

Michigan non-essential businesses forced to close through April 13



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Starting Tuesday, March 24 at 12:01 a.m. all individuals in Michigan will be required to stay in their homes and all non-essential businesses will be required to shut their doors until at least April 13, 2020. On Monday, Michigan Governor Gretchen Whitmer issued [Executive Order No. 2020-21](#), known as the “Stay Home, Stay Safe” executive order (the “Order”). The Order states “Subject to the exceptions in [the Order], all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.” Further, the Order prohibits all businesses and operations from requiring workers to leave their homes, unless those workers are necessary to sustain or protect life or to conduct minimum basic operations. Businesses and operations are to designate the workers that meet those criteria, and must adopt social distancing practices and other mitigation measures to protect workers and patrons in the performance of that necessary in-person work.

WHAT IS THE SCOPE OF THE ORDER?

The Order applies to all individuals and businesses located in the State of Michigan and covers any for-profit, non-profit, or education entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure. Only individuals who are necessary to sustain or protect life, defined as “critical infrastructure workers,” or who are necessary to conduct “minimum basic operations” are

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exempt.

WHAT ACTIVITIES ARE PROHIBITED?

The Order temporarily prohibits all public and private gatherings of any number of people occurring outside a single household, except for the limited purposes permitted by the Order. Section 7 of the Order enumerates exceptions to this stay-at-home directive.

[Executive Order 2020-20](#), issued on March 21st, previously closed all places of “public accommodation” including dine-in restaurants, bars, breweries and wineries offering alcoholic beverages for on-premises consumption, hookah bars, cigar bars and vaping lounges, theaters, cinemas and indoor and outdoor performance venues, libraries and museums, gyms, fitness centers, and all other indoor recreation, exercise and sports facilities, and casinos and racetracks through 11:59 p.m. on April 13, 2020.

DOES MY BUSINESS QUALIFY AS PROVIDING “CRITICAL INFRASTRUCTURE”?

The Order exempts businesses and operations that employ critical infrastructure workers and allows those businesses to continue in-person operations, subject to certain requirements. With certain exceptions, businesses must determine which of their workers are critical infrastructure workers and make such designations in writing, whether by electronic message, public website, or other appropriate means. Such designations, however, may be made orally until March 31, 2020 at 11:59 pm.

The Order defines critical infrastructure employees and businesses as follows:

1. **CISA List.** All businesses and workers identified in the U.S. Department of Homeland Security, Cybersecurity & Infrastructures Agency’s [Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response](#).
2. **Child Care Workers.** Includes only child care centers and individuals serving the children or dependents of critical infrastructure workers.
3. **Designated Suppliers and Distribution Centers.** These businesses must meet the criteria set forth in the Order:
 1. Businesses whose continued operating is necessary to enable, support, or facilitate the work of its critical infrastructure employees
 2. Such suppliers, distribution centers, or service providers may designate employees as critical infrastructure workers, only as necessary to support the work of the original operation’s or business’s critical infrastructure workers.
 3. Designated suppliers, distribution centers, and service provides may, in turn, designate *additional* suppliers, distributors, and service providers whose continued operation is necessary to support such business’s critical infrastructure employees.
 4. Such additional suppliers, distribution centers, and service providers may designate employees as critical infrastructure workers only to the extent that those workers are necessary to enable, support, or facilitate the work of the critical infrastructure workers at the supplier, distribution center, or service provider that designated them.
 5. Businesses’, operations, suppliers, distributor centers and service providers must make such designations in writing to the entities they are designating, whether by e-mail, public website or other appropriate means, but such designations may be made orally until 11:59 p.m. on March 31, 2020
4. **Workers in the Insurance Industry.** Only to the extent their work cannot be done remotely.

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5. **Charitable and Social Service Organizations.** Businesses or operations (including both and religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
6. **Critical Labor Union Functions.** Includes individuals who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers.
7. **Hotels and Motels.**

WHAT DOES MINIMUM BASIC OPERATIONS MEAN?

Under the Order all non-essential businesses are required to cease all operations except for those needed to perform Minimum Basic Operations. Minimum Basic Operations include the minimum necessary activities to maintain the value of the business's inventory and equipment, care for animals, ensure security, process transaction (including payroll and employee benefits), or facilitate the ability of others to work remotely.

Businesses must determine which of their workers are necessary to conduct minimum basic operations and make such designations in writing, whether by electronic message, public website, or other appropriate means. Such designations, however, may be made orally until March 31, 2020 at 11:59 pm.

DO I NEED TO DESIGNATE MY EMPLOYEES?

All employers must designate which of its employees are considered critical infrastructure or necessary to maintain minimum basic operations, except:

- Health Care and Public Health
- Essential Governmental Activities
- Charitable and Social Service Organizations

WHICH ACTIVITIES ARE EXEMPTED UNDER THE ORDER?

Individuals may only leave their residences to perform the following activities:

1. **Outdoor Activity.** Activities such as walking, hiking, running or biking, so long as all individuals comply with the six feet social distancing requirement.
2. **Certain Types of Work.** To perform work as a critical infrastructure worker (either as designated by an employer or as exempt from such designation under Section 5(a) of the Order), to maintain minimum basic operations (but only after being designated to perform such work by their employer), or to perform necessary governmental activities, all as described above.
3. **Health and Safety.** Tasks essential to their or their family or household members' health and safety, including pets. Permissible tasks include seeking emergency services, obtaining medication, or visiting a health care professional.
4. **Supplies and Services.** To obtain necessary services or supplies for themselves, their family or household members, and their vehicles, such as groceries or food, gasoline, needed medical supplies, and any other consumer products, or supplies needed to maintain the safety, sanitation and basic operations of their residences.
5. **To Care for Others.** To care for a family member, friend, or pet in another household, or to visit an individual under the care of a health care, residential, or congregate facility, to the extent otherwise

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permitted.

6. **To Attend Legal Proceedings.** For essential or emergency purposes only as ordered by a court.
7. **To Travel to a Residence.** Individuals may return to or leave Michigan to return to their home or other residence, may travel between two residences in the state, or as required by law enforcement or court order, including the transportation of children pursuant to a custody agreement.

HOW WILL THE ORDER BE ENFORCED?

The Director's Order will be enforced by State and local law enforcement to the extent set forth in Michigan law. A willful violation by an individual will be considered a misdemeanor consistent with MCL 10.33 and MCL 30.405(3).

The Order will remain in effect until 11:59 p.m. on April 13. Prior to such date, Governor Whitmer will evaluate the continued need for the Order.

McDonald Hopkins has a team of professionals dedicated to assisting businesses experiencing financial distress as result of the Coronavirus. A list of articles focused on providing legal and business solutions to the impact of the Coronavirus on your business can be found on our [coronavirus resource page](#).

If you have questions regarding the Michigan "Stay Home, Stay Safe" order or questions on if your business qualifies as "critical infrastructure," please contact the attorneys listed below.



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