

OHIO DEPARTMENT OF HEALTH ISSUES STAY-AT-HOME ORDER, EFFECTIVE 11:59 P.M. ON MARCH 23, 2020. SO WHAT DOES THAT MEAN?

MARCH 22, 2020

As announced by Governor Mike DeWine on March 22, the Ohio Department of Health issued a public health order directing all Ohio residents to stay home, “unless engaged in essential work or activity.” Noting that Ohio is effectively “at war” against an unseen “invader,” the governor stressed that the order would enable the state to slow the spread of disease and buy time for our medical service providers to treat existing cases.

Ohio joins several other states with stay-home or essential-business-only orders, including California, New York, Pennsylvania, Connecticut, Oregon, New Jersey, and Louisiana). The **stay-home order goes into effect at 11:59 p.m. on Monday, March 23, 2020**. Though the governor stated that it aligns with previous suggested restrictions, it is “no longer a suggestion,” and the order will be enforceable by local law enforcement.

The stay-home order, which incorporates the U.S. Department of Homeland Security’s (DHS) guidance on “essential” businesses, is available [here](#). It is important to review the order, as it does vary from other states, as well as the federal guidance, in some respects. **In general, the stay-home order provides that (1) residents of Ohio must stay at home, except as allowed in the order; (2) non-essential businesses must cease operations except for telework/work-from-home activity and Minimum Basic Operations, as defined in the order; and (3) essential businesses can remain open but must follow CDC guidelines on safety of employees and social distancing.**

How long does the order last? The order is in place until April 6, or until further notice.

For what reasons can consumers leave their homes? The order identifies five categories of “essential activities” for which residents may leave their homes:

- Health and safety (e.g., emergency services, medical supplies, visiting healthcare professional)
- Necessary supplies and services (e.g., groceries; household consumer products; automobile supplies, repair, and service; work-from-home supplies)
- Outdoor activity (e.g., walks, biking, running, hiking, visiting public parks, so long as people observe social distancing guidance and avoid gatherings of people)
- Certain types of work deemed “essential”
- Taking care of others (e.g., family members, neighbors, friends, pets; transporting self or others to medical care; attending weddings and funerals)

Elderly and other high-risk individuals are encouraged to limit travel outside the home to necessary healthcare.

How are businesses impacted? Importantly, the stay-home order permits **all business to continue telework or work-from-home operations**. It provides that “non-essential business and operations must cease,” except for “**Minimum Basic Operations**,” which include:

- a. the minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or related functions, and
- b. the minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

What businesses are considered essential? The order defines “essential businesses and operations” to include Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, Essential Infrastructure, as well as those mentioned in the DHS guidance and other exceptions. There are a wide range of businesses and services that are listed as essential, examples of which are below.

- Grocery stores, farmers markets, food banks, convenience stores
- Other food and beverage production, distribution, fulfillment centers, and storage facilities
- Manufacturers and supply chain for critical products and industries (pharmaceutical, technology, biotech, healthcare, chemical and sanitization, fuel, mining, national defense)
- Restaurants (delivery or carryout food service)
- Hardware stores, supply stores for electrical, plumbing, and heating material, HVAC, plumbers
- Gas stations
- Pharmacies
- Laundromats/laundry services
- Hotels and motels (lodging, delivery or carryout food service)
- Banks and financial institutions
- Legal services
- Funeral services
- Shipping services
- Long-term care facilities
- Insurance
- News media
- Religious entities
- Construction
- Building management and maintenance
- Airport operations, railways, roads, public transit
- Internet, video, and telecommunications systems
- Utilities operations and maintenance (including water, sewer, gas)
- Public works (trash, recycling)
- Essential state and local government offices and services, including law enforcement

For a summary of the DHS guidance, upon which Ohio's order relies for the definition of “essential” businesses, see the Tucker Ellis [Client Alert](#) issued March 21 2020. Essentially there are 16 critical infrastructure industries that provide resources, networks, and systems deemed essential to U.S. welfare and security. Paragraph 12(a) of Ohio's order incorporates and expands on this guidance in its definition of “essential businesses and operations.”

If you are an essential business and plan to stay open, what should you do? You should document the reasons why you are staying open internally and externally. In order to avoid confusion among employees and vendors, it is also important to communicate to them that you plan to stay open and the reasons why. If you need assistance in preparing such communication, please contact one of our attorneys.

In addition, you could also provide your employees with a sign that can be printed and placed in their vehicle, indicating that they are an essential worker. It should state “ESSENTIAL WORKER” in bold and large font, list your company name, address, contact person, and can copy the below excerpt from the CISA Memorandum.

**MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL
INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE**

FROM: Christopher C. Krebs
Director
Cybersecurity and Infrastructure Security Agency (CISA)



As the Nation comes together to slow the spread of COVID-19, on March 16th, the President issued updated Coronavirus Guidance for America. This guidance states that:

“If you work in a critical infrastructure industry, as defined by the Department of Homeland Security, such as healthcare services and pharmaceutical and food supply, you have a special responsibility to maintain your normal work schedule.”

Most importantly, ensure you have a documented policy to comply with the social distancing mandates of the CDC. Make sure hand sanitizer and other sanitizing products are readily available to employees and customers. Implement separate operating hours for vulnerable populations, including elderly employees and customers. Remind employees to maintain a safe distance from each other (minimum of 6 feet), wash hands frequently (minimum 20 seconds, with soap), and wipe down work surfaces as often as possible. And if they are sick, have been around someone who is sick, or been exposed to someone who is at risk of getting COVID-19, instruct employees to stay home from work. For employees whose jobs can be performed from home, require them to work remotely. The order also requires, where possible, that you post online whether a facility is open and how best to reach the facility and continue services by phone and/or remotely.

If you are unsure of whether you are an essential business or support an essential business, what should you do? Since there is no one-size-fits-all approach, it is important to consult counsel as you weigh your options. Our attorneys are available to help you analyze whether you are deemed an essential business. A case-by-case analysis will need to be performed under continually evolving circumstances and guidance.

If you are a non-essential business, what should you do? You should attempt to contact all employees prior to the order going into effect via email, text message, or telephone. For some businesses, this will mean the business will continue working from home or transition to having all employees work from home. But for some businesses, that is not an option, and this order will impact the ability to continue business. If that is the case, we encourage you to speak with counsel in short order to discuss the many implications of this order, including unemployment benefits, issues with existing contracts, supplier issues, etc.

The world for businesses is changing daily. If you need any help navigating the ever-changing landscape, please feel free to give us a call. Tucker Ellis lawyers are staying up to date on the latest changes. Or visit our [website](#), where several resources are posted to assist you.

ADDITIONAL INFORMATION

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