

Are You an “Essential Business” in Wisconsin Under the Safer At Home Order?

Article

March 24, 2020

The State of Wisconsin has joined several other states in shutting down all nonessential businesses with its newly issued Safer At Home Order, which is effective at 8:00 a.m on Wednesday, March 25, 2020, and will remain in effect until 8:00 a.m on Friday, April 24, 2020, or until a superseding order is issued.

Governor Evers and Secretary Andrea Palm define essential services in Emergency Order #12. This order is intended to protect the State of Wisconsin, including its residents, businesses, community organizations, and government to reduce further spread of COVID-19 and save lives.

As expected, **health care** and **public health operations** are deemed **essential**, and exempt from the Order, including medical facilities, pharmacies, and those manufacturers developing any personal protective equipment (PPE) and other health related services.

“Human Service Operations” (e.g., long-term care and assisted living facilities, shelters, vocational services, rehab facilities, etc.), “Essential Governmental Functions” (e.g., law enforcement, EMS, firefighters, building inspectors, court personnel, child protection, and child welfare personnel, etc.), and “Essential Infrastructure” (e.g., food production, distribution, storage facilities, construction, building management and maintenance[1], utilities, etc.) are also exempt from this order. Essential governmental functions include all services provided by the State, tribal, or local governments needed to ensure the continuing operation of the government body and support the health, safety, and welfare of the public. Each local municipality must determine its essential governmental functions and identify the key employees and contractors necessary to perform these functions. Businesses are advised to check with their local counsel or the municipalities in which they operate to determine if any services essential to their operations are being suspended. The D|K legal team expects that construction projects and supportive industry services will be considered essential businesses, and that the required local government plan reviews, permitting and inspections will resume after the municipalities can implement remote working or limited office services protocols.

PROFESSIONALS

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RELATED SERVICES

Corporate & Securities
Labor & Employment

In Wisconsin, there are 26 types of essential businesses (provided they abide by Social Distancing Requirements and CDC recommendations, where appropriate). Most are related to health care, food, or providing public services. The primary list of “essential” businesses include:

- **Bars.** Breweries, brewpubs, wineries, distilleries, and alcohol beverage retailers shall close except for carryout sales of alcohol beverages and food if permitted by local municipal ordinance. Customers may enter the establishment only for ordering, picking up and paying for the order.
- **CISA List.** Any business or worker identified in the U.S Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA).
- **Childcare settings.** Childcare facilities providing services that enable essential employees to work as permitted, following the Tier 1 and Tier 2 priorities.
- **Critical labor union functions.** Essential activities include the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Business and Operations, provided the checks are done by telephone or remotely where possible.
- **Critical Trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintain the safety, sanitation, and essential operation of residences, Essential Activities, Essential Government Functions, and Essential Businesses and Operations.
- **Financial Institutions.** Banks, credit unions, and other depository or lending institutions; licensed financial service providers; insurance services; personnel necessary to perform essential functions at broker dealers and investment advisor offices.
- **Food, beverage, and agriculture.** Food and beverage manufacturing, production, processing, transportation, and cultivation; farming, livestock, fishing, baking and other production agriculture, including cultivation, marketing, production and distribution of animals and goods for consumption; businesses that provide food, shelter, and other necessities for animals, including animal shelters, boarding, rescues, kennels, and adoption facilities; farm and agriculture equipment, supplies, and repair services.
- **Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services, except that any gathering shall include fewer than 10 people in a room or confined space at a time and individuals shall adhere to Social Distancing Requirements as much as possible.
- **Gas stations and businesses needed for transportation.** Gas stations; auto and motorcycle supply, repair and sales, boat supply, repair and sales, and bicycle supply, repair, and sales.
- **Hardware and supply stores.** Hardware stores and businesses that sell electrical, plumbing, heating and construction material.

