COVID-19") was first identified and, since that time, has spread throughout the world, including Mexico. The first case of COVID-19 appeared in Mexico on February 27, 2020, and, in the few weeks following, its transmission through community spread has grown exponentially.

On March 11, 2020, COVID-19 was characterized as a pandemic by the World Health Organization (WHO). If COVID-19 continues to spread at the current rate, the available medical facilities will be stressed and eventually overloaded with critical patients.

Given the above, and considering that the risk of community spread of COVID-19 through person-to-person contact is magnified when people congregate together, the Mexican government implemented some measures in order to protect, preserve and promote the general health, safety and welfare of the people in Mexico.

First, on March 30, 2020, a decree was published in the Federal Official Gazette ("DOF") declaring a health emergency due to force majeure. A day later, on March 31, 2020, a decree establishing extraordinary actions to address the health emergency generated by COVID-19 was published in the DOF (as it was amended by the explanatory note dated April 3, 2020, the "Decree"). Additionally, on April 6, 2020, a decree establishing the technical guidelines related to some of the activities described in the Decree was published in the DOF (the "Guidelines").

## SUSPENSION OF NON-ESSENTIAL ACTIVITIES

Pursuant to the Decree and in order to mitigate the spread and transmission of COVID-19, the Federal

government, through the Ministry of Health, ordered the immediate suspension of activities and businesses considered "non-essential." The initial term of said suspension is from March 30 to April 30, 2020 (the "Effective Period"). Therefore, all non-essential businesses, services and activities are prohibited during the Effective Period.

Although the Decree does not define what is considered an essential activity, it does provide a list of the activities that are considered as such, which are:

- a) The activities that are directly necessary to attend the health emergency, such as the work activities of the medical, paramedical, administrative and support branches throughout the National Health System. Also, those who participate in its supply and services, among which the pharmaceutical sector stands out, both in its production and its distribution (pharmacies); the manufacture of supplies, medical equipment and technologies for health care; those involved in the proper disposal of biological-infectious hazardous waste, as well as cleaning and sanitizing medical units at different levels of care;
- b) Those involved in public safety and citizen protection, in the defense of national integrity and sovereignty, in the procurement and promotion of justice, and in legislative activity at the federal and state levels;
- c) Those necessary for the function of the key sectors of the economy, which include financial services; tax collection; distribution and sale of energy, gas and petrol station; generation and distribution of drinking water; food and non-alcoholic beverages industry; food markets, supermarkets, self-service shops, grocery and prepared food sales; passenger and cargo transportation services; agricultural, fishing and livestock production and agribusiness; chemicals industry; cleaning products; hardware stores;



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courier services;<sup>1</sup> private security guard services; day care centers and nurseries; assisted living and retirement facilities for the elderly; shelters and care centers for women who are the victims of violence and their daughters and sons; telecommunications and information media; private emergency services; burial services; storage services and chain of essential supplies; logistics (airports, ports and railways); as well as activities whose suspension may have irreversible effects for its continuation. According to the Guidelines, the activities whose suspension may have irreversible effects for its continuation are the following: steel, cement and glass production companies and information technology services that guarantee the continuity of computer systems in the private, public and social sectors.

- d) Those directly related to the operation of government social programs; and
- e) Those necessary for the conservation, maintenance and repair of the critical infrastructure that ensures the production and distribution of essential services, including specifically enumerated activities, namely, drinking water, electricity, gas, oil, gasoline, jet fuel, basic sanitation, public transportation, and hospital and medical infrastructure, among others, that could be listed in this category. This list is merely illustrative; the government anticipates analyzing, on a case-by-case basis, what other activities not mentioned here can be considered essential to the production and distribution of essential services.

Non-essential businesses, services and activities are all businesses and activities that are not encompassed in the five categories noted above. It is not clear whether the manufacture of necessary supplies so that the essential activities can continue

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<sup>1</sup> These include electronic commerce platforms and companies, as long as they comply with the health measures indicated in section 3 of this note.

to operate can also be considered as “essential”, even if not listed as such (i.e., companies that are engaged in the manufacture of plastic or cardboard packaging to preserve food sold in supermarkets). This should be analyzed on a case-by-case basis.

