

Governor Evers' Safer-at-Home Order

March 24, 2020

Today, March 24, 2020, Governor Evers' issued a Safer-at-Home Order in an attempt to "flatten the curve" of COVID-19 in the State of Wisconsin. The Order goes into effect starting Wednesday, March 25, 2020 at 8:00 a.m. and remains in effect until April 24, 2020, or until a superseding order is issued. This Order has several implications for public and private organizations and their employees. Particularly, the Order requires all individuals present within the State of Wisconsin to stay at home or at their place of residence unless engaging in any of the following:

- Performance of Essential Activities;
- Performance of Essential Government Functions; and
- To Operate Essential Businesses and Operations.

Performance of Essential Activities:

Individuals may leave their home or residence to perform any of the following:

- a) Health and safety – obtaining medical supplies and/or treatment for household members, including pets;
- b) Necessary supplies and services – obtaining necessary supplies such as food, pet supplies, fuel, and other household consumer products;
- c) Outdoor activity – such as going on walk, running, bike riding, and other activities that do not involve groups or visits to playgrounds;
- d) Take care of others who are not part of the household, but need assistance, including pets; and
- e) To perform work at Essential Businesses or Operations or otherwise carry out activities permitted by the Order including Minimum Basic Operations as defined below.

Performance of Essential Government Functions

Essential governmental functions means all services provided by the State, tribal, or local governments needed to:

- Ensure the continuing operation of the government body; and
- Provide and support the health, safety, and welfare of the public.

According to the Order, governmental bodies shall determine their essential government function(s) and identify employees and contractors necessary to perform those functions. Employees such as, but not limited to,

first responders, including law enforcement, EMS, firefighters, emergency management personnel, and others working for or supporting the essential businesses and operations are exempt from the Order.

In furtherance of performing government functions, the Order indicates government bodies should continue to review and follow the Wisconsin Department of Justice's Office of Open Government guidance on holding government meetings. We recently addressed this in a client alert which can be accessed at the following link: <https://buelowvetter.com/board-meetings-under-covid-19/>

Essential Businesses and Operations

Essential businesses and operations means:

- Healthcare and Public Health Operations;
- Human Services Operations;
- Essential Infrastructure; and
- Essential Governmental Functions.

The following are also some of the essential businesses and operations identified in the Order:

1. stores that sell groceries and medicine;
2. food and beverage production, transport, and agriculture;
3. child care;
4. organizations that provide charitable and social services;
5. gas stations and businesses needed for transportation;
6. manufacture, distribution, and supply chain for critical products and industries;
7. hardware and supplies stores;
8. critical trades;
9. businesses that sell, manufacture, or supply products needed for people to work from home and;
10. professional services.

Most important to note is the State of Wisconsin has joined other states whom have chosen to follow the guidance of U.S. Department of Homeland Security & Infrastructure Security Agency (CISA), which has provided guidance on the identification of essential critical infrastructure workers and critical infrastructure sectors. According to the Emergency Order, this list can be used to identify any business or worker which may fall under essential businesses or operations. The guidance was updated on March 23, 2020 and the current Order applies to subsequent versions of the CISA guidance that can be found here:

https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_508C_0.pdf

Non-Essential Businesses and Operations

For-profit and non-profit businesses that are considered "non-essential" are required to cease operations and close beginning at 8:00 a.m. Wednesday, March 25, 2020. However, to be clear, the Order does indicate these particular businesses may sustain minimum basic operations and any operations that may be done at home. According to the Order, minimum basic operations are:

- 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 for related functions; and
- Minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

Businesses that fall under this category will need to determine what those minimum basic operations are and ensure they are not running afoul of the Order.

Some of the implications in the Order remain unchanged. Public and private K-12 schools continue to be closed except as it relates to facilitating distance learning or virtual learning. Bars and restaurants are to be closed but may generally remain open for take-out or delivery services only, provided those services are permitted by state law and local ordinance.

If you believe your business is “essential” and should be included in that designation, you may consult with the Wisconsin Economic Development Corporation (WEDC) to request such a designation. You can apply by visiting www.wedc.org/essentialbusiness.

Recommendations

- Quickly determine whether your business is essential or non-essential;
- Determine the employees needed to perform and help facilitate minimum basic operations;
- Government bodies should immediately identify essential government functions and the individuals necessary to facilitate those functions;
- Continue to adhere to the social distancing requirements in your establishment and at your place of residence;
- Continue to follow the Department of Health Services and CDC guidelines; and
- Consult your legal counsel regarding identification of essential functions or workers or any other questions related to the Order.

Ultimately, careful consideration must be taken to determine whether your business or related functions are exempt from this Order.

If you have any questions or concerns regarding how this Order may affect your business or operations, or if you are unsure which category your business or operations fall under or need assistance in identifying essential functions and workers, please contact Saveon D. Grenell at sgrenell@buelowvetter.com or (262) 364-0313 or Joel S. Aziere at jaziere@buelowvetter.com or (262) 364-0250 or your Buelow Vetter attorney.

This Legal Update is intended to provide information only on general compliance issues and should not be construed as legal advice. Please consult an attorney if you have any questions concerning the information discussed in this Legal Update.

In order to comply with Treasury Circular 230, we are required to inform you that any advice we provide in this Legal Update concerning federal tax issues is not intended or written to be used, and cannot be used, to avoid federal tax penalties or to promote, market, or recommend to another person any tax advice addressed herein.

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