

Businesses Must Be Aware of Local Safer At Home Orders, Including Those in Brown, Dane, Kenosha, and Rock Counties, Parts of Milwaukee County, and the Cities of Appleton, Madison, Milwaukee, and Racine

Article

May 14, 2020

May 15, 2020, 4:00 PM Update

This article was originally published the morning of May 14, 2020, and was accurate as of the time of publishing. Since publication, a number of additional counties and local governments have implemented Safer At Home Orders. Additionally, a number of counties have rescinded or withdrawn their Safer At Home Orders (e.g., Kenosha and Brown). Given the pace of these evolving orders and withdrawals, businesses are encouraged to review the most recent orders from their respective localities or to contact an attorney to determine what orders may be governing their business as of late.

May 14, 2020, 8:00 AM Update

On May 13, 2020, the Wisconsin Supreme Court declared Emergency Order #28 was invalid and unenforceable. Emergency Order #28 is the second Safer At Home Order issued by Department of Health Services Andrea Palm pursuant to Governor Evers' request. The Supreme Court issued no stay or phase out in implementing its decision. Therefore, as of the time the Supreme Court's decision was issued, Emergency Order #28, and all of the restrictions contained within it, were no longer enforceable. Businesses that had been closed, such as restaurants and bars, could immediately open up to customers.

However, despite the removal of the statewide Safer At Home Order, businesses may still be subject to a local government's Safer At Home Order. In fact, many local governments began issuing their own Safer At Home Orders as a result of the Wisconsin Supreme Court decision.

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In Brown County, the County Health Officer, Anna Destree, issued a county-wide order implementing the restrictions set forth in the Secretary Palm's statewide Emergency Orders #28 (second Safer At Home Order), 34, and 36 (orders relaxing the restriction imposed in #28). These restrictions were effective immediately and remain in place until Wednesday, May 20, 2020. Violations of the Brown County Order are subject to a \$500 fine.

Rock and Kenosha Counties issued similar orders to Brown County, which adopted the provisions of Emergency Orders #28, 34, & 36. Rock and Kenosha Counties' Orders were effective immediately and will remain in effect until May 26, 2020. Violations are punishable by fines.

Likewise, the Public Health Officers of the City of Madison and Dane County jointly issued a similar Safer At Home Order. This Order adopts provisions of Emergency Order #28, 34 and 36, but declares "religious entities" to be essential businesses. Violations of the Joint City of Madison and Dane County Order are subject to a \$500 fine.

The City of Racine also adopted a Safer At Home Order similar to the Dane County and City of Madison's Order. The Racine Order likewise adopted provisions of Emergency Orders #28, 34, and 36, and declared "religious entities" to be essential businesses. Racine's Order is effective immediately and will remain in place until May 26, 2020—the date Emergency Order #26 was set to expire. Similarly, violations of the Racine Order are violations of the Racine Municipal Code of Ordinances and subject to fines.

The City of Milwaukee issued its own Safer At Home Order on March 25—the day the first statewide Safer At Home Order was implemented. The Milwaukee Order gave no end date. Rather, it declared that it would remain in effect until rescinded, extended, superseded, or amended by the Milwaukee Health Commissioner. As such, the Milwaukee Order remains in effect. The Milwaukee Order is substantively similar to the first statewide Safer At Home Order (Emergency Order #12). Violations of the Milwaukee Order is subject to a \$500 fine.

Not only is the City of Milwaukee's Safer At Home Order still in effect, many of the municipalities in Milwaukee County have issued their own Safer At Home Order. The following Suburban Milwaukee County Municipalities all signed onto this Order: Cudahy, Franklin, Greendale, Greenfield, Hales Corners, North Shore, Oak Creek, South Milwaukee/St. Francis, Wauwatosa, and West Allis. Unlike Brown, Dane, and Milwaukee Counties' Orders, which adopt the provisions of the orders by reference, the Suburban Milwaukee County Order mimics the language and provisions of Emergency Orders #28, 34, and 36, and appears to be substantively identical to them. The Suburban Milwaukee Order is effectively immediately and will remain in effect through May 21, 2020. Violations of the Order may face a fine or other punishment as defined by the local ordinances.

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Similarly, the City of Appleton issued a Safer At Home Order, which uses much of the language from Emergency Orders #28, 34, and 36, and appears to be substantively similar to them and to the Governor's Badger Bounce Back plan. Appleton's Order is effective as of 8:00 a.m. on May 14, 2020, and will remain in effect until May 20, 2020. Like the other orders, a violation may be subject to fine. Appleton's Order also states that a violation may be punishable by up to 30 days' imprisonment.

Therefore, in determining, if and how, a business may be reopened, consideration must be paid not only to the Supreme Court decision striking down the statewide order, but also to whether the local government has enacted its own Safer At Home Order. We have included the localities that implemented such an order within hours of the Supreme Court decision. Over the next few days, additional local governments may choose to implement similar local orders. As such, businesses must be proactive about researching whether the relevant local government has issued an order.

Some statewide businesses or businesses with more than one physical location face competing local Safer At Home Orders. Likewise, some businesses may have one location that is under a local Safer At Home Order and one that is not. There are steps that a business can take to resolve these disputes:

Stay Updated: Be aware of all Safer At Home Orders that may currently be applicable to your business location. This includes checking county, city, village, and township orders that may be issued for each and every business location. A business may be under both a county and city order. Moreover, several local governments indicated on May 13, 2020, that they would be meeting on May 14th to determine whether a local Safer At Home Order is necessary. Therefore, we expect additional local government orders to be issued on May 14th and possibly May 15th.

Apply Specific Location's Order: For businesses with plants, offices, factories, or other operations in multiple locations, the business should apply the local order for each business location. For example, if a business owns a store in Brown County and Milwaukee County, the business should treat each location separately and apply the specific orders to each location. Additionally, if the business has a third location in Winnebago County, which has not issued its own Safer At Home Order, the business would not have any restrictions at that location.

Follow the Narrower Definition: If a business location is subject to two orders with differing definitions (and the orders do not indicate which order is superior), apply the narrower definition. By applying the narrower definition of "essential business or operation," you will act in accordance with both orders. For example, if the City Order states that Business X is an "essential business," but the County Order does not declare Business X an "essential business" (thus, it is presumed "non-essential"), Business X should follow the City's Order, and close the business

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or work remotely. Because the City Order is narrower than the County Order, it is not “in conflict” with the County Order, thus Business X must comply with both.

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