Among the issues that have generated some concerns for Mexican companies regarding the scope of the above-mentioned restriction is the inability to comply with certain obligations required by law. For example, Mexican law provides that Mexican companies shall hold an annual shareholders' meeting on or before April 30 of each year. Due to restrictions imposed by the Decree, and considering that shareholder meetings are not explicitly listed as an essential activity, Mexican companies could analyze the convenience of holding shareholder meetings by electronic means. These alternatives require further analysis and shall be discussed on a case by case basis.

The steel, cement and glass production companies shall maintain a minimum activity that avoids irreversible effects in their operations. To do so, they should have informed the Ministry of Economy via email the total number of workers that are essential for this purpose. The deadline to inform the Ministry of Economy was April 7, 2020.

Those steel, cement and glass production companies that have current contracts with the federal government will continue activities that allow them to fulfill short-term commitments exclusively for the Dos Bocas Refinery, Tren Maya, Felipe Ángeles Airport and the Transismic Corridor projects, as well as existing contracts considered essential for Petróleos Mexicanos and the Federal Electricity Commission.

Coal mines and coal distribution companies shall maintain a minimum activity that meets the demand of the Federal Electricity Commission. For this, they should have informed the Ministry of Economy of the total number of workers that is

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essential for this purpose and must comply with the measures indicated in the following section.

## HEALTH AND SAFETY MEASURES TO BE OBSERVED IN PLACES WHERE ESSENTIAL ACTIVITIES ARE CARRIED OUT

The Decree establishes that, in all the places where the essential activities mentioned above are carried out, the following practices must be observed, on a mandatory basis:

- a) No meetings or congregations of more than 50 people may be held;
- b) People should wash their hands frequently;
- c) People should sneeze or cough covering their nose and mouth with a disposable tissue or with the forearm;
- d) People shall not greet with a kiss, a handshake or a hug; and
- e) All other healthy distance measures issued by the Ministry of Health should be in force.

The Decree does not establish the health measures to be adopted by the persons who do not perform essential activities; however, it is critical that everyone engage in all available health measures, including handwashing, maintaining a safe distance of at least six feet from other people in public, isolating themselves if ill, only purchasing supplies necessary for personal use and remaining calm. Is it advisable to consult with local health authorities and confirm the federal guidelines by the National Health Service regularly.

## SHELTER-AT-HOME MANDATED

All persons located in Mexico, whether residents or visitors, are required to shelter at home, unless providing an essential service, seeking health care, or engaging in life-sustaining activities or activities that support life-sustaining activities. For this reason, the Decree establishes that the portion of the population residing in the Mexican territory

(including people who arrive from abroad) that does not participate in essential work activities must stay at home until April 30, 2020. Until that date, all persons shall remain in their places of residence and shall not be or remain in public places.

This mandate is not a curfew; however, it will be strictly applied to anyone over 60 years of age, anyone in a state of pregnancy or an immediate puerperium, or anyone with a diagnosis of hypertension, diabetes mellitus, chronic heart or lung disease, immunosuppression (acquired or provoked), or kidney or liver insufficiency, regardless of whether his or her work is considered essential.

## ENDING DATE

Once the Effective Period of the measures established in the Decree has ended, the Ministry of Health, in coordination with the Ministry of Economy and the Ministry of Labor and Social Security, will issue the guidelines for a return, ordered, staggered and regionalized to the labor, economic and social activities of the entire population in Mexico.

## SURVEILLANCE AND ENFORCEMENT

Article 4 of the Mexican Constitution establishes health as a human right and provides the basis for the government to enact provisions regarding, among other things, health services and medical attention. Therefore, the Mexican government must guarantee such fundamental rights to all its citizens, primarily by providing access to public health services, such as public hospitals.

The main law regulating these matters is the General Health Law and its implementing regulations, which establish health services as a matter of public policy and interest subject to sanitary control.

The authorities in charge of health- and medical-related services include the President of Mexico, the

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General Health Board, the Ministry of Health and state governments, among others.

Therefore, even though the Decree is silent on who will enforce it, the Ministry of Health has such capacity. The Ministry of Labor and Social Security also has some authority to do so under its workplace safety and health programs.

Additionally, most states have adopted similar local decrees by which they have assumed authority to enforce the suspension of activities other than the ones considered essential. These include Mexico City and the State of Mexico.

