



HOW DOES WISCONSIN'S SAFER-AT-HOME ORDER AFFECT THE BUILDING AND CONSTRUCTION INDUSTRY?

The [Order](#) creates a clear mandate for all residents to stay at home. However, it also creates a number of broad exceptions that apply to builders, contractors, trades, and suppliers.

When is the stay-at-home order effective?

The order took effect at 8:00 a.m. on Wednesday, Mar. 25, 2020.

It runs until 8:00 a.m. on Friday, Apr. 24, 2020 – “or until a superseding order is issued.”

What does “essential business” mean?

Based on the Essential Infrastructure and the Essential Businesses exceptions – building, construction and infrastructure businesses can continue in Wisconsin under the Order – including building trades, like plumbers, electricians, carpenters, and laborers, among others.

Essential Businesses

This exception provides that a person can leave home to perform work providing essential products and services at Essential Businesses or Operations. Essential Businesses include:

(these are summaries – see the [Order](#) for complete descriptions and the [Essential Business Declaration](#) from WEDC):

Critical Trades. Building and Construction Tradesmen and Tradeswomen, and other trades – including but not limited to plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers **who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, and Essential Businesses and Operations.**

Supplies for Essential Businesses & Operations. Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to carry out their operations – including paint; electrical, plumbing, and heating materials; and construction materials and equipment.

Hardware & supply stores. Hardware stores and businesses that sell electrical, plumbing, heating, and construction material.

Critical Labor Union Functions. This includes essential activities such as the administration of health and welfare funds.

Financial & Insurance Institutions. This includes banks, credit unions, & other lending services.

Professional Services. Such as legal or accounting services, insurance services, real estate services (including appraisal, home inspection, and title services). These services shall, to the greatest extent possible, use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work (i.e., work from home).

Essential Governmental Functions. This exception includes governmental employees working for or to support Essential Business and Operations, which would allow municipalities to conduct inspections.

Essential Infrastructure

In addition to the Essential Businesses exception, there is an exception for Essential Infrastructures. This exception will allow people to leave their residence to provide any services or perform any work necessary to offer, provide, operate, maintain and repair Essential Infrastructure. Essential Infrastructure includes the following (see the [Order](#) itself for complete list):

Construction – including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, essential business construction, construction necessary for Essential Government Functions, and housing construction;

Building management and maintenance; and

Roads and highways.

Further, the Order makes clear that “Essential Infrastructure” shall be construed broadly to avoid any impacts to essential infrastructure.

Essential Businesses, including those in the Building and Construction Industries are encouraged to remain open, but still follow the guidelines set by DHS.

In the Order, Governor Evers encourages all Essential Businesses and Operations to remain open. However, all business that are Essential Businesses and Operations shall, to the greatest extent possible, meet Social Distancing Requirements between all individuals on the premises. Essential Businesses and Operations shall, to the greatest extent possible, use technology to avoid meeting in person, including virtual meetings, teleconferences, and remote work from home.

Other recommended safe work practices include: regular body temperature scans for all on-site employees, staggered use of shared spaces, banning of international travel, a requirement that employees immediately report symptoms associated with COVID-19, and a requirement that all employees who were exposed to someone who has tested positive for COVID-19 self-quarantine for a period of 14 days and be symptom-free before returning to work.

When taking any action permitted under this Order, all individuals, organizations, government bodies, and any other permitted group of individuals shall, to the extent possible, follow [DHS guidelines](#). All Essential Businesses and Operations and all businesses performing Minimum Basic Operations shall comply with [DHS guidelines for businesses](#).

What if workers do not feel safe going to work at an Essential Business because they are at a higher risk of contracting a severe case of COVID-19?

It is up to employees and employers to decide how this will be handled. The stay-at-home order states that “elderly people and those who are vulnerable as a result of underlying health conditions should take additional precautions.” However, those precautions are not required.

Can contractors and laborers still travel across the Wisconsin border? Can people from other states still travel to Wisconsin?

Travel across state lines is still allowed, and you do not need a special permit or letter explaining where you are going and why in order to do so. You can drive anywhere you were allowed to drive before this order took effect.

“People will not be pulled over and asked,” said Ryan Nilsestuen, Evers’ chief legal counsel. “The order does not require people to have certifications or to have proof that they’re on essential travel.”

That said, Nilsestuen said he hoped most people would “do their part” and stay at home.

Other Considerations for Building and Construction Industry – OSHA Standards that may apply

There is no specific OSHA standard covering COVID-19. However, some OSHA requirements may apply to preventing occupational exposure to COVID-19. Among the most relevant are:

OSHA’s Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection. When respirators are necessary to protect workers, employers must implement a comprehensive respiratory protection program in accordance with the Respiratory Protection standard (29 CFR 1910.134). OSHA has issued temporary guidance related to enforcement of respirator annual fit-testing requirements for healthcare.

The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970, 29 USC 654(a)(1), which requires employers to furnish to each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.” The General Duty Clause is a catch-all requirement which provides OSHA with enforcement power when no specific safety or health standard applies to a given workplace hazard. However, as it applies to COVID-19, both an OSHA inspection and citation are unlikely absent extraordinary circumstances, such as an employer’s failure to undertake any precautions to protect against workplace exposures followed by a workplace outbreak of COVID-19.

For more information about “How does Wisconsin’s Safer At Home Order Effect The Building and Construction Industry?,” contact McCarty Law attorneys [Kristy A. Christensen](mailto:kchristensen@mccarty-law.com) or [Kayla J. Giese](mailto:kgiese@mccarty-law.com) at kchristensen@mccarty-law.com, kgiese@mccarty-law.com or 920-882-4070.