

# Can I go to Jail if My Business Violates a Stay-at-Home Order?

## Labor & Employment Law Update

on May 18, 2020

How cities, counties and states are actively enforcing their COVID-19 orders is all over the map, but criminal and/or civil penalties are on the books in some areas. For example, last Friday, May 15, the Illinois Governor directed the Illinois Department of Public Health (IDPH) to add an emergency rule called "Pandemic or Epidemic Respiratory Disease – Emergency Provisions." The emergency rule authorizes IDPH to *"take means it considers necessary to restrict and suppress dangerously contagious or infectious diseases, especially when existing in epidemic form."* This specifically includes the power to seek penalties pursuant to Section 8.1 of the Illinois Public Health Act, including seeking convictions of Class A misdemeanors that can result in up to 364 days in jail time and/or fines of up to \$2,500.

The IDPH rule specifically restricts and greatly limits the following businesses:

1. Restaurant and other food serving establishments (except those located in airports and hospitals);
2. Fitness health clubs and non-medical wellness establishments; and
3. Barbershops, hair and nail salons, and other establishments that provide non-medical personal care services.

Other states have taken a variety of similar approaches. For instance, in Indiana, businesses that violate state and local orders will receive a verbal warning first, a cease and desist letter second, a removal of their license or permit, and then finally, criminal charges, namely a Class B Misdemeanor resulting in a \$1,000 fine and up to 180 days in jail. A violation of Michigan's stay-at-home order can result in a civil penalty of up to \$1,000, as well as criminal fines and up to 90 days of jail time. In Ohio, a violation can lead to a second-degree misdemeanor, a \$750 fine and up to 90 days in jail. While Wisconsin's state-wide order has been struck down by the Wisconsin Supreme Court, local orders are still in effect in some cities and counties. In some localities, a violation may result in 30 days in jail time and a \$500 fine pursuant to the Wisconsin statute on Communicable Diseases. Missouri's state-wide order ended on May 4<sup>th</sup>, but some local cities and counties have extended its application to accommodate a phased reopening. Pursuant to Missouri Revised Statutes, a violation of law or quarantine is a Class A misdemeanor punishable by 1-year in prison and a \$2,000 fine. Restaurants in

Pennsylvania face suspension of their retail licenses and fines up to \$10,000 per day. Pursuant to Maryland's amended order on May 6<sup>th</sup>, violations can result in \$5,000 fines and jail for up to 1-year. Finally, in Texas, the initial COVID-19 order provided for fines up to \$1,000 and 180 days in jail or both. However, in light of inconsistent and "overzealous" enforcement by some local agencies, particularly the arrest of a Dallas hair salon owner, Governor Greg Abbott announced he would ban cities from arresting individuals and would retroactively nullify any prosecutions.

Whether hard line enforcement will occur remains to be seen. In the interim, legal battle lines are being drawn. Any business that is not 100% certain of its rights and responsibilities in operating during the current crisis should consult with experienced legal counsel. The stakes are just too high.

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