

# Advice for Operating as an Essential Business During the COVID-19 Crisis

Article

April 10, 2020

On March 24, 2020, in response to the growing COVID-19 crisis, Governor Evers directed the Department of Health Services to issue a Safer At Home Order, which closed all non-essential businesses and eliminated non-essential travel. For now, the Order is scheduled to last until April 24. However, with the uncertainty of the COVID-19 crisis, it may continue in some variation even after April 24. The only thing anyone can know for certain is that the Order and the COVID-19 crisis have radically changed how businesses operate.

As part of the Order, all non-essential businesses must be closed. Businesses are presumed to be non-essential unless they fall into one of the defined “essential business” categories in the Order. Broadly speaking, essential businesses are businesses that sell or offer the following types of goods or services: healthcare and public health; law enforcement, public safety, and other first responders; food and agriculture, including grocery stores and restaurants and bars offering to-go or delivery orders; energy; water and wastewater; transportation and logistics; public works and infrastructure; communications, like media, and information technology; community- or government-based operations; certain child care providers; organizations that provide charitable and social services; gas stations; financial and professional institutions; hardware and supply stores; critical trades, like plumbing and electricians; wedding, funeral, and religious entities; shipping and mail providers; laundry services; businesses that provide supplies to work from home; hotels and motels; critical labor union functions; higher educational institutions; and manufacturing, distribution, and supply chain for critical products and industries and for other essential businesses. These are broad descriptions of the essential business categories. Businesses should consult the Order and additional guidance from the Wisconsin Economic Development Corporation for more specific descriptions.

There are steps that businesses can take to adapt to the COVID-19 crisis and the Order to allow them to maintain operations and continuity during these times. These steps include: being informed about essential business, being adaptable, and preparing for an employee testing positive.

## PROFESSIONALS

Sherry D. Coley  
Partner

Tiffany E. Woelfel  
Associate

## RELATED SERVICES

Litigation

First, businesses need to review the essential business definitions, and determine which definitions apply to your business and operations. A business may meet more than one category of essential business or only parts of a business may meet a category. Recently, more local law enforcement agencies have begun visiting businesses to review whether the business is truly essential. It is important to review your operations, goods, and services, as compared to the defined essential businesses so that you can articulate the grounds for remaining open and being considered essential. The Governor and the Department of Health Services continue to offer additional guidance about these definitions, so businesses must stay informed.

Moreover, if a business does not explicitly fall into one of the essential business categories, it can submit an application to the Wisconsin Economic Development Corporation to be designated as an essential business. Additionally, there are still essential minimum business activities that a business will be allowed to perform.

Second, businesses need to be adaptable. With the legal restrictions imposed by the Order and the physical restrictions that COVID-19 causes, businesses need to be adaptable in all facets of operation. This may mean businesses, offices, or factories may need to be reconfigured to ensure that people remain six-feet apart to maintain social distancing. It may also mean adapting processes so more individuals can work from home.

Additionally, businesses should think creatively in determining whether they can adapt the goods and services they provide to meet certain needs during this time. For example, some wineries and distilleries are converting their alcohol production to provide disinfectant products. Restaurants and bakeries are creating new products to offer families that are at home. Businesses, whose typical goods and services may not be considered essential, may be able to adapt their approach to provide goods that are essential.

Lastly, businesses need to be prepared for employees who may have been exposed to COVID-19. This includes creating a plan for disinfecting the office or business, if exposure occurs. Businesses should also establish a policy for addressing possible exposure, including requiring employees to self-quarantine if exposed. By being prepared for possible exposure you may be able to minimize the effects of exposure. This includes staggering shifts and having key decision-makers staggered across shifts. Therefore, if exposure does occur, a business doesn't lose all of its employees or decision-makers to self-quarantine. Creating a policy before possible exposure occurs will allow you to limit and minimize the effects of exposure.

## Advice for Operating as an Essential Business During the COVID-19 Crisis