Further measures may be taken by the federal government on this regard, depending on the level of the emergency.

## ADMINISTRATIVE AND JUDICIAL REMEDIES

Any party affected by an unfavorable decision issued by the competent health authorities may, as a general rule:

- a) File a reconsideration remedy, also known as an administrative appeal. This remedy should be filed before the same authority that issued the challenged resolution.
- b) File a nullity trial before the Federal Court for Administrative Law.
- c) File an *amparo* trial before a Federal District Court or before a Federal Collegiate Court. If the Mexican Supreme Court considers that a case is highly relevant for the country and involves constitutional matters, it can attract the *amparo* trial.

These three alternatives present specific challenges and requirements, and their filing will significantly depend on the nature of the resolution, imposition of fines and penalties, and particular issues of the resolution in question.

## DISCLAIMERS

This guidance is not intended to be a legal opinion but, rather, discusses and analyzes some of the measures taken by the Mexican federal government regarding COVID-19.

The discussions set forth above are subject to change and qualifications by reason of change of law, facts and circumstances, lapse of time, and other similar matters. The firm has not undertaken an obligation to update this guide for changes in facts, circumstances, laws or otherwise.

# South America

**Last Updated:** March 30

## Brazil

The World Health Organization declared COVID-19 a Public Health Emergency of International Importance on January 30, 2020. The Brazilian government, in Act No. 188/GM/ MS, declared the outbreak a Public Health Emergency of National Importance on February 4, 2020 and, in Law 13,979/2020, established measures to deal with the emergency. On March 12, 2020, the Brazilian government published Act No. 356/2020, which provides for the regulation and implementation of measures to deal with the COVID-19 coronavirus as a public health emergency.

On February 26, the first COVID-19 case was confirmed in the City of São Paulo. Since then, the propagation of the disease has been increasing quickly. On March 20, there were already 977 confirmed cases in Brazil and 11 confirmed deaths. Bearing in mind this crisis scenario, the Brazilian Congress approved the decree that established the "Public Calamity State" in Brazil.

After that, the President enacted Decree No. 10,282/2020 ("Decree") and the Provisional Measure No. 926/2020 ("Provisional Measure") establishing several rules that complement Law No. 13.979, which established a series of procedures, such as quarantines and social distancing, in order to fight the spread of coronavirus in Brazil.

The Decree establishes that the essential activities are the ones that are indispensable to meet society's most urgent needs. That is to say that the nonperformance of the referred activities may endanger the population's health and safety. The transportation of essential goods to the production chain and to the performance of the essential activities are also considered to be indispensable.

In addition to that, the Provisional Measure establishes that all of the transportation or transit

restrictions shall be based on a technical recommendation issued by the Brazilian National Agency on Sanitary Surveillance ("Anvisa") to be valid.

However, it is important to point out that each state and/or municipality, even before the enacting of the Decree, adopted a series of restrictive measures. Some of the restrictive measures established by Brazil's state/municipal governments include:

- São Paulo (state): In the State of São Paulo, on March 21, Governor João Dória enacted a decree establishing a 15-day mandatory quarantine starting on March 24 and determining the closure of all establishments that provide non-essential services until April 7, 2020. The Governor understands essential services as being only the ones related to food supplies (supermarkets and grocery stores), health care (hospitals, clinics and pharmacies) and provisions (transport companies, storage and gas stations). The Governor based the decree on the fact that São Paulo already had 396 confirmed cases of infection by COVID-19 and 9 deaths caused by the virus.
- Rio de Janeiro (state): Governor Wilson Witzel established a series of significantly restrictive measures, such as:
  - Prohibition of intercity passenger transport that connects the Metropolitan Region to the capital (Rio de Janeiro), except for trains and ferries; restrictions are foreseen for providing essential services, such as health;
  - Prohibition of circulation of transportation apps' cars (i.e., Uber) between the capital and other municipalities;
  - Prohibition of interstate passenger transports originating in the following states: São Paulo, Minas Gerais, Espírito Santo and Bahia, in addition to the Federal District and other states in which the circulation of the virus is confirmed or an emergency situation is

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decreed (the National Land Transport Agency needs to ratify the determination);

- Prohibition of international or national passenger flights originating in states with confirmed virus circulation or with an enacted emergency situation. This measure does not apply to cargo operations, and the National Civil Aviation Agency needs to ratify it. Repatriated passengers will have special escort; and
- Prohibition of the berthing of cruise ships originating in states and countries with confirmed circulation of the coronavirus or an emergency situation is decreed. The National Waterway Transport Agency (Antaq) needs to ratify.