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- **Higher Education Institutions.** Higher educational institutions, for purposes of facilitating distance learning, performing critical research, or performing essential functions as determined by the institution.
- **Home-based care and services.** Home-based care for seniors, adults, children, and/or people with disabilities, substance use disorders, and/or mental illness, including caregivers or nannies who may travel to the child's home to provide care, and other in-home services including meal delivery.
- **Hotels and motels.** Hotels and motels, except that such establishments shall:
 - Comply with the requirements stated in the Order.
 - Close swimming pools, hot tubs, and exercise facilities.
 - Prohibit guests from congregating in lobbies or other common areas, including providing adequate space to adhere to Social Distancing Requirements while quieting for front desk services.
- **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers.
- **Mail, post, shipping, logistics, delivery, and pick-up services.** Businesses providing mailing and shipping services, including post office boxes.
- **Manufacturers, 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 industries such as pharmaceutical, technology, biotechnology, health care, 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, and products used by other Essential Governmental Functions and Essential Businesses and Operations.
- **Media.** Newspapers, television, radio, and other media services.
- **Organizations that provide charitable and social services.** Businesses that provide food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals.
- **Professional services.** Professional services, such as legal or accounting services, insurance services, real estate services (including appraisal, home inspection, and title services). These services shall, to the greatest extent possible, use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work (e.g., work from home).
- **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so if the food is provided to students or members of the public for pick-up and takeaway 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.

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- **Stores that sell groceries and medicines.** Grocery stores, bakeries, pharmacies, farm and produce stands, supermarkets, food banks and food pantries, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supply, fresh meats, fish, poultry, prepared food, alcoholic and non-alcoholic beverages, and any other household consumer products (such as cleaning and personal care products).
- **Supplies for Essential Businesses and Operations.** Businesses that supply other essential businesses with the support or supplies necessary to operate.
- **Supplies to work from home.** Businesses that sell, manufacture, or supply products needed for people to work from home.
- **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 essential activities and other purposes expressly authorized.
- **WEDC designated businesses.** Businesses not listed may apply to the WEDC (see below).
- **Weddings, funerals, and religious entities.** Religious facilities, entities, groups, and gatherings, and weddings and funerals, except that any gathering shall include fewer than 10 people in a room or confined space at a time and individuals shall adhere to Social Distancing Requirements as much as possible.

Minimum Basic Operations

All nonessential businesses can remain open as long as employees are only performing "minimum basic operations" such as maintaining the value of business inventory, preserving the condition of the business's physical plant and equipment, ensuring security, processing payroll and employee benefits, and facilitating telework for employees to work from home.

Travel

While the stay in place order restricts all travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, ***the travel restriction does not apply to travel related to the provision of or access to essential activities, essential businesses, or minimum basic operations.***

Travel includes travel for any of the following purposes.

- Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.
- Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
- Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, or any other related services.

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- Travel to return to a place of residence from outside the jurisdiction.
- Travel required by law enforcement or court order.
- Travel required for non-residents to return to their place of residence outside Wisconsin. Individuals are strongly encouraged to verify that their transportation out of the state remains available and functional prior to commencing such travel.

Any business operating in Wisconsin must review the terms of the stay in place order to determine if it may remain open and operational, determine whether its employees or contractors are permitted to leave their residences to go to work and implement policies to minimize gatherings and maintain statewide social distancing guidelines. If a business is not listed in the order but believes that it should be included in the list, the business may apply to the Wisconsin Economic Development Corporation (WEDC).

It is also important to note that Mayor Barrett issued a Stay at Home requirement pursuant to Wis. Stat. 252.03 for the City of Milwaukee on March 23, 2020. This order tracks the Wisconsin order.

Last, this order is enforceable by any local law enforcement official and any violations or obstruction of this order is punishable by up to 30 days imprisonment or up to a \$250 fine, or both.

[1] Landlords and property managers are advised to check local orders. For example, the City of Milwaukee has ordered that "a landlord or rental property manager shall not enter a leased residential rental premises unless a maintenance emergency exists." See our article Stay-At-Home and Safer At Home Orders Impose Restrictions on Residential Landlords and Rental Property Managers addressing this matter.

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