

Wisconsin Strikes Down Stay-at-Home Order: Non-essential Businesses Prepare to Reopen

Labor & Employment Law Update

By Peter Hansen on May 14, 2020

The Wisconsin Supreme Court struck down Emergency Order 28, the Safer at Home Order, for failing to follow emergency rulemaking procedures in a lengthy 161-page opinion – effective immediately. So, what does this mean for Wisconsin employers?

Local Orders Still Apply

Local officials may enact their own stay-at-home orders – and indeed, some already have. Dane and Kenosha counties each issued orders adopting the majority of Emergency Order 28's provisions, effective immediately and continuing to May 26, 2020. Brown County issued a similar order in effect until May 20, 2020, the City of Racine issued an order in effect until May 26, 2020, and Milwaukee's Mayor has taken the position that the city's prior stay-at-home order is still in place.

More local orders will follow, so any employer planning on reopening or changing their practices as a result of the Wisconsin Supreme Court's decision must verify that they are not violating any local order.

Preparing the Workplace

Non-essential businesses preparing to reopen can take a number of steps recommended by the Wisconsin Department of Health Services to prevent and reduce COVID-19 transmission among their workforce, including:

- Whenever possible, maintain a distance of at least 6 feet from others
- Require employees who have symptoms of respiratory illness to stay home and do not come to work until they are free of fever ($>100.4^{\circ}\text{F}$) AND/OR respiratory symptoms (for example, cough, shortness of breath) for at least three days (72 hours) without the use of fever-reducing medicine AND ten days have passed since symptoms first appeared
- Provide tissues and no-touch disposal receptacles for use by employees and customers

- Encourage employees to wash their hands often with soap and water for at least 20 seconds or to use hand sanitizer with at least 60% alcohol if soap and water are not available
- Routinely clean and disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, and doorknobs
- Advise employees to avoid touching their eyes, nose, and mouth with unwashed hands

Employers should also consider implementing the Centers for Disease Control and Prevention's guidance for responding to COVID-19, including:

- Conducting daily health checks
- Conducting a hazard assessment of the workplace
- Encouraging employees to wear cloth face coverings in the workplace, if appropriate
- Implementing policies and practices for social distancing in the workplace
- Improving the building ventilation system

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