In addition to the restrictions above, the following is prohibited for the next 15 days:

- Operation of gyms, fitness centers and similar establishments;
- Operation of malls and shopping centers. Exceptions include supermarkets, pharmacies and health care services, such as hospitals, clinics, laboratories and similar establishments;
- Access to public beaches, lagoons, rivers and public swimming pools;
- Operation of bars, restaurants, cafeterias and similar establishments. This measure does not apply to establishments based inside hotels, inns and similar institutions, which should work only for guests and employees, as a way of ensuring quarantine (it was not clear whether the home delivery is permitted).
- Brasília (Federal District): Governor Ibaneis Rocha established that most establishments must be closed, such as churches, bank agencies, night clubs, shopping centers, gyms and parks until April 5. Schools and universities also suspended their activities.

In addition to the measures referred to above, several other states and cities in Brazil (Santa Catarina, Bahia, Espírito Santo, Minas Gerais and others) also established restrictive measures in order to fight against the global spread of the virus.

Furthermore, in order to minimize the impacts generated by the COVID-19 pandemic on public health and the economy, the federal government has announced several measures, among which are:

Actions for vulnerable people:

- Anticipation of the first installment of the 13th of retirees and pensioners for April (R \$23 billion);
- Anticipation of the second installment of the 13th of retirees and pensioners for May (R \$23 billion);
- The amounts not withdrawn from PIS / PASEP will be transferred to FGTS to allow new withdrawals (up to R \$21.5 billion);
- Anticipation of the Salary Allowance for June (R \$12.8 billion);
- Reinforcement of the Bolsa Família program: allocation of resources to enable the expansion of the number of beneficiaries - inclusion of more than 1 million people (up to R \$3.1 billion);
- Reduction of the payroll interest ceiling, increase in the margin and payment term;
- 150 billion to stimulate the economy;
- Money voucher for the most needed (income supplementation).

Maintenance of employment:

- Deferral of the FGTS payment term for 3 months (R \$30 billion);
- Deferral by the Union in the Simples Nacional for 3 months (R \$22.2 billion);
- More R \$5 billion in PROGER / FAT credit for Micro and Small Companies;

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- 50 percent reduction in contributions from Sistema S for 3 months (R \$2.2 billion);
- Simplification of the requirements for contracting credit and dispensing with documentation (CND) for credit renegotiation;
- Facilitate the clearance of imported industrial raw materials and inputs before landing;
- Delay in the payment of the Service Guarantee Fund (FGTS) and Simples Nacional for three months, to reinforce the companies' cash;
- Release of R \$24 billion for personal credit lines (in order to help self-employed workers) and R \$48 billion for companies;
- Aid to civil aviation;
- SELIC cut to 3.5 percent; and
- Interest reduction and authorization to pause debt payments by Caixa Econômica Federal.

## Fighting the pandemic:

- Destination of the DPVAT fund balance to SUS (R \$4.5 billion);
- Reduction of import tax rates for products for medical and hospital use to 0 (until the end of the year);
- Temporary exemption from IPI for listed imported goods that are necessary to combat COVID-19;
- Temporary exemption from IPI for domestically produced goods listed that are necessary to combat COVID-19;

- Suspend the proof of life of the INSS beneficiaries for 120 days;
- Tariff preference for products for medical and hospital use;
- Prioritize customs clearance of products for medical and hospital use; and
- Exemption from medical products, that is, products that will not pay taxes.
- Closing borders.

Several other measures are being discussed by public authorities, and many will have an impact on economic and labor relations. Among these measures are: (i) express permission by law for unilateral change by the company in working hours; (ii) reactivation of the unemployment insurance program; (iii) permission to compensate for unworked days during the vacation period; (iv) non-application of fines by labor inspection authorities due to the crisis; (v) suspension of administrative records during the crisis; (vi) extending the term for carrying out occupational examinations; and (vii) excluding the coronavirus as a work-related disease; etc. These and other measures are pending negotiations, analysis and approval.



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